

STATE OF NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
14 CVS 8130

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DR. ROBERT CORWIN, AS TRUSTEE)
FOR THE BEATRICE CORWIN LIVING)
IRREVOCABLE TRUST, on Behalf of a)
Class of those Similarly Situated,)
)
Plaintiff,)
)
v.)
)
BRITISH AMERICAN TOBACCO PLC,)
REYNOLDS AMERICAN, INC., SUSAN M.)
CAMERON, JOHN P. DALY, NEIL R.)
WITHINGTON, LUC JOBIN, NICHOLAS)
SCHEELE, MARTIN D. FEINSTEIN,)
RONALD S. ROLFE, RICHARD E.)
THORNBURGH, HOLLY K. KOEPEL,)
NANA MENSAH, LIONEL L. NOWELL III,)
JOHN J. ZILLMER, and THOMAS C.)
WAJNERT,)
)
Defendants.)
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MEMORANDUM OF UNDERSTANDING

WHEREAS, this Memorandum of Understanding (“MOU”) is made and entered into as of January 17, 2015, by and among Defendants Reynolds American Inc. (“Reynolds”) and Susan M. Cameron, John P. Daly, Neil R. Withington, Luc Jobin, Sir Nicholas Scheele, Martin D. Feinstein, Ronald S. Rolfe, Richard E. Thornburg, Holly K. Koeppel, Nana Mensah, Lionel L. Nowell III, John J. Zillmer, Thomas C. Wajnert (collectively, the “Director Defendants” and with Reynolds, “Defendants”), and Plaintiff Dr. Robert Corwin, as Trustee for the Beatrice Corwin Living Irrevocable Trust (“Plaintiff” and together, with Defendants, the “Parties”) in the action currently pending in the North Carolina General Court of Justice, Superior Court Division,

Guilford County (the “Court”), captioned *Corwin v. British American Tobacco PLC, et al.*, No. 14-CVS-8130 (the “Action”), to document the agreement in principle for the partial settlement of the Action on the terms and subject to the conditions set forth herein;

WHEREAS, on July 15, 2014, Reynolds announced the signing of a definitive Agreement and Plan of Merger (the “Merger Agreement”) with Lorillard, Inc. (“Lorillard”) and Lantern Acquisition Co. (“Merger Sub”), pursuant to which, subject to the approval of Reynolds’ and Lorillard’s stockholders, Reynolds will acquire Lorillard and Lorillard stockholders will receive \$50.50 in cash and 0.2909 shares of Reynolds common stock for each share of Lorillard common stock (the “Merger”);

WHEREAS, on July 15, 2014, Reynolds announced that it had entered into a Subscription and Support Agreement with British American Tobacco plc (“BAT”) under which BAT will maintain its 42 percent ownership in RAI through an investment of approximately \$4.7 billion (the “Subscription and Support Agreement”);

WHEREAS, on July 15, 2014, Reynolds announced that it had entered into an Asset Purchase Agreement and Transfer Agreement with Imperial Tobacco Group PLC (“Imperial”) under which Imperial will purchase certain assets and liabilities for total consideration of approximately \$7.1 billion (the “Asset Purchase Agreement”);

WHEREAS, on August 8, 2014, Plaintiff filed a putative class action lawsuit in the North Carolina General Court of Justice, Superior Court Division, Guilford County;

WHEREAS, on October 17, 2014, Reynolds and Lorillard filed a Form S-4 Registration Statement and a joint proxy statement/prospectus with the Securities and Exchange Commission

(“SEC”) (the “Registration Statement”);

WHEREAS, on November 7, 2014, Plaintiff filed a First Amended Class Action Complaint (“Complaint”), alleging, as more fully set forth therein, that the Director Defendants breached their fiduciary duties by approving the Subscription and Support Agreement and an alleged “Technology Sharing Agreement” (the “Fairness Claims”) and by failing to disclose allegedly material information in the Registration Statement and the amendments thereto (the “Disclosure Claims”);

WHEREAS, on November 24, 2014, Reynolds and Lorillard filed Amendment No. 1 to the Registration Statement with the SEC;

WHEREAS, on December 8, 2014, Defendants filed a motion to stay discovery and a motion to dismiss the Complaint;

