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and for the Proposed Class*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

RUSSELL BRATTAIN, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

SANTA FE NATURAL TOBACCO
COMPANY, INC., REYNOLDS AMERICAN,
INC., and DOES 1 through 50,

Defendants.

Civil Case No.: 15-4705

Judge:

CLASS ACTION COMPLAINT

*DEMAND FOR JURY TRIAL OF ANY
ISSUES SO TRIABLE*

1 Plaintiff, Russell Brattain (“Plaintiff”), a consumer purchaser of Natural American Spirit
 2 Cigarettes as defined in this Complaint, on behalf of himself and all others similarly situated, by
 3 and through the undersigned counsel, hereby brings this action against Defendants Santa Fe
 4 Natural Tobacco Company, Inc., Reynolds American, Inc., and Does 1 through 50, inclusive
 5 (“Defendants”), for damages and equitable relief, and alleges as follows:

I. INTRODUCTION

7 1. This is a consumer class action brought on behalf of all persons in the State of
 8 California who relied on the misrepresentations and/or material omissions of Defendants and were
 9 induced to purchase Natural American Spirit Cigarettes as a result. As used herein, “Natural
 10 American Spirit Cigarettes” shall include the following Santa Fe Natural Tobacco Company
 11 products that all uniformly claim that they are “NATURAL” and “100% ADDITIVE-FREE” (the
 12 “Statements”):

- 13 a. Organic Light Filter cigarettes;
- 14 b. Organic Regular Filter cigarettes;
- 15 c. Medium Filter cigarettes;
- 16 d. Light Filter cigarettes;
- 17 e. Ultra Light Filter cigarettes;
- 18 f. Menthol Filter cigarettes;
- 19 g. Menthol Light Filter cigarettes;
- 20 h. Perique’s cigarettes;
- 21 i. Regular Filter cigarettes; and
- 22 j. Non-Filter cigarettes (collectively, the “Products”).

23 2. This case arises out of Defendants’ unlawful conduct in marketing and selling
 24 American Spirits from October 9, 2011, through the present (“Class Period”). However, the Class
 25 Period may be amended and expanded in a subsequent pleading, because upon information and
 26 belief, Defendants concealed and continue to conceal the truth about the Products from
 27 consumers. As a result, Plaintiffs and the Class did not discover and could not discover that
 28 Defendants’ statements are misleading or that Defendants omitted material facts until recently, in
 part due to the Warning Letter issued by the FDA on August 27, 2015. *See* FDA Warning Letter

1 to Santa Fe Natural Tobacco Company, Inc., attached hereto as **EXHIBIT 1** and incorporated
 2 herein. Therefore, any applicable statute of limitations should present no bar to any portion of the
 3 damage claims asserted by Plaintiffs and the Class.

4 3. California has experienced a growing consumer trend towards avoiding
 5 unnecessary exposure to potentially harmful preservatives, additives, and chemicals in food items
 6 and products. This trend has resulted in a widespread belief amongst consumers that products
 7 without synthetic (i.e., man-made or manufactured) chemicals, preservatives, or additives and
 8 only containing organic and natural ingredients are healthier and of higher quality for consumers
 9 than products containing chemicals or synthetic compounds. As a result, today's modern-day
 10 consumer is more health conscious and prefers products labeled "organic," "natural," or "additive-
 11 free" over those without similar claims.

12 4. As a result of this movement, from 2009 through 2014, overall cigarette sales in
 13 the United States fell by seventeen percent. However, the Natural American Spirit brand has
 14 managed to increase its sales by 86 percent from 2009 to 2014 due to its deceptive marketing
 15 campaign of the Products. Defendants have long featured phrases such as "organic," "natural,"
 16 and "100% additive-free" in their marketing for the Products, but recently have increased the
 17 visibility of such claims in its marketing campaign to appeal to consumers.¹

18 5. Defendants' deceptive marketing campaign feeds into the consumer desire for a
 19 more health and environmentally friendly product. Consumer research confirms that terms such
 20 as "additive-free" and "natural" imply reduced risk by leading the consumer to believe he or she
 21 is purchasing a safer and healthier cigarette. Researchers at the University of California in San
 22 Francisco reported that "The idea that cigarettes are natural may also help smokers downplay the
 23 risks of smoking, as 'natural' risks inspire less concern than unnatural ones."²

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 25
 26 ¹ See Advertising for Natural American Spirits Cigarettes 2000-2015. Available at
http://www.tobaccofreekids.org/press_office/2015/natural_american_spirit (last visited October
 27 8, 2015).

28 ² McDaniel, P. A., & Malone, R. E. (2007). "I always thought they were all pure tobacco":
 American smokers' perceptions of "natural" cigarettes and tobacco industry advertising
 strategies. *Tobacco Control*, 16(6), e7. Available at
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2807204/> (last visited October 8, 2015).

1 6. Plaintiff and consumer smokers purchased Natural American Spirit brand
2 cigarettes characterized as “100% additive-free,” “natural” and/or “organic” on the suggestion of
3 defendants that these cigarettes were less harmful than regular cigarettes when in fact these
4 cigarettes were at least as dangerous as regular cigarettes and defendants were fully aware of these
5 dangers. Based on the Statements made by Defendants, Plaintiff and members of the Class (as
6 defined herein) believed that the Products were less harmful than other brands of cigarettes.³ But
7 for Defendants’ false and misleading advertising and marketing of the Products, Plaintiffs and
8 members of the Classes would not have purchased or would not have paid a premium price for
9 the Products.

10 7. As a result of Defendants’ false and misleading labeling and advertising of the
11 Products, Plaintiff and members of the Class have incurred actual damages for purchasing
12 products that are not as advertised, have lost money or property, and suffered injury in fact,
13 including economic damages by purchasing the Products, which were completely worthless as
14 they did not conform to its advertising claims and/or were worth less than their actual premium
15 purchase price.

16 8. Had Plaintiffs and the Class been provided with information regarding the true
17 facts about the Products, including, *inter alia*, that it contains synthetic compounds, chemical
18 additives, and makes unapproved claims under the Sherman Law and FDCA, despite its claims
19 of being “natural” and “100% additive-free” Plaintiffs would not have purchased the Products.

20 9. Plaintiff expressly does not seek to contest or enforce any state law that has
21 requirements beyond those required by any applicable Federal laws or regulations.

22 10. Due to the size of a typical individual class members’ claims and because the costs
23 associated with purchasing the Products is nominal, it is unlikely that individual class members
24 would seek recovery against Defendants on their own. This is especially true in light of the size
25 and resources of Defendants and its refusal to otherwise fully disclose the true nature of its product
26 to the consumer. A class is therefore the only reasonable means by which class members can
27 obtain relief from Defendants.

³ *Id.*

11. Plaintiff therefore brings this action on behalf of himself and other similarly situated consumers who purchased one or more of the Products in California during the Class Period, alleging violations of (1) California's False Advertising Law, California Business and Professions Code sections 17500, *et seq.*, (2) California's Unfair Competition Law Unlawful Prong, California Business and Professions code sections 17200, *et seq.*, (3) California's Unfair Competition Law Unfair Prong, California Business and Professions code sections 17200, *et seq.*, (4) California's Unfair Competition Law Fraudulent Prong, California Business and Professions code sections 17200, *et seq.*, and (5) California's Consumers Legal Remedies Act, California Civil Code sections 1750, *et seq.*, for damages and equitable relief against Defendants.

10 II. JURISDICTION, AND VENUE

12. Plaintiff brings this action on behalf of himself and all others similarly situated. This Court has original jurisdiction over Defendants and the claims set forth below pursuant to the Class Action Fairness Act, codified at 28 U.S.C. § 1332(d)(2), because the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and in addition, more than two-thirds of the members of the class reside in states other than the state in which the Defendant resides.

13. Venue is proper in this Court under 28 U.S.C. § 1391 because the unlawful actions and practices alleged in this Complaint have been committed in this District. Defendant systematically and continuously transacts business in this District and intentionally avails itself of the laws and markets of this District through the promotion, marketing, distribution, and sale of Natural American Spirit Cigarettes in this District.

22 III. THE PARTIES

14. Plaintiff Russell Brattain is a California citizen and resident of San Francisco, California. Plaintiff was exposed to, and read and relied on statements on the Products' labeling and/or packaging made by Defendants regarding the Products. Specifically, during the Class Period defined above, Plaintiff purchased and was exposed to, read, and relied on the Statements on the product labeling and/or packaging of Natural American Spirit Regular Filter cigarettes and Menthol Filter cigarettes.

