

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

Mar 29 5 10 PM '94

CLERK

DIANNE CASTANO,
ERNEST PERRY,
GEORGE SOLOMON and ALL OTHERS
SIMILARLY SITUATED

VERSUS

THE AMERICAN TOBACCO COMPANY,
LORILLARD, INC., LORILLARD
TOBACCO COMPANY,
PHILIP MORRIS COMPANIES, INC.,
PHILIP MORRIS INCORPORATED,
RJR NABISCO, INC., R.J. REYNOLDS
TOBACCO COMPANY,
LIGGETT GROUP, INC.,
and REYNOLDS R.J. TOBACCO CO, INC.

DOCKET NO: _____

DIVISION **94-1044**

JUDGE _____

MAGISTRATE _____

SECT. MAG. 3

CLASS ACTION COMPLAINT

NOW INTO COURT, through undersigned counsel, come Plaintiffs who respectfully represent that they have injuries common to all those similarly situated, who incurred damages arising out of Defendants' manipulation of the levels of nicotine in their tobacco products. Plaintiffs seek to represent and prosecute all such claims through class action proceedings for those similarly situated who are residents or domiciliaries of the United States, for the following reasons, to-wit:

JURISDICTION AND VENUE

1.

This is a class action on behalf of all residents or domiciliaries of the United States who have used and been addicted to tobacco products manufactured by the

Defendants, which manufacturers deny that the chemical, nicotine, is addictive, but who manipulate the level of nicotine in their tobacco products for the purposes of addicting consumers.

2.

This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 (diversity jurisdiction).

3.

The amount in controversy in compensatory and punitive damages claims exceeds \$50,000, exclusive of interest and costs, for each Plaintiff and class member.

4.

Venue is proper in this District pursuant to 28 U.S.C. § 1391(a). Plaintiffs and numerous class members purchased tobacco products of Defendants in the Eastern District of Louisiana and were thereby damaged and subjected to irreparable harm. Defendants advertised in this District, received substantial compensation and profits from sales of tobacco products in this District, and made material omissions and misrepresentations and breached warranties in this District.

PARTIES

5.

PLAINTIFFS AND PROPOSED CLASS REPRESENTATIVES:

Now Into Court, through undersigned counsel, come (1) Dianne Castano, individually for the wrongful death of her husband, Peter Castano, and as representative in the survival action of Peter Castano, deceased husband of Plaintiff,

(2) Ernest Richard Perry, Sr., and (3) T. George Solomon, Jr., all of whom are persons of the age of majority domiciled in the State of Louisiana and who further appear on behalf of those individuals similarly situated.

6.

Proposed class representative Dianne Castano, loving wife of Peter Castano, a well respected attorney, witnessed that due to Nicotine addiction Peter Castano, who started smoking while a teenager, used and could not discontinue the use of tobacco products due to his addiction thereto which caused him to die of cancer from smoking tobacco products, because he was rendered without power to formulate a desire to quit smoking. Moreover, if and when Mr. Castano did try to quit, he was unable to do so, due to his addiction to defendants' tobacco products, causing injury including costs of medical treatment, loss of income, mental and emotional suffering, humiliation and frustration, and many other economic, physical and property losses, including loss of consortium, as suffered by Dianne Castano and other damages to be proven during the trial.

7.

Plaintiff and proposed class representative Ernest Richard Perry, Sr., started smoking at the age of seventeen and has tried on numerous occasions to discontinue the use of defendants' tobacco products, which efforts included therapy from several hypnotists and an acupuncturist; three different clinical sessions at hospitals each of which lasted for an extended period of time; injections in the ear; an ear-clip device; and numerous brands of nicotine patches, all to no avail. His addiction to Defendants'

tobacco products caused him out-of-pocket expenses, mental and physical suffering, and frustration and humiliation among other damages to be proven at trial.

8.

Plaintiff and proposed class representative T. George Solomon, Jr., started smoking at the age of 15. In his efforts to quit smoking, he attended various medical sessions at hospitals, traveled to California to receive injections from a specialist, tried several sessions with a hypnotist, and attempted many other varied methods to quit, but due to his addiction contrived by defendants, he has been unable to quit. His addiction to defendants' tobacco products caused him out-of-pocket expenses, mental and physical suffering, and frustration and humiliation among other damages to be proven at trial.

