

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No.: 5:12-CV-00729-D

TERESA M. SPEAKS, TOBY SPEAKS,)
STANLEY SMITH, EDDIE BROWN, ROBERT)
POINDEXTER, MIKE MITCHELL, ROY L.)
COOK, ALEX SHUGART, H. RANDLE WOOD,)
ROBIN ROGERS and DANIEL LEE NELSON,)
)
Plaintiffs,)
)
vs.)
)
U.S. TOBACCO COOPERATIVE INC. f/k/a)
FLUE-CURED TOBACCO COOPERATIVE)
STABILIZATION CORPORATION,)
)
Defendant.)
)

**STIPULATION AND AGREEMENT OF CLASS ACTION COMPROMISE,
SETTLEMENT AND RELEASE**

This stipulation and agreement of settlement dated as of the 6th day of September, 2017 (the “Stipulation”) is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the Court, this Stipulation is entered into among the Plaintiffs, on behalf of themselves and the Settlement Class (all as defined below), and Defendant U.S. Tobacco Cooperative Inc. (f/k/a Flue-Cured Tobacco Cooperative Stabilization Corporation) (“U.S. Tobacco”), by and through their respective counsel. The Plaintiffs and U.S. Tobacco are referred to hereinafter, collectively, as the “Parties.”

RECITALS

A. On October 31, 2012, the Plaintiffs filed this action (“Action”) in the United States District Court for the Eastern District of North Carolina on behalf of a putative class of individuals,

proprietorships, partnerships, corporations, and other entities that are or were shareholders and/or members of U.S. Tobacco from the date of its inception in 1946 to the present. The Plaintiffs allege, *inter alia*, that the fundamental purposes for which U.S. Tobacco was created had ceased to exist, and that the actions of U.S. Tobacco were unfair and would have the effect of divesting or eliminating the value of Plaintiffs' alleged equity interests in U.S. Tobacco. The Plaintiffs asserted a claim for a judicial dissolution of U.S. Tobacco or, alternatively, for a distribution of U.S. Tobacco's assets, as well as a claim for declaratory judgment. U.S. Tobacco denies Plaintiffs' allegations.

B. Plaintiffs' Counsel (as defined below) has conducted a thorough and comprehensive investigation relating to the claims and the underlying events and transactions alleged in the Action. Plaintiffs' Counsel has analyzed the evidence adduced through the public record, pre-trial discovery (including discovery that had been produced to plaintiffs in the parallel Fisher/Lewis Litigation (as defined below), which is proceeding in North Carolina state court and with which Plaintiffs' Counsel was previously involved), voluntary document and information exchanges with U.S. Tobacco, ongoing meetings and discussions with the Plaintiffs and other members of the proposed Settlement Class, and information derived through the mediation process (including through document productions made in connection with the mediation). In addition, Plaintiffs' Counsel has consulted at length with experts and authorities in the field of agricultural cooperatives generally, and the tobacco industry in particular, and has researched the applicable law with respect to the claims against U.S. Tobacco and the potential defenses thereto.

C. Since the filing of the Action, and in light of all of the above considerations, Plaintiffs' Counsel has conducted extensive discussions and arm's-length negotiations with Defendant's Counsel (as defined below) with respect to a possible compromise and settlement of this Action. To that end, the Parties on May 11 and 12, 2017 conducted a mediation in Raleigh, North

Carolina with the assistance of the Honorable Frank W. Bullock, Jr. (Ret.), with a view to settling the issues in dispute and achieving the best relief possible consistent with the interests of the Settlement Class on the terms set forth in this Stipulation. The parties' two-day mediation with the Honorable Frank W. Bullock, Jr. (Ret.) was successful. Through extensive mediation and negotiation, the Parties were able to reach agreement on the principal terms of settlement.

D. Based upon the investigation of Plaintiffs' Counsel as set forth above, and after considering (a) the substantial benefits that the Plaintiffs and the members of the Settlement Class will receive from settlement of this Action; (b) the attendant risks and costs of litigation; and (c) the desirability of permitting the Settlement to be consummated as provided herein, the Plaintiffs have agreed to settle their claims pursuant to the terms and provisions of this Stipulation. The Plaintiffs and Plaintiffs' Counsel have carefully considered this Stipulation and have concluded and believe that the terms and conditions of the Stipulation are fair, reasonable, and adequate and in the best interests of the Plaintiffs and the Settlement Class.

E. This Stipulation shall in no event be construed or deemed to be evidence of, or an admission or concession on the part of, Defendant with respect to any claim, fault, liability, wrongdoing, or damage whatsoever that has been alleged against Defendant, or of any infirmity in the defenses that Defendant has asserted or could assert. Similarly, this Stipulation shall not be construed or deemed to be a concession by any of the Plaintiffs of any infirmity in the claims asserted in this Action.

NOW THEREFORE, in consideration of the benefits flowing to the Settlement Class and the Parties from the Settlement (as defined below), and without any admission or concession on the part of any party hereto, the Parties hereby STIPULATE AND AGREE, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, that all Settled Claims (as defined

below) as against the Released Parties (as defined below) shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms and conditions:

DEFINITIONS

Capitalized terms shall be defined as set forth in the Stipulation. In addition, the following terms shall have the following meanings:

(a) “Claims Administrator” means the claims administrator agreed upon by counsel for the Plaintiffs and the Defendant, the cost of which will be paid by the Defendant, to administer the “Settlement Fund” (as defined below).

(b) “Claims Period” means the period commencing with the final publication of the Class Publication Notice (as defined below) and ending 180 (one-hundred and eighty) days thereafter.