1 15. Plaintiff Brattain was exposed to the Products at a convenience store in this district.
2 When deciding to purchase the Products, Plaintiff Brattain read the statements on the packaging,
3 specifically “NATURAL” and “100% ADDITIVE-FREE NATURAL TOBACCO.” Based on
4 these statements, Plaintiff Brattain reasonably believed that Natural American Spirit brand
5 cigarettes contained no synthetic ingredients or chemical additives and were less harmful to his
6 health than other brands of cigarettes. Plaintiff Brattain paid more for Natural American Spirit
7 Regular Filter cigarettes and Menthol Filter cigarette than other comparable brands of cigarette in
8 reliance on Defendants’ claims made on the packaging.

9 16. Defendant Santa Fee Natural Tobacco Company, Inc. (“SFNTC”) is a New
10 Mexico corporation that does substantial business in California. SFNTC maintains its principal
11 place of business at 1 Plaza La Prensa, Santa Fe, New Mexico 87507. SFNTC, a subsidiary of
12 Reynolds American, Inc., manufactures, markets, sells, and distributes Natural American Spirit
13 Cigarettes throughout California. SFNTC is registered to do business in the state of California
14 and maintains a Registered Agent for Service of Process at CSC-Lawyers Incorporating Service,
15 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833. Defendant SFNTC therefore
16 avails itself of the laws and markets of California and has significant contacts that causes it to
17 incur obligations and liabilities in this District, sustaining this Court’s jurisdiction over Defendant.

18 17. Defendant Reynolds American, Inc. (“Reynolds”) is a North Carolina corporation
19 and the parent company of SFNTC, making it severally, jointly, and vicariously liable for the
20 actions of SFNTC. Defendant Reynolds maintains its principal place of business at 401 North
21 Main Street, Winston-Salem, North Carolina, 27101. Reynolds is registered to do business in the
22 state of California and maintains a Registered Agent for Service of Process at Corporation Service
23 Company, 327 Hillsborough Street, Raleigh, NC 27603-1725.

24 18. Plaintiff does not know the true names of Defendants DOES 1 through 50,
25 inclusive, and therefore sues them by those fictitious names. Plaintiff is informed and believes,
26 and on the basis of that information and belief alleges, that each of those Defendants was in some
27 manner proximately responsible for the actions and events alleged in this complaint and for
28 Plaintiff and the Class’ injuries.

 19. Defendants are legally responsible for the occurrences herein alleged.

1 20. Defendants promoted and marketed the Products at issue in this jurisdiction and in
2 this judicial District. The advertising for the Products relied upon by Plaintiff was prepared and/or
3 approved by Defendants and its agents, and was disseminated by Defendants and its agents
4 through advertising containing the misrepresentations alleged herein.

5 21. The advertising for the Products was designed to encourage consumers to purchase
6 the Products and reasonably misled the reasonable consumer, i.e. Plaintiff and the Class into
7 purchasing the Products. Defendants are the owners, manufacturers and distributors of the
8 Products, and created and/or authorized the unlawful, fraudulent, unfair, misleading and/or
9 deceptive advertising and statements for the Products.

10 22. Plaintiff alleges that, at all times relevant herein, Defendants and its subsidiaries,
11 affiliates, and other related entities, as well as their respective employees, were the agents,
12 servants and employees of Defendants, and at all times relevant herein, each was acting within
13 the purpose and scope of that agency and employment.

14 23. Plaintiff further alleges on information and belief that at all times relevant herein,
15 the distributors and retailers who delivered and sold the Products, as well as their respective
16 employees, also were Defendants' agents, servants and employees, and at all times herein, each
17 was acting within the purpose and scope of that agency and employment.

18 24. In addition, Plaintiff alleges that, in committing the wrongful acts alleged herein,
19 Defendants, in concert with its subsidiaries, affiliates, and/or other related entities and their
20 respective employees, planned, participated in and furthered the unlawful advertising and labeling
21 to induce members of the public to purchase the Products by means of untrue, misleading,
22 deceptive, and/or fraudulent representations, and that Defendants participated in the making of
23 such representations in that it disseminated those misrepresentations and/or caused them to be
24 disseminated.

25 25. Whenever reference in this Class Action Complaint is made to any act by
26 Defendants or its subsidiaries, affiliates, distributors, retailers and other related entities, such
27 allegation shall be deemed to mean that the principals, officers, directors, employees, agents,
28 and/or representatives of Defendants committed, knew of, performed, authorized, ratified and/or

1 directed that act or transaction on behalf of Defendants while actively engaged in the scope of
2 their duties.

3 IV. CLASS ALLEGATIONS

4 26. Plaintiff brings this class action pursuant to Rule 23 on behalf of all the members
5 of the following Class:

6 All persons that have purchased for their own use and not for resale any of the Products
7 in the State of California, during October 9, 2011 through the present.

8 27. Plaintiff reserve the right to amend the class definition following further
9 investigation and a reasonable opportunity to conduct discovery.

10 28. Excluded from the Class are as follows: (1) any entity in which Defendants have a
11 controlling interest; (2) Defendants' officers, directors, and employees; (3) Defendants' legal
12 representatives, successors, and assigns; and (4) the Court to which this case is assigned. The
13 proposed Class is ascertainable and shares a well-defined community of interest in common
14 questions of law and fact. Furthermore, this action satisfies the numerosity, typicality, adequacy,
15 predominance and superiority requirements as set forth more fully below.

16 29. Numerosity: The members of the Class are so numerous that individual joinder of
17 all members is impracticable. The precise number of purchasers of Natural American Spirit
18 Cigarettes is presently unknown to Plaintiff and will be ascertained through discovery, but given
19 the vast reach of Defendants' business in California, the number of class members is patently so
20 large as to make joinder impracticable and the members of the Class are so geographically diverse
21 throughout California that joinder of all Class members is impracticable.

22 30. Existence and Predominance of Common Questions of Fact and Law: Questions
23 of law and fact common to the members of the class predominate over questions affecting only
24 individual members. These include the following:

- 25 (a) Whether Natural American Spirit Cigarettes are composed of solely "natural"
26 ingredients;
- 27 (b) Whether Natural American Spirit Cigarettes contain any additives;
- 28 (c) Whether Defendants made false misrepresentations regarding Natural American
Spirit Cigarettes;

- (d) Whether Natural American Cigarettes are “natural” as advertised;
- (e) Whether Natural American Cigarettes pose fewer health risks than other commercially marketed cigarettes;
- (f) Whether Defendants engaged in unfair, false, misleading or deceptive trade practices;
- (g) Whether Defendants have engaged in false advertising;
- (h) Whether Defendants knew or should have known that their statements and/or omissions were likely to mislead Plaintiffs and the Class;
- (i) Whether Defendants were unjustly enriched;
- (j) Whether Plaintiffs and members of the Class are entitled to damages; and
- (k) Whether injunctive relief is appropriate.

31. Typicality: Plaintiff’s claims are typical of the claims of the members of the Class, as they arise out of the same course of conduct by Defendants’ manufacturing, marketing, advertising, and selling Natural American Spirit Cigarettes and the uniform Statements and/or omissions made by Defendants. Plaintiff’s interests are allied with, and not antagonistic to, those interests of the other members of the Class. By proving Plaintiff’s own claims, Plaintiff will prove other Class members’ claims as well.

32. Adequacy: Plaintiff and his counsel are able to and will fairly and adequately protect the interests of the Class. Plaintiff has no conflicts and will vigorously pursue the claims asserted in this Complaint. Plaintiff understands and appreciates his duties to the Class as a class representative and is committed fulfilling these duties and protecting the rights of absent Class members. Plaintiff has retained counsel, who are experienced in complex class litigation.

33. Superiority: A class action is the superior procedural vehicle for fair and efficient adjudication of the claims asserted in this Complaint. The members of the Class are so numerous that joinder of all members is, at a minimum, impractical and likely impossible. Separate actions brought by individual class members pose a risk of inconsistent or varying judgment and incompatible standards of conduct for Defendants, thereby potentially impeding or impairing the ability of class members to pursue their claims. Substantial judicial economy exists to the Court and to the parties in litigating the common issues on a class-wide, as opposed to a repetitive

1 individual basis. Plaintiff does not anticipate difficulties in managing this lawsuit as a class action.
2 Resolution of this action on a class-wide basis is a fair and efficient method for adjudicating the
3 controversy and claims of the Class.

4 **V. COMMON FACTUAL ALLEGATIONS**

5 34. The Products are distributed, marketed, and sold throughout California by
6 Defendants.

