

STATE OF MARYLAND,

Plaintiff,

v.

PHILIP MORRIS INCORPORATED, et al.,

Defendants.

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IN THE

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CIRCUIT COURT

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FOR

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BALTIMORE CITY

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Case No.: 96122017/CL211487

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**STATE OF MARYLAND'S MOTION TO ENFORCE
THE MASTER SETTLEMENT AGREEMENT
AGAINST CUTTING EDGE ENTERPRISES, INC.**

Plaintiff State of Maryland moves, pursuant to Section VII(c) of the Tobacco Litigation Master Settlement Agreement ("MSA"), for an enforcement order against Cutting Edge Enterprises, Inc. ("CEI"), a Participating Manufacturer under the MSA, for violations of the MSA arising out of its transfers of ownership of 100% of its stock in 2005 and 2006.

In support, Plaintiff states:

1. This Court has continuing jurisdiction to implement and enforce the MSA pursuant to MSA § VII(a).

2. From March 2005 to present, CEI orchestrated a series of transactions to facilitate the backdoor entry into the MSA of a tobacco manufacturer that is not a MSA participant (a "nonparticipating manufacturer" or "NPM"), with the goal of avoiding payments to the governmental signatories to the MSA (the "Settling States") of more than \$65.9 million.

3. As set forth in the accompanying memorandum and exhibits, CEI, as a

Participating Manufacturer under the MSA, was required but failed to comply with MSA provisions that cover sales, transfers and dispositions of assets having a fair market value of five percent or more of its consolidated assets and that preclude it from selling its cigarette brands, brand names, formulas or businesses to any person or entity that is not also a Participating Manufacturer.

4. On March 16, 2005, without notice to the Settling States, CEI entered into a "Stock Purchase Agreement" by which Windy City Tobacco, LLC ("Windy City") acquired 100% of its stock and thereby 100% control of the CEI's business, including its cigarette brands, brand names, formulas, and trademarks.

5. On January 15, 2006, Calvin Phelps assumed 100% ownership and control over CEI's business by exercising his rights as the financier of Windy City's acquisition of CEI.

6. Mr. Phelps is the sole owner of Alternative Brands, Inc. ("ABI"), an NPM that, under the MSA, would be liable for more than \$65.9 million in payments to the Settling States were it to become a Participating Manufacturer. Beginning shortly after the initial stock transfer to Windy City, ABI and CEI entered into various contractual relationships, involving, for example, the transfer of a major ABI brand to CEI and an agreement for ABI to manufacture CEI cigarettes.

7. As set forth in the accompanying Memorandum with exhibits, the transactions leading to Mr. Phelps' ownership and control of CEI violate the express language of the notice provision of MSA § XVIII(x) and the business transfer provision of MSA § XVIII(c),

the intent of those provisions, and the overall purpose of the MSA.

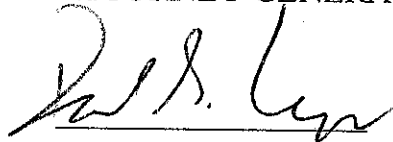
8. As set forth in the proposed Order, the State requests that this Court declare that the transfers and acquisitions of control of the CEI stock and business violate the MSA, issue injunctive relief requiring that they must be rescinded, pay Plaintiff's reasonable costs of this enforcement action, and issue any other relief the Court deems appropriate.

9. Prior to filing this action, by letter dated November 27, 2006 the State provided notice to CEI of the State's intent to initiate enforcement proceedings against CEI unless the matter could be resolved. Moreover, as contemplated by MSA § VII(c)(2) and Consent Decree § VI.A, the State sought to resolve the issues raised herein by meeting with CEI in Ft. Lauderdale on November 28, 2006 and by subsequent telephone discussion.

A supporting Memorandum with exhibits, proposed Order and a Request for Hearing accompany this Motion.

Respectfully submitted,

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