

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between (i) the Signatory States, (ii) S&M Brands, Inc. (“S&M Brands”), (iii) Malcolm “Mac” Bailey (“Mac Bailey”), (iv) Steven Bailey, (v) Everett Gee, and (vi) the Signatory PMs (collectively, the “Parties”) and shall be effective on the Settlement Effective Date.

I. RECITALS

A. The Signatory States and Signatory PMs are among the parties to the 1998 tobacco Master Settlement Agreement (“MSA”).

B. S&M Brands is not a party to the MSA but has operated as an NPM. S&M Brands is located in Keysville, Virginia, and organized under the laws of the Commonwealth of Virginia. Mac Bailey is the chief executive officer of S&M Brands; Steven Bailey is its president; and Everett Gee is its general counsel. Each of them also owns equity interests in S&M Brands.

C. In or about 1996, S&M Brands began manufacturing Cigarettes.

D. In 2000, S&M Brands established a QEF account pursuant to the Escrow Statutes of the Settling States in which it had sold its Cigarettes. In 2006, S&M Brands’ QEF account was held at U.S. Bank. Later, Escrow Principal held for certain Settling States for certain sales years was transferred to S&M Brands’ QEF accounts at SunTrust Bank and at BB&T, which banks have since merged and are in the process of consolidating under the name Truist Bank. Currently, U.S. Bank, SunTrust Bank, and BB&T hold Escrow Principal for the benefit of the Signatory States in the amounts shown in the attached Exhibit A.

E. Effective April 2, 2010, S&M Brands entered into an *Escrow Release Transfer Agreement* (“ERTA”) with Kelly Capital, LLC (“Kelly”), under which S&M Brands gave Kelly the right to buy certain rights related to a portion of the Escrow Principal held in S&M Brands’ QEF account, including the right to receive the interest earned on these funds and the right to receive the Escrow Principal if it was available for release 25 years after it was first deposited.

F. Effective April 16, 2010, S&M Brands and Kelly entered into the *First Amendment to the Escrow Release Transfer Agreement* under which S&M Brands and Kelly consented to have the SEI Private Trust Company (“SEI Trust”), rather than Kelly, purchase the income rights to a sub-set of the Escrow Principal that Kelly was eligible to buy under the ERTA. The Escrow Principal affected by the SEI Trust purchase is held for the benefit of the States of Kentucky and Tennessee and is in a QEF account at BB&T.

G. Effective July 15, 2010, S&M Brands and Kelly Escrow Fund V, LLC (“KEFV”) entered into a *Reinstatement of and Second Amendment to Escrow Release Transfer Agreement* under which KEFV purchased certain rights to a sub-set of Escrow Principal that Kelly was eligible to buy under the ERTA. The Escrow Principal affected by the KEFV purchase is held

for the benefit of the States of North Carolina, Tennessee, West Virginia, Georgia, Delaware, and Maryland and is in a QEF account at U.S. Bank.

H. On June 6, 2017, S&M Brands filed a complaint against the State of North Carolina and its Attorney General in the General Court of Justice, Superior Court Division, in Wake County, North Carolina, styled *S&M Brands, Inc., v. Josh Stein, Attorney General, et al.*, Case No. 17 CVS 6894 (“NC Litigation”). In this suit, S&M Brands seeks a release of asserted “excess” escrow deposits made into its QEF accounts pursuant to North Carolina’s Escrow Statute codified at N.C. Gen. Stat. § 66-291 *et seq.* and asserts related violations under the North Carolina Constitution.

I. On June 1, 2018, the court in the NC Litigation entered the *Consent Confidentiality Agreement and Protective Order* (ECF No. 86) (“Protective Order”), which restricts the disclosure of confidential and highly confidential documents produced in discovery by S&M Brands and the State of North Carolina in the NC Litigation.

J. In 2019, S&M Brands ceased manufacturing and selling Cigarettes, and none of S&M Brands, Mac Bailey, Steven Bailey, or Everett Gee has any intent to directly or indirectly manufacture or sell NPM Cigarettes in the future or to participate in, invest in, or profit from such manufacture or sale, but wish to continue growing, purchasing and selling tobacco, but not including Cigarettes, pipe tobacco, or cigars in consumer packaging.

K. Currently, S&M Brands’ QEF accounts hold Escrow Principal for the benefit of each Signatory State and other Settling States.

L. The Parties wish to resolve the NC Litigation, similar claims that S&M Brands may assert under the Escrow Statutes of other Signatory States, and certain Claims arising from S&M Brands’ Cigarette manufacturing business.

NOW, THEREFORE, in consideration for the payments and releases provided for in this Settlement Agreement and such other consideration as described in this Settlement Agreement, the sufficiency of which is hereby acknowledged, the Parties, acting by and through their authorized representatives, memorialize and agree as follows:

II. DEFINITIONS

A. “BB&T Escrow Principal” means Escrow Principal (i) in the amount of \$29,513,492.84 (ii) held for the benefit of Kentucky and Tennessee (iii) in the QEF account at BB&T (iv) in which SEI Trust holds certain rights purchased from S&M Brands in 2010.

