

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No. 99-CV-2496 (GK)
	)	Next scheduled court appearance:
and	)	NONE
	)	
TOBACCO-FREE KIDS	)	
ACTION FUND, <i>et al.</i>	)	
	)	
Plaintiff-Intervenors	)	
	)	
v.	)	
	)	
PHILIP MORRIS USA INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	

ORDER #51 -Remand
CONSENT ORDER IMPLEMENTING THE CORRECTIVE STATEMENTS REMEDY
UNDER ORDER #1015 AND ORDER #34-REMAND

Upon consideration of the Joint Motion for Consent Order Implementing the Corrective Statements Remedy under Order #1015 and Order #34-Remand (Dkt. No. 6021; filed 1/10/2014), and the entire record herein, it is hereby ORDERED that:

The corrective statements remedy under Order #1015 (DN 5733, Aug. 17, 2006), published as *United States v. Philip Morris USA Inc.*, 449 F. Supp. 2d 1, 938-41 (D.D.C. 2006), *aff'd in part & vacated in part*, 566 F.3d 1095 (D.C. Cir. 2009) (*per curiam*), *cert. denied*, 561 U.S. ___, 130 S. Ct. 3501 (2010), is hereby MODIFIED as set forth below:

I. Definitions

A. “Above the Fold” means:

1. For websites other than mobile websites, the text that begins on the first screen of the home page for the web address, without scrolling, or
2. For mobile websites that do not use responsive design, the text that begins on the first screen in portrait orientation, without scrolling.

B. “Benchmark timeslot” for a particular month means the timeslot that received the fewest average impressions (18-99+) among CBS, ABC, and NBC, Monday through Thursday, between 7:00 p.m. and 9:59 p.m., during the most recent three-month period that ended a full month before the month in question.

C. “Corrective Statements” or “Statements” mean the text of the Statements ordered in Order #34-Remand, except that the phrase “Defendant Tobacco Companies” will be replaced with “Altria, R.J. Reynolds Tobacco, Lorillard, and Philip Morris USA” (in the order detailed in the substantive sections below); in the Adverse Health Effects Statement (Statement A), the words “and uterus” will be deleted from the final bullet; and in the Secondhand Smoke Statement (Statement E), the phrase “Secondhand smoke kills over 3,000 Americans per year” will be replaced with “Secondhand smoke kills over 38,000 Americans per year.”

D. “Covered Websites” refers to the websites listed on **Exhibit A**, and any successor or replacement websites and any additional defendant websites that promote or advertise cigarettes; provided, however, that the term “Covered Websites” does not include (i) log in and age verification pages, if any, for the Covered Websites, or (ii) websites advertising only products

other than cigarettes, including but not limited to smokeless tobacco, e-cigarettes, and other tobacco-derived nicotine products.

E. “Defendants” means Altria, R.J. Reynolds Tobacco Company, Lorillard Tobacco Company, and Philip Morris USA.

F. “Defendant” means the individual company that is making the Corrective Statement.

G. “No Sunday exception rule” refers to the concept that for any newspaper that does not publish on the Sunday for which Corrective Statements are required, the Corrective Statement will instead appear in that newspaper in the first section of the Friday edition immediately preceding that Sunday.

H. “Preamble Text” refers to the text of each Corrective Statement that begins with the words “A Federal Court” and ends with the words “Here is the truth.”

I. “Remedial Order” refers to Order #1015 in *United States v. Philip Morris USA Inc. et al.*

J. “Social media” refers to web pages and internet-connected applications that enable users to create and share content or otherwise to participate in social networking, excluding web addresses that fall within the definition of “Covered Websites.”

K. “Spanish version” of the Statements refers to the text of the Statements translated into Spanish, as set forth in **Exhibit B**.

L. “Trigger date” means the date on which appeals are exhausted in the appeal noticed from Order #34-Remand, *United States v. Philip Morris USA*, appeal docketed, No. 13-5028 (D.C. Cir. Jan. 30, 2013), and in any timely appeals noticed from this Consent Order. If

Defendants do not file a petition for certiorari within the time prescribed in Section VI(6), appeals will be deemed exhausted for this purpose on the last day of that prescribed time.

M. "Website Corrective Statements" refers to the versions of the Corrective Statements described in Section IV below, under the heading "Corrective Statements on Websites."