(c) “Class Notice” means the Notice of Pendency of Class Action, Preliminary and Proposed Class Action Certification, Proposed Class Action Settlement, Fee Petition, Settlement Hearing and Right to Appear, which is to be published online at the Settlement Website, substantially in the form annexed hereto as Exhibit 1 to Exhibit A.

(d) “Class Period” means, for the purposes of this Stipulation only, the period of time from the date of U.S. Tobacco’s incorporation on June 1, 1946 through and including the Effective Date of Settlement (as defined below).

(e) “Class Publication Notice” and “Postcard Notice” mean the Summary Notice of Proposed Settlement and Hearing, which are to be published or mailed to the Settlement Class Members, as further provided herein substantially in the forms annexed hereto as Exhibits 2 and 3 to Exhibit A.

(f) “Class Release” means the releases provided for in this Stipulation.

(g) “Class Representatives” or “Named Plaintiffs” mean Teresa M. Speaks; Toby Speaks; Stanley Smith; Eddie Brown; Robert Poindexter; Mike Mitchell, Roy L. Cook, Alex Shugart; H. Randle Wood; Robin Rogers; and Daniel Lee Nelson.

(h) “Defendant” means U.S. Tobacco in this Action.

(i) “Defendant’s Counsel” means the law firms of Quinn Emanuel Urquhart & Sullivan, LLP and Wyrick Robbins Yates & Ponton LLP.

(j) “Effective Date of Settlement” or “Effective Date” means the date upon which all conditions to the Settlement contemplated by this Stipulation shall have been satisfied and the Settlement shall become effective, as further set forth below.

(k) “Final Court Approval” means (1) entry by the Court of an Order and Final Judgment, in all material respects, and the expiration of the time to appeal or seek reargument or review of such Order and Final Judgment; or (2) if any appeal is filed and not dismissed, after such Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by writ of certiorari; or (3) in the event the Court enters an order and final judgment in form other than provided above (“Alternative Judgment”) and none of the Parties elect to terminate this Settlement (as provided below), the date such Alternative Judgment becomes final and no longer subject to appeal or review.

(l) “Order and Final Judgment” means the order to be entered certifying the Settlement Class and approving the Settlement and Class Release (as defined below) as fair and reasonable and dismissing the Settled Claims, wherever asserted, with prejudice and without costs to any party (except as provided herein).

(m) “Preliminary Order” means the Preliminary Order in Connection with Settlement Proceedings certifying the Settlement Class, preliminarily approving the Settlement, and directing notice thereof to the Settlement Class substantially in the form annexed hereto as Exhibit 4.

(n) “Plaintiffs’ Counsel” or “Class Counsel” mean the law firms of Shipman & Wright and Daughtry Woodard Lawrence & Starling.

(o) “Released Parties” means U.S. Tobacco and its parents, subsidiaries, predecessors, successors and assigns (the “Releasees”), and each of the Releasees’ past and present officers, directors, shareholders, agents, employees, attorneys, insurers, trustees, advisors, investment advisors, consultants, auditors, accountants, and any other representatives, heirs or individual or entity in which any Releasee has a controlling interest or which is related to or affiliated with any Releasee.

(p) “Settled Claims” means any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, covenants, controversies, damages, judgments, extents, executions, liabilities, claims, and demands whatsoever, in law, admiralty or equity, whether based on acts, omissions, or agreements, whether arising under federal, state, local, statutory, and/or common law and/or any other law, rule, or regulation (including, without limitation, the federal securities laws), whether known claims or Unknown Claims (as defined below), that have been or could have been asserted, either directly, derivatively or otherwise, in any forum by the Plaintiffs or the Settlement Class Members (as defined below), and/or any of them, against any of the Released Parties which arise out of, are based upon, are in connection with, and/or relate in any way to: (i) any of the matters, things, causes, or events that are specifically released pursuant to any of the provisions of this Stipulation or any document executed in connection herewith; (ii) any matter, thing, cause, or event whatsoever, or any series thereof, involved, set forth, and/or related to the

Complaint in this Action; and (iii) any action or inaction of U.S. Tobacco or its Board of Directors, or any of them, whatsoever during the Class Period; provided, however, that the Settled Claims shall not include the right of any of the Parties or the Released Parties to enforce the terms of this Settlement.

(q) “Settlement” means the settlement memorialized in this Stipulation.

(r) “Settlement Class” and “Settlement Class Members” mean the members of the class that has been certified or will be certified by the Court pursuant to this Stipulation, and for settlement purposes only, and consisting of all individuals, proprietorships, partnerships, corporations, and other entities that are or were shareholders and/or members of U.S. Tobacco at any time during the Class Period, without any exclusion, including any heirs, representatives, executors, powers-of-attorney, successors, assigns, or others purporting to act for or on their behalf with respect to U.S. Tobacco and/or the Settled Claims. There shall be no exclusions from the Settlement Class, except for any putative Settlement Class Members who exclude themselves by timely filing an “opt out” request in accordance with the requirements set forth in the Class Notice (as further described herein). Concurrently with their execution of this Stipulation, Plaintiffs’ Counsel shall file an Amended Complaint that defines the class in a manner consistent with the definition of the Settlement Class herein.

(s) “Unknown Claims” means any and all Settled Claims that any of the Plaintiffs or that any Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Parties, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement. Plaintiffs and Defendant acknowledge, and Settlement Class Members by operation of law shall be deemed to have acknowledged, that the

inclusion of “Unknown Claims” in the definition of Settled Claims was separately bargained for and was a key element of the Settlement.