7 35. Defendant SFNTC was created in 1982. Since then it has held itself out to be a
8 “natural tobacco” company with a mission to “produce a natural tobacco product, an unadulterated
9 tobacco product.”⁴ SFNTC prominently labels its cigarettes as “100% Additive-Free” and
10 “Natural” on the product labeling.

11 36. Since introducing the Products into commerce, Defendants consistently conveyed
12 the message to consumers throughout California, that cigarettes are “natural” and “100%
13 Additive-Free,” implying that the cigarettes are a healthier option to other cigarette brands. This
14 representation is made, *inter alia*, on the packaging of Natural American Spirit Cigarettes. The
15 statements “NATURAL” and “100% ADDITIVE-FREE” appear on the carton of all Natural
16 American Cigarettes. *See* Figure A.

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⁴ <https://www.sfntc.com/site/ourCompany/sfntc-story>

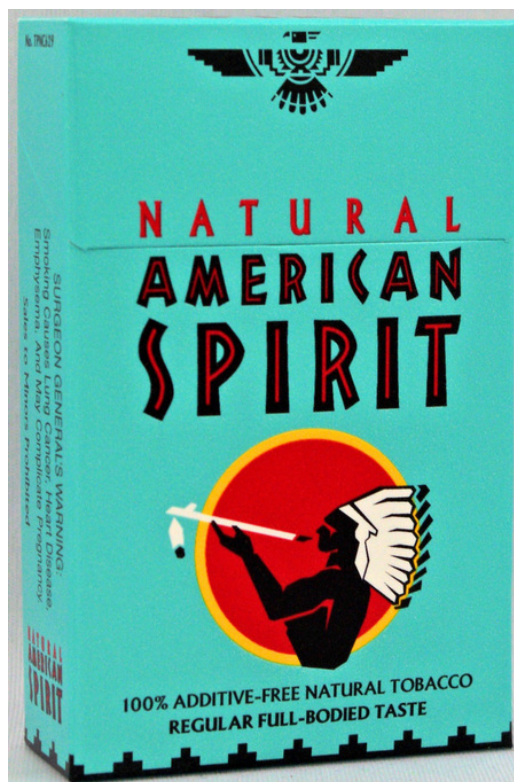


Figure A-Natural American Spirit Cigarettes.

37. Taking Defendants' Statements made as a whole, Defendants have created an extensive and inclusive campaign to promote that the Products are less harmful than other tobacco products and other brands of cigarettes. Defendants exploit this consumer attitude through, inter alia, their product packaging and marketing campaign.

38. For example, SFNTC's website promotes: "Our blenders create the highest-quality tobacco blends and only use two ingredients: whole tobacco leaf and water."⁵

39. SFNTC also advertises, "TOBACCO + WATER," further feeding into the consumer belief in a more "natural" and reduced risk cigarette. *See* Figure B.



Figure B: Natural American Spirit Cigarettes Advertisement.

40. Defendants' Statements promoting "Natural" tobacco and "100% Additive-Free" are particularly attractive to Defendants' target market. Defendants systematically and deliberately targeted consumers through their campaign. Former president of SFNTC, Robin

⁵ <https://www.sfntc.com/site/ourproduct/overview>

1 Sommers, touted, “The central concept on which the company has been built is that consumers of
 2 tobacco products have the right to know exactly what they are consuming.” The website further
 3 attests, “Our blenders create the highest quality tobacco blends and only use two ingredients:
 4 whole leaf tobacco and water.” Defendants’ campaign deliberately misleads consumers by
 5 implying that the Products or their smoke do not contain or are free of the substances found in
 6 other commercially marketed tobacco products and therefore present a reduced risk of tobacco-
 7 related disease or are not as harmful as other commercially marketed tobacco products.

8 41. Each and every consumer who purchases the Products is exposed to Defendants’
 9 deceptive statements because it appears prominently and conspicuously on the front of each
 10 carton.

11 42. Defendants’ Statements are misleading because there is no scientific evidence to
 12 show that the ingredients of the Products cause smoking the Products to pose fewer health risks
 13 than other cigarettes. In reality, Natural American Spirit Cigarettes contain 36 percent free-base
 14 nicotine, compared with 9.6 percent in Marlboro brands, 2.7% in Camel brands, and 6.2% in
 15 Winston brands.⁶

16 **Natural American Spirit Cigarettes Deceptive and False Advertising**

17 43. Plaintiff and members of the Class have been and will continue to be deceived or
 18 misled by Defendants’ deceptive statements and material omissions.

19 44. Plaintiff and members of the Class purchased goods marketed with the terms
 20 “natural” and “100% additive-free,” anticipating that they are purchasing a cigarette with less
 21 health risks. Researchers at the University of California in San Francisco reported that “The idea
 22 that cigarettes are natural may also help smokers downplay the risks of smoking, as ‘natural’ risks
 23 inspire less concern than unnatural ones.”⁷

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 25 ⁶ “Percent Free Base Nicotine in the Tobacco Smoke Particulate Matter of Selected
 26 Commercial and Reference Cigarettes,” James F. Pankow et al., Chemical Research Toxicology,
 2003.

27 ⁷ McDaniel, P. A., & Malone, R. E. (2007). “I always thought they were all pure tobacco”:
 28 American smokers’ perceptions of “natural” cigarettes and tobacco industry advertising
 strategies. *Tobacco Control*, 16(6), e7. Available at

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2807204/> (last visited October 8, 2015).

45. Plaintiff and members of the Class purchased the Products characterized as “100% additive-free,” “natural” and “organic” on the suggestion of defendants that these cigarettes were less harmful than regular cigarettes when in fact these cigarettes were at least as dangerous as regular cigarettes and defendants were fully aware of these dangers. Plaintiff and members of the Class believed that the Products were less harmful than other brands of cigarettes.⁸ But for Defendants’ false and misleading advertising and marketing of Natural American brand cigarettes, Plaintiffs and members of the Classes would not have purchased or would not have paid a premium price for the Products.

46. Defendants’ claim that the Natural American Spirit Cigarettes are “100% additive-free” is also false and misleading as chemical additives, including flavoring agents such as menthol and ammonia, are among the ingredients of the Products.

47. On August, 27, 2015, the Food and Drug Administration Center for Tobacco Products (“FDA”) warned SFNTC that advertising its Natural American Spirit Cigarettes as “natural” and “additive-free” is in violation of federal law because the labeling “represents explicitly and/or implicitly that the products or their smoke do not contain or are free of a substance and/or that the products present a lower risk of tobacco-related disease or are less harmful than one or more other commercially marketed tobacco products.”⁹ Specifically, the FDA identified SFNTC’s Natural American Spirit Cigarettes as a modified risk tobacco product and considered the products as “adulterated” pursuant to 902(8) of the Food Drug and Cosmetics Act (“FDCA”) (21 U.S.C. § 387b(8)). *See* **EXHIBIT 1**.

48. As a result of Defendants’ Statements, Plaintiff and members of the Class paid a premium price for the Products believing that the cigarettes they purchased were “natural” and “100% additive-free” and understanding that the Products presented a reduced risk of tobacco-related disease or were, at minimum, less harmful than other brands of cigarettes. Plaintiff and members of the Class paid more for the Products than other brands of cigarettes, without similar claims on their labeling.

⁸ *Id.*

⁹ <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm459778.htm>

49. The Products retail for a higher price than its counterparts without such labels:

- a. Camel Blue, Camel's light cigarette, retails for approximately \$45 per carton compared to its American Spirit Light counterpart, which retails for approximately \$52 per carton (attached hereto as **Exhibit 2** is a true and correct copy of a printout of American Spirit cigarette prices on Smokers-Mall.com and incorporated herein¹⁰; attached hereto as **Exhibit 3** is a true and correct copy of a printout of Camel cigarette prices on Smokers-Mall.com and incorporated herein¹¹);
- b. Camel's Regular line of cigarettes retail for approximately \$46 per carton¹² compared to its American Spirit Regular counterpart, which retails for approximately \$52 per carton¹³ (*id.*); and
- c. Newport cigarettes retail for approximately \$41 per carton. Attached hereto as **Exhibit 4** is true and correct copy of a printout of Newport cigarette prices on Smokers-mall.com and incorporated herein.¹⁴

50. Plaintiff and the Class considered the statements made on, *inter alia*, the labeling and packaging and based their decision to buy the Products based on these Statements. Plaintiff and members of the Class would not have purchased the Products if they knew that Defendants' claims that its cigarettes were "natural" and "100% additive-free" were untrue and/or misleading.