B. “Cigarette” means as it is defined in section II(m) of the MSA.

C. “Claims” means any and all manner of civil (i.e., non-criminal): claims, demands, actions, suits, causes of action, damages (whenever incurred), liabilities of any nature including civil penalties and punitive damages, as well as costs, expenses and attorneys’ fees, known or unknown, suspected or unsuspected, accrued or unaccrued, whether legal, equitable, or statutory;

provided however, that criminal liability of any kind whether under federal, state or local laws is excluded.

D. “Escrow Bank” means any of the banks holding S&M Brands’ QEF accounts, which include U.S. Bank, BB&T, SunTrust Bank, and Truist Bank (as the successor entity to the merger of BB&T and SunTrust Bank).

E. “Escrow Principal” means the funds that S&M Brands deposited into its QEF accounts pursuant to the Escrow Statutes, net of any releases made from such QEF accounts before the Settlement Effective Date. The total amount of Escrow Principal held for each Signatory State is set forth in the attached Exhibit A.

F. “Escrow Statutes” means the laws in each Settling State requiring NPMs to deposit a certain amount into escrow for certain Cigarettes sold in the respective Settling State. The statutory citation to each Signatory State’s Escrow Statute is listed in the attached Exhibit B.

G. “NPM” means a “Non-Participating Manufacturer,” as defined in section II(cc) of the MSA.

H. “NPM Adjustment Settlement Agreement” means the agreement entered into among certain Settling States and certain PMs in 2017 that provides for the settlement of disputes regarding the 2003-2015 NPM Adjustments, among other terms, and the later extensions of this agreement, including the *2016 and 2017 NPM Adjustments Settlement Agreement* and the *2018 through 2022 NPM Adjustments Settlement Agreement*.

I. “QEF” means a “Qualified Escrow Fund,” as defined in Exhibit T to the MSA and the respective Settling States’ Escrow Statutes.

J. “OPM” means “Original Participating Manufacturer” as defined in section II(hh) of the MSA.

K. “PM” means a “Participating Manufacturer,” as defined in section II(jj) of the MSA.

L. “S&M Brands’ Individual Claims” means only Claims held by a Signatory State against Steven Bailey, Mac Bailey or Everett Gee (a) arising from conduct, acts, or omissions (b) performed by them in the usual and ordinary course of their work (c) done solely and exclusively for S&M Brands (and not for any other company, individual, or other entity) and (d) occurring before the Settlement Effective Date; provided however, that Claims for liability under any (x) licensing (or similar) fee laws, (y) tax laws, or (z) the Escrow Statutes of the Signatory States are excluded.

M. “S&M Brands’ Company Claims” means any and all Claims held by a Signatory State against S&M Brands that are directly or indirectly based on, arising out of, or in any way related to, in whole or in part, to (a) the use, sale, distribution, manufacture, development, advertising, marketing or health effects of, (b) the exposure to, or (c) research, statements, or

warnings regarding, the Cigarettes manufactured, distributed and/or sold by S&M Brands before the Settlement Effective Date; provided however, that Claims for liability under any (i) licensing (or similar) fee laws, (ii) tax laws, or (iii) the Escrow Statutes of the Signatory States are excluded.

N. “Settlement Effective Date” shall be the last date on which S&M Brands, Steven Bailey, Mac Bailey, Everett Gee, the Signatory PMs, and the following Signatory States: Virginia, North Carolina, Tennessee, West Virginia, Kentucky, South Carolina, Georgia, Delaware, and Maryland, have signed this Settlement Agreement.

O. “Settling State” has the same meaning as in section II(qq) of the MSA.

P. “Signatory PMs” means the following PMs: Philip Morris USA, Inc. (“Philip Morris”); R. J. Reynolds Tobacco Company (“R. J. Reynolds”); Santa Fe Natural Cigarette Company, Inc.; Commonwealth Brands, Inc.; Compania Industrial de Tabacos Monte Paz, S.A.; Daughters & Ryan, Inc.; Ets L Lacroix Fils NV S.A. (Belgium); House of Prince A/S; Imperial Tobacco Limited/ITL (UK); Imperial Tobacco Mullingar (Ireland); Imperial Tobacco Polska S.A. (Poland); Imperial Tobacco Production Ukraine (Ukraine); Imperial Tobacco Sigara ve Tutunculuk (Turkey); Imperial Tobacco Volga, LLC; ITG Brands, LLC (“ITG”); Japan Tobacco International U.S.A., Inc.; King Maker Marketing, Inc.; Kretek International; Liggett Group LLC; Peter Stokkebye Tobaksfabrik A/S; Premier Manufacturing, Inc.; P.T. Djarum; Reemtsma Cigarettenfabriken GmbH (Germany); Scandinavian Tobacco Group Lane Ltd (“Lane”); SEITA; Sherman’s 1400 Broadway N.Y.C., LLC; TABESA; Top Tobacco, L.P.; U.S. Flue-Cured Tobacco Growers, Inc.; Van Nelle Tabak Nederland B.V. (Netherlands); Vector Tobacco; Von Eicken Group; Wind River Tobacco Company.