II. Corrective Statements In Newspapers

1. The Defendants will purchase a full newspaper page in the first section of the Sunday edition of the following newspapers, on the schedule listed in Paragraph 5 below:

Atlanta Journal-Constitution; Boston Globe; Charlotte Observer; Chicago Sun-Times; Chicago Tribune; Dallas Morning News; Houston Chronicle; Los Angeles Times; Miami Herald; New York Daily News; New York Times; Philadelphia Inquirer; Richmond Times-Dispatch; San Francisco Chronicle; Tampa Bay Times (formerly St. Petersburg Times); USA Today; Wall Street Journal; Washington Post; the newspapers published by Eastern Group Publications; San Francisco La Oferta Review/El Vistazo-Combo (NAHP); Chicago Lawndale News (NAHP); Houston – Que Onda!; Newark Star-Ledger; Detroit Free Press; Commercial Appeal (Memphis, TN); Baltimore Sun; New Orleans Times-Picayune; Clarion-Ledger (Jackson, MS); Birmingham News; News Journal (Wilmington, DE); Charleston Post & Courier; Arizona Informant; Little Rock Sun Community Newspaper; Denver Weekly News; Inner City News (CT); Gary Crusader; Louisville Defender; Insight News (MN); St. Louis American; Omaha Star; City News (Cleveland, Akron, Columbus); Black Chronicle (OK); Portland Skanner (OR); Seattle Skanner; and Milwaukee Courier.

2. In the event any newspaper listed in this Section is no longer in print or online, Defendants will notify Plaintiffs. The parties will jointly select an alternative newspaper in approximately the same market.

3. Each newspaper placement will contain one of the five Corrective Statements in its entirety. Altria, R.J. Reynolds Tobacco Company, Lorillard, and Philip Morris USA will each be listed first on one date. As to the remaining date, Defendants will decide which of them is listed first. This listing of the companies will satisfy the requirement to identify the Defendant making the Corrective Statement.

4. Each Corrective Statement will be substantially similar to and meet the specifications depicted in **Exhibit C** attached. The font family shall be Univers LT Std. For a newspaper of 11.55 inches wide by 21 inches tall, the preamble shall be Univers Light, 40 point font size, and 68 point leading, except "Here is the truth," which shall be Univers Light, 40 point and have between 82 and 84 points of white space above and below, as shown in the **Exhibit C** mock ups attached. The bullet list shall be Roman, 30 point with .50 stroke, 40 point leading, and have between 48 and 58 points of white space after each bulleted phrase, with additional emphasized words in Univers Black font, as shown in the **Exhibit C** mock ups attached. The bulleted text shall be indented one 1-inch tab-stop, with the bullets positioned 0.25 inches to the left of the indented text. Corrective Statements in newspaper pages of other sizes shall be adjusted proportionately. The Corrective Statements will use black text on a white background. To the extent a newspaper requires it, the word "advertisement" shall appear in Univers Light, 10 point font size, at the top center of the page. The text of each Corrective Statement will be

centered vertically on the page, leaving equal white space above the first line of the preamble and after the last line of the bulleted text.

5. The Corrective Statements published in Spanish-language newspapers will be the same, but will use the Spanish version of the Corrective Statements attached at **Exhibit B**.

6. Defendants will purchase the placement of the Corrective Statements to occur on the following schedule, applying the no Sunday exception rule:

- a. The publication of the Adverse Health Effects of Smoking Statement (Statement A) in the Sunday editions of the 8th Sunday following the Trigger Date.
- b. The publication of the Addictiveness of Smoking and Nicotine Statement (Statement B) in the Sunday editions of the 10th Sunday following the Trigger Date.
- c. The publication of the Lack of Significant Health Benefit from Lights Statement (Statement C) in the Sunday editions of the 14th Sunday following the Trigger Date.
- d. The publication of the Manipulation of Cigarette Design Statement (Statement D) in the Sunday editions of the 18th Sunday following the Trigger Date.
- e. The publication of the Secondhand Smoke Statement (Statement E) in the Sunday editions of the 22nd Sunday following the Trigger Date.

7. Defendants will also run the Corrective Statements in the online versions of each newspaper in which they are placed. Each such Corrective Statement will be substantially similar to and meet the specifications depicted in **Exhibit D** attached. Defendants will purchase the online space in a size of at least 300 x 250 pixels (if horizontal) or 300 x 600 pixels (if vertical). Defendants will purchase the space with preference for the highest available location on the home page that can accommodate such size, and if no such space is available, the next most visited

location on the website. Defendants will purchase the online space for a duration that will be equivalent to a day run, based on the highest typical daily number of home page impressions for the online publication year, and, if that information is not available, then the average daily number of home page impressions for the online publication year. Defendants will use best efforts to have the online placement appear on the same weekend (Friday through Sunday) the print Corrective Statement appears. The online placement will stop appearing when the total number of impressions are achieved.