WHEREAS, on December 12, 2014, Reynolds and Lorillard filed Amendment No. 2 to the Registration Statement with the SEC, inviting holders of record of shares of Reynolds common stock as of the close of business on December 20, 2014 (the “Record Date”), to attend a special meeting of Reynolds stockholders on January 28, 2015 (the “Meeting”), to consider and vote on proposals relating to the Merger;

WHEREAS, on December 17, 2014, Plaintiff filed an omnibus opposition to the Defendants’ motions to stay discovery;

WHEREAS, on December 22, 2014, the SEC deemed Reynolds and Lorillard’s Registration Statement and amendments thereto effective;

WHEREAS, on December 22, 2014, Plaintiff filed an omnibus opposition to the Defendants' motions to dismiss;

WHEREAS, on December 29, 2014, Defendants filed a reply memorandum in support of their motion to stay discovery;

WHEREAS, on January 2, 2015, Defendants filed a reply memorandum in support of their motion to dismiss Plaintiff's Complaint;

WHEREAS, on January 2, 2015, Plaintiff filed a motion for a preliminary injunction;

WHEREAS, on January 5, 2015, Defendants filed a supplemental brief in support of their motion to stay discovery;

WHEREAS, on January 6, 2015, Plaintiff filed a supplemental brief in opposition to Defendants' motions to stay discovery;

WHEREAS, on January 8, 2015, the Court entered an Interim Order on Defendants' Motions to Stay Discovery;

WHEREAS, on January 12, 2015, Defendants filed an opposition to Plaintiff's motion for a preliminary injunction;

WHEREAS, on January 15, 2015, Plaintiff filed a reply in support of his motion for a preliminary injunction;

WHEREAS, counsel for Plaintiff and counsel for Defendants have engaged in arm's-length discussions and negotiations about a possible resolution of Plaintiff's Disclosure Claims including discussions and negotiations regarding possible supplemental disclosures that would address the purported disclosure deficiencies as alleged in Plaintiff's Complaint;

WHEREAS, in connection with settlement discussions and negotiations leading to the Parties' agreement on the disclosures described in Exhibit A attached hereto, counsel for the Parties did not discuss the appropriateness or amount of any application by counsel for Plaintiff for an award of attorneys' fees and expenses;

WHEREAS, on January 15, 2015, counsel for the Parties reached an oral agreement-in-principle to settle the Settled Claims (as defined herein) and to fully and completely settle and resolve the Settled Claims on the terms and conditions contained herein, without any admission of liability or wrongdoing;

WHEREAS, the Parties are not settling the Fairness Claims or Other Claims (which for purposes of this MOU shall mean any claims, to the extent such claims exist, other than the Fairness Claims and the Settled Claims), and this MOU does not pertain to or limit in any way the Releasing Parties' ability to prosecute any of the Fairness Claims or Other Claims, including the facts on which Plaintiff may rely in support of those claims or Plaintiff's ability to respond to any argument (all of which Defendants fully reserve) regarding shareholder acquiescence, the effect on the Fairness Claims or Other Claims of any shareholder vote, or the scope of discovery that Plaintiff may seek;

WHEREAS, the Parties have agreed that Plaintiff will not seek to unwind or rescind the shareholder vote, the Merger, the Merger Agreement, the Subscription and Support Agreement,

the Asset Purchase Agreement or the alleged Technology Sharing Agreement;

WHEREAS, counsel for Plaintiff have concluded that the terms contained in this MOU are fair, reasonable, and adequate to the putative class, are in the best interests of the class, and that it is reasonable to pursue a settlement of the Disclosure Claims based upon the terms and procedures outlined herein; and

WHEREAS, each of the Defendants has denied, and continues to deny, that he, she, or it committed or aided and abetted the commission of any breach of fiduciary duty or violation of any other state or federal law, or engaged in any of the wrongful acts alleged in the Action, and expressly maintains that he, she, or it diligently and scrupulously complied with his, her, or its fiduciary and other legal duties, to the extent such duties exist, and is entering into this MOU solely to eliminate the burden, expense, and uncertainties inherent in further litigation regarding the Disclosure Claims.