DEFENDANTS:

5.

Defendants are the manufacturers of tobacco products containing the chemical nicotine, who manipulated the level of nicotine in their tobacco products so as to make those products addictive. Named herein are:

(1) Philip Morris Companies, Inc., a Virginia corporation, with its principal place of business in New York, New York; and

(2) Philip Morris Incorporated, a Virginia corporation, with its principal place of business in New York City, doing business in the State of Louisiana during all material times herein.

(3) The American Tobacco Company, a Delaware corporation, with its

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principal place of business in Stamford, Connecticut, doing business in the State of Louisiana during all material times herein;

(4) Lorillard, Inc., a New York corporation, with its principal place of business in New York City, doing business in the State of Louisiana during all material times herein;

(5) Lorillard Tobacco Company, a Delaware corporation, with its principal place of business in New York City, doing business in the State of Louisiana during all material times herein;

(6) RJR Nabisco, Inc., a Delaware corporation, with its principal place of business in New York City, doing business in the State of Louisiana during all material times herein;

(7) R.J. Reynolds Tobacco Company, a Delaware corporation, with its principal place of business in Winston-Salem, North Carolina, doing business in the State of Louisiana during all material times herein; and

(8) Liggett Group, Inc., a Delaware corporation, with its principal place of business in Durham, North Carolina, doing business in the State of Louisiana during all material times herein.

6.

At all times mentioned herein, each Defendant was the agent, servant, or employee of the other Defendants and in acting and omitting to act as alleged herein did so within the course and scope of the agency or employment.

7.

Each Defendant is sued individually and as a co-conspirator and aider and abettor. Defendants, and each of them, knowingly and/or recklessly conspired in, and/or aided and abetted, the common course of conduct set forth fully below.

8.

This conduct included acts and practices which operated as a fraud and deceit upon Plaintiffs and the class members, and included various false statements of material fact, the nondisclosure of material facts, and the making of statements which, in light of the circumstances under which they were made, omitted material facts necessary to make such statements not misleading to Plaintiffs and the class members.

9.

Such acts of conspiracy and aiding and abetting included, among other things, falsely advertising, marketing and selling cigarettes as safe, non-addictive, and not containing levels of nicotine manipulated by Defendants to cause addiction.

10.

The liability of each Defendant arises from the fact that each committed and/or engaged in a conspiracy to accomplish and/or aided and abetted in the commission of all or part of the unlawful conduct alleged herein, and/or intentionally, knowingly, or in reckless disregard of the truth, engaged in the conduct herein alleged.

THE CLASS:

11.

This action is brought and may properly be maintained as a class action pursuant to the provisions of the Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(1), 23(b)(2) or 23(b)(3). Plaintiffs bring this action, on behalf of themselves and all other similarly situated, as representative members of the following proposed class:

All residents and domiciliaries of the United States who have purchased tobacco products manufactured by Defendants and who claim to be addicted to tobacco products, and survivors who claim that their decedents were so addicted to the tobacco or tobacco products manufactured by defendants herein, which manufacturers caused, contributed to, were aware or in any other manner assisted or abetted in, or encouraged, that the drug, or chemical, Nicotine or any derivative thereof to be added to tobacco and/or tobacco products intended to be sold for consumption and all those individuals injured thereby.

12.

Specifically excluded from the proposed class are Defendants, any entity in which any Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, heirs, successors, subsidiaries, and/or assigns of any such entity.

13.

Numerosity of the Class. Fed. R. Civ. P. 23(a)(1). The proposed class is so numerous that the individual joinder of all its members is impracticable under the

standard of Fed. R. Civ. P. 23(a)(1). Tens of millions of American smoke cigarettes; thousands of adolescents begin smoking for the first time every day. While the exact number and the identities of class members are unknown at this time and can only be ascertained through appropriate investigation and discovery, Plaintiffs are informed and believe that the class includes millions of members.

14.