Q. “Signatory SPMs” means the following sub-set of Signatory PMs: Commonwealth Brands, Inc.; Compania Industrial de Tabacos Monte Paz, S.A.; Daughters & Ryan, Inc.; Ets L Lacroix Fils NV S.A. (Belgium); House of Prince A/S; Imperial Tobacco Limited/ITL (UK); Imperial Tobacco Mullingar (Ireland); Imperial Tobacco Polska S.A. (Poland); Imperial Tobacco Production Ukraine (Ukraine); Imperial Tobacco Sigara ve Tutunculuk (Turkey); Imperial Tobacco Volga, LLC; ITG Brands, LLC (“ITG”); Japan Tobacco International U.S.A., Inc.; King Maker Marketing, Inc.; Kretek International; Liggett Group LLC; Peter Stokkebye Tobaksfabrik A/S; Premier Manufacturing, Inc.; P.T. Djarum; Reemtsma Cigarettenfabriken GmbH (Germany); Scandinavian Tobacco Group Lane Ltd (“Lane”); SEITA; Sherman’s 1400 Broadway N.Y.C., LLC; TABESA; Top Tobacco, L.P.; U.S. Flue-Cured Tobacco Growers, Inc.; Van Nelle Tabak Nederland B.V. (Netherlands); Vector Tobacco; Von Eicken Group; Wind River Tobacco Company.

R. “Signatory States” means the following Settling States: Virginia, North Carolina, Tennessee, West Virginia, Kentucky, South Carolina, Georgia, Delaware, Maryland, and any other Settling State that signs this Settlement Agreement.

S. “U.S. Bank Escrow Principal” means Escrow Principal (i) in the amount of \$40,031,445.59 (ii) held for the benefit of North Carolina, Tennessee, West Virginia, Georgia,

Delaware, and Maryland (iii) in the QEF account at U.S. Bank (iv) in which KEFV holds certain rights purchased from S&M Brands in 2010.

T. All capitalized terms not otherwise defined in this Settlement Agreement shall be as defined in the MSA.

III. SETTLEMENT OF CLAIMS BY THE SIGNATORY STATES

A. S&M Brands' QEF accounts hold Escrow Principal for the benefit of the Signatory States in the amount of \$329,941,876.03, as set forth in the attached Exhibit C.

B. In consideration for the release of all Escrow Principal held for the Signatory States as provided herein and for payment to the Signatory States of the amount of Escrow Principal as provided in Section VII herein, and the other terms and conditions set forth herein, each Signatory State hereby settles (i) all S&M Brands' Company Claims held by it and (ii) all S&M Brands' Individuals' Claims held by it.

C. Notwithstanding anything to the contrary herein, S&M Brands shall remain subject to all provisions of the Escrow Statutes for all Cigarettes manufactured, distributed, and/or sold by it before the Settlement Effective Date. This includes, without limitation, the obligation to make deposits for any outstanding escrow owed for such Cigarettes. Nothing herein releases S&M Brands, Steven Bailey, Mac Bailey, or Everett Gee from any Claims arising under the Escrow Statutes of the Signatory States.

D. On or before the Settlement Effective Date, (i) S&M Brands shall permanently cease its Cigarette manufacturing and sales operations, and (ii) Mac Bailey, Steven Bailey, and Everett Gee shall refrain from engaging or profiting, directly or indirectly, through any employment relationship, ownership interest, consulting relationship with, investment in or otherwise, in the manufacture or sale of Cigarettes to be offered or sold as NPM Cigarettes or as to which an NPM has any interest in the United States. Provided, however, Mac Bailey, Steven Bailey and Everett Gee shall be permitted to engage in growing, purchasing and selling tobacco, but not including Cigarettes, pipe tobacco, or cigars in consumer packaging.

E. S&M Brands hereby (i) stipulates pursuant to paragraph 13. j. of the Protective Order that any Settling State may receive court filings marked "Confidential" or "Highly Confidential" in the NC Litigation, except that the following shall be excluded or redacted from any such court filings because they reference or include information from S&M Brands' financial reports, financial statements, or tax returns produced in the NC Litigation: Beverly Bailey's deposition transcript [ECF Nos. 118.2 & 128.1], defendants' expert's report [ECF No. 118.3; pp. 21-24 & 84 (& apps. G & H)], Exhibit E to defendants' motion for summary judgment [ECF Nos. 118.5 & 128.2], Exhibit F to defendants' motion for summary judgment [ECF No. 118.6], defendants' brief supporting summary judgment [ECF No. 120; pp. 10-12 & 20], and defendants' reply brief supporting summary judgment [ECF No. 146; pp. 7-8 & 11], (ii) agrees that any Settling State may use such documents or information outside the NC Litigation for any purpose, and (iii) consents to modification of the Protective Order consistent with this provision. Within 5 days after the Settlement Effective Date, S&M Brands (iv) agrees to North

Carolina filing a joint motion seeking this modification and (v) agrees not to seek dismissal of the NC Litigation until the court has entered this order except as provided in Section III.G. herein.