NOW, THEREFORE, the Parties have reached an agreement providing for the settlement of the Disclosure Claims on the terms and subject to the conditions set forth below (the “Settlement”):

1. As a result of discussions between and among the Parties, it is agreed that, in consideration for the full settlement and release of the Settled Claims (as defined below), the Parties agree that the Defendants will provide the supplemental disclosures identified in the document attached hereto as Exhibit A in an amendment to the Registration Statement that will be filed with the SEC promptly following the execution of this MOU. Without admitting any wrongdoing, Defendants acknowledge that the pendency of the Action and the efforts of Plaintiff’s counsel were the sole cause for the consideration set forth herein.

2. The Parties shall negotiate in good faith and execute an appropriate Stipulation of Settlement (the "Stipulation") and will present the Stipulation and such other documentation as may be required to obtain Court approval of the Settlement (the "Settlement Documents") to the Court as soon as practicable following execution of the Stipulation, and the Parties will use their best efforts to obtain Final Court Approval of the Settlement of the Settled Claims and dismissal with prejudice of the Disclosure Claims, without costs to any Party other than as expressly provided herein, such proceedings being collectively referred to herein as the "Settlement-Related Proceedings." As used herein, "Final Court Approval" of the Settlement means the Court has entered an Order approving the Settlement and that Order is finally affirmed on appeal or is no longer subject to appeal, review following a writ, petition, or any other form of judicial review; provided, however, and notwithstanding any provision to the contrary in this MOU, Final Court Approval does not require, and shall not include or depend in any way upon, the resolution of any orders, proceedings, rulings, consideration, appeals or other matters concerning, relating to, based upon or arising out of any application by Plaintiff's counsel for an award of reasonable attorneys' fees and expenses (including the allocation of such fees among counsel).

3. The Stipulation shall expressly provide for and include, among other things:

(a) A provision that conditions the Settlement on Final Court Approval of the Settlement (including a judgment entered in the Action containing the releases and litigation protections described below, the dismissal with prejudice of the Disclosure Claims, such dismissal not being subject to appeal (or further appeal) by lapse of time or otherwise and without regard to the consideration of any and all applications for an award of attorneys' fees and expenses to Plaintiff's counsel).

(b) The requirement that the Parties present, as soon as practicable, the Settlement to the Court, including a proposed scheduling order (the "Scheduling Order") setting a final hearing on whether the Settlement should be approved by the Court, following appropriate notice to members of the Settlement Class (as defined herein).

(c) The requirement that the Parties use their best efforts, and take all other steps as may be necessary and required to effect the implementation and Final Court Approval of the Settlement on the terms set forth herein, including the dismissal of the Disclosure Claims with prejudice and without costs, except as otherwise provided herein.

(d) For the conditional certification in the Action for Settlement purposes only, of a non-opt-out class that includes any and all record holders and beneficial holders of Reynolds common stock (excluding Defendants and BAT, and their immediate families and their affiliates) for the period from and including July 14, 2014 through and including the effective date of the Merger (such period being the "Class Period"), including any and all of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors and successors and assigns (the "Settlement Class").

(e) For the complete discharge, dismissal with prejudice, settlement and release of, all Settled Claims, which shall be defined to comprise the following: (i) any and all claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, interests, debts, expenses, charges, rights, interest, penalties, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any

kind, nature and description whatsoever; (ii) whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, perfected or not perfected, choate or inchoate, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, ripened or unripened, including any Unknown Claims (as defined below); (iii) whether at law or equity, whether based on or arising under state, local, foreign, federal, statutory, regulatory, common or other law or rule and upon any legal theory (including but not limited to any claims arising under the Securities Act of 1933, the Securities Exchange Act of 1934, and any other provisions of the federal securities laws and any rule or regulation promulgated pursuant thereto, and any state disclosure law, or any claims that could be asserted derivatively on behalf of Reynolds), no matter how asserted; (iv) that previously existed, or currently exist; (v) that were or that could have been asserted by the Releasing Persons (as defined herein) against any or all of the Released Persons (as defined herein), in any federal or state court, or in any other court, tribunal, arbitration, proceeding, administrative agency or other forum in the United States or elsewhere that arise out of or relate to its/her/his ownership of Reynolds common stock, its/her/his status as a Reynolds stockholder, or its/her/his Reynolds holdings during the Class Period; and (vi) that are based upon or arise out of, in whole or in part, any of the following: (A) any disclosures or non-disclosures made available, propounded, disseminated, published or filed relating to or discussing, in whole or in part, the Merger, the Merger Agreement, the Subscription and Support Agreement, the Asset Purchase Agreement or the alleged Technology Sharing Agreement in (i) the Registration Statement and any amendments thereto, (ii) public filings, (iii) periodic reports, (iv) press releases, (v) amendments, (vi) information statements, (vii) solicitation materials, (viii) earnings call or investor call statements, (ix) notifications or (x) other statements issued, and/or (B) any fiduciary