8. Each online Corrective Statement will appear as an animation in Flash or JavaScript, with two screens (the first screen for the preamble before the phrase "Here is the truth"; the second screen for the phrase "Here is the truth" and sub-bullets). Upon the initial view, the first screen will appear for 15 seconds (or as close as reasonably practicable), followed by the second screen, which will appear for 15 seconds (or as close as reasonably practicable). The screens will not rotate beyond any animation time limit established by the website, except to the extent re-initiated by a viewer (who may play or stop the animation at the viewer's discretion). If the website establishes any animation time limit, the loop will end on the second screen. Defendants will submit animated GIFs with two screens capturing the entire Corrective Statement to websites that do not support Flash or JavaScript, as a default for viewing by users who cannot view animated Corrective Statements in Flash, JavaScript, or other animated formats. The format of the online Corrective Statements is subject to the approval of the website owners, and adjustments to the online format may from time to time be necessary to meet the website owner requirements.

9. For online-placements, the font family shall be Arial Regular. For a placement 300 x 250 pixels, the preamble in frame 1 shall be 19 pixels Arial Regular with 24 pixels leading, except for Statement C (Lack of Significant Health Benefit from Lights), which shall be 17.5 pixels Arial Regular with 21.5 pixels leading. Frame 2, "Here is the truth," shall be 15 pixels Arial Regular with 12 pixels of white space below. The bullet list shall be 13 pixels Arial Regular with 13 pixels leading, with between 9 pixels and 16.75 pixels of white space after each bulleted phrase, with additional emphasized words in Arial Bold font, as shown in the attached **Exhibit D** mock ups. The Corrective Statements will use black text on a white background. The copy for frame 1 and frame 2 shall be centered vertically in the frame leaving equal white space above the first line and below the last line of text. Corrective Statements in online placements of other sizes shall be adjusted proportionately.

10. For online-placements, Paragraph 2 above will govern the order in which the Defendants are identified.

III. Corrective Statements on Television

1. Each Defendant will place the Corrective Statements ("spots") on its choice of the three major television networks – CBS, ABC, or NBC. During each month, Defendants may also place up to one-third of the spots on programs on other channels and networks that, during the most recent three-month period that ended a full month before the month in question, had an overall audience (18-99+) at least as large as the benchmark timeslot, so long as Defendants use their best efforts to ensure that each such selected program has more African American viewers than the benchmark timeslot. The TV spots will run a total of five times per week, subject to the availability of network time and upon approval of the network(s) on which the spots will air.

2. The five TV spots to be run each week will be run by each Defendant at its choice between 7:00 p.m. and 10:00 p.m. in the time zone in which the spot airs, between Monday and Thursday, for one year.

3. The spots will run for 52 weeks. In the event that lack of availability of network time precludes Defendants from purchasing all spots within the one-year period, Defendants will continue to purchase spots until they have run each Corrective Statement at least 50 times and have run a total of 260 spots.

4. On a bi-weekly basis during the time period in which the TV spots will run, Defendants will notify Plaintiffs at least one week in advance of the programs, channels/networks, and timeslots of their placements for the forthcoming two weeks. If any of those placements will be made on a program allowed under the second sentence of paragraph 1 in this Section, Defendants will also provide all viewership data, including referencing the source of the data, from which they determined the program meets all the requirements of the benchmark timeslot and allowed in calculating its overall and African American audience sizes (18-99+).

5. The TV spots will be those in **Exhibit E**, each of which contains display and sound acceptable to the parties. The following statements will be placed in 45-second spots: "Adverse Health Effects of Smoking," "Lack of Significant Health Benefit from Lights," "Manipulation of Cigarette Design," and "Secondhand Smoke." The following Statement will be placed in a 30-second spot: "Addictiveness of Smoking and Nicotine."

6. The TV spots will contain the words "Under court order, paid for by Altria, R.J. Reynolds Tobacco, Lorillard, and Philip Morris USA." The Defendant that bears the cost of the

spot will be listed first both in the text of the Corrective Statement and the “paid for” footer, so that Altria, R.J. Reynolds Tobacco Company, Lorillard, and Philip Morris USA will each be listed first on at least one spot per week. For the final spot each week, R.J. Reynolds Tobacco Company will be listed first.