CONDITIONS OF SETTLEMENT

1. This Settlement shall be subject to, and shall only become effective upon, satisfaction of all of the following conditions:

(a) Approval by U.S. Tobacco’s Board of Directors of this Stipulation and any such further actions as may be necessary to obtain Final Court Approval and effect the terms of this Settlement;

(b) Execution of this Stipulation by Plaintiffs’ Counsel and by Defendant’s Counsel on behalf of the Parties;

(c) Certification by the Court, for settlement purposes only, of a Settlement Class as defined herein;

(d) Final Court Approval of this Stipulation and Settlement; and

(e) Dismissal, with prejudice, or issuance of an appropriate order precluding further pursuit of any class-wide claims on behalf of these class members, including but not limited to those associated with the actions *Dan Lewis et al. v. Flue-Cured Tobacco Stabilization Corp.*, 05 CVS 188 (N.C. Super. Ct.); *Kay W. Fisher et al. v. Flue-Cured Tobacco Stabilization Corp.*, 05 CVS 1938 (N.C. Super. Ct.), as currently pending in the N.C. Superior Court. This provision shall not be construed to prevent any individual plaintiffs from opting out of the provisions of this Stipulation in accordance with the provisions described below and pursuing their claims on an individual basis.

SCOPE AND EFFECT OF SETTLEMENT

2. The obligations incurred pursuant to this Stipulation are the result of a compromise between and among the Parties that is intended to settle and resolve disputed and contested claims,

and this Settlement shall be in full and final disposition as against all Released Parties of this Action and any and all Settled Claims of the Settlement Class, wherever asserted.

3. Upon the Effective Date of this Settlement, and pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Plaintiffs and the Settlement Class Members, on behalf of themselves, their heirs, representatives, executors, administrators, successors, and assigns, and any persons they represent, hereby release, compromise, settle, discharge, and dismiss with prejudice, pursuant to the terms and conditions set forth herein, each and every Settled Claim against each of the Released Parties, and shall forever be enjoined from prosecuting each and every Settled Claim against each of the Released Parties.

4. Pending consummation of this Settlement and until the Effective Date of this Settlement, or until the Settlement is terminated as provided herein, the Plaintiffs shall not seek relief against the Released Parties in any forum, or take any action in this Action, and all proceedings in this Action or otherwise shall be stayed and suspended, except that the Parties shall take all such action and file all such papers as are necessary or appropriate to effect the consummation and approval of the Settlement.

TERMS OF THE SETTLEMENT

5. U.S. Tobacco shall cause the following to occur as consideration for the Settlement:

(a) **The Settlement Fund**

(1) U.S. Tobacco shall pay into the Settlement Fund the sum of Twenty Four Million Dollars (\$24,000,000.00), said amounts to be held in escrow on behalf of this Plaintiffs and the Settlement Class and paid and administered in accordance with the provisions of this Stipulation.

(2) Payments into the Settlement Fund shall be made according to the following schedule (collectively, the “Settlement Payment Dates”): (i) \$10 million shall be paid upon the Effective Date (“the First Settlement Payment”); (ii) \$5 million shall be paid two years after the First Settlement Payment (“the Second Settlement Payment”); (iii) \$5 million shall be paid two years after the Second Settlement Payment (“the Third Settlement payment”); and \$4 million shall be paid one year after the Third Settlement Payment.

(3) The payments made by U.S. Tobacco into the Settlement Fund and any interest thereon shall constitute the Settlement Fund. Except as provided in this agreement, the Settlement Fund, net of any Taxes (as defined below), shall be used to pay such attorneys’ fees and expenses as may be awarded by the Court from the Settlement Fund to Plaintiffs’ Counsel and the Named Plaintiffs/Class Representatives. The balance of the Settlement Fund after the above payments have been made shall be distributed to the Authorized Claimants (as defined below) as provided herein.

(4) Any sums required to be held in escrow hereunder shall be held and administered by Rust Consulting, Inc. as escrow agent (the “Escrow Agent”) for the Settlement Fund, pursuant to an escrow agreement to be prepared by Plaintiffs’ Counsel and approved by the Court. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court, and such funds and the Escrow Agent shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned to the persons paying the same pursuant to this Stipulation and/or further order of the Court.

(5) The Escrow Agent shall invest any funds in the Settlement Fund in excess of \$100,000 in short term United States Agency or Treasury Securities, or in a Treasury Obligations Fund approved by the Parties, and shall collect and reinvest all interest accrued thereon.

Any funds held in escrow in an amount of less than one hundred thousand dollars (\$100,000.00) may be held in an interest-bearing bank account insured by the Federal Deposit Insurance Corporation (“FDIC”).

(6) The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that the Escrow Agent, as administrator of the Settlement and Settlement Fund within the meaning of Treasury Regulation §1.468B-2(k)(3), shall be responsible for filing tax returns, and information returns, if any, for the Settlement Fund and paying from the Settlement Fund any Taxes (as defined below) owed with respect thereto.

(7) All (i) taxes on the income of the Settlement Fund, and (ii) expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) (collectively “Taxes”) shall be paid out of the Settlement Fund, shall be considered to be a cost of administration of the Settlement, and shall be timely paid by the Escrow Agent without prior Order of the Court.

(8) The Plaintiffs and the Settlement Class acknowledge and agree that U.S. Tobacco makes no representation as to the tax effects of the Settlement and that Settlement Class Members assume exclusive responsibility for all tax or other liabilities, if any, associated with any distributions they receive from the Settlement Fund.

(9) If the Settlement does not become effective for any reason, (i) U.S. Tobacco shall have no obligation to make any payments to the Settlement Fund.

(b) **Notice, Claims Management. And Administration**

(1) Separate from the Settlement Fund, U.S. Tobacco will bear the cost of providing Notice of the Settlement to the Settlement Class.

(2) Separate from the Settlement Fund, U.S. Tobacco will bear the cost of claims management and administration of the Settlement.