F. After the court enters the order modifying the Protective Order, and after receipt by S&M Brands of the payment provided for in Section VII herein, S&M Brands shall file a Stipulation of Dismissal with Prejudice signed by all parties to the NC Litigation.

G. If the court denies North Carolina's joint motion seeking modification of the Protective Order, North Carolina and S&M Brands shall promptly thereafter file a motion for reconsideration of such denial. Should the court deny such motion for reconsideration, and after receipt by S&M Brands of the payment provided for in Section VII herein, S&M Brands shall file a Stipulation of Dismissal with Prejudice signed by all parties to the NC Litigation. Any such denials by the court shall not affect the validity, enforceability, or terms of this Settlement Agreement in any way.

IV. SETTLEMENT OF S&M BRANDS' CLAIMS AGAINST THE SIGNATORY STATES

In consideration for payment to S&M Brands of the amount of Escrow Principal as provided in Section VII herein, and the other terms and conditions of this Settlement Agreement, S&M Brands hereby consents (i) to dismiss with prejudice the NC Litigation as provided herein, (ii) to the stipulation and modification of the Protective Order entered in the NC Litigation as provided herein, and (iii) with respect to all Signatory States, to waive and release any and all Claims it has against each of them based on, arising out of, or in any way related to, the Escrow Statutes, including without limitation, any Claim for a release of escrow based on (x) excess escrow deposits, (y) any claim asserted in the NC Litigation, or (z) any violation of the U.S. Constitution or the Constitution of any Signatory State.

V. WAIVERS AND RELEASES BY THE SIGNATORY PMs

A. In consideration for payment to the Signatory PMs of the amount of Escrow Principal as provided in Section VII herein, and the other terms and conditions of this Settlement Agreement, the Signatory PMs provide the following waivers and releases to each of the Signatory States:

1. Philip Morris and R. J. Reynolds hereby waive any rights they have under the "Limited Most-Favored Nation Provision" found in section XVIII(b)(2) of the MSA for each Signatory State in connection with such Signatory State entering into this Settlement Agreement.

2. To the extent ITG and Lane have any rights under the "Limited Most-Favored Nation Provision" found in section XVIII(b)(2) of the MSA, each of them hereby waives these rights for each Signatory State in connection with such Signatory State entering into this Settlement Agreement.

3. Each Signatory PM hereby agrees that it will not assert any Claim under section XVIII(b)(2) of the MSA (“Limited Most-Favored Nation Provision”) or any other provision of the MSA against any Signatory State based on, or related to, any Signatory State entering into this Settlement Agreement or carrying out the terms of this Settlement Agreement.

4. Each Signatory PM hereby acknowledges and agrees that the OPMs have herein unanimously waived their rights under the “Limited Most-Favored Nation Provision” found in section XVIII(b)(2) of the MSA for each Signatory State in connection with such Signatory State entering into this Settlement Agreement.

5. The Signatory PMs and the Signatory States hereby agree that nothing in this Settlement Agreement may be used against any Signatory State or any Signatory PM in (i) any arbitration brought under section XI(c) of the MSA (“Resolution of Disputes”) including, without limitation, to resolve any NPM Adjustment dispute, (ii) any case filed in federal or state court, or (iii) any other legal proceeding, to argue, assert, infer, or as evidence to suggest that any Signatory State has not diligently enforced its Escrow Statute or for any other purpose. This Settlement Agreement will not constitute evidence in any such arbitration, court case, or other legal proceeding, and will not be admissible or used in connection with any dispute that does not directly arise under this Settlement Agreement.

6. Each Signatory PM hereby consents to the release of Escrow Principal as provided for herein and waives and releases each Signatory State from any and all Claims directly or indirectly based on, arising out of, or related in any way to section IX.I. “Release of Escrow” under the NPM Adjustment Settlement Agreement as a result of any Signatory State entering into this Settlement Agreement.

7. Each Signatory PM hereby agrees that, once executed, this Settlement Agreement constitutes a “written instrument executed by the waiving Signatory Party” as provided in section IX. BB. (“Amendment and Waiver”) of the NPM Adjustment Settlement Agreement and is sufficient for any Signatory PM to waive rights conferred to it under the NPM Adjustment Settlement Agreement.

B. This Settlement Agreement is entered without prejudice to any Party’s position relating to which PMs are considered OPMs under section XVIII(b)(2) of the MSA (“Limited Most-Favored Nation Provision”) or otherwise. This Settlement Agreement will not constitute evidence with respect to any such position and will not be admissible or used in connection with any dispute that does not directly arise under this Settlement Agreement.