7. Defendants shall commence airing the TV spots, if feasible, the week immediately following the 8th Sunday following the Trigger Date.

IV. Corrective Statements On Websites

1. The Website Corrective Statements will be published as described in this Section.
 - a. Defendants will not interfere with or impede a user’s ability to print or copy the Website Corrective Statements. The full-text display (as defined below) will not be an image, and will be in a format that allows a user to print or copy all or part of its text.
 - b. The specifications below assume a website viewed on a monitor screen with a resolution of 72 DPI.
 - c. The specifications for non-mobile-device presentations assume a 17 inch monitor with an overall screen width of 1024 pixels and a height of 768 pixels; and for mobile-device presentations, assume an overall screen width of 320 pixels and a height of 480 pixels. For clarity, mobile device specifications may be measured on a 17 inch monitor with a viewable area that is 320 pixels wide and 480 pixels high.
 - d. With respect to any new or redesigned Covered Website, the comparative prominence of the website preamble and the full-text display (as defined below) in relation to the other elements on the screen will be at least as great as in any of the

mock ups in the relevant phase and section of the **Exhibit F mock ups** (*i.e.*, non-mobile, responsive design mobile, and non-responsive design mobile).

Phase 1

2. Beginning on the 8th Sunday following the Trigger Date, and continuing for five years thereafter (years 1 through 5) or for the duration of the Remedial Order, whichever is shorter, the format specified in this paragraph will be on each Covered Website. Any existing Covered Website that is not redesigned shall meet the requirements of this Order by conforming to the specifications of its **Exhibit F** mock ups, whether or not the website conforms to the specifications contained in this paragraph. Any new or redesigned Covered Website must conform to the specifications of this paragraph.

- a. The following "Phase 1 website preamble" will appear on each of the Covered Websites, with the Defendant that operates the website being listed first: "A Federal Court has ruled that Altria, R.J. Reynolds Tobacco, Lorillard, and Philip Morris USA deliberately deceived the American public and has ordered those companies to make these statements. Here is the truth:

- * Health effects of smoking
- * Addictiveness of smoking and nicotine
- * Falsely selling and advertising low-tar and light cigarettes as less harmful than regular cigarettes
- * Designing cigarettes to enhance the delivery of nicotine
- * Health effects of secondhand smoke
- * *Para información en español, clic aquí*"

- b. The phrase "Here is the truth" will hyperlink to a display of the full-text of all five Corrective Statements (the "full-text display") that will open when clicked. The full-text display text will be black on a white background and contain an identifying

heading to segregate the individual Corrective Statements. In the Phase 1 website preamble, each of the topic-specific bullet points will hyperlink to the same full-text display. The phrase "Here is the truth" and the topic-specific bullet points will be formatted as hyperlinks shown with an underline and/or in a color with a high contrast to the non-hyperlinked preamble text. Hyperlinked text must maintain readability against the background color. When one of those topics is clicked, the full-text display will open with the particular Corrective Statement associated with that topic at the top. The user will be able to scroll through the rest of the full-text display to view the other Corrective Statements as well. The last bulleted hyperlink will open the portion of the full-text display containing the Spanish version of all five Corrective Statements, as shown in **Exhibit B**. All of the above requirements apply to Spanish-language websites, which will display the Spanish version of the Corrective Statements, including the website preamble, in Spanish.

- c. The website preamble text shall be black on white background, or white on a black background, or a similar text and contrasting background, and shall appear in a manner that contrasts, by typography, layout, or color, with all other material on that page of the website.
- d. The following requirements apply to all Phase 1 presentations other than those designed for mobile devices:
 - (i) The website preamble must appear in a prominent position on the home page Above the Fold, such that the amount of text on the first screen of the home page includes the text of the website preamble through and including the first bulleted text

(“Health effects of smoking”). The website preamble will occupy a minimum total area of 90,000 pixels, and be coded to a minimum font size of 11 pixels.

(ii) The full-text display will: (A) appear within a full-text display containing window that is a minimum of 500 pixels wide and 575 pixels high and be viewable in its entirety by scrolling only the full-text display scroll bar; (B) contain the text of the preambles and the bullet point lists coded to a minimum font size of 14 pixels using Arial Regular font style; (C) contain a hard return between “Here is the truth” and the bulleted information; (D) contain an identifying heading for each Statement; and (E) contain horizontal lines between the last bullet point of each Statement and the identifying heading of the next Statement.

e. The following requirements apply to all Phase 1 presentations designed for mobile devices.