Existence and Predominance of Common Questions of Law and Fact. Fed. R. Civ. P. 23(a) and 23(b)(3). Questions of law and fact arising out of Defendants' denial that nicotine is addictive, and Defendants' ~~concealment of the manipulation of nicotine levels in their tobacco products~~ so as to make them addictive, are common to all members of the class, and such questions predominate over any questions affecting only individual members of the class. These common legal and factual questions include, but are not limited to, the following:

- a. Whether nicotine is addictive;
- b. Whether Defendants have denied that nicotine is addictive, while knowing that it is addictive;
- c. Whether Defendants manipulated the levels of nicotine in their tobacco products;
- d. Whether Defendants knew or should have known that the levels of nicotine in their tobacco and/or tobacco products were addictive;
- e. Whether Defendants manipulated the nicotine levels of their tobacco and/or tobacco products in such a manner as to knowingly cause addiction to their

products;

f. Whether Defendants' course of conduct in denying that nicotine is addictive and manipulating the levels of nicotine in their tobacco products so as to addict consumers constitutes fraud, and intentional concealment of material facts;

g. Whether Defendants' conduct constitutes negligent misrepresentation;

h. Whether Defendants violated state consumer protection statutes;

i. Whether Defendants breached express warranties;

j. Whether Defendants breached the implied warranty of merchantability;

k. Whether Defendants are liable for intentional infliction of emotional distress;

l. Whether Defendants negligently designed their tobacco products in terms of nicotine content;

m. Whether Defendants failed adequately to warn or notify consumers regarding the hazards of tobacco products;

n. When Defendants initiated their alleged scheme and the amount of revenues and profits they received as a result of such wrongdoing;

o. Whether Defendants are strictly liable in tort for selling a dangerously defective product;

p. Whether the class members are threatened with irreparable harm and whether they are entitled to injunctive and other equitable relief including restitution, disgorgement of products, and a medical monitoring fund, and, if so, the nature of such relief;

q. Whether the class is entitled to compensatory damages, and, if so, the nature of such damages;

r. Whether defendants are liable for punitive or exemplary damages.

s. The amount of punitive or exemplary damages expressed as a multiple of each class member's compensatory damages.

10.

Common questions of law and fact as shown above predominate over individual questions of causation of individual damages and the monetary compensation therefor and defenses of individual defendants are generally applicable to the entire class rather than to individual claims.

15.

Typicality of Claims, Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical of the claims of the members of the class. Plaintiffs and all members of the class sustained damages and are facing irreparable harm arising out of Defendants' common course of conduct as complained of herein. The losses of each member of the class were caused directly by Defendants' wrongful conduct as alleged herein.

16.

Adequate Representation, Fed. R. Civ. P. 23(a)(4). Plaintiffs will fairly and adequately protect the interests of the members of the class. They have retained attorneys experienced in the prosecution of class actions, including complex consumer product, toxic tort, and mass accident class actions.

Superiority, Fed. R. Civ. P. 23(b)(3) A class action is superior to other available methods for the fair and efficient adjudication of this litigation, since individual joinder of all members of each class is impracticable. Even if any class members could afford individual litigation, it would be unduly burdensome to the Courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by defendants' product. By contrast, the class action device presents far and fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision by a single court. Concentrating this litigation in one forum would aid with judicial economy and efficiency and promote parity among the claims of individual class members as well as judicial consistency. The conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each class member. Notice of the pendency and of any resolution of this action can be provided to the class members by publication.

This action is also certifiable under the provisions of Fed. R. Civ. P. 23(b)(1) and/or 23(b)(2) because:

a. The prosecution of separate actions by the individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual class members, thus establishing incompatible standards of conduct for

Defendants;

b. The prosecution of separate actions by individual class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party class members to protect their interests; and

c. Defendants have acted or refused to act in respects generally applicable to the class, thereby making appropriate final injunctive relief with regard to the members of the class as a whole.

FACTUAL ALLEGATIONS

ADDICTION:

19.

The human body does not require Nicotine for its life-sustaining biological functions. Nicotine is a highly toxic liquid alkaloid naturally occurring in tobacco. With continued or habitual use and/or casual use Nicotine has the propensity to cause the human body to become addicted to it, or to develop a physiological need for it, where none previously existed and which serves no necessary bodily purpose. Indeed, the use of tobacco products results in a chemical dependence on nicotine that is similar to addiction to heroin or cocaine.