(3) Upon receipt of each Settlement Payment, as described above, the Settlement Fund shall be divided by the Claims Administrator into two (2) separate funds, with Seventy-Five percent (75%) of the Settlement Fund to be paid into an account from which Group 1 Claims will be paid, and Twenty-Five percent (25%) of the Settlement Fund to be paid into an account from which Group 2 Claims will be paid.

(4) A Claims Administrator, to be selected jointly by the Parties and compensated by the Defendant, will have responsibility for administering the Settlement, including providing Claim Forms (as defined below), maintaining the Settlement Website (as defined below), monitoring a toll-free telephone number that Settlement Class Members can call to obtain information about the Settlement, reviewing and evaluating Claim Forms, determining whether claimants are Settlement Class Members, determining whether Settlement Class Members are entitled to a distribution under either Group 1 or Group 2 Claims (“Authorized Claimants”), determining the amount of the distribution for each Authorized Claimant (to be calculated as set forth herein), and mailing checks to the Authorized Claimants. The Claims Administrator shall keep all information received in connection with this Action confidential and shall use such information only for the purpose of administering the Settlement and the Settlement claims process and for no other purpose.

(5) In order to facilitate notice and to provide further information about this Settlement, the Claims Administrator shall maintain a website (the “Settlement Website”) throughout the duration of the Claims Period. The Settlement Website shall post copies of the Plaintiffs’ Complaint; Order Granting Preliminary Approval of the Settlement; the Class Notice; and

Frequently Asked Questions (in the form attached hereto as “Exhibit 5”), along with instructions for opting-out or downloading a Claim Form. The website address is www.fluecuredtobaccosettlement.com. In addition, the Claims Administrator shall maintain a toll-free number throughout the duration of the claims period, containing a recorded message and touch-tone options for callers to learn more about the Settlement. The toll-free number is [REDACTED].

(6) In order to make a Claim, Settlement Class Members must complete and submit to the Claims Administrator a Claim Form, certifying to the best of their knowledge and belief that they qualify for distributions under Group 1 and/or Group 2. The Claim Form shall be in the form attached hereto as “Exhibit 6.” In no event may Claims be submitted by more than one individual, proprietorship, partnership, corporation or other entities for a single Settlement Class Member. If submitting a Group 1 Claim, Settlement Class Members shall provide sufficient information and documentation so as to enable the Claims Administrator to make a determination regarding the total pounds of flue-cured tobacco the Settlement Class Member marketed and sold during the Class Period. If submitting a Group 2 Claim, Settlement Class Members shall provide sufficient information and documentation so as to enable the Claims Administrator to make a determination regarding the total number of crop years that a Settlement Class Member marketed and sold flue-cured tobacco during the Class Period.

(7) To be timely, the Claim Form must either (a) be uploaded and received by the Claims Administrator on or before the one-hundred and eightieth (180th) day following the date of the final publication of the Notice of the Proposed Settlement; or (b) be sent by U.S. Mail to the Claims Administrator and postmarked on or before the one-hundred and eightieth (180th) day following the date of the final publication of the Notice of the Proposed Settlement.

(8) If the Claim Form is timely, proper, and contains sufficient information to establish that the Claim falls within Group 1 and/or Group 2, the Claims Administrator shall cause a check or checks to be provided to Settlement Class Members. The Claims Administrator shall rely upon the good-faith representations and submissions from the Settlement Class Members and the records provided to the Claims Administrator by the Defendant in authorizing payments to Settlement Class Members submitting Group 1 and/or Group 2 Claims.

(9) Group 1: Group 1 Claims shall be distributed to Settlement Class Members who submit a Group 1 Claim on a pro rata basis, determined by the total pounds of flue-cured tobacco a Settlement Class Member marketed and sold during the Class Period relative to the total pounds of flue-cured tobacco from all Settlement Class Members who submit a Group 1 Claim. Notwithstanding the preceding sentence, no Settlement Class Member shall receive more than \$15,000 for a Group 1 Claim. Any funds leftover after the administration of all Group 1 Claims shall be distributed to Settlement Class Members submitting valid Group 2 Claims, as set forth below.

(10) Group 2: Group 2 Claims shall be distributed to Settlement Class Members who submit a Group 2 Claim on a pro rata basis, determined by the total number of crop years that a Settlement Class Member marketed and sold flue-cured tobacco relative to the total number of crop years of all Settlement Class Members who submit a Group 2 Claim.

(11) At the hearing of the Motion for an Order and Final Judgment (“Final Approval Hearing”), Class Counsel shall petition the Court for an award of attorneys’ fee, costs, and Class Representative incentive awards in an amount not to exceed Two Million Dollars (\$2,000,000.00) in the aggregate, to be paid from the Settlement Fund, as determined by the Court.

(12) At the end of the Claims Period, the Claims Administrator shall finally determine which Settlement Class Members are Authorized Claimants, and the amount of the distribution, based upon either the timely, proper, and complete submission of a Claim Form and the information then available to the Claims Administrator.

(13) U.S. Tobacco shall cooperate to provide any information that is readily available to U.S. Tobacco and that is reasonably necessary to assist Plaintiffs' Counsel in identifying Settlement Class Members, to effectuate the provision of Class Notice and distribution of the Settlement Fund.