VI. ESCROW PRINCIPAL RELEASED IN SETTLEMENT OF RELEASED CLAIMS

All Parties acknowledge and agree that settlement of S&M Brands’ Company Claims and S&M Brands’ Individual Claims by the Signatory States as provided in Section III. B. herein

qualifies as the settlement of Released Claims (as defined in the MSA and cross-referenced in the Escrow Statutes) held by the Signatory States against S&M Brands and its principals, and that such a settlement satisfies the statutory basis for the release of Escrow Principal under the Escrow Statutes, and, as a result, under this Settlement Agreement, all Escrow Principal has been released at the direction of the Signatory States in conformity with their respective Escrow Statutes.

VII. DISTRIBUTION OF ESCROW PRINCIPAL

A. The Parties agree to a division of the Escrow Principal held for the Signatory States in the following shares, which amounts are also shown in the attached Exhibit C:

1. S&M Brands' share is 40% of the Signatory States' total Escrow Principal (\$131,976,750.41) plus \$5,323,645.06 million.
2. The Signatory States' share is 60% of the Signatory States' total Escrow Principal (\$197,965,125.62) less \$5,323,645.06 million, which amounts they shall divide equally with the Signatory PMs, resulting in the Signatory PMs receiving a 30% share of the Signatory States' total Escrow Principal (\$98,982,562.81) less \$2,661,822.53.

B. In conformity with the above division of Escrow Principal, S&M Brands and the Signatory States shall provide joint written instructions, in the form as provided in the attached Exhibit D of this Settlement Agreement, as soon as possible after execution of this Settlement Agreement by the Parties but in no event later than three (3) business days after the Settlement Effective Date, to the Escrow Banks directing each of them to disburse the Escrow Principal held for the benefit of the Signatory States to the Parties and their designees as specified below, which amounts are also shown in the attached Exhibit C.

1. From SunTrust Bank, funds shall be disbursed (i) \$67,755,457.04 to S&M Brands, (ii) \$31,785,844.29 to Philip Morris, (iii) \$55,332,196.58 to R.J. Reynolds and Santa Fe Natural Tobacco Company, (iv) \$9,202,699.41 to the Signatory SPMs, and (v) \$96,320,740.28 to the Signatory States.
2. From U.S. Bank, funds shall be disbursed \$26,020,439.63 to S&M Brand's designee, KEFV, and \$14,011,005.96 to S&M Brands.
3. From BB&T, funds shall be disbursed \$29,513,492.84 to S&M Brands and its designee, SEI Trust, which amount shall be divided among them as provided in joint written instructions agreed to by S&M Brands, SEI Trust, and the applicable Signatory States, the form of which is attached hereto as Exhibit E.
4. All funds disbursed to the Signatory States shall be paid from the Escrow Bank to a single, designated recipient for the Signatory States who shall then be responsible for further disbursing these funds among the Signatory States as they direct.

5. All funds disbursed to S&M Brands shall be paid from the Escrow Bank to a single, designated recipient for S&M Brands and, in the case of the BB&T Escrow Principal, in part to S&M Brands and in part to S&M Brands' designee, SEI Trust and, in the case of U.S. Bank Escrow Principal, in part to S&M Brands and in part to S&M Brands' designee, KEFV.

6. All funds disbursed to the Signatory SPMs shall be paid from the Escrow Bank to a single, designated recipient who shall then be responsible for further disbursing these funds among the Signatory SPMs as they direct.

7. All funds disbursed to Philip Morris shall be paid from the Escrow Bank to a single account as designated by Philip Morris.

8. All funds disbursed to R.J. Reynolds and Santa Fe Natural Tobacco Company shall be paid from the Escrow Bank to a single account as designated by R.J. Reynolds.

9. All disbursements from the Escrow Banks shall be made in cash by wire transfer pursuant to wire instructions provided by the recipient.

C. The Parties agree to execute such other documents as necessary to effectuate the terms of this Settlement Agreement.

D. The Parties acknowledge and agree that the Signatory States and the Signatory PMs have provided S&M Brands with \$5,323,645.06 of Escrow Principal funds otherwise payable to them as part of their respective 30% shares (\$2,661,822.53 from the Signatory PMs and \$2,661,822.53 from the Signatory States as provided in Section VII.A.2 herein) to secure SEI Trust's consent to the release of the full amount of the BB&T Escrow Principal (\$29,513,492.84) and to secure KEFV's consent to the release of the full amount of the U.S. Bank Escrow Principal (\$40,031,445.59). In consideration for these remittances, the Signatory States and the Signatory PMs have no further obligation to secure the consent of SEI Trust to the release of the BB&T Escrow Principal or to secure the consent of KEFV to the release of the U.S. Bank Escrow Principal and any risk or delay in their release is borne entirely and exclusively by S&M Brands; provided, however, that the Signatory States shall provide joint written instructions to the Escrow Banks in accordance with Section VII.B herein.