(i) There will be a paragraph return below “Here is the truth.” The website preamble and full-text display will be the full width of the mobile screen. The remaining elements may use either an accordion or full-text format as follows:

(A) Accordion format. Each topic headline will be displayed using an accordion menu with the topic name as a headline and the full Corrective Statement programmed to hide and reveal upon tap. The full-text display will initially show all topic headlines with all topic headline accordion menus in the closed position. A right-pointing arrow indicator shall appear to the right of each Statement title, indicating that more content can be viewed by tapping the Statement title or right-pointing arrow.

(B) Full-text format. The full-text display will (I) contain the text of the preambles and the bullet point lists; (II) contain a hard return between “Here is the truth” and the bulleted information; (III) contain an identifying heading for each Statement; and (IV) contain horizontal lines between the last bullet point of each Statement and the identifying heading of the next Statement.

(ii) For websites that adjust to different screen sizes (such as sites using responsive design), the website preamble appearing on the home page of the Covered Websites should be resized, match the hierarchy of, utilize the same font style as, and utilize a font size no smaller than the format used for larger screens under paragraph 2(d) above. Such a website preamble is not required to appear Above the Fold, but must begin within 1111 pixels from the top of the screen. The mock ups contained in **Exhibit F – Phase 1 -- Mobile Version for Responsive Design** comply with the requirements of this paragraph.

(iii) For mobile websites that do not adjust to different screen sizes, the text of the website preamble and the full-text display will be coded to a minimum font size of 11 pixels using Arial Regular font style or an alternative font that is at least as large and readable. The website preamble must appear Above the Fold, such that the amount of text on the first screen of the home page includes the text of the website preamble through the list of Defendants (“A Federal Court has ruled that Altria, R.J. Reynolds Tobacco, Lorillard, and Philip Morris USA”). The mock ups contained in **Exhibit F- Mobile Version – Not Responsive Design** comply with the requirements of this paragraph.

Phase 2

3. During the six years following the expiration of year five (years 6 through the expiration of year 11) or for the duration of the Remedial Order, whichever is shorter, the format specified in this paragraph will be on each Covered Website. Any existing Covered Website that is not redesigned shall meet the requirements of this Order by conforming to the specifications of its **Exhibit F – Phase 2** mock ups, whether or not the website conforms to the specifications contained in this paragraph. Any new or redesigned Covered Website must conform to the specifications of this paragraph.

- a. The following “Phase 2 website preamble” will appear on each of the home pages of the Covered Websites, with the Defendant on whose website the Corrective Statement appears listed first: “A Federal Court has ruled that Altria, R.J. Reynolds Tobacco, Lorillard, and Philip Morris USA deliberately deceived the American public about the health effects of smoking, and has ordered those companies to make these statements. Here is the truth.”
- b. The phrase “Here is the truth” will hyperlink to a full-text display that will open when clicked. The phrase will be formatted in a manner to make it recognizable as a hyperlink. When a reader clicks on the link, a full-text display will appear containing the full-text of all of the Corrective Statements, in compliance with the full-text display for the Phase 1 executions above.
- c. For Phase 2 website presentations other than those designed for mobile devices, the website preamble must appear entirely Above the Fold. For Phase 2 website presentations designed for mobile devices (whether or not they adjust to different

screen sizes), the website preamble must begin Above the Fold, such that the amount of text on the first screen of the home page includes at least the following portion of the preamble: “A Federal Court has ruled that Altria, R.J. Reynolds Tobacco, Lorillard, and Philip Morris USA deliberately deceived the.”

- d. The text of the website preamble for Phase 2 presentations will be coded to a minimum font size of 10 pixels using Arial Regular font style or an alternative font that is comparable in size and readability.
- e. For the link on the home page and the Statements on the full-text display, each Defendant will utilize font styles and sizes, and text and background colors, that are consistent with those used for other links appearing on the company’s home page.