(14) Settlement Class Members whose Claims are rejected, in whole or in part, shall be notified in writing by the Claims Administrator as to the reasons that any Claim(s) has been rejected; how any defects in the Claim might be cured; and the deadline for the submission of additional information. Any Settlement Class Member whose Claim has been rejected in whole or in part and who desires to contest such rejection, must, within twenty (20) days after the date of the notification from the Claims Administrator that a Claim has been rejected, serve upon the Claims Administrator a notice and statement of reasons indicating the Settlement Class Member's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Claims Administrator. Defendant's Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Claim submitted to the Claims Administrator in the interests of achieving substantial justice. If a dispute concerning a Claim cannot be otherwise resolved, Plaintiffs' Counsel may thereafter present the request for review to the Court;

(15) The administrative determinations of the Claims Administrator accepting and/or rejecting Claims shall be presented to Class Counsel and Defendant's Counsel

(collectively the “Parties’ Counsel”). The Parties’ Counsel shall have 15 days to challenge any of the Claims Administrator’s determinations. Any such challenges shall be transmitted to the Claims Administrator, with copy to all counsel of record, in writing. The Claims Administrator shall have 15 days to respond to any challenges by the Parties’ Counsel, which response shall be final and binding.

(c) **Claimants Submit to Jurisdiction of Court**

(1) Each Settlement Class Member submitting a Claim shall be deemed to have submitted to the jurisdiction of the Court with respect to the Settlement Class Member’s Claim, and the Court’s inquiry regarding any disputes over a Claim shall be limited to that Settlement Class Member’s status as an Authorized Claimant and the validity and amount of the Settlement Class Member’s claim. No discovery shall be allowed on the merits of the underlying Action or Settlement in connection with processing of the Claims.

(d) **Payment Deemed Final and Conclusive**

(1) Payment pursuant to this Stipulation shall be deemed final and conclusive against all Settlement Class Members with respect to their right to receive any distribution from the Settlement Fund. All Settlement Class Members who fail to submit a timely Claim (unless a later Claim is allowed by the Court), and all Settlement Class Members whose claims are not accepted by the Claims Administrator and approved by the Court, shall be barred from receiving any distribution from the Settlement Fund with respect to such Claim only; and such Settlement Class Member shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order and Final Judgment to be entered in this Action and the Class Release, and shall be barred from bringing any action against the Released Parties concerning the Settled Claims.

(2) All proceedings with respect to the administration, processing, and determination of claims relating to the Settlement Fund and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court.

(3) The Settlement Fund shall be distributed to Authorized Claimants by the Claims Administrator only after the Effective Date and after receipt of each Settlement Payment and after the following events: (i) upon the receipt of and the processing of all Claims, and all Settlement Class Members whose Claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; (ii) all objections with respect to all rejected or disallowed Claims have been resolved by the Court; (iii) all matters with respect to attorneys' fees, costs, and disbursements have been resolved by the Court, all appeals therefrom have been resolved or the time therefore has expired; and (iv) all costs of administration have been paid.

(4) Plaintiffs' Counsel shall apply to the Court, on notice to Defendant's Counsel, for an Order (the "Class Distribution Order") approving the Claims Administrator's administrative determination concerning the acceptance and rejection of the Claims submitted pursuant to the process herein, the calculation of the distribution amounts for the Authorized Claimants, and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator, and if the Effective Date has occurred, directing payment to the Authorized Claimants.

(5) Any escheat liability or other liabilities associated with distributions from the Settlement Fund shall be the sole responsibility of the Settlement Fund or of the Authorized Claimants receiving such distributions and, upon the Effective Date, the Settlement

Fund and the Authorized Claimants, with respect to any payments received by them, hereby release and agree to defend and indemnify U.S. Tobacco against any and all such liabilities, including reasonable attorneys' fees; provided, however, that the indemnity provided for in this paragraph shall not exceed the amounts actually received by the party providing the indemnity.

APPROVAL, CLASS NOTICE, CLAIMS PROCEDURE

6. The Parties will appear before the Court on a date and time to be set by the Court to request an Order Granting Preliminary Approval.

7. Upon preliminary approval, and as the Court may direct, the Class Notice, the Class Publication Notice, and the Postcard Notice will be disseminated to Settlement Class Members as provided in this section.

8. Prior to the Effective Date and U.S. Tobacco's payment of the Settlement Amount, and subject to the limitations set forth in this Agreement, U.S. Tobacco shall advance (i) such reasonable costs and expenses as Plaintiffs' Counsel and Defendant's Counsel jointly approve in connection with providing notice to the class; and (ii) such reasonable costs and expenses as Plaintiffs' Counsel and Defendant's Counsel jointly approve in connection with administration of the Settlement.

9. The Class Publication Notice shall be publicly disseminated in a manner reasonably calculated to reach Settlement Class Members, as more particularly described in the notice plan to be submitted by the Parties and approved by the Court. The Class Publication Notice shall inform Settlement Class Members, among other things, of the Settlement Website (which shall have a copy of the Class Notice and other documents related to the Settlement, as provided herein and in the notice plan), a toll-free telephone number through which they may arrange for a mailing of the Class Notice, and a Claim Form.

10. In addition, the Postcard Notice, to be approved by the Court, shall be mailed, postage prepaid, to any Settlement Class Member whose current address can be identified by the Parties through reasonable efforts, and the costs thereof shall be borne by the Defendant. In addition, such mailing shall be sent to each Settlement Class Member whose identity becomes known as a result of the Class Publication Notice or who contacts the Claims Administrator, U.S. Tobacco, or counsel for the Parties during the Claims Period.

11. Dissemination of the Class Notice, Class Publication Notice, and the Postcard Notice, either substantially in their original forms or as modified by the Court, shall begin on the date of the Court's Preliminary Approval Order, or as soon thereafter as is reasonable possible, and be disseminated as additional Settlement Class Members are identified until the date set for the Final Approval Hearing.