VIII. LATER JOINING SIGNATORY STATES

A. Within 60 calendar days of the Settlement Effective Date, other Settling States with Escrow Principal held for their benefit in S&M Brands' QEF accounts may join this Settlement Agreement. The Escrow Principal held for their benefit shall be disbursed in the same relative shares (i.e., 30% to the other Signatory States, 30% to the Signatory PMs, and 40% to S&M Brands) and in the same manner by the Escrow Banks as provided herein to the earlier Parties. Within five (5) business days after the expiration of this 60-day period, the new Signatory States, in conjunction with the Signatory PMs and S&M Brands shall provide mutually

agreeable, written instructions to the applicable Escrow Banks for disbursement of their Escrow Principal to the Parties.

B. The *status quo* of any Escrow Principal held in S&M Brands' QEF accounts that is not released under this Settlement Agreement shall remain unchanged. Nothing herein shall affect its status under the Escrow Statutes of the applicable Settling States or under the QEF account escrow agreements governing it.

IX. OTHER TERMS

A. **Venue.** Any disputes arising from or related to this Settlement Agreement shall be adjudicated in a court of competent jurisdiction located in the capital city of any Signatory State. For purposes of any such proceeding, the Signatory PMs, S&M Brands, Mac Bailey, Steven Bailey, and Everett Gee hereby consent to venue and personal jurisdiction in each of these courts.

B. **Applicable Law.** This Settlement Agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina, without respect to conflict of law principles.

C. **Specific Performance.** S&M Brands, Mac Bailey, Steven Bailey, and Everett Gee hereby acknowledge and agree that the failure of any of them to perform its agreements and covenants under Section III(D) hereunder, will cause irreparable injury to the Signatory PMs, for which money damages, even if available, will not be an adequate remedy. Accordingly, each of S&M Brands, Mac Bailey, Steven Bailey, and Everett Gee hereby consents to the issuance of injunctive relief by any court of competent jurisdiction to compel performance of such Party's obligations under Section III(D) hereunder and to the granting by any court of the remedy of specific performance of its obligations under Section III(D) hereunder, in addition to any other rights or remedies available hereunder or at law or in equity. Each of S&M Brands, Mac Bailey, Steven Bailey, and Everett Gee hereby waives any requirements for the securing or posting of any bond with such remedy.

D. **Construction.** No Party shall be considered the drafter of this Settlement Agreement, or any drafts of this Settlement Agreement, or any provision thereof, for the purpose of any statute, case law, or rule of interpretation or construction that would require or might cause any provision to be construed against the drafter.

E. **Payments to Certain Signatory States.** The funds received by the States of South Carolina and Georgia shall be directed to their respective attorney general offices and may be used for purposes that include, but are not limited to, reimbursement for attorneys' fees and costs associated with resolving the Claims settled herein or for other uses permitted under the laws of their respective states, at the sole discretion of their respective attorneys general. The Kentucky and Tennessee attorney general offices may also retain reasonable attorneys' fees and costs. The funds received by West Virginia may be used by the Attorney General for any one or more of the following purposes: direct and indirect administrative, investigative, compliance,

enforcement, or litigation costs and services incurred for consumer protection purposes; to be held for appropriation by the Legislature; and/or distribution to taxpayers and/or consumers.

F. **Recitals.** The Recitals set forth in Section I herein shall be deemed to be a part of this Settlement Agreement just as if set forth in the substantive sections of this Settlement Agreement.

G. **No Determination or Admission.** This Settlement Agreement is not intended to be and shall not in any event be construed or deemed to be, or represented or caused to be represented as, an admission or concession or evidence of any liability or any wrongdoing whatsoever on the part of any Party. S&M Brands specifically disclaims and denies any liability or wrongdoing whatsoever with respect to any Released Claim. S&M Brands has entered into this Settlement Agreement solely to avoid the expense, inconvenience, burden and risk of litigation.

H. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement among the Parties relating to Claims against S&M Brands, the NC Litigation, and the other matters described herein. It replaces and supersedes any other agreements, negotiations, correspondence, understandings, or other communications, whether written or oral, express or implied, between or among the Parties regarding the matters described herein.

I. **Amendment.** This Settlement Agreement may be amended only by a written instrument executed by all Parties affected by the Amendment.

J. **Authority.** The persons signing this Settlement Agreement represent that they have the requisite authority to execute and enter into this Settlement Agreement on behalf of the Party or Parties on whose behalf they sign. By signing this Settlement Agreement, such authorized persons bind the respective Parties to the terms and conditions of this Settlement Agreement. The Parties hereto further represent that no further consents are necessary to effectuate the provisions of this Settlement Agreement.

K. **Counterparts and Electronic Signatures.** This Settlement Agreement may be executed in counterparts. An electronically transmitted signature to this Settlement Agreement will be deemed an acceptable original for purposes of consummating this Settlement Agreement and binding the signing Party. Electronically transmitted signatures shall be considered valid as of the date signed and shall be provided to: NAAG, Center for Tobacco and Public Health, Michael Hering, Director and Chief Counsel, c/o Erjona Fatusha, efatusha@naag.org, 1850 M Street, N.W. 12th Floor, Washington DC 20036, Fax: 202-521-4052

IN WITNESS THEREOF, each Party, through its authorized representative has agreed to this Settlement Agreement on the respective date below.