Phase 3

4. During the year following the expiration of year 11 and thereafter (year 12 and thereafter) or for the duration of the Remedial Order, whichever is shorter, the format specified in this paragraph will be on each Covered Website. Any existing Covered Website that is not redesigned shall meet the requirements of this Order by conforming to the specifications of its **Exhibit F – Phase 3** mock ups, whether or not the website conforms to the specifications contained in this paragraph. Any new or redesigned Covered Website must conform to the specifications of this paragraph. With the exception of mobile-device presentations that do not adjust to different screen sizes (which may place the text anywhere on the home page provided it is fully Above the Fold), the following text will appear Above the Fold at the top of each of the home pages of the Covered Websites: “Court Ordered Corrective Statements.” That text will be coded to a minimum font size of 9 pixels using Arial Regular font style or an alternative font that is

comparable in size and readability, and will be formatted in a manner to make it recognizable as a hyperlink. That text will hyperlink to a full-text display that will open when clicked, in compliance with the full-text display for the Phase 1 execution above. When a reader clicks on the link, a full-text display will appear containing the full-text of the Corrective Statements. For the link on the home page and the full-text display, each Defendant will utilize font styles and sizes, and text and background colors, that are consistent with those used for other links appearing on the company's home page.

Social Media

5. Defendants represent that they do not currently advertise or promote their cigarettes on social media. In the event a Defendant chooses to launch any social media that promotes or advertises cigarettes, that Defendant will, where reasonably feasible, utilize the applicable website Corrective Statement requirement. That is, if the social media is launched in Year 2, the Defendant will first attempt to utilize the Phase 1 website execution; if the social media is launched in Year 7, the Defendant will first attempt to utilize the Phase 2 website execution. If it is not reasonably feasible to implement the applicable website execution, the Defendant will attempt to implement the execution applicable to the next website phase. If that execution is not reasonably feasible, the Defendant will utilize the next website execution phase.

If none of the website executions are reasonably feasible, the Defendant shall implement an alternative Corrective Statement execution that follows the principles in this Order. In such a case, the Defendant shall notify Plaintiffs of its alternative social media Corrective Statement execution at least 28 days prior to launch of the social media. At the conclusion of the 28 days, the Defendant may launch the social media. If Plaintiffs have a concern about an execution under

this paragraph, they will meet and confer with the Defendant before raising objections with the Special Master. The Defendant will modify the social media Corrective Statement execution in the event any changes are subsequently agreed to by the parties or required by the Special Master. This paragraph does not give Plaintiffs any right of pre-approval over Defendants' ability to advertise or promote their products on social media.

V. Corrective Statements On Cigarette Pack Onserts

1. On the schedule provided in paragraphs 2-5 below, each Defendant will affix to cigarette packaging, either to the outside of or within the outer cellophane wrapping around each package, an "onsert" containing one of the Corrective Statements. Paragraph 2 for Newspapers above will govern the order in which Defendants are identified.

2. For each installment of onserts, and for each of the Defendant's cigarette brand styles, each Defendant will affix the onsert to two weeks' worth of estimated annual volume shipped to distributors in the United States, as defined in 15 U.S.C. § 1332(3), which determines the geographic scope of Surgeon General's warnings, including to distributors to duty-free locations in the United States; and all distributors of cigarettes for sale or distribution to members or units of the Armed Forces of the United States located outside of the United States, with the exception of Italy, for which R.J. Reynolds Tobacco Company has represented that a required tax stamp makes the onsert technologically infeasible for it.

3. Each Defendant will ship the onserted product three times per year for two years, for a total of six installments, with the installments timed approximately four months apart based on target wholesale delivery dates (*e.g.*, March, June and October). Each Defendant will begin shipping onserted product no later than thirty weeks after the Trigger Date.

4. Each Defendant will include each of the five Corrective Statements in at least one two-weeks' worth shipment of each brand. Alternatively, a Defendant may elect to include an approximately equal number of all five Corrective Statements in each shipment.

5. If a Defendant elects to include a single Corrective Statement in each shipment, the Corrective Statements will be disseminated on onserts in this sequence: (1) Adverse health effects of smoking; (2) Addictiveness of smoking and nicotine; (3) Falsely selling and advertising low-tar and light cigarettes as less harmful than regular cigarettes; (4) Designing cigarettes to enhance the delivery of nicotine; and (5) Adverse health effects of secondhand smoke.

6. The Corrective Statements for the onserts shall be in black text on a white background, using the Univers family fonts. The onserts will look substantially similar to and meet the specifications depicted in the mock ups for each Defendant company contained in **Exhibit G** attached. The first panel of each onsert mock up in **Exhibit G** will show "Here is the truth" as its own line. Based on the onsert parameters provided by the Defendants, each company's specifications are as follows:

- a. For Philip Morris's onserts, the preamble text will appear on the outside cover, visible on the face of the pack, and the rest of each Statement will be printed on the unfolded back side of the onsert. The font size will vary slightly based on the length of the text of any given Statement. For Statement A (Adverse Health Effects), the preamble will be Univers Light, 10 point font size, 11.75 point leading. In addition to the bottom of the outside cover, "Here is the truth" will appear in Univers Light, 12 point font, 22 point leading, at the top of the unfolded back side. The bullet list will appear in Univers Light 10 point font size, 11.75 point leading. The font size for the remaining

four Statements will be adjusted proportionately, depending on the length of the statement. The Spanish version of that Statement will be printed on the remaining panels.