51. As a result of Defendants' deceptive conduct, Plaintiffs and Class members have been injured because they were deceived into purchasing the Products based on Defendants' misrepresentations and material omissions when they otherwise would not have purchased the product.

52. As a result of the misrepresentations and/or material omissions made regarding the Products Defendants have reaped significant profits at the expense of Plaintiffs and the Class.

¹⁰ <http://www.smokers-mall.com/cigarettes/american-spirit.aspx>.

¹¹ <http://www.smokers-mall.com/cigarettes/camel.aspx>.

¹² <http://www.smokers-mall.com/cigarettes/american-spirit.aspx>.

¹³ <http://www.smokers-mall.com/cigarettes/american-spirit.aspx>.

¹⁴ <http://www.smokers-mall.com/cigarettes/newport.aspx>.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of California Business and Professions Code Section 17500, *et seq.* (False Advertising)

53. Plaintiff incorporates and re-allege, as though set forth fully herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

54. The conduct described above and throughout this Complaint took place in the State of California and constitutes deceptive or false advertising in violation of California Business and Professions Code § 17500. California’s False Advertising Law (“FAL”), California Business and Professions Code § 17500 applies to all claims of all Class members because the Defendants’ conduct, which constitutes violations of the Code, occurred within the State of California.

55. California Business and Professions Code § 17500 prohibits deceptive or misleading practices in connection with advertising or representations made for the purpose of inducing, or which are likely to induce, consumers to purchase products.

56. Defendants, when they marketed, advertised, and the Products, represented to Plaintiff and Class Members that their “100% additive-free” and “natural” cigarettes posed fewer health risks than other cigarettes. As alleged above, these statements regarding the Products are misleading because the statements misrepresent the true character of the products, i.e. that there is no scientific evidence that corroborate Defendants’ claims or the implication that the Products pose fewer health risks than other tobacco products or brands and, in actuality, the Products contain chemical additives such as ammonia and flavoring agents.

57. At the time of the misrepresentations and material omissions, Defendant were either aware that the products did not have these characteristics when sold or were aware that Defendant lacked information and/or knowledge required to make such representations truthfully.

58. Defendants’ statements regarding the Products on the product packaging claiming “natural” and “100% additive-free” were false, misleading, and likely to deceive Plaintiffs, members of the Class, and other reasonable consumers:

59. Defendants’ statements were made in connection with the sale of the Products. The Products lack the implied health benefits as advertised and contain chemical additives, such as flavoring agents and ammonia. Therefore, Defendants’ conduct constitutes deceptive or

misleading advertising.

60. Plaintiff has standing to pursue claims brought under the FAL because he reviewed and relied on Defendants' advertising. As alleged above, Plaintiff Brattain reviewed and relied on the statements made on the product packaging regarding the Products, and in reliance on these statements that the cigarettes were "100% additive-free" and "natural," incurred out of pocket costs when he purchased the Natural American Spirits regular cigarettes and Natural American Spirits menthol cigarettes.

61. Plaintiff purchased the Products in reliance on Defendants' advertising, which was ultimately false and misleading.

62. Had Defendants' advertising regarding the Products disclosed the true nature of the products, i.e. that the products lacked the affirmative characteristics advertised, contained synthetic ingredients, made claims that were unapproved by the FDA, and did not pose fewer health risks as Defendants implied, Plaintiffs would not have purchased the items.

63. Defendants' statements in its advertising regarding the Products was part of Defendant's plan made with an intent to sell the Products as advertised.

64. Plaintiff and the Class purchased the Products for its "natural" and "100% additive-free" formula and benefits (i.e., that its ingredients caused smoking the Products to present less harm and reduced risk of tobacco-related disease than other cigarette brands and the Products contained no chemical additives or synthetic ingredients). Because the formula actually contained chemical additives and had no substantial health benefits in comparison to other brands of cigarettes, the product is completely devoid of value.

65. Additionally, Plaintiff and the Class purchased the product for a premium price and paid more for the Products than a comparable brand. As alleged above, the Products retail for approximately \$52 per carton compared to its Camel counterpart, which retails for approximately \$46 per carton, and its Newport counterpart, which retails for approximately \$41 per carton.

66. Research shows that some smokers were willing to smoke "natural" cigarettes over a cigarette without similar claims and labeling because they believed that the "natural" cigarettes

were potentially less harmful than cigarettes without similar claims.¹⁵

67. As a direct and proximate result of Defendants' violations of the FAL as set forth above, Plaintiff and the Class have suffered injury by paying for a premium price for a product that they otherwise would not have purchased had the true nature of the product been disclosed.

68. Plaintiff and the Class seek restitution of any monies wrongfully acquired or retained by Defendant, including monies already obtained from Plaintiff and the Class, and by means of Defendant's deceptive or misleading representations under Section 17500, *et seq.*

69. Accordingly, Plaintiff seeks all available damages and claims for relief under this section.

SECOND CLAIM FOR RELIEF

Violation of the California Business and Professions Code § 17200, *et seq.* (Unfair Competition Law-Unlawful Business Practices)

70. Plaintiffs incorporate and re-allege, as though set forth fully herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

71. Defendants' conduct in marketing and selling the Products was an unfair, unlawful or fraudulent business practice in violation of California's Unfair Competition Law ("UCL"), California Business and Professions Code § 17200, *et seq.* Defendant's concealment and intentional and negligent misrepresentation constitute unfair, unlawful, and fraudulent business acts and practices in violation of Section 17200.

72. California Business and Professions Code § 17200 applies to all claims of the Class members because the conduct, which constitutes violations of the Code by Defendants, occurred in the State of California and Defendants maintain significant contacts in California.

73. The UCL, California Business & Professions Code §17200, *et seq.* prohibits anything that can properly be called a business practice and at the same time is forbidden by law.

74. In the course of conducting business, Defendants committed unlawful business practices by, *inter alia*, claiming that the Products are "natural" and "100% additive-free." In light of the fact that the Products contain chemical additives and do not pose fewer health risks to consumers as implied, these statements and/or material omissions are misleading, deceptive,

¹⁵ <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2807204/> (last visited October 8, 2015)

1 and/or false. These statements were made in connection with the sale of Natural American Spirit
2 Cigarettes and therefore constitute “advertising” within the meaning of §17200.

3 75. As alleged above, Defendants’ statements in its advertising regarding the Products
4 was part of Defendants’ plan made with an intent to sell the Products as advertised.

5 76. Defendants’ unlawful business acts and/or practices as alleged herein have violated
6 federal, state, statutory and/or common laws, and these predicate acts are *per se* violations of
7 Section 17200.

8 77. Defendants’ conduct is in violation of the Sherman Law and the FDCA. The
9 Sherman Law is explicitly authorized by the FDCA and adopts and imposes identical
10 requirements to the federal FDCA. “All nonprescription drug regulations and regulations for new
11 drug applications under the FDCA are the regulations of this State.” Cal. Health & Safety Code
12 §§ 110110-110111, 110115. Thus, by violating provisions of the FDCA, Defendants have
13 violated the Sherman Law.

14 78. Defendants, *inter alia*, omitted material facts that their products are manufactured,
15 marketed, advertised, and sold in violation of the Sherman Law and FDCA, and that their claims
16 have no basis in scientific research or studies, thereby violating Civil Code §§1572, 1573, 1709,
17 1711, 1770 and Business & Professions Code §§17200, *et seq.* and applicable common law.

18 79. Defendants are in violation of provisions of the FDCA and thereby the Sherman
19 Law for failure to abide by the FDCA and continuing to market and sell Natural American Spirit
20 Cigarettes to Plaintiffs and the Class.

21 80. These violations resulted in harm to Plaintiff and the Class. Plaintiff and the Class
22 purchased the Products in reliance on these misrepresentations and/or material omissions and
23 suffered injury as a result. This conduct therefore constitutes violation of the unlawful prong of
24 California Business and Professions Code §17200, *et seq.*

25 81. Accordingly, Plaintiff seeks all available damages and claims for relief under this
26 section.

THIRD CLAIM FOR RELIEF

Violation of the California Business and Professions Code § 17200, *et seq.*

(Unfair Competition Law-Unfair Business Practices)

82. Plaintiffs incorporate and re-allege, as though set forth fully herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

83. Defendants' conduct in marketing and selling Natural American Spirit Cigarettes was an unfair, unlawful or fraudulent business practice in violation of California's Unfair Competition Law ("UCL"), California Business and Professions Code § 17200, *et seq.* Defendant's concealment and intentional and negligent misrepresentation constitute unfair, unlawful, and fraudulent business acts and practices in violation of Section 17200.

