

IN THE CIRCUIT COURT OF OREGON FOR MULTNOMAH COUNTY

**If you purchased Swisher cigar products as part of a promotion, you could get benefits from a class action settlement.**

*A court authorized this notice. This is **not** a solicitation from a lawyer.*

- A proposed Settlement has been reached in a class action lawsuit in which the Plaintiff alleges that the “5 for the price of 3” promotion on the Swisher Sweets cigarillos is misleading.
- The Plaintiff alleges that 5-packs advertised as “5 for the price of 3” were deceptive because the promotion implies that five cigarillos could be purchased for the price of three, but consumers could purchase three individual cigarillos for less than the price of the 5-pack.
- Swisher International, Inc., Plaid Pantries, Inc., and Plaid Pantry, Inc. (“Defendants”) deny any and all liability but have agreed to enter into a settlement to avoiding the burden, expense, risk, and uncertainty of continuing to litigate the claims.
- Plaintiff’s Class Counsel believe that the substantial benefits available under the terms of the benefit are fair, reasonable, adequate, and in the best interests of the Plaintiff and the Class.

<b>YOUR RIGHTS AND OPTIONS</b>	
<b>SUBMIT A CLAIM</b>	If you are a Class Member and wish to receive benefits from the Settlement, you must submit a completed Claim Form.
<b>OBJECT</b>	Write to the Court about why you don’t like this Settlement. Objections must be filed with the Court and copies sent to Counsel for the Parties. Objections must be received no later than <b>July 19, 2019</b> .
<b>ASK TO BE EXCLUDED</b>	If you would like to be excluded (“opt out”) of the Settlement, you must submit a written request for exclusion to the Settlement Administrator. Opt-out requests must be received no later than <b>July 19, 2019</b> .
<b>DO NOTHING</b>	If you are a Class Member and do not submit a claim or opt out, you will not receive any benefits from the Settlement but will be bound by all subsequent proceedings, orders and judgments in the Action.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- A Fairness Hearing has been scheduled for August 9, 2019 at 9 A.M. At the hearing, the Court will consider whether this Settlement is fair, reasonable and adequate and will also consider Plaintiff’s Class Counsel’s request for attorneys’ fees, costs and expenses, and any award to the individual Plaintiff. You have the right to go to that hearing, although you are not required to do so.

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## **BASIC INFORMATION**

### **1. What is this lawsuit about?**

The Plaintiff's lawsuit in this Action alleges that Swisher Sweets cigarillo 5-packs advertised as "5 for the price of 3" violated the Oregon Unlawful Trade Practices Act because such advertising implies that five cigarillos could be purchased for the price of three, but consumers could purchase three individual cigarillos for less than the price of the 5-pack. Defendants deny any and all liability as Defendant Swisher International, Inc. ("Swisher") does not directly sell cigarillos to consumers and believes that retailers price the products within the scope of the promotion, so that most consumers did not overpay for Swisher cigarillos.

### **2. What is a class action?**

In a class action, one or more people called "Class Representatives" sue on behalf of everyone who has a similar claim. All of these people are a "Class" or "Class Members." One court resolves the issues for all Class Members.

### **3. Why is there a settlement?**

The Court did not decide in favor of the Plaintiff or the Defendants. Instead, as a result of negotiations and mediation, the Parties have agreed to enter into an agreement to avoid the burden, expense, risk and uncertainty of continuing to trial. Plaintiff and Plaintiff's Class Counsel believe that the benefits available under the terms of the Settlement are fair, reasonable and adequate and that the Settlement is in the best interests of the Plaintiff and the Class. The Settlement does not mean that any law was violated or that the Defendants did anything wrong.

## **WHO IS IN THE SETTLEMENT?**

### **4. Am I part of the Settlement?**

You are a Class Member if you fall within the definition of the Class. For the purposes of the Settlement, the Court certified a Class that includes all persons, entities or organizations who, at any time from August 25, 2015 through February 7, 2019, purchased Swisher cigar products under any of the following promotions in any of the fifty States, the District of Columbia, or Puerto Rico (collectively, the Swisher Product as defined herein): "5 for the price of 3"; "3 for the price of 2"; "buy 1 get 1 free"; or "buy 4 get 1 free."

### **5. Are there exceptions to being included?**

Yes. The following groups are excluded from the Class:

- (a) any persons or entities that purchased or acquired the Swisher Product for commercial use or resale;
- (b) Swisher, its officers, directors and employees; its affiliates and affiliates' officers, directors and employees; its distributors and distributors' officers, directors and employees;
- (c) Plaintiff's Class Counsel;
- (d) judicial officers and their immediate family members and associated court staff assigned to this case; and
- (e) persons or entities who or which timely and properly exclude themselves from the Class.