20.

Throughout the Class Period and through the present day, Defendants have

publicly denied that nicotine is addictive. However, on March 25, 1994, Food and Drug Administration ("FDA") Commissioner David A. Kessler testified before the House of Representatives Subcommittee on Health and the Environment that Defendant cigarette manufacturers intentionally suppressed scientific and/or medical evidence that nicotine is addictive. An internal Philip Morris research memo on "Motives and Incentives in Cigarette Smoking" described the conclusions of a 1972 Council for Tobacco Research scientific conference on the question of "Why do people smoke cigarettes?" The memo states: "Without nicotine, the argument goes, there would be no smoking."

The memo continues:

Think of the cigarette pack as a storage container for a day's supply of nicotine... Think of the cigarette as a dispenser for a dose unit of nicotine... Think of a puff of smoke as the vehicle of nicotine....

An internal Philip Morris report from 1971 describes the difficulties a smoker has in stopping smoking once he or she is addicted to nicotine:

Even after eight months quitters were apt to report having neurotic symptoms, such as feeling depressed, being restless and tense, being ill-tempered, having a loss of energy, being apt to doze off, etc. They were further troubled by constipation and weight gains....

21.

Throughout the Class Period and through the present day, Defendants have publicly denied that they intend cigarettes to provide nicotine to consumers in order

to encourage and/or contribute to and/or cause nicotine addiction.

MANIPULATION OF NICOTINE LEVELS

22.

On March 25, 1994, Food and Drug Administration Commissioner David A. Kessler presented to the Congressional Subcommittee on Health and the Environment evidence that tobacco companies intentionally sell cigarettes containing an addictive level of nicotine. Indeed, Defendants have apparently manipulated the levels of nicotine in their tobacco products so as to addict consumers. Plaintiffs were unaware of Defendants' knowing manipulation of the nicotine levels found in their tobacco products until such allegations surfaced after FDA investigations as announced by the media in the Spring of this year, 1994.

INTENT/PURPOSE TO ADDICT

23.

Defendants knew or should have known nicotine to be harmful and/or injurious and/or addictive and/or to cause damages of the nature alleged herein below. Plaintiffs are informed and believe that Defendants intentionally manipulated the levels of nicotine in their tobacco products so as to make them addictive to consumers.

TOLLING OF APPLICABLE STATUTES OF LIMITATION

24.

Any applicable statutes of limitation have been tolled by Defendants' acts of fraudulent concealment and denial of the facts as alleged above. Plaintiffs are informed and believe that such acts of fraudulent concealment included intentionally

covering up and refusing to disclose internal documents and failing to disclose and even suppressing information concerning the fact that nicotine is addictive and that Defendants manipulate the levels of nicotine in their tobacco products to addict consumers. Through such acts of fraudulent concealment, Defendants were able to conceal from the public the truth about the addictive nature of tobacco, and their manipulation of nicotine levels in their tobacco products, thereby tolling the running of any applicable statutes of limitation. The public could not reasonably have discovered the true facts until very recently, the truth having been fraudulently and knowingly concealed by Defendants for years.

25.

In the alternative, Defendants are estopped from relying on any statutes of limitation because of their fraudulent concealment of the addictive nature of nicotine and their manipulation of nicotine levels in their tobacco products. Defendants were under a duty to disclose their manipulation of nicotine levels in their tobacco products because this is nonpublic information over which Defendants had exclusive control, and because Defendants knew that this information was not available to Plaintiffs or to class members. In addition, Defendants are estopped from relying on any statutes of limitation because of their active concealment of these facts.

26.

Until shortly before the filing of the Complaint in this action, Plaintiffs and the members of the class had no knowledge that Defendants were engaged in the wrongdoing alleged herein. Because of the fraudulent and active concealment of the

wrongdoing by Defendants, including deliberate efforts to give Plaintiffs and the class members the materially false impression that nicotine is not addictive and that Defendants are not manipulating the nicotine levels of their tobacco products, Plaintiffs and the members of the class could not reasonably have discovered the wrongdoing at any time prior to this time. Defendants have attempted to keep such internal information from reaching the public. Indeed, Defendants still refuse to admit that nicotine is addictive and that they have manipulated the levels of nicotine in their tobacco products.