obligations of any of the Defendants in connection with any disclosures or non-disclosures in the Registration Statement and any amendments thereto. The Settled Claims shall not include (w) any claims to enforce the Settlement, (x) any claims to enforce a final order and judgment entered by the Court, (y) any of the Fairness Claims, or (z) any of the Other Claims. The Parties agree that nothing in this MOU shall affect or limit in any way Plaintiff's ability to prosecute any of the Fairness Claims or Other Claims, including the facts on which Plaintiff may rely in support of those claims or Plaintiff's ability to respond to any argument (all of which Defendants fully reserve) regarding shareholder acquiescence or the effect on the Fairness Claims or Other Claims of any shareholder vote, or the scope of discovery that Plaintiff may seek. The Parties further agree that Plaintiff will not seek to unwind or rescind the shareholder vote, the Merger, the Merger Agreement, the Subscription and Support Agreement, the Asset Purchase Agreement or the alleged Technology Sharing Agreement.

(f) That the release contemplated by the Settlement extends to Settled Claims that the Releasing Persons (as defined herein) do not know or suspect to exist at the time of the release and that, if known, might have affected the decision to enter into the release ("Unknown Claims"). The Releasing Persons shall be deemed to waive any and all provisions, rights and benefits conferred by any law of the United States or any state or territory of the United States, or principle of common law, that governs or limits a person's release of Unknown Claims. The Releasing Persons shall be deemed to relinquish, to the full extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides:

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.

The Releasing Persons also shall be deemed to waive any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, that is similar, comparable or equivalent to California Civil Code § 1542. Plaintiff, for himself and on behalf of the Settlement Class, acknowledges that members of the Settlement Class and/or other Reynolds stockholders may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is his intention, as Plaintiff and on behalf of the Settlement Class, to fully, finally and forever settle and release any and all claims released hereby known or unknown, suspected or unsuspected, that now exist, or heretofore existed, and without regard to the subsequent discovery or existence of such additional or different facts.

(g) A definition of Releasing Persons that includes each and all of the following: Plaintiff and each and every other Settlement Class member, on behalf of themselves and each and all of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, agents, heirs, estates, assigns, or transferees, immediate and remote, and any other person who has the right, ability, standing or capacity to assert, prosecute or maintain on behalf of any Settlement Class member any of the Settled Claims (or to obtain the proceeds of any recovery therefrom), whether in whole or in part.

(h) A definition of Released Persons that includes each of: (i) the Defendants; (ii) each of the Defendants' respective past and/or present affiliates, subsidiaries, parents, general partners, limited partners and any Person in which any Defendant has or had a controlling interest (the "Defendant Party Releasees," and together with the Defendants, the "Defendant Releasees"); and (iii) each of the Defendant Releasees' past and/or present family members, heirs, principals, trustees, executors, administrators, predecessors, successors, assigns, members,

parents, subsidiaries, employees, officers, managers, directors, partners, limited partners, agents, investment bankers, attorneys, representatives, estates, divisions, financial advisors, estate managers, assigns, insurers and reinsurers.

(i) That Defendants have denied, and continue to deny, that he, she, or, it has committed or has threatened to commit any wrongdoing, violation of law or breach of duty or aided or abetted any such violation or breach of duty owed to Plaintiff, the Settlement Class or anyone, and that Defendants expressly maintain that they diligently and scrupulously complied with their fiduciary and/or other legal duties.

(j) Defendants are entering into the Stipulation solely because the Settlement would eliminate the burden, expense, and uncertainties inherent in further litigation of the Disclosure Claims.

(k) That Plaintiff's entry into the Settlement is not an admission as to any lack of merit of his claims.

(l) For a covenant by each member of the Settlement Class not to sue, and a bar against each member of the Settlement Class from suing, any Released Person for any Settled Claim.