84. California Business and Professions Code § 17200 applies to all claims of the Class members because the conduct, which constitutes violations of the Code by Defendants, occurred in the State of California and Defendants maintain significant contacts in California.

85. Defendants' untrue or misleading statements were false, misleading, and/or likely to deceive the consuming public within the meaning of Business & Professions Code § 17200, *et seq.* Defendants' conduct, as alleged in this action, constitutes tortious conduct that gave Defendants an unfair competitive advantage over their competitors who did not engage in such practices. Defendants' misconduct also violated established law and/or public policies which discourage false and misleading advertising, unfair competition, and deceptive conduct towards consumers.

86. Plaintiff and the Class purchased the Products over other brands in reliance on Defendants' misrepresentations that Natural American Spirit Cigarettes contain no additives and are "natural." Failing to properly disclose the nature of the Products to consumers, prior to those consumers purchasing the products, as alleged herein, was and is directly contrary to established legislative goals and policies against engaging in false and misleading advertising, unfair competition, and deceptive conduct towards consumers.

87. There were reasonably available alternatives to further Defendants' legitimate business interests other than the conduct described in this Complaint.

1 88. The Sherman Law and FDCA set guidelines to ensure that products reaching
2 consumers meet adequate standards. Defendants circumvented the Sherman Law and FDCA
3 regulations and manufactured, marketed, advertised, and sold Natural American Spirit Cigarettes
4 in violation of provisions of the Sherman Law and FDCA.

5 89. At all relevant times, Defendants' misconduct and omissions alleged herein: (a)
6 caused substantial injury to the Public; (b) had no countervailing benefit to consumers or to
7 competition that could possibly outweigh the substantial injury; and (c) caused damage to
8 ordinary consumers by inducing them to pay out of pocket for a product that was not as advertised.
9 Therefore, Defendant' acts and/or practices as alleged herein were unfair within the meaning of
10 Business and Professions Code section 17200.

11 90. Accordingly, Plaintiff seeks all available damages and claims for relief under this
12 section.

13 **FOURTH CLAIM FOR RELIEF**

14 **Violation of the California Business and Professions Code § 17200, *et seq.***
15 **(Unfair Competition Law-Fraudulent Business Practices)**

16 91. Plaintiffs incorporate and re-allege, as though set forth fully herein, each and every
17 allegation set forth in the preceding paragraphs of this Complaint.

18 92. Defendants' acts and practices, as alleged herein, were likely to, and did, deceive
19 the Public. As alleged throughout this Complaint, Defendant' misleading, deceptive, and/or false
20 statements, deceived Plaintiffs and the Class and were intended to deceive consumers.
21 Defendants' conduct therefore constitutes fraudulent business acts and/or practices within the
22 meaning of California Business and Professions Code section 17200.

23 93. Plaintiff and the Class have in fact been deceived as a result of their reliance on
24 Defendants' material representations and omissions as described in this complaint. Plaintiffs and
25 the Class purchased Natural American Spirit Cigarettes based on (1) statements that the products
26 were "natural" and "100% additive-free" and (2) the belief that the products posed fewer health
27 risks than other cigarettes. As alleged in further above, the reliance has caused harm to Plaintiffs
28 and other members of the class who each purchased Defendants' Natural American Spirit

1 Cigarettes. Plaintiff and other Class members have suffered injury in fact and lost money as a
2 result of these unlawful, unfair, and fraudulent practices as alleged in this Complaint.

3 94. As a result of its deception, Defendants have been able to reap unjust revenue and
4 profit.

5 95. Consumers continue to be misled and deceived by Defendants' claims and
6 statements. Online literature reflects that consumers were and still are induced to purchase Natural
7 American Spirit Cigarettes as a result of Defendants' deceptive claims:

8 a. "People who buy American Spirits fall into one of two categories: One, the kind
9 of people who think that because American Spirits are... "100% additive free
10 natural tobacco", that it means that it's better than the 'trash' those other
11 simpletons buy."¹⁶

12 b. "Although some smokers were dubious that natural cigarettes were healthier, they
13 did not necessarily reject the idea outright. Some expressed a willingness to smoke
14 natural cigarettes "just in case" they were less harmful or 'one notch less bad.'"¹⁷

15 96. In fact, the FDA warned Defendants that their labeling and advertising markets
16 that Natural American Spirit Cigarettes present a lower risk of tobacco-related disease or are less
17 harmful than one or more other commercially marketed tobacco products. *See EXHIBIT 1.*

18 97. Unless restrained and enjoined, Defendants' claims and statements will continue
19 to mislead and deceive consumers. Plaintiff brings this class action to afford protection to future
20 consumers from the same fraud. Plaintiff on behalf of himself, all others similarly situated, and
21 the public at large, seek restitution and disgorgement of all money obtained from Plaintiff and the
22 members of the Class as a result of unfair competition, and a remedial marketing and advertising
23 campaign to inform consumers about the true and accurate nature of Natural American Spirit
24 Cigarettes, and all other relief which this Court deems appropriate, consistent with Business &
25 Professions Code §17203.

26
27
28 ¹⁶ <http://www.madpoet-one.com/2010/12/what-your-cigarette-says-about-you.html>

¹⁷ <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2807204/> (last visited October 8, 2015)

1 98. Accordingly, Plaintiff seeks all available damages and claims for relief under this
2 section.

3 **FIFTH CLAIM FOR RELIEF**
4 **Violation of Cal. Civ. Code §§ 1750, *et seq.***
5 **(California Consumer Legal Remedies Act)**

6 99. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above,
7 as if fully set forth herein.

8 100. Plaintiffs and the Class bring this claim pursuant to the Consumers Legal Remedies
9 Act (“CLRA”), California Civil Code §§ 1750, *et seq.* Defendants’ conduct described above and
10 throughout this Complaint occurred in the State of California. As alleged above and described
11 below, Defendant’ conduct constitutes unfair or deceptive acts or practices and unfair methods of
12 competition in violation of the CLRA. Because Defendant’s conduct, which constitutes violations
13 of the CLRA, occurred in the State of California, the CLRA applies to all claims of all Class
14 members.

15 101. Plaintiff and the Class are consumers as defined by California Civil Code
16 §1761(d).

17 102. Defendants’ Natural American Spirit Cigarettes are “goods” within the meaning
18 of the CLRA.

19 103. The purchase of Natural American Spirit Cigarettes by Plaintiff and Class
20 Members are “transactions” within the meaning of Civil Code § 1761(c).

21 104. As set forth below, the CLRA deems that the following unfair methods of
22 competition and unfair or deceptive acts or practices undertaken by any person in a transaction
23 intended to result or which results in the sale or lease of goods or services to any consumer is
24 unlawful:

- 25 a. “Representing that goods ... have sponsorship, approval, characteristics,
26 ingredients, uses, benefits, or quantities which they do not have.” Civil Code §
27 1770(a)(5).
28

- 1 b. “Representing that goods ... are of a particular standard, quality, or grade, or that
2 goods are of a particular style or model, if they are of another.” Civil Code §
3 1770(a)(7).

4 105. Defendants violated and continue to violate the act by engaging in the following
5 practices that are proscribed by California Civil Code §1770(a)(5) and (a)(7) by representing that
6 Natural American Spirit Cigarettes had characteristics and were of a particular quality when these
7 claims were false. As detailed throughout this Complaint, Defendants have repeatedly engaged
8 in conduct that is deemed in violation of the CLRA.

9 106. Defendants represented that Natural American Spirit Cigarettes were “natural” and
10 “100% Additive-Free.” Defendants further represented that the ingredients in the Products caused
11 smoking their brand of cigarettes to be less harmful or pose reduced risk of a tobacco-related
12 disease than one or more other commercially marketed cigarettes.

13 107. As detailed above, Defendant violated the CLRA when, in transactions with
14 Plaintiff and the Class, Defendant made the following representations, which were intended to
15 result in, and did result in, the sale of Natural American Spirit Cigarettes:

- 16 a. Representing that Natural American Spirit Cigarettes have approval,
17 characteristics, uses and benefits which they do not have;
18 b. Representing that Natural American Spirit Cigarettes are of a particular standard,
19 quality, or grade and it is of another; and
20 c. Advertising goods with the intent not to sell them as advertised.