### **6. What if I am not sure whether I am included in the Settlement?**

If you are not sure whether you are included in the Class, or you have questions about the Settlement, you may contact the Settlement Administrator toll-free on 1-833-285-1326, or by email to [info@SwisherSweetsSettlement.com](mailto:info@SwisherSweetsSettlement.com). You can also reach the Settlement Administrator via the website, [www.SwisherSweetsSettlement.com](http://www.SwisherSweetsSettlement.com), or in writing to:

Swisher Sweets Settlement  
c/o JND Legal Administration  
P.O. Box 91047

## **SETTLEMENT BENEFITS**

### **7. What does the Settlement provide?**

Class Members who submit a valid and complete claim form are entitled to receive between two and five vouchers, each with a face value of \$1.00 and a two-year expiration date, which can be redeemed at retail for the purchase of Swisher cigar products. Claims will be processed on a first-come, first-serve basis, and there will be a cap of \$2.5 million on the total dollar value of vouchers distributed under the terms of the Settlement.

If the cap has not been reached after one year has passed from the first voucher distribution, an amount equal to \$2.5 million less the total dollar value of vouchers distributed will be donated as a *cy pres* remedy – half to the National Consumer Law Center and half to the Oregon State Bar.

### **8. How can I get benefits?**

To participate in the Settlement, you must submit a complete and valid Claim Form. You will be able to submit a Claim Form until the cap of \$2.5 million has been reached or until one year has passed from the first voucher distribution. You can download a Claim Form or submit a Claim Form online via the website, [www.SwisherSweetsSettlement.com](http://www.SwisherSweetsSettlement.com). You can also email or write to the Settlement Administrator and ask for a blank Claim Form to be sent to you. The Settlement Administrator may ask you to provide additional information if this is deemed necessary in order to validate your claim.

### **9. When will I get my benefits?**

The Settlement Administrator will begin distributing vouchers to eligible Claimants once the Court approves the Settlement and any appeals are resolved. Thereafter, vouchers will be distributed on a quarterly basis to Claimants whose Claims were newly approved for a period of one year from the first voucher distribution date.

### **10. What am I giving up as part of the Settlement?**

Unless you opt out of the Settlement, you will be giving up any and all rights to claims and damages of any kind and/or type related to Swisher's marketing or sale of the Swisher Product on the basis of a 5 for the price of 3, 3 for the price of 2, buy 1 get 1 free, or buy 4 get 1 free promotion. You can find more information regarding the rights you will be giving up in the Settlement Agreement, which is available for download at [www.SwisherSweetsSettlement.com](http://www.SwisherSweetsSettlement.com).

## **THE LAWYERS REPRESENTING YOU**

### **11. Do I have a lawyer in the case?**

The Class is represented by Michael Fuller of Olsen Daines, Levi & Korsinsky, LLP, Geragos & Geragos, and The Law Offices of Robert Le. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **12. How will the lawyers and Class Representatives be paid?**

At the Fairness Hearing, Class Counsel will ask the Court for approval of attorneys' fees, costs and expenses in an amount of \$695,000. In addition, Class Counsel may ask the Court for Incentive Awards of up to \$7,500.00 for the Plaintiff and up to \$5,000.00 for potential plaintiff Reymon Brown in connection with their time and efforts in connection with the Action. The fees, expenses, and awards that the Court orders, plus the costs to administer the Settlement, are in addition to the \$2.5 million consideration in respect of the settlement benefits.

## **OBJECTING TO THE SETTLEMENT**

### **13. How do I tell the Court if I do not like the Settlement?**

If you do not like any part of the Settlement, or if you object to the requested award of Attorneys' Fees, Costs, and Expenses or the requested Incentive Awards, you can notify the Court by submitting a written objection. To do so, you must send a written statement to the Court setting out the reasons why you think the Court should not approve the Settlement. A copy of your objection must also be sent to Class Counsel, Swisher's Counsel, and Plaid Pantry's Counsel. Your written objection must include: (a) a heading which refers to the Action, *Podawiltz v. Swisher International, Inc., et al.*, Case No. 16CV27621; (b) your full name, telephone number, and residential address; (c) a statement that you are a Class Member, including approximately when and where the Swisher Product(s) was purchased; (d) all of the reasons for your objection; (e) if you are represented by counsel, their full name, telephone number and address; (f) confirmation as to whether you or your counsel intend to appear at the Fairness Hearing; and (g) your dated, handwritten signature. Your objection must include any supporting documentation and provide the names of anyone who will testify in support of the objection.