The Parties hereto have set forth their signature and seal with the intention of executing a sealed instrument.

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SETTLEMENT AGREEMENT BETWEEN SIGNATORY STATES, SIGNATORY PMs, S&M
BRANDS, INC., MALCOLM BAILEY, STEVEN BAILEY, AND EVERETT GEE
SIGNATURE PAGE

STATE OF DELAWARE

Signed: Thomas E. Brown

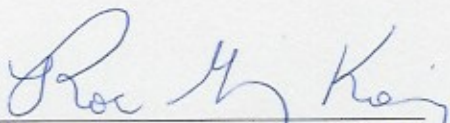
Name: Thomas E. Brown

Title: Deputy Attorney General

Dated: December 29, 2020

SETTLEMENT AGREEMENT BETWEEN SIGNATORY STATES, SIGNATORY PMs, S&M
BRANDS, INC., MALCOLM BAILEY, STEVEN BAILEY, AND EVERETT GEE
SIGNATURE PAGE

STATE OF GEORGIA

Signed: 

Name: Robin Ginsburg Koenig

Title: Senior Assistant Attorney General

Dated: December 30, 2020

SETTLEMENT AGREEMENT BETWEEN SIGNATORY STATES, SIGNATORY PMs, S&M
BRANDS, INC., MALCOLM BAILEY, STEVEN BAILEY, AND EVERETT GEE
SIGNATURE PAGE

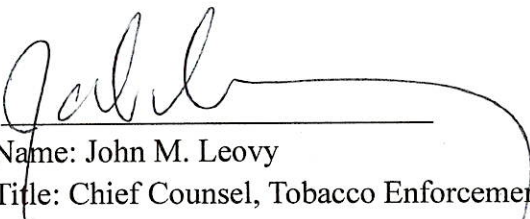
COMMONWEALTH OF KENTUCKY

Signed: Michael Plumley
Name: Michael Plumley
Title: Assistant Attorney General

Dated: December 30, 2020

SETTLEMENT AGREEMENT BETWEEN SIGNATORY STATES, SIGNATORY PMs, S&M
BRANDS, INC., MALCOLM BAILEY, STEVEN BAILEY, AND EVERETT GEE
SIGNATURE PAGE

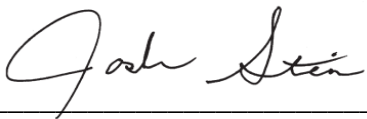
STATE OF MARYLAND

Signed: 
Name: John M. Leovy
Title: Chief Counsel, Tobacco Enforcement Unit

Dated: December 30, 2020

SETTLEMENT AGREEMENT BETWEEN SIGNATORY STATES, SIGNATORY PMs, S&M
BRANDS, INC., MALCOLM BAILEY, STEVEN BAILEY, AND EVERETT GEE
SIGNATURE PAGE

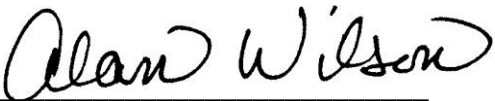
STATE OF NORTH CAROLINA

Signed: 
Name: Josh Stein
Title: Attorney General

Dated: December 29, 2020

SETTLEMENT AGREEMENT BETWEEN SIGNATORY STATES, SIGNATORY PMs, S&M
BRANDS, INC., MALCOLM BAILEY, STEVEN BAILEY, AND EVERETT GEE
SIGNATURE PAGE

STATE OF SOUTH CAROLINA

Signed: 
Name: Alan Wilson
Title: Attorney General

Dated: December 30, 2020

SETTLEMENT AGREEMENT BETWEEN SIGNATORY STATES, SIGNATORY PMs, S&M
BRANDS, INC., MALCOLM BAILEY, STEVEN BAILEY, AND EVERETT GEE
SIGNATURE PAGE

STATE OF TENNESSEE

Signed: 

Name: John H. Sinclair, Jr.

Title: Deputy Attorney General

Dated: December 30, 2020

SETTLEMENT AGREEMENT BETWEEN SIGNATORY STATES, SIGNATORY PMs, S&M
BRANDS, INC., MALCOLM BAILEY, STEVEN BAILEY, AND EVERETT GEE
SIGNATURE PAGE

STATE OF VIRGINIA

Signed:

A handwritten signature in black ink, appearing to be 'S. Thornton', written over a horizontal line.