27.

Because, in part, of the self-concealing nature of Defendants' actions and, in part, of Defendants' active concealment of their wrongdoing, Plaintiffs assert the tolling of any applicable statute of limitations affecting the claims by Plaintiffs and the members of the class.

FIRST CLAIM FOR RELIEF
(Fraud And Deceit)

28.

Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 27 above, and further allege:

29.

At all times during the course of dealing between Defendants and Plaintiffs and the members of the class, through advertising in the mass media and by other communications, Defendants repeatedly made the misrepresentation that nicotine is

not addictive. Moreover, Defendants have recently stated that they do not manipulate nicotine levels in their tobacco products so as to addict consumers.

30.

In representations to Plaintiffs and members of the class, Defendants omitted the following material information: nicotine is addictive and Defendants manipulate nicotine levels in their tobacco products so as to addict consumers.

31.

Defendants were under a duty to disclose to Plaintiffs and class members the addictive nature of nicotine, Defendants' manipulation of the nicotine levels in Defendants' tobacco products, and Defendants' intent to addict Plaintiffs and the class members. Defendants had sole access to material facts concerning the addictive nature of nicotine, Defendants' manipulation of nicotine levels in Defendants' tobacco products, and Defendants' intent to addict Plaintiffs and the class members. Defendants knew that, prior to Plaintiffs' addiction to nicotine, Plaintiffs and class members could not reasonably have discovered the addictive nature of nicotine, Defendants' manipulation of the nicotine levels in Defendants' tobacco products, and Defendants' intent to addict Plaintiffs and the class members. In addition, Defendants actively concealed the addictive nature of nicotine, Defendants' manipulation of nicotine levels in Defendants' tobacco products, and Defendants' intent to addict Plaintiffs and the class members.

32.

The representations were false when made and Defendants knew or were

reckless in not knowing that they were false. In fact, nicotine was known to Defendants to be addictive, the level of nicotine in Defendants' tobacco products was known to be manipulated by Defendants, and the intent to addict Plaintiffs and class members was known to Defendants.

33.

The misrepresentations and omissions were made deliberately, willfully, and maliciously to mislead Plaintiffs and the members of the class into reliance and action thereon, and to cause them to purchase Defendants' tobacco products.

34.

Plaintiffs and the members of the class had no way to determine that the representations were false and misleading, and that they included material omissions, and Plaintiffs and members of the class reasonably relied on Defendants' representations.

35.

By reason of their reliance on Defendants' misrepresentations and omissions, Plaintiffs and the members of the class are addicted or subject to be addicted to Defendants' tobacco products and have been damaged in an amount to be proven at trial. Plaintiffs and the class members are therefore entitled to the equitable relief described in the Tenth Claim for Relief and to damages.

36.

Defendants knew that nicotine was addictive, Defendants' manipulated the amount of nicotine level in Defendants' tobacco products, and Defendants' intent to

addict Plaintiffs and the class members but refrained from disclosing this fact to Plaintiffs and the class members, for the purpose of inducing them to purchase Defendants' tobacco products, thus causing them to incur economic and other damages in an amount to be proven at trial.

37.

Defendants' conduct alleged above constitutes malice, oppression, and fraud and thereby warrants the imposition of punitive damages against Defendants. Defendants are liable for punitive damages for their reckless or wanton or willful disregard for the public's safety in the manufacture, design, or manipulation of nicotine, a toxic and hazardous substance, in their tobacco products and/or, as provided by any state's laws as authorized by the choice of law provisions of the state in which this Court sits.

SECOND CLAIM FOR RELIEF
[Negligent Misrepresentation]

38.

Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 37 above, and further allege:

39.

By reason of their knowledge and expertise regarding the addictive nature of nicotine, manipulation of the amount of nicotine level in Defendants' tobacco products, and intent to addict, and by reason of their statements to consumers in advertisements and other communications, at all times relevant hereto, Defendants

owed Plaintiffs and the members of the class a duty of care which required, among other things, that Defendants be truthful and accurate in their representations to Plaintiffs and members of the class concerning their tobacco products.