21 108. Defendants further violated the CLRA by representing and failing to disclose
22 material facts on the Natural American Spirit Cigarettes labeling and packaging and any
23 associated advertising as described above, when they knew, or should have known, that the
24 representations were false and misleading and the omissions were of material facts it was
25 obligated to disclose.

26 109. Pursuant to §1780(d) of the CLRA, filed concurrently with this Complaint is an
27 affidavit showing that this action has been commenced in the proper forum.

28 110. On or about October 9, 2015, Plaintiff Russell Brattain sent Defendants notice in
writing of violations under the CLRA, accompanied by a demand that Defendants correct, repair,

replace or otherwise rectify the prohibited practices. Pursuant to Cal. Civ. Proc., § 1782(a)(2), Plaintiffs sent pre-suit notice and demand by certified mail, with return receipt requested, to Defendants' principal place of business and Registered Agent in California. In the event Defendants do not remedy their violations, Plaintiff reserves the right to amend the Complaint to include a request for punitive damages under the CLRA.

111. Accordingly, Plaintiff seeks all available damages and claims for relief under this section.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for a judgment and relief on all causes of action as follows:

A. For an order certifying that the action may be maintained as a class action, certifying Plaintiff as representative of the Class, and designating Plaintiff's attorneys as Class counsel.

B. For an award of equitable relief as follows:

- i. Enjoining Defendants from making any of the Statements (defined above) for the Products found to violate the UCL, FAL, or CLRA as set forth above;
- ii. Requiring Defendants to make full restitution of all monies wrongfully obtained as a result of the conduct as set for above;
- iii. Requiring Defendants to disgorge all ill-gotten gains flowing from the conduct as set forth above.

C. For actual damages in an amount to be determined at trial.

D. For an award of attorneys' fees pursuant to, *inter alia*, § 1780(d) of the CLRA and *Code of Civil Procedure* § 1021.5.

E. For an award of costs.

F. For pre- and post-judgment interest on any amounts awarded.

G. For such further relief this Court deems just, appropriate, or proper.

VII. JURY DEMAND

Plaintiff respectfully demands a trial by jury on all issues so triable.

Dated this October 9, 2015

Respectfully Submitted by,

**EGGNATZ, LOPATIN &
PASCUCCI, LLP**

/s/ Benjamin M. Lopatin

BENJAMIN M. LOPATIN (SBN 281730)

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Telephone: (415) 324-8620

Facsimile: (415) 520-2262

*Attorneys for Plaintiff Russell Brattain
and for the Proposed Class*

EXHIBIT 1

U.S. Food and Drug Administration
Protecting and Promoting *Your* Health

Santa Fe Natural Tobacco Company, Inc. 8/27/15



Department of Health and Human Services

Food and Drug Administration
Center for Tobacco Products
10903 New Hampshire Avenue
Silver Spring, MD 20993

AUG 27, 2015

VIA UPS and FAX

Michael Little, President
Santa Fe Natural Tobacco Company, Inc.
1 Plaza La Prensa
Santa Fe, NM 87507

WARNING LETTER

Dear Mr. Little:

The Center for Tobacco Products of the U.S. Food and Drug Administration (FDA) reviewed your cigarette product labeling and determined that your cigarette products are manufactured and distributed or offered for sale to customers in the United States. Under section 201(rr) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. § 321(rr)), as amended by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), these products are tobacco products because they are made or derived from tobacco and intended for human consumption. Certain tobacco products, including cigarettes, are subject to FDA jurisdiction under section 901(b) of the FD&C Act (21 U.S.C. §

387a(b)).

FDA has determined that several of your cigarette products are adulterated under section 902(8) of the FD&C Act (21 U.S.C. § 387b(8)) because they are modified risk tobacco products sold or distributed without an FDA order in effect that permits such sale or distribution.

Modified Risk Tobacco Product Violations

You sell or distribute cigarette products the label, labeling, or advertising of which represents explicitly and/or implicitly that the products or their smoke do not contain or are free of a substance and/or that the products present a lower risk of tobacco-related disease or are less harmful than one or more other commercially marketed tobacco products. Specifically, you sell or distribute Natural American Spirit cigarettes described in product labeling as “Natural” and “Additive Free.”

A tobacco product is considered a “modified risk tobacco product” under section 911(b)(2)(A)(i) of the FD&C Act (21 U.S.C. § 387k(b)(2)(A)(i)) if its label, labeling, or advertising explicitly or implicitly represents that: (1) the product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products; (2) the product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or (3) the product or its smoke does not contain or is free of a substance. Under section 911(a) of the FD&C Act (21 U.S.C. § 387k(a)), no person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product without an FDA order in effect under section 911(g) of the FD&C Act (21 U.S.C. § 387k(g)). A product that is in violation of section 911(a) of the FD&C Act (21 U.S.C. § 387k(a)) is adulterated under section 902(8) of the FD&C Act (21 U.S.C. § 387b(8)). Your product labeling for Natural American Spirit cigarettes, which uses the descriptors “Natural” and “Additive Free,” represents explicitly and/or implicitly that the products or their smoke do not contain or are free of a substance and/or that the products present a lower risk of tobacco-related disease or are less harmful than one or more other commercially marketed tobacco products. As such, these products are modified risk tobacco products. Because these products are sold or distributed to customers in the United States without an appropriate FDA order in effect under section 911(g) of the FD&C Act (21 U.S.C. § 387k(g)), these products are adulterated under section 902(8) of the FD&C Act (21 U.S.C. § 387b(8)).

FDA recognizes that Santa Fe Natural Tobacco Company, Inc. has entered into a consent order with the Federal Trade Commission (FTC) regarding the company’s use of additive free claims in tobacco product advertising (Federal Trade Commission, *In the Matter of Santa Fe Natural Tobacco Company, Inc., a corporation*, Docket No. C-3952, Decision and Order, Issued June 12, 2000). This order requires, in part, that the company display certain disclosures (e.g., “No additives in our tobacco does NOT mean safer”) in any advertisements using claims that represent tobacco products as having no additives, unless the company possesses and relies upon competent and reliable scientific evidence demonstrating that such products pose materially lower health risks than other tobacco products of the same type. This consent order predates the Tobacco Control Act, which was enacted on June 22, 2009 and gave FDA authority to

regulate the manufacture, sale, distribution, and promotion of tobacco products, including authority over modified risk tobacco products under Section 911 of the FD&C Act (21 U.S.C. § 387k). As noted above, under section 911(a) of the FD&C Act (21 U.S.C. § 387k(a)), no person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product without an FDA order in effect under section 911(g) of the FD&C Act (21 U.S.C. § 387k(g)). Because you sell or distribute modified risk tobacco products without an appropriate FDA order in effect under section 911(g) of the FD&C Act (21 U.S.C. § 387k(g)), you are in violation of the FD&C Act, notwithstanding your consent order with FTC.

Conclusion and Requested Actions

The violations discussed in this letter do not necessarily constitute an exhaustive list. You should immediately correct the violations that are referenced above, as well as violations that are the same as or similar to those stated above, and take any necessary actions to bring your tobacco products into compliance with the FD&C Act.

It is your responsibility to ensure that your tobacco products and all related labeling and/or advertising comply with each applicable provision of the FD&C Act and FDA's implementing regulations. Failure to ensure full compliance with the FD&C Act may result in FDA initiating further action without notice, including, but not limited to, civil money penalties, criminal prosecution, seizure, and/or injunction. Please note that adulterated and misbranded tobacco products offered for import into the United States are subject to detention and refusal of admission.

Please submit a written response to this letter within 15 working days from the date of receipt describing your corrective actions, including the dates on which you discontinued the violative promotion, advertising, sale, and/or distribution of these tobacco products and your plan for maintaining compliance with the FD&C Act. If you do not believe that your products are in violation of the FD&C Act, include your reasoning and any supporting information for our consideration. You can find the FD&C Act through links on FDA's homepage at <http://www.fda.gov> (<http://www.fda.gov/>).

Please note your reference number, RW1500345, in your response and direct your response to the following address:

DPAL-WL Response, Office of Compliance and Enforcement
FDA Center for Tobacco Products
c/o Document Control Center
Building 71, Room G335
10903 New Hampshire Avenue
Silver Spring, MD 20993-0002

If you have any questions about the content of this letter, please contact Ele Ibarra-Pratt at (301) 796-9235 or via email at CTPCompliance@fda.hhs.gov (<mailto:CTPCompliance@fda.hhs.gov>).

Sincerely,

/S/

Ann Simoneau, J.D.

Director

Office of Compliance and Enforcement

Center for Tobacco Products

VIA UPS and FAX

CC:

Susan M. Cameron

President and Chief Executive Officer

Reynolds American Inc.