(m) Subject to the Order of the Court, pending final determination of whether the Settlement should be approved, that Plaintiff and all members of the Settlement Class, or any of them, and anyone acting or purporting to act on behalf of, in the stead of, or derivatively for any of them, are prohibited from commencing, pursuing, prosecuting, instigating or in any way participating in the commencement, pursuit or prosecution of any action asserting any of the

Settled Claims against any of the Released Persons.

(n) That in the event the Settlement does not become final for any reason, the Defendants reserve the right to oppose certification of any plaintiff class in the Action or in any future or other proceedings.

(o) That Defendants and the Released Persons release Plaintiff, members of the Class and their counsel, from all claims arising out of the instituting, prosecution, settlement or resolution of the Settled Claims; provided however that the Defendants and the Released Persons shall retain the right to enforce the terms of the Settlement, this MOU, and/or the Settlement Agreement.

4. The Parties agree: (a) to use their best efforts to pursue the Settlement in as expeditious a manner as possible; and (b) to cooperate in preparing any and all papers necessary to define, pursue and effectuate the Settlement.

5. Pending negotiation, execution and the Court's approval of the Settlement Agreement, Plaintiff agrees to a stay of the proceedings in the Action relating to the Settled Claims and not to initiate any other proceedings other than those incident to the Settlement itself. The Scheduling Order shall provide that, pending the Court's determination as to final approval of the Settlement, Plaintiff and all members of the Settlement Class, or any of them, are prohibited from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Settled Claim, against any of the Released Persons. The Plaintiff and his counsel also agree to cooperate with Defendants and their counsel to prevent, stay or seek dismissal of or oppose entry of any interim or final relief in favor of any member of the Settlement Class in any other litigation against any of the Parties to this MOU that challenges

the Settlement or otherwise involves a Settled Claim.

6. This MOU and the Settlement contemplated herein shall be of no force and effect if the Settlement is not effectuated for any reason. In such event, this MOU (as well as the negotiation of, and discussions among counsel to the Parties relating or leading to, the MOU and the Settlement) shall not: (a) in any way be deemed to prejudice in any respect the positions of the Parties; (b) be used, referred to or cited in any way in the Action or any other litigation or proceedings other than to enforce the Settlement or this MOU; and/or (c) entitle any Party to the recovery of costs and expenses to implement this MOU. Further, if the Settlement is not approved by the Court, Plaintiff reserves the right to petition the Court for a mootness award of attorneys' fees and expenses and Defendants reserve the right to oppose such a petition.

7. If any action is currently pending or is later filed in state or federal court asserting Settled Claims prior to Final Court Approval of the proposed Settlement, Plaintiff shall cooperate with Defendants in obtaining the dismissal or withdrawal of such related litigation, including, where appropriate, joining in any motion to dismiss such litigation.

8. The provisions contained in this MOU shall not be deemed a presumption, concession, or admission by any Party of any fault, liability, or wrongdoing, or lack of merit as to any facts or claims alleged or asserted in the Action or in any other action or proceeding, and shall not be interpreted, construed, deemed, invoked, offered, or received into evidence or otherwise used by any person in the Action or in any other action or proceeding, whether civil, criminal, or administrative, except in connection with any proceeding to enforce the terms of the Settlement.

9. The Settlement, this MOU and the implementation or effectuation thereof, are not conditioned on any award of attorneys' fees and expenses to Plaintiff's counsel. Neither Plaintiff nor any member of the Settlement Class shall have any right to terminate or withdraw from the Settlement by reason of any order or other proceeding (including, without limitation, any appeals) relating to any application by Plaintiff's counsel for attorneys' fees and/or expenses.

10. Defendants agree that, if the Settlement is approved by the Court, Plaintiff's counsel are entitled to a reasonable fee with respect to the Settled Claims, but Defendants reserve all rights to oppose the amount sought. The Parties agree to negotiate in good faith regarding an agreed-upon amount of Plaintiff's attorneys' fees and expenses relating to the Settled Claims. In the event the Parties are able to reach agreement on such an amount, Plaintiff and Plaintiff's counsel will seek an order awarding fees and expenses to Plaintiff's counsel in an amount not to exceed the agreed-upon amount. The Parties further agree that Defendants shall not be required to pay fees and expenses in an amount higher than any agreed-upon amount. In the event the Parties are unable to reach agreement on an amount of Plaintiff's attorneys' fees and expenses: (a) Plaintiff and Plaintiff's counsel in the Action reserve the right to petition the Court for an award of reasonable attorneys' fees and expenses; and (b) Defendants reserve the right to oppose the amount of any such application made by Plaintiff's counsel.