40.

Defendants breached their duty of care to consumers by negligently making the material misrepresentations alleged in the First Claim for Relief.

41.

Plaintiffs and the members of the class reasonably relied on Defendants' representations, when in fact those representations constituted negligent misrepresentations.

42.

Such reliance was not only foreseeable by Defendants but also intended by them.

43.

By reason of their reliance on the Defendants' negligent misrepresentations, Plaintiffs and the members of the class are addicted or subject to being addicted to tobacco products and have been damaged in an amount to be proven at trial. Plaintiffs and the class members are therefore entitled to the equitable relief described in the Tenth Claim for Relief and to damages.

THIRD CLAIM FOR RELIEF
[Violation of Consumer Protection Statutes]

44.

Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 43 above, and further allege:

45.

Plaintiffs and class members are consumers who purchased Defendants' tobacco products for personal use. All fifty states and the District of Columbia have enacted statutes to protect consumers against unfair, deceptive or fraudulent business practices, unfair competition, and false advertising. Almost every state allows consumers a private right of action under these statutes.

46.

By their misrepresentations and non-disclosures of material facts alleged above, Defendants deceived and continue to deceive consumers and subject them to continuing and/or increasing addiction to Defendants' tobacco products. This conduct constitutes unlawful, unfair, and fraudulent business practices within the meaning of state consumer protection statutes.

47.

In addition, Defendants' use of various media to promote the sale of Defendants' tobacco products by, among other things, falsely and deceptively representing that nicotine is not addictive and that Defendants' do not manipulate the levels of nicotine in their tobacco products so as to addict consumers constitutes

unfair competition and unfair, deceptive, untrue, or misleading advertising within the meaning of state consumer protection statutes.

48.

The above-described unlawful, unfair, and fraudulent business practices and false and misleading advertising and unfair competition by Defendants continues to present a threat to members of the public. Defendants have systematically perpetrated a fraud upon members of the public and refuse publicly to acknowledge the wrongdoing of their actions. Defendants continue to refuse to admit that nicotine is addictive, that Defendants manipulate the amount of nicotine level in Defendants' tobacco products, or that Defendants intend Plaintiffs and class members to become addicted to nicotine.

49.

As a result of the conduct described above, Defendants have been and will continue to be unjustly enriched at the expense of Plaintiffs and the members of the class. Specifically, Defendants have been unjustly enriched by the receipt of billions of dollars in domestic tobacco products sales each year, which products were promoted and sold through advertisements and statements which affirmatively misrepresent, either directly or by implication, that nicotine is not addictive and that Defendants do not manipulate the nicotine levels of their tobacco products so as to addict consumers.

50.

Plaintiffs and the members of the class are therefore entitled to the equitable

relief described below in the Tenth Claim for Relief and to attorneys' fees.

FOURTH CLAIM FOR RELIEF
[Breach of Express Warranty]

51.

Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 50 hereof, and further allege:

52.

Defendants' advertisements and promotional statements alleged above contained broad claims amounting to a warranty that Defendants' tobacco products were not addictive, that Defendants did not manipulate the nicotine levels in Defendants' tobacco products, and that Defendants did not intend to addict Plaintiffs and class members.

53.

As alleged above, Defendants breached their warranties by offering for sale, and selling as non-addictive, Defendants' tobacco products that were addictive, and contained levels of nicotine manipulated by Defendants to make them addicted.

54.

Defendants' breach of their express warranties has caused Plaintiffs and the class members to become addicted to nicotine and entitles them to equitable relief as described in the Tenth Claim for Relief and has caused Plaintiffs and the members of

the class to suffer damages in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF
[Breach of Implied Warranty]

55.

Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 54 above, and further allege:

56.

Defendants impliedly warranted that their tobacco products, which they designed, manufactured, and sold to Plaintiffs and members of the class, were merchantable and fit and safe for their ordinary use, and that Defendants have not manipulated their nicotine levels so as to make them addictive to consumers.

57.

Defendants' tobacco products purchased and consumed by Plaintiffs and the members of the class were addictive, unmerchantable, and unfit for use when sold, and subjected Plaintiffs and members of the class to addiction and/or increasing addiction. Therefore, Defendants breached the implied warranty of merchantability at the time Defendants' tobacco products were sold to Plaintiffs and class members in that the Defendants' tobacco products were not fit for their ordinary purposes.

58.

As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and class members are addicted or subject to addiction to Defendants' tobacco products and entitled to the equitable relief described in the

Tenth Claim for Relief and have suffered damages in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF
[Intentional Infliction of Emotional Distress]

59.

Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 58 hereof, and further allege:

60.

Defendants acted in an extreme and outrageous manner towards the Plaintiffs and the members of the class through a course of conduct which included denying that nicotine is addictive while manipulating the levels of nicotine in their tobacco products so as to addict Plaintiffs and the members of the class to Defendants' tobacco products. Defendants acted with the intention of causing, or reckless disregard of the probability of causing, emotional distress to Plaintiffs and members of the class.

61.

As a direct, foreseeable, actual and proximate result of the Defendants' conduct, Plaintiffs have suffered and continue to suffer injury, damage and severe emotional distress.

62.

The Defendants' extreme and outrageous conduct entitles the Plaintiffs and class members to punitive and exemplary damages.

SEVENTH CLAIM FOR RELIEF
[Negligence]

63.

Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 62 hereof, and further allege:

64.

Defendants had a duty to Plaintiffs and class members to provide a reasonably safe product in design and manufacture, and to warn of the addictive nature of nicotine.

65.

Defendants breached their duty of reasonable care to Plaintiffs and class members by the following acts and omissions:

- a. failure to design and manufacture tobacco products that were not addictive and/or that did not contain unreasonable levels of nicotine;
- b. failure to warn consumers of the addictive nature of nicotine when they knew or should have known of nicotine's addictive nature; and
- c. otherwise failing to exercise due care under the circumstances.

66.

As a direct and proximate result of the carelessness and negligence of Defendants, Plaintiffs and class members have suffered reasonably and especially foreseeable damages in an amount to be proven at trial including, without limitation, economic injury and severe emotional distress.

67.

At all times relevant hereto, Defendants' conduct was intentional and/or outrageous and beyond the bounds of reasonableness and was in reckless disregard for the safety of Plaintiffs and the class. Plaintiffs are entitled to compensation, punitive, and exemplary damages.

EIGHTH CLAIM FOR RELIEF
(Strict Liability)

68.

Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 67 above, and further allege:

69.

At all relevant times, Defendants were engaged in the business of manufacturing and selling their tobacco products for ultimate retail sale to consumers. Defendants manufactured their tobacco products, manipulated the level of nicotine in their tobacco products and sold these tobacco products to retailers, who sold the Defendants' tobacco products to Plaintiffs and class members.

70.

Defendants' tobacco products were expected to and did reach the class without substantial change in their condition as manufactured, manipulated and sold by Defendants.

71.

The Plaintiffs and the class members consumed the tobacco products in the manner in which the tobacco products were intended to be used, that is, for personal

consumption, causing and/or subjecting Plaintiffs and class members to become addicted to nicotine.

The members of the class were not aware of, and could not in the exercise of reasonable care have discovered, the addictive nature of tobacco products, Defendants' manipulation of the nicotine levels of these tobacco products, and Defendants' intent to addict Plaintiffs and class members.

As a direct and proximate result of Defendants' design, manufacture, and sale of Defendants' tobacco products, Plaintiffs and the class members have suffered addiction or are subject to addiction to Defendants' tobacco products and have suffered damages in an amount to be proven at trial.

72.

Defendants' tobacco products, containing manipulated levels of nicotine, as manipulated by Defendants, which caused or subjected Plaintiffs and class members to become addicted to nicotine upon personal consumption, constitute a product dangerous for normal use.

73.

Thus, Defendants' are strictly liable to Plaintiffs and class members in an amount according to proof.

NINTH CLAIM FOR RELIEF
[Redhibition]

74.

Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 73

hereof, and further alleges:

75.

Defendants' concealment of nicotine's addictive nature, Defendants' manipulation of nicotine levels in their tobacco products, and Defendants' concealed intent to addict Plaintiffs' and class members constitutes a redhibitory vice or defect in Defendants' tobacco products, which renders their consumption so inconvenient and imperfect that it must be supposed that buyers would not have purchased Defendants' tobacco products had they known of the vice. La. C.C. art. 2520.