12. Concurrently with Parties' execution of this Agreement, Plaintiffs' Counsel shall submit a motion to the Court for entry of the Preliminary Order (a) certifying a Settlement Class, as defined herein, (b) preliminarily approving the Settlement, and (c) approving the form of Class Notice, Postcard Notice, and Class Publication Notice and directing that the Class Notice, Postcard Notice, and Class Publication Notice be provided to the Settlement Class in the manner approved therein. The Preliminary Order shall be substantially in the form annexed hereto as Exhibit 4.

13. If the Settlement contemplated by this Stipulation is approved by the Court, Plaintiffs' Counsel and Defendant's Counsel shall request that the Court enter an Order and Final Judgment.

14. Immediately upon the Class Publication Notice being published, Settlement Class Members may begin to submit Claims, either through uploading a completed and signed Claim Form to the Settlement Website or mailing it to the Claims Administrator. Settlement Class Members will

be allowed to submit Claim Forms up to one-hundred and eighty (180) days following the date of the final publication of the Notice of the Proposed Settlement.

15. The Claims Administrator shall administer the relief provided in this Settlement Agreement by resolving claims in a rational, responsive, cost-effective and timely manner. The Claims Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement in a computerized database. The Claims Administrator shall maintain all such records for a period of eighteen (18) months following the close of the Claims Period and such records will be made available upon request to Class Counsel and Defendant's counsel. The Claims Administrator shall also provide such reports and such other information to the Court as the Court may require. The Claims Administrator shall provide Class Counsel and Defendant's counsel with a detailed written summary of Claims received on a monthly basis. The Claims Administrator will validate each Claim Form by confirming that it is signed and provides the required information, and will determine whether the claimant satisfies the requirements to receive a distribution from the Settlement Fund. The Parties retain the right to petition the Court for an order directing an audit of a representative sampling of the Claim Forms submitted to ensure their validity. The Parties also have the right to request information from the Claims Administrator concerning the settlement process. The Parties shall also have the right to challenge any payment of cash to any Authorized Claimant(s) for good cause, including but not limited to: failure to provide all required information for recovery under the Settlement; failure to meet the eligibility requirements for recovery under this Settlement; duplication; mistake; and/or fraud. The Claims Administrator shall establish procedures for a Party to challenge any proposed payment(s) of cash.

ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS

16. Upon Final Court Approval of the Settlement, Plaintiffs' Counsel may apply to the Court for an award of attorneys' fees, expenses and incentive awards for the Named Plaintiffs in an amount not to exceed Two Million Dollars (\$2,000,000.00) in the aggregate. Such attorneys' fees and expenses as are awarded by the Court shall be paid to Plaintiffs' Counsel upon or after the Effective Date as directed and ordered by the Court, and shall be paid from the Settlement Fund. Subject to the requirement that U.S. Tobacco pay the Settlement Amount to the Settlement Fund as provided in this Stipulation, and except as otherwise expressly provided herein, Defendant shall have no obligation or liability whatsoever for any costs, fees, or expenses, including attorneys' fees, awarded by the Court. The Named Plaintiffs in this Action shall participate in the Settlement, according to their respective interests, on the same basis as other members of the Settlement Class and each may apply for and may be entitled to receive a reasonable incentive payment as approved by the Court. Said incentive awards, if any, shall be paid from the Settlement Fund.

OPT-OUTS

17. Any Settlement Class Member who wishes to opt-out of the Settlement must file with the Clerk of the United States District Court for the Eastern District of North Carolina and serve on [Rust Consulting, Inc. **insert address of Claims Administrator**] no later than thirty (30) days prior to the Final Approval Hearing, a written and signed statement, titled "Request for Exclusion," demonstrating his/her/its prima facie status as a Settlement Class Member and requesting his/her/its exclusion from the Class. In addition, any Settlement Class Member who wishes to opt-out must provide his or her name, address, telephone number, and email address (if applicable). Settlement Class Members who do not timely opt out of the Class or who fail to properly opt-out of the Class,

remain members of the Class and may succeed to any of the benefits of the Class, and shall be bound by any order(s) of the Court regarding the Class.

OBJECTIONS TO SETTLEMENT

18. Any Settlement Class Member who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the Settlement must file with the Clerk of the Court and serve on Gary K. Shipman, Esq., Shipman & Wright, LLP, 575 Military Cutoff Road, Suite 106, Wilmington, NC 28405 and Derek L. Shaffer, Esq., Quinn Emanuel Urquhart & Sullivan, LLP, 777 6th Street NW 11th floor, Washington, D.C. 20001-3706, no later than thirty (30) days prior to the Final Approval Hearing, a written and signed statement, stating such objections as he, she, or it may have as well as the specific reason(s), if any, for each objection, including any legal support the Settlement Class Member wishes to bring to the Court's attention and any evidence the Settlement Class Member wishes to introduce in support of the objection. In addition, any Settlement Class Member who wishes to object must provide his, her, or its name, address, telephone number, and email address (if applicable). Settlement Class Members who object must submit documentary proof or an affidavit establishing that they are Members of the Class. Settlement Class Members may object through any attorney hired at their own expense. If a Settlement Class Member hires an attorney to represent him, the attorney must:

(a) File a notice of appearance with the Clerk of Court no later than fourteen (14) days prior to the Final Approval Hearing or as the Court may otherwise direct, and

(b) Serve a copy of such notice of appearance on Gary K. Shipman, Esq., Shipman & Wright, LLP, 575 Military Cutoff Road, Suite 106, Wilmington, NC 28405 and Derek L. Shaffer, Esq., Quinn Emanuel Urquhart & Sullivan, LLP, 777 6th Street NW 11th floor, Washington, D.C. 20001-3706 within the same time period.