- b. For R.J. Reynolds Tobacco Company's and Lorillard's onserts, the preamble text will appear on the outside cover. "Here is the truth" will appear at the bottom of the outside cover. The back side of the onsert will be headed with "Here is the truth," followed by the bullet list.
- c. The font size will vary slightly based on the length of the text of any given Statement:
 - i. For R.J. Reynolds Tobacco Company, for Statement A (Adverse Health Effects), the preamble will be Univers Light, 11 point font size, 13 point leading. In addition to the bottom of the outside cover, "Here is the truth" will appear in Univers Light Condensed, 9 point font size, 9 point leading, at the top of the rear. The bullet list will appear in Univers Light Condensed, 9 point font size, 9 point leading. For Statement C (Light/low tar), the preamble will be Univers Light, 10 point font size, 11.75 point leading. In addition to the bottom of the outside cover, "Here is the truth" will appear in Univers Light Condensed, 8.75 point font size, 8.75 point leading, at the top of the rear. The bullet list will appear in Univers Light Condensed, 8.75 point font size, 8.75 point leading. The font size for the remaining three Statements will be adjusted proportionately, depending on the length of the Statement. For all Corrective Statements, all emphasized words in the bullet list will appear in Univers Condensed, with the same font size and leading as the other bullet-list text for that Corrective Statement.

ii. For Lorillard, for Statement A (Adverse Health Effects), the preamble will be Univers Light, 9 point font size, 10.5 point leading. In addition to the bottom of the outside cover, "Here is the truth" will appear in Univers Light Condensed, 8 point font size, 8 point leading, at the top of the rear. The bullet list will appear in Univers Light Condensed, 8 point font size, 8 point leading. For Statement C (Light/low tar), the preamble will be Univers Light, 8.25 point font size, 9 point leading. In addition to the bottom of the outside cover, "Here is the truth" will appear in Univers Light Condensed, 8.5 point font size, 8.5 point leading, at the top of the rear. The bullet list will appear in Univers Light Condensed, 8.5 point font size, 8.5 point leading. The font size for the remaining three Statements will be adjusted proportionately, depending on the length of the Statement. For all Corrective Statements, all emphasized words in the bullet list will appear in Univers Condensed, with the same font size and leading as the other bullet-list text for that Corrective Statement.

VI. Additional Provisions

1. This Consent Order modifies certain provisions of Order #1015, but does not modify the deadline for Defendants' document depository obligations, which will continue until September 1, 2021. *See* Order #1021 (Dkt. No. 5765; issued 9/20/2006). Where the terms of this Consent Order differ from Order #1015, this Consent Order will govern. This Consent Order does not resolve the outstanding issue of Corrective Statements in retail point-of-sale displays.

2. The Corrective Statement formats specified above are intended to be comprehensive. No Defendant shall alter, modify, or add to the specified elements of these formats, and no additional text, images, voice-over or other elements may be included.

3. Defendants shall be responsible for the production of all Corrective Statements in the media described herein. Specific implementations of the Corrective Statements, or sufficient exemplars where necessary, incorporated herein by reference, were filed with the Court as an attachment to the parties' Joint Motion and (Proposed) Consent Order (Dkt. No. 6021-5; filed 1/10/2014) (Ex. E—Television Spots); and for all other implementations, as exhibits being filed concurrently on 4/22/2014.

4. No provision of this Consent Order waives either any R.J. Reynolds Tobacco Company challenge to the requirement that it publish Corrective Statements on television in its capacity as successor to Brown & Williamson Tobacco Co. or any response Plaintiffs may present to such a challenge.¹ The obligations regarding Corrective Statements on television will conform to the outcome of any such further litigation, such that, should R.J. Reynolds Tobacco Company prevail, there will be four sets of Corrective Statement spots on television.