Name: Sean R. Thornton

Title: Senior Assistant Attorney General / Section Chief

Dated: December 29, 2020

SETTLEMENT AGREEMENT BETWEEN SIGNATORY STATES, SIGNATORY PMs, S&M
BRANDS, INC., MALCOLM BAILEY, STEVEN BAILEY, AND EVERETT GEE
SIGNATURE PAGE

STATE OF WEST VIRGINIA

Signed: 
Name: Patrick Morrissey
Title: Attorney General

Dated: December 30, 2020

SETTLEMENT AGREEMENT BETWEEN SIGNATORY STATES, SIGNATORY PMs, S&M
BRANDS, INC., MALCOLM BAILEY, STEVEN BAILEY, AND EVERETT GEE
SIGNATURE PAGE

PHILIP MORRIS USA INC. and SHERMAN'S 1400 BROADWAY N.Y.C., LLC

Signed:  _____

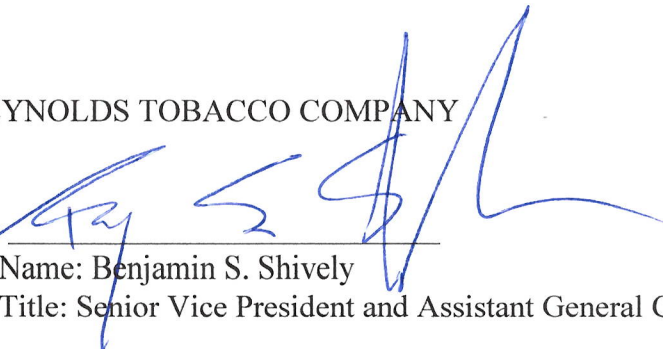
Name: Alexander Shaknes

Title: Counsel

Dated: December 29, 2020

SETTLEMENT AGREEMENT BETWEEN SIGNATORY STATES, SIGNATORY PMs, S&M BRANDS, INC., MALCOLM BAILEY, STEVEN BAILEY, AND EVERETT GEE
SIGNATURE PAGE

R.J. REYNOLDS TOBACCO COMPANY

Signed: 

Name: Benjamin S. Shively

Title: Senior Vice President and Assistant General Counsel, RAI Services Company

Dated: January 6, 2021

SANTA FE NATURAL TOBACCO COMPANY, INC.

Signed: 

Name: Benjamin S. Shively

Title: Senior Vice President and Assistant General Counsel, RAI Services Company

Dated: January 6, 2021

SETTLEMENT AGREEMENT BETWEEN SIGNATORY STATES, SIGNATORY PMs, S&M BRANDS, INC., MALCOLM BAILEY, STEVEN BAILEY, AND EVERETT GEE
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COMMONWEALTH BRANDS, INC.; COMPANIA INDUSTRIAL DE TABACOS MONTE PAZ, S.A.; DAUGHTERS & RYAN, INC.; ETS L LACROIX FILS NV S.A. (BELGIUM); HOUSE OF PRINCE A/S; IMPERIAL TOBACCO LIMITED/ITL (UK); IMPERIAL TOBACCO MULLINGAR (IRELAND); IMPERIAL TOBACCO POLSKA S.A. (POLAND); IMPERIAL TOBACCO PRODUCTION UKRAINE (UKRAINE); IMPERIAL TOBACCO SIGARA VE TUTUNCULUK (TURKEY); IMPERIAL TOBACCO VOLGA, LLC; ITG BRANDS, LLC (formerly LIGNUM-2, INC.); JAPAN TOBACCO INTERNATIONAL U.S.A., INC.; KING MAKER MARKETING, INC.; KRETEK INTERNATIONAL; LIGGETT GROUP LLC; PETER STOKKEBYE TOBAKSFABRIK A/S; PREMIER MANUFACTURING, INC.; P.T. DJARUM; REEMTSMA CIGARETTENFACBRIKEN GMBH (GERMANY); SCANDINAVIAN TOBACCO GROUP LANE LTD (formerly LANE LIMITED); SOCIETE NATIONAL D'EXPLOITATION INDUSTRIELLE DES TABACS ET ALLUMETTES (SEITA); TABACALERA DEL ESTE, S.A. (TABESA); TOP TOBACCO, L.P.; U.S. FLUE-CURED TOBACCO GROWERS, INC.; VAN NELLE TABAK NEDERLAND B.V. (NETHERLANDS); VECTOR TOBACCO INC.; VON EICKEN GROUP

Signed: /s/ Elizabeth B. McCallum
Name: Elizabeth B. McCallum
Title: Partner, Baker Hostetler

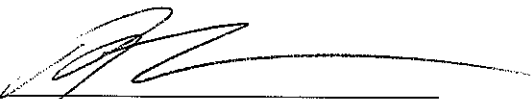
Dated: December 29, 2020

Elizabeth B. McCallum
Partner
BakerHostetler
1050 Connecticut Ave., NW
Suite 1100
Washington, DC 20036

Date

SETTLEMENT AGREEMENT BETWEEN SIGNATORY STATES, SIGNATORY PMs, S&M
BRANDS, INC., MALCOLM BAILEY, STEVEN BAILEY, AND EVERETT GEE
SIGNATURE PAGE

WIND RIVER TOBACCO COMPANY, LLC

Signed: 

Name: Bryan Tascher

Title: Chief Financial Officer

Dated: 12/30/20