Any Settlement Class member who files and serves a written objection, as described herein, may appear at the Final Approval Hearing to object to the fairness, reasonableness, or adequacy of this Agreement or the Settlement. Any Settlement Class Member (or attorney) who fails to comply with the provisions of this paragraph and the preceding paragraphs shall waive and forfeit any and all rights or objections the Settlement Class Member may have in this or in any other action or proceeding, and shall be bound by all the terms of the Agreement and by all proceedings, orders, and judgments in the Action.

ENTRY OF ORDER AND FINAL JUDGMENT

19. At the time the Court considers the Order Granting Preliminary Approval, the Parties will request that the Court set a hearing for the Final Approval Hearing approximately sixty (60) days after first publication of the Notice of the Proposed Settlement. At the Final Approval Hearing, the Parties will request that the Court, among other things, (a) enter an Order and Final Judgment in accordance with this Agreement, and (b) approve the Settlement and Agreement as final, fair, reasonable, adequate, and binding on all Settlement Class Members.

20. In the event the Court determines not to enter an Order and Final Judgment in accordance with all of the terms of this Agreement, or the Order and Final Judgment does not for any reason become Final as defined herein, the Parties shall proceed as follows:

(a) If the Court declines to enter the Order and Final Judgment as provided for in this Agreement, the Action will resume unless the Parties mutually agree to: (1) seek reconsideration or appellate review of the decision denying entry of the Order and Final Judgment, or (2) attempt to renegotiate the Settlement and seek Court approval of the renegotiated settlement.

(b) In the event any such reconsideration and/or appellate review is sought and denied, the Parties shall have no further rights or obligations under this Agreement.

RELEASE AND COVENANT NOT TO SUE

21. Regardless of whether Settlement Class Members make claims under this Settlement, the Court's Order and Final Judgment will dismiss Plaintiffs' and Settlement Class Members' claims with prejudice and will forever release, remise, acquit, satisfy, and discharge Defendant from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, covenants, controversies, damages, judgments, extents, executions, liabilities, claims, and demands whatsoever, in law, admiralty or equity, whether based on acts, omissions, or agreements, whether arising under federal, state, local, statutory, and/or common law and/or any other law, rule, or regulation (including, without limitation, the federal securities laws), whether known claims or Unknown Claims, that have been or could have been asserted, either directly, derivatively, or otherwise, in any forum by the Plaintiffs or the Settlement Class Members, and/or any of them, against any of the Released Parties which arise out of, are based upon, are in connection with, and/or relate in any way to: (i) any of the matters, things, causes, or events that are specifically released pursuant to any of the provisions of this Stipulation or any document executed in connection herewith; (ii) any matter, thing, cause, or event whatsoever, or any series thereof, involved, set forth, and/or related to the Complaint in this Action; and (iii) any action or inaction of U.S. Tobacco or its Board of Directors, or any of them, whatsoever during the Class Period; provided, however, that the Settled Claims shall not include the right of any of the Parties or the Released Parties to enforce the terms of the Settlement.

EXCLUSIVE REMEDY; DISMISSAL OF ACTION(S); JURISDICTION OF COURT

22. Except as otherwise provided in this Settlement Agreement, this Settlement Agreement shall be the sole and exclusive remedy for any and all Settled Claims of Settlement Class Members against Defendant, and upon entry of the Final Order and Judgment by the Court,

each Settlement Class Member who has not opted-out of the Settlement Class shall be barred from initiating, asserting, prosecuting or continuing to prosecute any Settled Claim against Defendant.

23. Plaintiffs' Counsel agree to provide reasonable cooperation to stay or dismiss, as appropriate, any other action of any Settlement Class Member for Settled Claims pending in any Court against Defendant, unless a Settlement Class Member timely opts out pursuant to the provisions herein. This Court shall retain exclusive and continuing jurisdiction of the Action, all Parties, and Settlement Class Members, to interpret and enforce the terms, conditions and obligations of this Settlement Agreement, including the enforcement of the provisions of this paragraph.

EFFECTIVE DATE OF SETTLEMENT OR TERMINATION

24. The Effective Date of Settlement shall be the date when all of the material conditions to the Settlement as set forth in this Stipulation have occurred.

25. Any signatory to this Stipulation shall have the right to terminate the Settlement and this Stipulation by providing written notice of its election to do so ("Termination Notice") to Defendant's Counsel and Plaintiffs' Counsel (as applicable) within thirty (30) days of: (a) the Court's declining to enter an Order for Notice and Hearing in a form consistent with the substance of the proposed Order annexed hereto as Exhibit 4; (b) the Court's refusal to approve this Stipulation; (c) the Court's declining to enter the Order and Final Judgment; (d) the date upon which the Order and Final Judgment is modified or reversed in any respect by the United States Court of Appeals for the Fourth Circuit and/or the United States Supreme Court; (e) the date upon which an Alternative Judgment is modified or reversed in any respect by the United States Court of Appeals for the Fourth Circuit and/or the United States Supreme Court; or (f) the failure of any other material condition to the Settlement as set forth in this Stipulation.

26. Except as otherwise provided herein, in the event the Settlement is terminated or fails to become effective for any reason, then (i) the Settlement shall be without prejudice, and none of its terms shall be effective or enforceable, except to the extent costs of notice and administration have been incurred or expended as provided for in this Stipulation; (ii) certification of the Settlement Class shall be vacated and shall not be deemed an admission that a class exists for any other purpose; and (iii) the Parties shall be deemed to have reverted to their respective status in this Action immediately prior to the date of this Stipulation; and (v) except as otherwise expressly provided, the Parties shall proceed in all respects as if this Stipulation, the Settlement, and any related orders had not been entered.