5. Except as stated in this paragraph, no party waives or abandons any appeal or appellate rights or arguments; nor should anything herein be construed as a waiver or impairment of any such appellate right or argument. Defendants reserve the right to challenge on appeal the content of the Court-ordered Corrective Statements and the requirement that the Court-ordered Corrective Statements appear in the multiple media referenced in the Remedial Order and herein. Defendants will not challenge on appeal the specific implementation executions in this Consent Order, and Plaintiffs will not invoke Defendants' agreement to the specific implementation executions in response to Defendants' appellate challenge to the Court-ordered Corrective

¹ The definition and use of the terms "Defendant" and "Defendants" in this Consent Order shall have no bearing on the Court's adjudication of any such motion.

Statements. Should the language of the Corrective Statements be changed as a result of further litigation, the parties reserve the right to seek different requirements than those stated herein.

6. Defendants agree not to oppose Plaintiffs' motions to expedite, motions for extension of time, or proposed briefing schedules, if any, in the appeal noticed from Order #34-Remand, *United States v. Philip Morris USA*, appeal docketed, No. 13-5028 (D.C. Cir. Jan. 30, 2013), and in any appeals noticed from this Consent Order, provided that the time Defendants are allotted to file their briefs shall not be shorter than the time allowed by Federal Rule of Appellate Procedure 31, and provided further that any motion or proposed briefing schedule shall treat Plaintiffs and Defendants proportionally relative to Federal Rule of Appellate Procedure 31. Defendants agree that (unless Plaintiffs agree to the contrary), Defendants will file any petitions for certiorari within 60 days after entry of the judgment or resolution of any petition for rehearing or rehearing en banc, whichever comes last; and that (unless Plaintiffs agree to the contrary) Defendants will not seek any extensions of the time to file a petition for certiorari under Sup. Ct. R. 13.5.

7. Defendants' agreement to these terms and to these executions of the language of the Corrective Statements shall not be deemed or construed as an admission of the Defendants, collectively or individually.

8. Nothing in this agreement precludes Plaintiffs from seeking further relief of any kind based on violations of the Remedial Order injunction not related to the requirements of this agreement, or from presenting any argument not based on this agreement in defense of the Court-ordered Corrective Statements or Remedial Order.

9. The United States' agreement to these terms does not constitute, and shall not be used as evidence of, permission or authorization to advertise cigarettes on websites or social media notwithstanding the Broadcast Ban, 15 U.S.C. § 1335.

10. This Consent Order is the complete agreement of the parties and supersedes any prior negotiations, agreements, or understandings of the parties. The terms of this agreement cannot be modified or amended without written consent by all parties.

DATED:

June 3, 2014


GLADYS KESSLER
U.S. District Judge

We consent to entry of the above consent order:

Dated: April 22, 2014

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Exhibit List

- A. Specifically-Named Covered Websites (updated list filed as an exhibit to parties' Joint Praeipse (Dkt. No. 6081-2; filed 4/22/2014))
- B. Spanish version of Corrective Statements (re-filed as an exhibit with the Parties' Joint Praeipse (Dkt. No. 6081-3; filed 4/22/2014))
- C. Newspaper print exemplar (re-filed as an exhibit with the Parties' Joint Praeipse (Dkt. No. 6081-4; filed 4/22/2014))
- D. Online exemplar (for newspaper websites) (re-filed as an exhibit with the Parties' Joint Praeipse (Dkt. No. 6081-5; filed 4/22/2014))
- E. Television spots in MP4 or a similar format suitable for Court review using a standard desktop computer and software; and in high-resolution, large files to be transmitted to and aired by TV networks (filed as exhibits to the parties' Joint Motion (Dkt. No. 6021-5; filed 1/10/2014))
- F. Company website exemplars:
 - Phase 1 – Non-Mobile Version (updated exemplar filed as an exhibit to the parties' Joint Praeipse (Dkt. No. 6081-6; filed 4/22/2014))
 - Phase 1 – Mobile Version for Responsive Design (updated exemplar filed as an exhibit with the parties' Joint Praeipse (Dkt. No. 6081-7; filed 4/22/2014))
 - Phase 1 – Mobile Version – Not Responsive Design (re-filed as an exhibit with the Parties' Joint Praeipse (Dkt. No. 6081-8; filed 4/22/2014))
 - Phase 2 (updated exemplar filed as an exhibit with the parties' Joint Praeipse (Dkt. No. 6081-9; filed 4/22/2014))
 - Phase 3 (updated exemplar filed as an exhibit with the parties' Joint Praeipse (Dkt. No. 6081-10; filed 4/22/2014))
- G. Onsert exemplars (re-filed as an exhibit to the parties' Joint Praeipse (Dkt. No. 6081-11; filed 4/22/2014))