401 North Main Street

Winston-Salem, NC 27101-3804

Dr. James Swauger

Vice President Regulatory Oversight

401 North Main Street

Winston-Salem, NC 27102

More in 2015

[\(/ICECI/EnforcementActions/WarningLetters/2015/default.htm\)](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/default.htm)

EXHIBIT 2

HOMEABOUTCONTACTSHIPPINGREFUNDS & RESHIPSPAYMENTTERMSFAQORDER STATUS PAGE

SMOKERS-MALL.COM

All your smokers needs in one place

FREE SHIPPING

QUALITY GUARANTEE

FREE OF DUTY

NO REPORTING

SSL SECURE TRANSACTIONS

CART: 0 items

TOTAL: \$ 0

EN

USD

CIGARETTES CLOVE CIGARETTES CIGARS TOBACCO E-CIGS LIGHTERS BRANDS A-Z

SEARCH... SEARCH

AMERICAN LEGEND

AMERICAN SPIRIT

BENSON & HEDGES

BEST MAN

BOND STREET

CAMEL

CHESTERFIELD

CORSET

Craven A

DAVIDOFF

DUNHILL

FORTUNA

GAULOISES

GITANES

GLAMOUR

GOLD CLASSIC

GOLD CROWN

GOLDEN AMERICAN

GOLDEN GATE

KARELIA

KENT

KING

KOOL

L&M

LAMBERT & BUTLER

LUCKY STRIKE

MARLBORO

MG

MERILYN

MONTE CARLO

MORE

NAT SHERMAN

American Spirit

American Spirit Blue

Made in EU (King Size Box)

2 cartons

~~\$104.00~~ \$52.00 per carton

ADD TO CART

4 cartons

~~\$204.00~~ \$51.00 per carton

ADD TO CART

6 cartons

~~\$300.00~~ \$50.00 per carton

ADD TO CART

American Spirit Orange

Made in EU (King Size Box)

2 cartons

~~\$104.00~~ \$52.00 per carton

ADD TO CART

4 cartons

~~\$204.00~~ \$51.00 per carton

ADD TO CART

6 cartons

~~\$300.00~~ \$50.00 per carton

ADD TO CART

American Spirit Yellow

Made in EU (King Size Box)

2 cartons

~~\$104.00~~ \$52.00 per carton

ADD TO CART

4 cartons

~~\$204.00~~ \$51.00 per carton

ADD TO CART

6 cartons

~~\$300.00~~ \$50.00 per carton

ADD TO CART

HOME ; ABOUT US ; CONTACTS US ; SHIPPING INFO ; PAYMENT ; TERMS ; FAQ'S ; ORDER STATUS PAGE

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http://www.smokers-mall.com/cigarettes/american-spirit.aspx

1/3

EXHIBIT 3

HOMEABOUTCONTACTSHIPPINGREFUNDS & RESHIPSPAYMENTTERMSFAQORDER STATUS PAGE

SMOKERS-MALL.COM
All your smokers needs in one place

FREE SHIPPING

QUALITY GUARANTEE

FREE OF DUTY

NO REPORTING

SSL SECURE TRANSACTIONS

CART: 0 items
TOTAL: \$ 0
EN USD

Show Cart

CIGARETTES CLOVE CIGARETTES CIGARS TOBACCO E-CIGS LIGHTERS BRANDS A-Z

SEARCH...

SEARCH

- AMERICAN LEGEND
- AMERICAN SPIRIT
- BENSON & HEDGES
- BEST MAN
- BOND STREET
- CAMEL
- CHESTERFIELD
- CORSET
- Craven A
- DAVIDOFF
- DUNHILL
- FORTUNA
- GAULOISES
- GITANES
- GLAMOUR
- GOLD CLASSIC
- GOLD CROWN
- GOLDEN AMERICAN
- GOLDEN GATE
- KARELIA
- KENT
- KING
- KOOL
- L&M
- LAMBERT & BUTLER
- LUCKY STRIKE
- MARLBORO
- MG
- MERILYN
- MONTE CARLO
- MORE
- NAT SHERMAN

Camel
Camel cigarettes were launched in 1913 by R.J. Reynolds Tobacco who set a standard in both quality and taste. They are made of Turkish tobacco blend and Virginia tobacco including other specific ingredients and aromatic additions which give them a superb taste. Camels are popular for their charming odor and preferred for their unique composition. Camel cigarettes lead the way to success and are the feature of a classic cigarette that you ever smoked.

FREE SHIPPING

ON ALL ORDERS

Camel Filter
Made in EU (King Size Box)
Tar 10mg, Nicotine 0,8mg

2 cartons \$92.00 \$46.00 per carton	4 cartons \$180.00 \$45.00 per carton	6 cartons \$264.00 \$44.00 per carton
<div>ADD TO CART</div>	<div>ADD TO CART</div>	<div>ADD TO CART</div>

Camel Mild
Made in EU (King Size Box)
Tar 9mg, Nicotine 0,7mg

2 cartons \$92.00 \$46.00 per carton	4 cartons \$180.00 \$45.00 per carton	6 cartons \$264.00 \$44.00 per carton
<div>ADD TO CART</div>	<div>ADD TO CART</div>	<div>ADD TO CART</div>

Camel Blue Subtle Flavour
Made in EU (King Size Box)
Tar 8mg, Nicotine 0,6mg

2 cartons \$92.00 \$46.00 per carton	4 cartons \$180.00 \$45.00 per carton	6 cartons \$264.00 \$44.00 per carton
<div>ADD TO CART</div>	<div>ADD TO CART</div>	<div>ADD TO CART</div>








Camel Silver
Made in EU (King Size Box)
Tar 4mg, Nicotine 0.3mg

2 cartons \$92.00 \$46.00 per carton	4 cartons \$180.00 \$45.00 per carton	6 cartons \$264.00 \$44.00 per carton
<div>ADD TO CART</div>	<div>ADD TO CART</div>	<div>ADD TO CART</div>

Camel No-Filter Regular
Made in EU (Soft Pack)
Tar 10mg, Nicotine 0,8mg

2 cartons \$92.00 \$46.00 per carton	4 cartons \$180.00 \$45.00 per carton	6 cartons \$264.00 \$44.00 per carton
<div>ADD TO CART</div>	<div>ADD TO CART</div>	<div>ADD TO CART</div>

- NEWPORT
- NEXT
- PALL MALL
- PARLIAMENT
- PETER STUYVESANT
- PRESIDENT
- R1
- RAQUEL
- REGAL
- ROTHMANS
- SALEM
- SILK CUT
- SOBRANIE
- STATE EXPRESS 555
- SUPERKINGS
- VICEROY
- VOGUE
- WEST
- WINSTON
- ASHIMA
- ASSOS
- BRASS
- CAPITAL
- DUBLISS
- GALA
- KIM
- MARBLE
- MAYFAIR
- MILD SEVEN
- MURATTI
- PLAZA
- PRINCE
- RICHMOND
- SENECA
- STRAND
- YESMOKE
- HILTON

	Camel Natural Flavor Made in EU (King Size Box) Tar 10mg, Nicotine 0,9mg	2 cartons \$92.00 \$46.00 per carton	4 cartons \$180.00 \$45.00 per carton	6 cartons \$264.00 \$44.00 per carton
	Camel Essential Blue Made in EU (King Size Box) Tar 8mg, Nicotine 0,7mg	2 cartons \$92.00 \$46.00 per carton ADD TO CART	4 cartons \$180.00 \$45.00 per carton ADD TO CART	6 cartons \$264.00 \$44.00 per carton ADD TO CART
	Camel Black Made in EU (King Size Box) Tar 10mg, Nicotine 0,9mg	2 cartons \$92.00 \$46.00 per carton ADD TO CART	4 cartons \$180.00 \$45.00 per carton ADD TO CART	6 cartons \$264.00 \$44.00 per carton ADD TO CART
	Camel White Made in EU (King Size Box) Tar 8mg, Nicotine 0,7mg	2 cartons \$92.00 \$46.00 per carton ADD TO CART	4 cartons \$180.00 \$45.00 per carton ADD TO CART	6 cartons \$264.00 \$44.00 per carton ADD TO CART
	Camel Filters Made in Europe (King Size Box) Tar 10mg, Nicotine 0,8mg	2 cartons \$90.00 \$45.00 per carton ADD TO CART	4 cartons \$176.00 \$44.00 per carton ADD TO CART	6 cartons \$258.00 \$43.00 per carton ADD TO CART
	Camel Blues Made in Europe (King Size Box) Tar 8mg, Nicotine 0,6mg	2 cartons \$90.00 \$45.00 per carton ADD TO CART	4 cartons \$176.00 \$44.00 per carton ADD TO CART	6 cartons \$258.00 \$43.00 per carton ADD TO CART
	Camel Silvers Made in Europe (King Size Box) Tar 4mg, Nicotine 0.3mg	2 cartons \$90.00 \$45.00 per carton ADD TO CART	4 cartons \$176.00 \$44.00 per carton ADD TO CART	6 cartons \$258.00 \$43.00 per carton ADD TO CART

CHEAP CAMEL CIGARETTES FACTS

Going by record, cheap camel cigarettes brands was established in 1913. As camel cigarettes are growing in popularity, RJ Reynolds Tobacco Company resolved to make the cigarettes being a brand tobacco. It was initially known as Red camel cigarettes before it was taking over. After the acquisition, the name was changed to camel with promotional name as camel cigarettes online with the famous brand symbol called Joe.