76.

Defendants as manufacturers of their tobacco products are conclusively presumed to know of the addictive nature of nicotine, Defendants' manipulation of nicotine levels in their tobacco products, and Defendants' intent to addict Plaintiffs and class members, and are thus considered bad-faith sellers answerable to petitioners in damages, as well as restitution of price and repayment of expenses, including reasonable attorneys' fees.

77.

Defendants, by manufacturing for sale the above-mentioned tobacco products, are bound to the implied warranty respecting the hidden defects of the things sold, or their redhibitory vices, that is, the addictive nature of nicotine, the Defendants' manipulation of nicotine levels in their tobacco products, and Defendants' intent to addict Plaintiffs and class members.

78.

Defendants' declaration that nicotine is not addictive, that Defendants did not manipulate nicotine levels in their tobacco products, and that Defendants did not intend to addict Plaintiffs and class members, which declarations Defendants knew were untrue, and thereby fraudulent.

79.

The redhibitory vice or defect in Defendants' tobacco products has caused petitioners to sustain damages, whether for the cost of remedy, and correction, and/or the repayment of the expenses associated therewith, and/or non-pecuniary damages associated with the addiction to nicotine and Defendants' manipulation of nicotine levels in their tobacco products, together with legal interest thereon, for all costs of these proceedings, and for reasonable attorneys' fees, because the redhibitory defect or vice has rendered Defendants' cigarettes so inconvenient and imperfect that it must be supposed that the petitioners would not have purchased them if they had known of the defect or vice.

TENTH CLAIM FOR RELIEF

[Equitable (Injunctive and/or Declaratory) Relief]

80.

Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 79 above, and further allege:

81.

The class members have no adequate remedy at law, rendering injunctive and

other equitable relief appropriate in that damages cannot adequately compensate Plaintiffs and class members for the injuries suffered and threatened.

82.

Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated, request the following classwide equitable relief:

(a) That a judicial determination and declaration be made of the rights of Plaintiffs and the class members, and the corresponding responsibilities of Defendants;

(b) That Defendants be declared to be financially responsible for notifying all class members of nicotine's addictive nature, Defendants' manipulation of nicotine levels in their tobacco products, and Defendants' intent to addict Plaintiffs and class members, with restitution and refunds to Plaintiffs and the class members of all or part of the sums paid by them to purchase Defendants' falsely promoted tobacco products;

(c) That Defendants be ordered to disgorge, for the benefit of the class, all or part of their ill-gotten profits received from the sale of cigarettes and/or to make full restitution to the Plaintiffs and class members; and

(d) That Defendants be ordered to create a medical monitoring fund to monitor the health of Plaintiffs and class members and to pay for all medical expenses caused by Defendants' wrongdoing. Addicted smokers are entitled to a "medical monitoring" fund because they are demonstrably at increased risk for lung disease, heart disease, and other well-established smoking-related ailments. The need

for future monitoring is a reasonably certain consequence of the Plaintiffs' and class members' exposure to carcinogens and the recommended monitoring is reasonable.

PRAYER FOR RELIEF

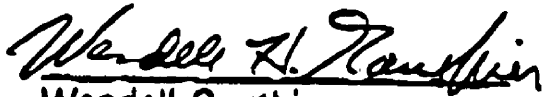
WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment against Defendants, and each of them, jointly and severally as follows:

1. An Order certifying the Plaintiff class and any appropriate subclass thereof under the appropriate provisions of Fed. R. Civ. P. 23, and appointing Plaintiffs and their counsel to represent the class;
2. For the equitable relief requested in the Tenth Claim for Relief;
3. For damages as alleged herein;
4. For punitive or exemplary damages against each Defendant found guilty of oppression, fraud, malice, and/or despicable behavior, or for violation of state consumer protection statutes, in an amount sufficient to punish each such Defendant and deter others from similar wrongdoing;
5. For attorneys' fees;
6. For pre-judgment interest;
7. For costs of suit; and

8. For such other and further relief as this Court may deem just and proper.

DATED: March 29, 1994

Respectfully submitted:



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