11. Approval by the Court of any Plaintiff's attorneys' fee application shall not be a condition to the Settlement. Plaintiff shall not have the right to withdraw from, terminate or cancel the Settlement or this MOU if the Court denies, in whole or in part, any motion or petition for an award of fees and expenses. Plaintiff's counsel warrant that no portion of such fees and expenses shall be paid to Plaintiff or to any member of the Settlement Class, except as approved by the Court. Defendants shall have no responsibility for, and no liability with respect to, the fee

and/or expense allocation among Plaintiff's counsel and/or any other person who may assert any claim thereto. Reynolds (and/or its successor in interest and/or its insurance carriers), on behalf of and for the benefit of itself and the Defendants, agrees to pay any final award of fees and expenses awarded by the Court within ten business days following the entry of the Court's order awarding such fees. In the event that any such order awarding fees is reversed or modified on appeal, Plaintiff's counsel shall refund to Defendants the amount by which the fees and expenses were reduced within ten business days of the order reversing or modifying the Court's order.

12. This MOU and the Settlement contemplated by it shall be governed by, and construed in accordance with, the laws of the State of North Carolina, without regard to conflict of laws principles. All actions or proceedings concerning, arising out of or relating to this MOU and/or the Settlement shall be exclusively heard and determined in the North Carolina General Court of Justice, Superior Court Division, and the Parties hereby irrevocably submit to the exclusive jurisdiction of that Court in connection therewith. The Parties agree to submit any such actions or proceedings to the North Carolina Business Court to the extent allowed by law.

13. This MOU constitutes the entire agreement among the Parties with respect to the subject matter hereof, and may not be amended nor any of its provisions waived except by a writing signed by all of the Parties hereto.

14. This MOU may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Each signatory below represents and warrants that it has the authority to enter into this MOU.

15. Plaintiff and his counsel represent and warrant that (i) Plaintiff is a Reynolds stockholder and has been a Reynolds stockholder at all relevant times and continued to hold his stock in

Reynolds as of the date this MOU was signed, and (ii) none of Plaintiff's claims or causes of action referred to in any of the complaints or this MOU, or any claims Plaintiff could have alleged, have been assigned, encumbered, or in any manner transferred in whole or in part.

16. Upon final approval of the Settlement, each member of the Class covenants not to sue, and each member of the Class shall be barred from suing, any Defendant or any other Released Person for any Settled Claim.

17. Nothing in this MOU shall be construed as affecting, limiting, or compromising any claim asserted by the plaintiffs in their capacity as shareholders of Lorillard, Inc. in *In Re Lorillard, Inc. Consolidated Stockholders Litigation*, C.A. No. 9904-CB (Del. Ch.).

18. In entering into the Settlement, Plaintiff assumes the risk of any mistake of fact or law if Plaintiff should later discover that any fact he relied upon in entering into the Settlement is not true, or that his understanding of the facts or law was incorrect, and in such event Plaintiff shall not be entitled to seek rescission of the Settlement, or otherwise attack the validity of the Settlement, based on any such mistake. The Settlement is intended to be final and binding upon Plaintiff regardless of any mistake of fact or law.

19. The Parties agree that this MOU is intended to be a binding agreement among the Parties. The Parties further agree that, if they are unable to agree on any of the terms of the Stipulation referenced herein, the Court shall provide customary terms.

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

21. If any provision or provisions of this MOU shall be held to be invalid, illegal or

unenforceable, the validity, legality and enforceability of the remaining provisions of the MOU shall not in any way be affected or impaired thereby.

22. This MOU shall be of no further force or effect upon the execution of the Settlement Agreement that shall supersede the terms of this MOU.

IN WITNESS WHEREOF, the Parties have executed this MOU effective as of the date set forth above.

DATED: January 17, 2015

/s/ Alan W. Duncan
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, pursuant to the Joint Stipulation and Scheduling Order, the foregoing document was served by email to the following individuals:

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Dated: January 17, 2015

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