27. In the event the Settlement is terminated or fails to become effective for any reason, this Stipulation, all other Settlement documents, and the fact of the Settlement (i) shall be inadmissible in this Action or any other proceeding, including any fee application, for any purpose, including impeachment; (ii) shall not be deemed to prejudice in any way the position of any Party with respect to this Action or other proceeding, including any Party's position with respect to the existence of a class or the appropriateness of class certification; and (iii) shall be subject to Rule 408 of the Federal Rules of Evidence. In the event that the Settlement is not consummated, no party shall be entitled to recover costs or expenses incurred in connection with the proposed Settlement (except as expressly provided herein).

NO ADMISSION OF WRONGDOING

28. U.S. Tobacco and its Board of Directors have denied and continue vigorously to deny that they have committed any act or omission giving rise to any liability and/or violation of law whatsoever. U.S. Tobacco is entering into this Settlement to eliminate the burden and expense of further litigation. This Stipulation, whether or not consummated, and any proceedings taken pursuant

to it:

(a) Shall not be offered or received against Defendant or against Plaintiffs or the Settlement Class as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by the Defendant or by any of the Plaintiffs or the Settlement Class with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that has been or could have been asserted in this Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in this Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Defendant;

(b) Shall not be offered or received against Defendant as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by Defendant, or against Plaintiffs and the Settlement Class as evidence of any infirmity in the claims of Plaintiffs and the Settlement Class;

(c) Shall not be offered or received against Defendant or against Plaintiffs or the Settlement Class as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any reason as against any of the parties to this Stipulation, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, Defendant may refer to it to effectuate the liability protection granted hereunder;

(d) Shall not be construed against Defendant as an admission or concession that a class exists or that this Action or any other action may be certified as a class action, except for purposes of this Settlement;

(e) Shall not be construed as or received in evidence as an admission, concession,

or presumption against Plaintiffs or the Settlement Class or any of them that their claims are without merit or that damages recoverable under their Complaint would not have exceeded the consideration provided for in this Settlement.

MISCELLANEOUS PROVISIONS

29. Negotiated Agreement. The Parties agree that the terms of the Settlement were negotiated at arm's length in good faith by the Parties, including under the supervision of the Honorable Frank W. Bullock, Jr. (Ret.) as mediator, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

30. Modification. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all signatories hereto or their successors-in-interest.

31. No Waiver. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Stipulation by any other Party shall not be deemed a waiver of any of the provisions, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by such other Party.

32. Notices. Any notice, communication, request, reply, or advice (collectively, "Notice") required or permitted to be given by any Party to any other Party under this Stipulation, other than the Class Notice, Postcard Notice, and Class Publication Notice, shall be in writing and shall be given or served by (i) deposit in the United States Mail, addressed to the Party to be notified, postage prepaid, and registered or certified with return receipt requested; (ii) delivery in person to such Party; or (iii) any other method that provides for actual and verifiable receipt by such Party. Notice deposited in the mail in the manner hereinabove described shall be effective only if and when

received or refused by the Party to be notified. For purpose of Notice, the addresses of the Parties shall be as set forth in Exhibit 7 hereto. Any Party may change the address stipulated in Exhibit 7 by providing Notice of the change of address to all Parties pursuant to the terms of this section.

33. Headings. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

34. Jurisdiction. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the United States District Court for the Eastern District of North Carolina and the Court shall retain jurisdiction for the purpose of (i) enforcing the terms of this Stipulation; (ii) resolving any claims of Settlement Class Members with respect to the Settlement Fund as specifically provided herein; and (iii) entering orders providing for awards of attorneys' fees and expenses to Plaintiffs' Counsel as specifically provided herein.

35. Return of Documents. Within fifteen (15) days after entry of the Final Order and Judgment, Plaintiffs' Counsel shall return to Defendant's Counsel all discovery material produced in this Action that was marked "Confidential" by U.S. Tobacco, and shall not retain any copies or extracts thereof.

36. Entire Agreement. This Stipulation and its exhibits constitute the entire agreement among the Parties concerning the Settlement of this Action and supersede all prior agreements or understandings. No representations, warranties, or inducements have been made by any party hereto concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

37. Governing Law. This Stipulation and the Settlement contemplated by it shall be governed by and construed in accordance with the internal laws of the State of North Carolina, without regard to North Carolina's conflict of law rules. This Stipulation shall not be construed more

strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that the Stipulation is the result of arm's length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation.

38. Successors. This Stipulation shall be binding upon and inure to the benefit of the Parties and their respective agents, executors, heirs, successors, and assigns.

39. Execution In Counterparts. This Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument, and shall become effective when such counterparts have been signed by each of the Parties and delivered to the other Parties.

40. Full Authority. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related settlement documents, warrant, and represent that he or she has been duly authorized and empowered to execute this Stipulation on behalf of each such Party.

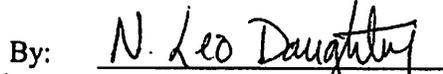
41. Cooperation Of Counsel. The Parties and their attorneys agree to cooperate fully with one another in seeking Court approval of the Order for Notice and Hearing, and to use their best efforts to effect, as promptly as practicable, the consummation of the Settlement and dismissal of this Action with prejudice and without costs to any party (except as expressly provided herein).

SIGNATURES APPEAR ON FOLLOWING PAGE

IT IS HEREBY AGREED by the undersigned, on behalf of their respective clients, as of the date first set forth above.

By: 

Gary K. Shipman, Esq.
William G. Wright, Esq.
Shipman & Wright, LLP
575 Military Cutoff Road
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Attorneys for Plaintiffs

By: 

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By: 

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Attorneys for Defendant

By: 

Lee M. Whitman, Esq. 9/7/17
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