Your written objection must be filed with the Court and sent to all of the following addresses so that it is received no later than **July 19, 2019**.

<b>COURT</b>	<b>SWISHER'S CLASS COUNSEL</b>
Clerk of the Court Multnomah County Courthouse 1021 SW Fourth Avenue Portland, OR 97204-1123	Peter P. Hargitai Holland & Knight LLP 50 North Laura Street, Suite 3900 Jacksonville, Florida 32202
<b>PLAINTIFF'S COUNSEL</b>	<b>PLAID PANTRY'S COUNSEL</b>
Michael Fuller Olsen Daines US Bancorp Tower 111 SW 5th Ave., Suite 3150 Portland, Oregon 97204	Milo Petranovich Lane Powell 601 SW 2nd Ave., Suite 2100 Portland, Oregon 97204

## **REQUESTS FOR EXCLUSION**

### **14. How do I exclude myself from the Settlement?**

If you do not wish to participate in the Settlement, you can ask to be excluded by "opting out." If you opt out, you will receive no benefits from the Settlement, but you will not be bound by subsequent proceedings, orders and judgments in the Action.

To opt out, you must send a written request for exclusion to: Exclusion Requests – Swisher Sweets Settlement, c/o JND Legal Administration, P.O. Box 91047, Seattle, WA 98111. Exclusion requests may not be submitted by phone, email, or fax. Your request must include: (a) your full name, telephone number, and residential address; (b) a statement that you wish to be excluded from the Settlement; and (c) your dated, handwritten signature. Your request for exclusion must be received no later than **July 19, 2019**.

### **15. What's the difference between objecting and excluding?**

Objecting is simply telling the Court that you don't like something about the Settlement. You can only object if you stay in the Class, and you can still submit a claim if you object to the Settlement. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you will not be able to submit a claim and will have no basis to object to the Settlement, because the case no longer affects you.

## **THE FAIRNESS HEARING**

### **16. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a hearing to decide whether to approve the Settlement. The Fairness Hearing is scheduled to take place **at 9 A.M. on August 9, 2019** at the Multnomah County Courthouse, 1021 SW Fourth Avenue, Courtroom 736, Portland, Oregon, 97204-1123. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and should be granted final approval. If there are Objections, the Court will consider them. Class Counsel will also ask the Court for approval of their request for attorneys' fees, costs, expenses, and Incentive Awards to Class Representatives.

The Fairness Hearing may be moved to a different date or moved to a different courtroom without additional notice, so it is recommended that you periodically check the website, [www.SwisherSweetsSettlement.com](http://www.SwisherSweetsSettlement.com), for updated information.

### **17. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have. If you send in a timely written Objection, you do not have to come to the Fairness Hearing to talk about it. The Court will consider your views. However, you are welcome to attend the hearing or to have another attorney represent you at the Fairness Hearing at your own expense.

### **18. May I speak at the hearing?**

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter to the Court so that it is received no later than July 19, 2019, saying that it is your "Notice of Intention to Appear" in "*Podawiltz v. Swisher International, Inc., et al.*, Case No. 16CV27621." Your letter should include your name, address, telephone number, confirmation that you are a class member, and your handwritten signature. You must also provide information about what you intend to say at the hearing, copies of any documentation you want the Court to consider, and the names of any witnesses you wish to testify. The Court will decide if you will be allowed to speak at the Fairness Hearing. You cannot speak at the hearing if you exclude yourself.

## **IF YOU DO NOTHING**

### **19. What happens if I do nothing at all?**

If you do nothing before the deadlines described in this Notice, you will not receive any benefits from the Settlement and will be bound by all subsequent proceedings, orders, and judgments in the Action. You will not be able to start a lawsuit, continue a lawsuit, or be part of any other lawsuit against Defendants or any of the Released Parties about the legal issues resolved by this Settlement.

## **GETTING MORE INFORMATION**

### **20. How do I get more information about the Settlement?**

**This notice is only a summary.** Detailed information about the Settlement can be found in the Settlement Agreement, which is available on the website, [www.SwisherSweetsSettlement.com](http://www.SwisherSweetsSettlement.com). You also may contact the Settlement Administrator for more information by calling toll-free 1-833-285-1326, emailing [info@SwisherSweetsSettlement.com](mailto:info@SwisherSweetsSettlement.com), or writing to: Swisher Sweets Settlement, c/o JND Legal Administration, P.O. Box 91047, Seattle, WA 98111.

**DO NOT CONTACT THE COURT REGARDING THIS NOTICE.**