Buy cheap camel cigarettes because they are possibly the single brand that has maintained design without noticeable ever change its luncheon. For almost a century till date, camel Joe is still a modeled personality to both all smokers as well as non-smokers. Meanwhile, camel cigarettes were once in very still competition with Marlboro cigarettes and rebranding of 2000-2001.

You are strongly advised to buy camel cigarettes to observe the packaging with camel designed as it was been more fashionable and solid. Nevertheless, added information was included with emphasis on the long history of cheap camel cigarettes brand. You can find camel cigarettes online and offline in the following varieties:

- Camel Silver

- Camel Mild
- Camel Super Light
- Camel Blue
- Camel Blue Subtle Flavour
- Camel Essential Blue
- Camel Lights
- Camel One
- Camel Filter
- Camel Natural Flavor
- Camel Black
- Camel White
- Camel No-Filter Regular

By buying cheap camel cigarettes online, you will have access to many benefits which you cannot be given easily and cheaply offline.

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EXHIBIT 4

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SMOKERS-MALL.COM

All your smokers needs in one place

FREE SHIPPING

QUALITY GUARANTEE

FREE OF DUTY

NO REPORTING

SSL SECURE TRANSACTIONS

EN

USD

CIGARETTES

CLOVE CIGARETTES

CIGARS

TOBACCO

E-CIGS

LIGHTERS

BRANDS A-Z

SEARCH...

SEARCH

AMERICAN LEGEND

AMERICAN SPIRIT

BENSON & HEDGES

BEST MAN

BOND STREET

CAMEL

CHESTERFIELD

CORSET

Craven A

DAVIDOFF

DUNHILL

FORTUNA

GAULOISES

GITANES

GLAMOUR

GOLD CLASSIC

GOLD CROWN

GOLDEN AMERICAN

GOLDEN GATE

KARELIA

KENT

KING

KOOL

L&M

LAMBERT & BUTLER

LUCKY STRIKE

MARLBORO

MG

MERILYN

MONTE CARLO

MORE

NAT SHERMAN

Newport

Newport cigarettes were launched in 1957 being America's number one menthol cigarettes. Produced by Lorillard Tobacco Company of Greensboro, North Carolina, United States, this brand offers a perfect balance of premium tobacco flavor and menthol. Initially Newport was promoted as cigarettes that allow you to: "Enjoy full flavor menthol, without drowning out pure tobacco taste."

FREE SHIPPING

ON ALL ORDERS

Newport

Made in EU (King Size Box)

Tar 10 mg, Nicotine 0.8 mg

2 cartons

~~\$82.00~~ \$41.00 per carton

ADD TO CART

4 cartons

~~\$160.00~~ \$40.00 per carton

ADD TO CART

6 cartons

~~\$234.00~~ \$39.00 per carton

ADD TO CART

HOME

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CONTACTS US

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PAYMENT

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FAQ'S

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http://www.smokers-mall.com/cigarettes/newport.aspx

1/2

BENJAMIN M. LOPATIN (SBN 281730)
EGGNATZ, LOPATIN & PASCUCI, LLP
2201 Market Street, Suite H
San Francisco, CA 94114
Telephone: (415) 324-8620
Facsimile: (415) 520-2262
Email: blopatin@elplawyers.com

*Attorneys for Plaintiff Russell Brattain
and for the Proposed Class*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

RUSSELL BRATTAIN, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

SANTA FE NATURAL TOBACCO
COMPANY, INC., REYNOLDS AMERICAN,
INC., and DOES 1 through 50,

Defendants.

Case No.: 15-4705

Judge:

CLASS ACTION

**DECLARATION OF VENUE UNDER
CALIFORNIA'S CONSUMER LEGAL
REMEDIES ACT, CAL. CIVIL CODE
§§ 1750, ET SEQ.**

DEMAND FOR JURY TRIAL

1 I, Benjamin M. Lopatin, hereby declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon, could
3 competently testify to the facts set forth herein.

4 2. I am employed at Eggnatz, Lopatin & Pascucci, LLP. This firm has been retained
5 as counsel for named Plaintiff, Russell Brattain, and the proposed class in this action against
6 Defendants Santa Fe Natural Tobacco Company, Inc., Reynolds American, Inc., and Does 1
7 through 50, inclusive (collectively “Defendants”).

8 3. I am an attorney for the Plaintiff in the above-entitled action.

9 4. This action is filed in the United States District Court for the Northern District of
10 California, because the transaction wherein the Plaintiff purchased the Defendant’s product—
11 and perceived Defendant’s material misrepresentations—occurred in this judicial District.

12 5. The Complaint concurrently filed in this matter includes a cause of action against
13 Defendants for violations of the Consumers Legal Remedies Act (“CLRA”). Defendants avail
14 themselves of the laws and markets of California and the alleged misrepresentations and
15 unlawful misconduct occurred in this judicial District.

16 6. The transaction at issue occurred in San Francisco, California, as Plaintiff
17 purchased Defendants’ products in San Francisco, California. As a result, Defendants have
18 significant contacts throughout California and in this judicial District, which causes Defendants
19 to incur obligations and liabilities in this District, sustaining this Court’s jurisdiction over
20 Defendant, and creating proper venue in this Court under the CLRA..

21 I declare under penalty of perjury under the laws of the United States that the foregoing
22 is true and correct, and was executed in the city of San Francisco, County of San Francisco,
23 California, on October 9, 2015.

24
25 By: /s/ Benjamin M. Lopatin
Benjamin M. Lopatin, Esq.

26
27 *Attorneys for Plaintiff Russell Brattain*
28 *and for the Proposed Class*

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Russell Brattain, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Francisco, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Benjamin M. Lopatin, EGGNATZ, LOPATIN & PASCUCCHI, LLP., 2201
Market Street, Suite H, San Francisco, CA 94114, (415) 324-8620

DEFENDANTS

Santa Fe Natural Tobacco Company, Inc., Reynolds American, Inc.,
and Does 1 through 50

County of Residence of First Listed Defendant Santa Fe, NM
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1332(d)(2)

Brief description of cause:

Unlawful sale and advertising of consumer products in violation of California's UCL, FAL, and CLRA.**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/09/2015

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Northern District of California

Russell Brattain, individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

Santa Fe Natural Tobacco Company, Inc., Reynolds
American, Inc., and Does 1 through 50, inclusive

Defendant(s)

Civil Action No. 15-4705

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Santa Fe Natural Tobacco Company, Inc.
c/o CSC-Lawyers Incorporating Service
2710 Gateway Oaks Dr., Ste 150N
Sacramento, CA 95833

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

BENJAMIN M. LOPATIN
EGGNATZ, LOPATIN & PASCUCCI, LLP
2201 Market Street, Suite H
San Francisco, CA 94114
Telephone: (415) 324-8620
Facsimile: (415) 520-2262

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 15-4705

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____,
a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

Russell Brattain, individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

Santa Fe Natural Tobacco Company, Inc., Reynolds
American, Inc., and Does 1 through 50, inclusive

Defendant(s)

Civil Action No. 15-4705

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Reynolds American, Inc.
c/o Corporation Service Company
327 Hillsborough Street
Raleigh, NC 27603-1725

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

BENJAMIN M. LOPATIN
EGGNATZ, LOPATIN & PASCUCCI, LLP
2201 Market Street, Suite H
San Francisco, CA 94114
Telephone: (415) 324-8620
Facsimile: (415) 520-2262

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 15-4705

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____,
a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: