

FILED

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

2016 JAN 28 PM 1:49

CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
GAINESVILLE, FLORIDA

STEVE OKSTAD, MICHAEL ANDERSON,
BROOK BALOCCA, ELIJAH BENT,
CHARLENE BLEVINS, SAM BOWMAN,
MATOKIE BRIM, TERRY CLIVER,
CHRISTOS CHRISTOLOW, GEORGE COON,
GARY CRUSE, MARGIE HARRIS,
CHARLES HONSE, CLINTON HORTON,
COLLIN JASS, CRISTOPHER JENSEN,
SHEREEN KEITH, KELLY KEISER, ASHER KING,
MARILYN KOMARINSKI, JODI KUMPULA,
TOM KURTZ, RICHARD KUSICK, MIKE LAIR,
TRACY LEE, KATHLEEN LELLI,
ROBERT LITWIN, LINDA MACDONALD-LEWIS,
RUDOLPH MILLER, RICHARD MORELOCK,
DEBORAH ORRTIM PAULSON,
RICHARD PEAVY, CONCETTA SCHULTZ,
JUDY SELL, HARRISON THOMAS,
DANI WEIR, TOM WEIR, KYLE WIEBE,
VICKI WILSON, on behalf of
themselves and all others similarly situated,

Plaintiff,

v.

SANTA FE NATURAL TOBACCO
COMPANY, INC., and REYNOLDS AMERICAN
INC.,

Defendants.

No.: 3:16-cv-84-J-34PDB

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs STEVE OKSTAD, MICHAEL ANDERSON, BROOK BALOCCA, ELIJAH BENT, CHARLENE BLEVINS, SAM BOWMAN, MATOKIE BRIM, CHRISTOS CHRISTOLOW, TERRY CLIVER, GEORGE COON, GARY CRUSE, MARGIE HARRIS, CHARLES HONSE, CLINTON HORTON, COLLIN JASS, CRISTOPHER JENSEN, KELLY KEISER, SHEREEN KEITH, ASHER KING, MARILYN KOMARINSKI, JODI KUMPULA, TOM KURTZ, RICHARD KUSICK, MIKE LAIR, TRACY LEE, KATHLEEN LELLI, ROBERT LITWIN, LINDA MACDONALD-LEWIS, RUDOLPH MILLER, RICHARD MORELOCK, DEBORAH ORR, TIM PAULSON, RICHARD PEAVY, CONCETTA SCHULTZ, JUDY SELL, HARRISON THOMAS, DANI WEIR, TOM WEIR, KYLE WIEBE, VICKI WILSON, individually, and on behalf of all others similarly situated in the United States, by and through the undersigned counsel, files this Class Action Complaint, and alleges against Defendants, SANTA FE NATURAL TOBACCO COMPANY, INC. and REYNOLDS AMERICAN INC., as follows:

INTRODUCTION

1. Defendants manufacture, market, and sell Natural American Spirit cigarettes (öAmerican Spiritsö). Defendantsö product labeling and advertising describes these cigarettes as öNatural,ö öAdditive Free,ö ö100% Additive Free,ö öOrganic,ö and an öunadulterated tobacco product.ö¹ These terms are intended to suggest that American Spirits are healthier, safer, and present a lower risk of tobacco-related disease than other tobacco products. Defendants, however, have no competent or reliable scientific evidence to back their labeling and advertising claims. Defendantsö claims are patently deceptive, especially in todayö market, where these terms have a

¹ <https://www.sfntc.com/site/ourCompany/sfntc-story/> (last visited Aug. 28, 2015).

potent meaning for the health-and environmentally-conscious consumer. Moreover, as the FDA recently determined, American Spirits are in fact adulterated. Using these deceptive terms, Defendants are able to successfully price American Spirits higher than other competitive cigarette brands.

2. Plaintiffs and the Class smoke American Spirits because they have been deceived by Defendants' advertising and other statements into regarding them as less harmful and less carcinogenic than other cigarettes. Individually and on behalf of all those similarly situated, Plaintiffs seeks redress for Defendants' fraudulent and deceptive trade practices.

JURISDICTION

3. The Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because a member of the Plaintiffs Class is a citizen of Florida, Defendants are citizens of New Mexico and North Carolina, there are currently 100 or more class members, and the aggregate amount in controversy will exceed \$5,000,000.

4. The Court has personal jurisdiction over all Defendants because they are authorized to do business and in fact do business in the Middle District of Florida and have sufficient minimum contacts with this District, and each Defendant otherwise intentionally avails itself of the markets in this State through the promotion, marketing and sale of American Spirits to render the exercise of jurisdiction by this Court permissible under Florida law and the U.S. Constitution.

VENUE

5. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. § 1391(b)(2) and (3) because a substantial part of the events or omissions giving rise to the claims at issue in this Complaint arose in this District, Plaintiffs Keith, Bowman, Cliver, Cruse, Morelock, Okstad, Schultz and Sell are domiciled in this District and purchased Defendants cigarettes in this District,

a substantial part of the property that is the subject of this action is situated in this District, and Defendants are subject to the Court's personal jurisdiction with respect to this action.

PARTIES

A. Alabama Plaintiffs

1. Tracy Lee

6. Plaintiff, Tracy Lee, resides in Sylacauga, Alabama, and is a citizen of the State of Alabama. Plaintiff, Tracy Lee, purchased American Spirits during the Class Period and has been smoking American Spirit Cigarettes for approximately 3 years. Plaintiff Tracy Lee switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to her, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Tracy Lee incurred losses and damages as a result of the activities alleged herein. Plaintiff Tracy Lee has suffered injury-in-fact for which she is entitled to seek monetary damages.

B. California Plaintiffs

1. Michael Anderson

7. Plaintiff, Michael Anderson, resides in Landers, California, and is a citizen of the State of California. Plaintiff, Michael Anderson, purchased American Spirits during the Class Period and has been smoking American Spirit Cigarettes for approximately 18 years. Plaintiff Michael Anderson switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Michael Anderson incurred

losses and damages as a result of the activities alleged herein. Plaintiff Michael Anderson has suffered injury-in-fact for which he is entitled to seek monetary damages.

2. Charles Honse

8. Plaintiff, Charles Honse, resides in Palm Springs, California, and is a citizen of the State of California. Plaintiff, Charles Honse, purchased American Spirits during the Class Period and has been smoking American Spirit Cigarettes for approximately 8 years. Plaintiff Charles Honse switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Charles Honse incurred losses and damages as a result of the activities alleged herein. Plaintiff Charles Honse has suffered injury-in-fact for which he is entitled to seek monetary damages.

3. Jodi Kumpula

9. Plaintiff, Jodi Kumpula, resides in Los Angeles, California, and is a citizen of the State of California. Plaintiff, Jodi Kumpula, purchased American Spirits during the Class Period. Plaintiff Jodi Kumpula switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to her, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Jodi Kumpula incurred losses and damages as a result of the activities alleged herein. Plaintiff Jodi Kumpula has suffered injury-in-fact for which she is entitled to seek monetary damages.

4. Tim Paulson

10. Plaintiff, Tim Paulson, resides in Oak Park, California, and is a citizen of the State of California. Plaintiff, Tim Paulson, purchased American Spirits during the Class Period and has been smoking American Spirit Cigarettes for approximately 4 years. Plaintiff Tim Paulson switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Tim Paulson incurred losses and damages as a result of the activities alleged herein. Plaintiff Tim Paulson has suffered injury-in-fact for which he is entitled to seek monetary damages.

C. Colorado Plaintiffs

1. Elijah Bent

11. Plaintiff, Elijah Bent, resides in Nederland, Colorado, and is a citizen of the State of Colorado. Plaintiff, Elijah Bent, purchased American Spirits during the Class Period and has been smoking American Spirit Cigarettes since he was 12 years old. Plaintiff Elijah Bent smokes American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Elijah Bent incurred losses and damages as a result of the activities alleged herein. Plaintiff Elijah Bent has suffered injury-in-fact for which he is entitled to seek monetary damages.

2. Kyle Wiebe

12. Plaintiff, Kyle Wiebe, resides in Wheat Ridge, Colorado, and is a citizen of the State of Colorado. Plaintiff, Kyle Wiebe, purchased American Spirits during the Class Period and has been smoking American Spirit Cigarettes since he was 18 years old. Plaintiff Kyle Wiebe switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Kyle Wiebe incurred losses and damages as a result of the activities alleged herein. Plaintiff Kyle Wiebe has suffered injury-in-fact for which he is entitled to seek monetary damages.

D. Florida Plaintiffs

1. Shereen Keith

13. Plaintiff, Shereen Keith, resides in the Middle District of Florida, and is a citizen of the State of Florida. Plaintiff, Shereen Keith, purchased American Spirits during the Class Period and has smoked American Spirit Cigarettes for approximately 5 years. Plaintiff Shereen Keith switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Shereen Keith incurred losses and damages as a result of the activities alleged herein. Plaintiff Shereen Keith has suffered injury-in-fact for which he is entitled to seek monetary damages.

2. Sam Bowman

14. Plaintiff, Sam Bowman, resides in the Middle District of Florida, and is a citizen of the State of Florida. Plaintiff, Sam Bowman, purchased American Spirits during the Class Period and has smoked American Spirit Cigarettes for approximately 6 years. Plaintiff Sam Bowman switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Sam Bowman incurred losses and damages as a result of the activities alleged herein. Plaintiff Sam Bowman has suffered injury-in-fact for which he is entitled to seek monetary damages.

3. Terry Cliver

15. Plaintiff, Terry Cliver, resides in the Middle District of Florida, and is a citizen of the State of Florida. Plaintiff, Terry Cliver, purchased American Spirits during the Class Period. Plaintiff Terry Cliver switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Terry Cliver incurred losses and damages as a result of the activities alleged herein. Plaintiff Terry Cliver has suffered injury-in-fact for which he is entitled to seek monetary damages.

4. Gary Cruse

16. Plaintiff, Gary Cruse, resides in the Middle District of Florida, and is a citizen of the State of Florida. Plaintiff, Gary Cruse, purchased American Spirits during the Class Period and has been smoking American Spirit Cigarettes for approximately 2 years. Plaintiff Gary Cruse

switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Gary Cruse incurred losses and damages as a result of the activities alleged herein. Plaintiff Gary Cruse has suffered injury-in-fact for which he is entitled to seek monetary damages.

5. Richard Morelock

17. Plaintiff, Richard Morelock, resides in the Middle District of Florida, and is a citizen of the State of Florida. Plaintiff, Richard Morelock, purchased American Spirits during the Class Period. Plaintiff Richard Morelock switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Richard Morelock incurred losses and damages as a result of the activities alleged herein. Plaintiff Richard Morelock has suffered injury-in-fact for which he is entitled to seek monetary damages.

6. Steve Okstad

18. Plaintiff, Steve Okstad, resides in the Middle District of Florida, and is a citizen of the State of Florida. Plaintiff, Steve Okstad, purchased American Spirits during the Class Period and has been smoking American Spirit Cigarettes for approximately 3 years. Plaintiff Steve Okstad switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Steve Okstad incurred losses and

damages as a result of the activities alleged herein. Plaintiff Steve Okstad has suffered injury-in-fact for which he is entitled to seek monetary damages.

7. Concetta Schultz

19. Plaintiff, Concetta Schultz, resides in the Middle District of Florida, and is a citizen of the State of Florida. Plaintiff, Concetta Schultz, purchased American Spirits during the Class Period and has been smoking American Spirit Cigarettes for approximately 1 year. Plaintiff Concetta Schultz switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to her, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Concetta Schultz incurred losses and damages as a result of the activities alleged herein. Plaintiff Concetta Schultz has suffered injury-in-fact for which she is entitled to seek monetary damages.

8. Judy Sell

20. Plaintiff, Judy Sell, resides in the Middle District of Florida, and is a citizen of the State of Florida. Plaintiff, Judy Sell, purchased American Spirits during the Class Period and has been smoking American Spirit Cigarettes for approximately 4 years. Plaintiff Judy Sell switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to her, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Judy Sell incurred losses and damages as a result of the activities alleged herein. Plaintiff Judy Sell has suffered injury-in-fact for which she is entitled to seek monetary damages.

9. Deborah Orr

21. Plaintiff, Deborah Orr, resides in Vero Beach, Florida, and is a citizen of the State of Florida. Plaintiff, Deborah Orr, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 7 years. Plaintiff Deborah Orr, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to her, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Deborah Orr incurred losses and damages as a result of the activities alleged herein. Plaintiff Deborah Orr has suffered injury-in-fact for which she is entitled to seek monetary damages.

E. Georgia Plaintiffs

1. Margie Harris

22. Plaintiff, Margie Harris, resides in Thomasville, Georgia, and is a citizen of the State of Georgia. Plaintiff, Margie Harris, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 6 years. Plaintiff Margie Harris, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to her, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Margie Harris incurred losses and damages as a result of the activities alleged herein. Plaintiff Margie Harris has suffered injury-in-fact for which she is entitled to seek monetary damages.

F. Iowa Plaintiffs

1. Christopher Jensen

23. Plaintiff, Christopher Jensen, resides in Delhi, Iowa, and is a citizen of the State of Iowa. Plaintiff, Christopher Jensen, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes since he is 19 years of age. Plaintiff Christopher Jensen, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Christopher Jensen incurred losses and damages as a result of the activities alleged herein. Plaintiff Christopher Jensen has suffered injury-in-fact for which he is entitled to seek monetary damages.

G. Illinois Plaintiffs

1. Vicki Wilson

24. Plaintiff, Vicki Wilson, resides in Elgin, Illinois, and is a citizen of the State of Illinois. Plaintiff, Vicki Wilson, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes since she is 25 years of age. Plaintiff Vicki Wilson, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to her, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Vicki Wilson incurred losses and damages as a result of the activities alleged herein. Plaintiff Vicki Wilson has suffered injury-in-fact for which she is entitled to seek monetary damages.

H. Maryland Plaintiffs

1. Robert Litwin

25. Plaintiff, Robert Litwin, resides in West Minster, Maryland, and is a citizen of the State of Maryland. Plaintiff, Robert Litwin, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 20 years. Plaintiff Robert Litwin, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Robert Litwin incurred losses and damages as a result of the activities alleged herein. Plaintiff Robert Litwin has suffered injury-in-fact for which he is entitled to seek monetary damages.

2. Matokie Brim

26. Plaintiff, Matokie Brim, resides in Takoma Park, Maryland, and is a citizen of the State of Maryland. Plaintiff, Matokie Brim, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 5 years. Plaintiff Matokie Brim, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Matokie Brim incurred losses and damages as a result of the activities alleged herein. Plaintiff Matokie Brim has suffered injury-in-fact for which he is entitled to seek monetary damages.

I. Maine Plaintiffs

1. Christos Christolow

27. Plaintiff, Christos Christolow, resides in Portland, Maine, and is a citizen of the State of Maine. Plaintiff, Christos Christolow, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 9 years. Plaintiff Christos Christolow, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Christos Christolow incurred losses and damages as a result of the activities alleged herein. Plaintiff Christos Christolow has suffered injury-in-fact for which he is entitled to seek monetary damages.

J. North Carolina Plaintiffs

1. Charlene Blevins

28. Plaintiff, Charlene Blevins, resides in Nebo, North Carolina, and is a citizen of the State of North Carolina. Plaintiff, Charlene Blevins, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 23 years. Plaintiff Charlene Blevins, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to her, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Charlene Blevins incurred losses and damages as a result of the activities alleged herein. Plaintiff Charlene Blevins has suffered injury-in-fact for which she is entitled to seek monetary damages.

2. Collin Jass

29. Plaintiff, Collin Jass, resides in Salisbury, North Carolina, and is a citizen of the State of North Carolina. Plaintiff, Collin Jass, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 3 years. Plaintiff Collin Jass, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Collin Jass incurred losses and damages as a result of the activities alleged herein. Plaintiff Collin Jass has suffered injury-in-fact for which he is entitled to seek monetary damages.

3. Rudolph Miller

30. Plaintiff, Rudolph Miller, resides in Jarvisburg, North Carolina, and is a citizen of the State of North Carolina. Plaintiff, Rudolph Miller, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 8 years. Plaintiff Rudolph Miller, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Rudolph Miller incurred losses and damages as a result of the activities alleged herein. Plaintiff Rudolph Miller has suffered injury-in-fact for which he is entitled to seek monetary damages.

K. New Jersey Plaintiffs

1. Kathleen Lelli

31. Plaintiff, Kathleen Lelli, resides in Cream Ridge, New Jersey, and is a citizen of the State of New Jersey. Plaintiff, Kathleen Lelli, purchased American Spirits during the Class Period. Plaintiff Kathleen Lelli, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to her, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Kathleen Lelli incurred losses and damages as a result of the activities alleged herein. Plaintiff Kathleen Lelli has suffered injury-in-fact for which she is entitled to seek monetary damages.

L. Ohio Plaintiffs

1. Clinton Horton

32. Plaintiff, Clinton Horton, resides in Waynesville, Ohio, and is a citizen of the State of Ohio. Plaintiff, Clinton Horton, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 7 years. Plaintiff Clinton Horton, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Clinton Horton incurred losses and damages as a result of the activities alleged herein. Plaintiff Clinton Horton has suffered injury-in-fact for which he is entitled to seek monetary damages.

M. Oregon Plaintiffs

1. Brook Balocca

33. Plaintiff, Brook Balocca, resides in Portland, Oregon, and is a citizen of the State of Oregon. Plaintiff, Brook Balocca, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 5 years. Plaintiff Brook Balocca, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to Plaintiff, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Brook Balocca incurred losses and damages as a result of the activities alleged herein. Plaintiff Brook Balocca has suffered injury-in-fact for which Plaintiff is entitled to seek monetary damages.

2. Asher King

34. Plaintiff, Asher King, resides in Portland, Oregon, and is a citizen of the State of Oregon. Plaintiff, Asher King, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 20 years. Plaintiff Asher King, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Asher King incurred losses and damages as a result of the activities alleged herein. Plaintiff Asher King has suffered injury-in-fact for which he is entitled to seek monetary damages.

3. Linda MacDonald-Lewis

35. Plaintiff, Linda MacDonald-Lewis, resides in Roseburg, Oregon, and is a citizen of the State of Oregon. Plaintiff, Linda MacDonald-Lewis, purchased American Spirits during the Class Period. Plaintiff Linda MacDonald-Lewis, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to Plaintiff, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Linda MacDonald-Lewis incurred losses and damages as a result of the activities alleged herein. Plaintiff Linda MacDonald-Lewis has suffered injury-in-fact for which she is entitled to seek monetary damages.

N. Pennsylvania Plaintiffs

1. Marilyn Komarinski

36. Plaintiff, Marilyn Komarinski, resides in Greensburg, Pennsylvania, and is a citizen of the State of Pennsylvania. Plaintiff, Marilyn Komarinski, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 3 years. Plaintiff Marilyn Komarinski, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to Plaintiff, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Marilyn Komarinski incurred losses and damages as a result of the activities alleged herein. Plaintiff Marilyn Komarinski has suffered injury-in-fact for which Plaintiff is entitled to seek monetary damages.

O. Texas Plaintiffs

1. Richard Peavy

37. Plaintiff, Richard Peavy, resides in Plano, Texas, and is a citizen of the State of Texas. Plaintiff, Richard Peavy, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 7 years. Plaintiff Richard Peavy, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Richard Peavy incurred losses and damages as a result of the activities alleged herein. Plaintiff Richard Peavy has suffered injury-in-fact for which he is entitled to seek monetary damages.

2. Harrison Thomas

38. Plaintiff, Harrison Thomas, resides in Houston, Texas, and is a citizen of the State of Texas. Plaintiff, Harrison Thomas, purchased American Spirits during the Class Period. Plaintiff Harrison Thomas, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Harrison Thomas incurred losses and damages as a result of the activities alleged herein. Plaintiff Harrison Thomas has suffered injury-in-fact for which he is entitled to seek monetary damages.

3. Tom Weir

39. Plaintiff, Tom Weir, resides in San Antonio, Texas, and is a citizen of the State of Texas. Plaintiff, Tom Weir, purchased American Spirits during the Class Period and has been

smoking American Spirit cigarettes for approximately 5 years. Plaintiff Tom Weir, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Tom Weir incurred losses and damages as a result of the activities alleged herein. Plaintiff Tom Weir has suffered injury-in-fact for which he is entitled to seek monetary damages.

4. Dani Weir

40. Plaintiff, Dani Weir, resides in San Antonio, Texas, and is a citizen of the State of Texas. Plaintiff, Dani Weir, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 4 years. Plaintiff Dani Weir, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Dani Weir incurred losses and damages as a result of the activities alleged herein. Plaintiff Dani Weir has suffered injury-in-fact for which he is entitled to seek monetary damages.

5. George Coon

41. Plaintiff, George Coon, resides in Houston, Texas, and is a citizen of the State of Texas. Plaintiff, George Coon, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 10 years. Plaintiff George Coon, switched to American Spirits specifically because of Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and

“Organic,” which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff George Coon incurred losses and damages as a result of the activities alleged herein. Plaintiff George Coon has suffered injury-in-fact for which he is entitled to seek monetary damages.

P. Wisconsin Plaintiffs

1. Richard Kusick

42. Plaintiff, Richard Kusick, resides in Butler, Wisconsin, and is a citizen of the State of Wisconsin. Plaintiff, Richard Kusick, purchased American Spirits during the Class Period and has been smoking American Spirit cigarettes for approximately 5 years. Plaintiff Richard Kusick, switched to American Spirits specifically because of Defendants’ advertising and other statements stating or implying that American Spirits are “Natural,” “Additive Free,” “100% Additive Free,” and “Organic,” which, to him, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Plaintiff Richard Kusick incurred losses and damages as a result of the activities alleged herein. Plaintiff Richard Kusick has suffered injury-in-fact for which he is entitled to seek monetary damages.

Q. Defendants

1. Santa Fe Natural Tobacco Company, Inc.

43. Defendant Santa Fe Natural Tobacco Company, Inc. is a New Mexico corporation. Its principal place of business is One Plaza La Prensa, Santa Fe, New Mexico 87507. Santa Fe manufactures, promotes and sells Natural American Spirit cigarettes. Santa Fe, a subsidiary of Reynolds American Inc., has been and still is engaged in the business of manufacturing, promoting and selling American Spirits throughout the United States.

2. Reynolds American Inc.

44. Defendant Reynolds American Inc. is a North Carolina corporation. Its principal place of business is 401 North Main Street, Winston-Salem, North Carolina 27101. Santa Fe Natural Tobacco Company, Inc. is an operating subsidiary of Reynolds American. Reynolds American is severally, jointly, and vicariously liable for the actions of Santa Fe.

FACTUAL ALLEGATIONS

A. The Natural American Spirit Cigarette

45. According to Reynolds American, Defendants manufacture the “fastest growing super-premium cigarette brand”² Natural American Spirit., also called American Spirits.

46. Santa Fe, created in 1982, holds itself out as a “natural tobacco” company.

47. Santa Fe’s first product was loose tobacco, which were called “The Original American Spirit” cigarette.³

48. When describing the company’s creation, a founding member remarked, “The initial proposal was to produce a natural tobacco product, an unadulterated tobacco product.”⁴

49. Defendants advertise and label its cigarettes as “100% natural.”

50. Defendants boast that “no other cigarette company has positioned itself as 100% natural.”

51. Defendants also represent that its cigarettes are “Natural,” “Additive Free,” and “Organic.”

² <http://www.sec.gov/Archives/edgar/data/1275283/000119312513050521/d449654d10k.htm> (last visited Aug. 30, 2015).

³ <https://www.sfntc.com/site/ourCompany/sfntc-story/> (last visited Aug. 30, 2015).

⁴ <https://www.sfntc.com/site/ourCompany/sfntc-story/> (last visited Aug. 30, 2015).



52. Defendants' product development and marketing scheme targets smokers inclined to buy natural, organic products in the belief that such products are healthier or more environmentally responsible. Defendants exploit these consumer attitudes in various ways. One American Spirit advertisement, for example, reads:

We make our cigarettes with 100 percent additive-free tobacco, including styles with 100 percent U.S. grown tobacco, and with certified organic tobacco. Our blenders create the highest quality tobacco blends and only use two ingredients: whole leaf tobacco and water.⁵

⁵ <https://www.sfntc.com/site/ourProduct/overview/> (last visited Aug. 30, 2015).



As another example, Defendants sent a direct mailing advertisement depicting a rain drop over a tobacco leaf that read:

TOBACCO + WATER THAT'S ALL[,] For over 30 years we've created premium, whole leaf, 100% additive-free natural tobacco products using only what the earth has given us.

Defendants also include in their advertisement alleged smoker testimonials such as: "I only purchase organic products at the grocery store and obviously I would only smoke a cigarette made with organic tobacco."

53. As a result of this deceptive marketing campaign, Natural American Spirit sales increased by 86 percent from 2009 to 2014, as compared to an overall 17 percent decline in cigarette sales in the United States over the same time period.

54. American Spirits have become one of the top 10 best-selling cigarette brands even though it is priced higher than most other competitive brands.

B. Defendants' False and Deceptive Advertising

55. The marketing for American Spirits is the most deceptive of any major U.S. cigarette brand currently on the market.⁶

56. American Spirits consumers, like Plaintiff, expect that the cigarette is healthier or less carcinogenic than other cigarettes. These consumers associate Defendants' advertising terms such as "natural," "organic," and "additive free" with reduced risk.

57. Tobacco company studies confirm these consumer associations. For example, when asked the implication of a natural cigarette compared to one with additives, focus group members thought that the absence of artificial additives assured a lower health hazard and longevity. In a 1983 study, participants described chemicals as undesirable or "not good for you." A 1996 study viewed natural as purer. A 1998 study found that natural meant less harmful.

58. Defendants deceptively exploit their insistent marketing message of a safer cigarette in other ways. They sell American Spirit cigarettes in health food stores; and Defendants accompany their cigarettes with literature from "America's leading natural foods teacher" who

⁶ "FDA Warning about Deceptive Marketing of Natural American Spirit Cigarettes, Other Brands Is Critically Important to Protect Consumers" available at: <http://www.prnewswire.com/news-releases/fda-warning-about-deceptive-marketing-of-natural-american-spirit-cigarettes-other-brands-is-critically-important-to-protect-consumers-300134309.html> (last visited Aug. 30, 2015).

claims that the cigarettes are medicinal and that Native Americans smoke such additive free cigarettes without developing cancer.

59. Defendants' intensive and successful advertising of American Spirits as natural, organic, wholesome and additive-free is overwhelming. The consuming public precisely thinks: "natural" and "organic" cigarettes are healthier and safer or less carcinogenic than cigarettes containing chemicals. In a 1997 interview, American Spirits smokers thought that Defendants "care[] more about its customers" than other cigarette companies.

60. Defendants' claim that American Spirit cigarettes are natural and "100% Additive Free" are deceptive and fraudulent. First, Defendants adds menthol and other flavors to its cigarettes. Menthol and flavoring agents are "additives." Mentholated cigarettes are particularly insidious because they make people more likely to start smoking, lead to greater nicotine dependence, and decrease the rate of quitting.

61. Second, a recent scientific study demonstrates that American Spirits are far more toxic and carcinogenic than other cigarettes.⁷ Scientists from the Center for Tobacco Products and the Tobacco and Volatiles Branch of the Centers for Disease Control and Prevention examined polycyclic aromatic hydrocarbons (PAHs), a class of carcinogenic compounds in cigarette smoke. PAHs do not naturally occur in the tobacco plant; rather, they are formed during the smoking process. Of the 50 mainstream U.S. cigarettes tested, the American Spirit Blue cigarette had the highest total PAH yields. It delivered from 60% to 170% higher PAH yields than the average PAH yields of all cigarettes analyzed. This is because American Spirit Blues, and, upon information and belief, American Spirits in general, have the highest tobacco mass. It has 216 mg more mass

⁷ Vu, A. T., Taylor, Kenneth, M., et al. Polycyclic Aromatic Hydrocarbons in the Mainstream Smoke of Popular U.S. Cigarettes. *Chemical Research in Toxicology*, 2015, 28:1616-26).

that the average tobacco mass of 49 other cigarettes. While consumers, such as Plaintiff and the Class, smoke American Spirits because they think those cigarettes are less carcinogenic, the opposite is true ó they are more carcinogenic.

62. American Spirits also contain the highest levels of freebase nicotine. The more freebase nicotine, the more addictive the cigarette. American Spirits' freebase nicotine levels are at 36 percent, compared to Camel's 2.7 percent, Winston's 6.2 percent, and Marlboro's 9.6 percent.⁸ While consumers, such as Plaintiff and the Class, smoke American Spirits as an alternative to quitting or because they think American Spirits will actually help them quit, the opposite is true ó they are smoking a more addictive cigarette.

63. What's more, Plaintiffs and the Class paid a premium price for American Spirits, which they believed were safer and less carcinogenic than other cigarettes. Defendants' public financial statements boast that they purposefully price American Spirits higher than other brands.

C. Natural American Spirit Cigarettes are Adulterated

64. The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) regulates cigarettes and other tobacco products.

65. Pursuant to the Tobacco Control Act, a tobacco product is considered a modified risk tobacco product under section 911(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.

⁸ Pankow, J., Barsanti, K., & Peyton, D. (2003) Fraction of Free-Base Nicotine in Fresh Smoke Particulate Matter from the Eclipse Cigarette by 1H NMR Spectroscopy. *Chemical Research in Toxicology*, 16(1): 23-27.

66. Under section 911(a), modified risk tobacco products cannot be introduced or delivered into interstate commerce absent prior FDA approval.

67. To obtain approval for a modified risk tobacco product, the applicant must, among other things, submit underlying scientific information relating to the research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco-related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health. Tobacco Control Act section 911(d).

68. Next, the FDA must determine that the applicant has demonstrated, among other things, that the modified risk tobacco product promotes the public health; the scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is reasonably likely in subsequent studies; and the product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the reasonably likely overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users. Tobacco Control Act section 911(g).

69. Introducing or delivering a modified risk tobacco product into interstate commerce without FDA approval means that the product is adulterated. Tobacco Control Act section 902(8).

70. On August 27, 2015, the FDA issued a warning letter to Defendants because American Spirits are adulterated.

71. According to the FDA, American Spirits are adulterated because they are modified risk tobacco products, distributed in interstate commerce, representing that they are less harmful than other cigarettes, all without FDA approval.

72. Stated simply, Defendants failed to present scientific evidence supporting their health-related representations.

73. Because Defendants sells modified risk tobacco products absent FDA authorization, it is in violation of the Tobacco Control Act.

74. Plaintiff is not seeking to enforce the Tobacco Control Act, and Plaintiff does not claim that Defendants' violation of the Tobacco Control Act gives rise to Plaintiff's claims.

D. Defendants Consciously or Recklessly Disregarded the Rights and Safety of Consumers

75. Defendants know that American Spirits' advertising and packaging campaign is deceptive or recklessly disregarded this fact, and continues to market to consumers, including Plaintiff and the Class, without disclosing the truth of its deceptive trade practices.

76. Defendants' conduct is with knowing, conscious and deliberate disregard for the rights and safety of consumers, including Plaintiff and the Class, thereby entitling Plaintiff and the Class to punitive damages in an amount appropriate to punish Defendants and deter them from similar conduct in the future.

CLASS ACTION ALLEGATIONS

77. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this action on behalf of themselves and the following class and subclasses (collectively the "Classes") initially defined as:

The Nationwide Class

All persons in the United States who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company

placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015. Collectively, all these persons will be referred to as "Plaintiffs" or "Plaintiffs Class."

The Alabama Subclass

All persons in the State of Alabama who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

The California Subclass

All persons in the State of California who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

The Colorado Subclass

All persons in the State of Colorado who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

The Florida Subclass

All persons in the State of Florida who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

The Georgia Subclass

All persons in the State of Georgia who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

The Illinois Subclass

All persons in the State of Illinois who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

The Iowa Subclass

All persons in the State of Iowa who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

The Maine Subclass

All persons in the State of Maine who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

The Maryland Subclass

All persons in the State of Maryland who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

The New Jersey Subclass

All persons in the State of New Jersey who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

The North Carolina Subclass

All persons in the State of North Carolina who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

The Ohio Subclass

All persons in the State of Ohio who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

The Oregon Subclass

All persons in the State of Oregon who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

The Pennsylvania Subclass

All persons in the State of Pennsylvania who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

The Texas Subclass

All persons in the State of Texas who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

The Wisconsin Subclass

All persons in the State of Wisconsin who purchased Natural American Spirit cigarettes for personal consumption from the first date Santa Fe Natural Tobacco Company placed its Natural American Spirit cigarettes into the stream of commerce through at least August 27, 2015.

78. Excluded from the Plaintiff Class are: Defendants and any entity or entities in which Defendants have a controlling interest; any entity or entities in which Defendants' officers, directors, or employees are employed and any of the legal representatives, heirs, successors or assigns of Defendants; the Judge to whom this case is assigned and any member of the Judge's immediate family; all persons that properly execute and timely file a request for exclusion of the Class.

79. Plaintiffs reserve the right to amend the Class definition if discovery and further investigation reveal that any Class should be divided into additional subclasses or modified in any other way.

80. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

81. The action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of the Federal Rules of Civil Procedure Rule 23(a)(1-4) and (b)(1).

82. Numerosity- the Class is so numerous that the individual joinder of all its members, in this or any action, is impracticable. The exact number or identification of the Class members is presently unknown to Plaintiff, but it is believed that Class members number at least in the

thousands. The identity of Class members is ascertainable. Class members may be informed of the pendency of this Class action by a combination of direct mail and public notice, or other means.

83. Commonality and Predominance- Common questions of fact and law exist as to all members of the Class, which predominate over questions affecting only individual members of the Class. State specific consumer protection and deceptive trade practices law should apply among the citizens of different states, respectively. These include, but are not limited to the following:

a. Whether Defendants engaged in unlawful, unfair or deceptive business practices alleged herein;

b. Whether Defendants made unlawful and misleading representations or material omissions with respect to Natural American Spirit cigarettes;

c. Whether Defendants represented that Natural American Spirit cigarettes have characteristics, uses, benefits or qualities that they do not have;

d. Whether Defendants' unlawful, unfair and deceptive practices harmed Plaintiffs and the Class;

e. Whether Plaintiffs and the Class have been damaged by the unlawful actions of the Defendants and the amount of damages to the Class;

f. Whether Defendants were unjustly enriched by its deceptive practices;

g. Whether Court-supervised medical monitoring is appropriate under the circumstances, including equitably mandating Defendants to create and/or pay the costs of smoking cessation programs;

h. Whether punitive damages should be awarded.

84. Typicality- Plaintiffs claims are typical of the claims of the members of the Class because Plaintiffs purchased American Spirits that Defendantsø deceptively promoted, sold and distributed. Plaintiff is asserting the same rights, making the same claims, and seeking the same relief for herself and for all other class members. Defendantsø unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiffs and each Class Member sustained similar injuries arising out of Defendantsø conduct in violation of common law.

85. The injuries of each Class member were caused directly by Defendantsø wrongful conduct. The factual underpinning of Defendantsø misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all Class members. Plaintiffs claims arise from the same practices and course of conduct that give rise to the claims of each member of the Class and are based on the same legal theories.

86. Adequacy- Plaintiffs are an adequate representative of the Class because Plaintiffs are Class members and Plaintiffs interests do not conflict with the interests of the members of the Class that Plaintiffs seeks to represent. Plaintiffs are represented by experienced and able counsel who have litigated numerous class actions, and Plaintiffsø counsel intends to prosecute this action vigorously for the benefit of the entire Plaintiffs Class. Plaintiffs and Plaintiffsø counsel can fairly and adequately protect the interests of the members of the Plaintiffs Class.

87. Superiority- The class action is the best available method for the efficient adjudication of this litigation because individual litigation of the Plaintiff Class claims would be impractical and individual litigation would be unduly burdensome to the courts. Individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single adjudication, economies of

scale, and comprehensive supervision by a single court. As the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

CLAIMS FOR RELIEF

A. Claims Brought on behalf of the Nationwide Class

COUNT I

FRAUD

88. Plaintiffs incorporate by reference paragraphs 1-90 above as if fully set forth herein, and further states:

89. Defendants have fraudulently and falsely represented that Natural American Spirit cigarettes are "Additive Free," "100% Additive Free," "Natural" and "Organic."

90. Defendants knowingly made false representations or material omissions regarding the safety (or lack thereof), ingredients, and engineering of the Natural American Spirit cigarettes.

91. At all relevant times, Defendants had a duty to disclose the nature and extent of what it knew regarding the safety (or lack thereof), ingredients, and engineering of the Natural American Spirit cigarettes.

92. Defendants failed to reveal this information to consumers, including Plaintiffs and the Class.

93. At all relevant times, Plaintiff and the Class were not aware that Defendants' representations were false, and they were not aware of the material information Defendants were concealing.

94. Plaintiffs and other reasonable consumers, including the Class members, reasonably relied on Defendants' representations set forth herein, and, in reliance thereon, purchased American Spirits.

95. Plaintiffs and Class members justifiably relied on Defendants' representations.

96. But for Defendants' representations, Plaintiffs and Class members would not have purchased American Spirits.

97. As a direct and proximate result of Defendants' knowingly false representations, Plaintiffs and members of the Class were induced to purchase American Spirits, and have suffered damages, to be determined at trial, in that they have been deprived of the benefit of their bargain in that they bought a product that was not what it was represented to be.

98. Plaintiffs seek all available equitable and legal remedies, including damages and costs as a result of Defendants' fraud.

COUNT II

NEGLIGENT MISREPRESENTATION

99. Plaintiffs incorporate by reference paragraphs 1-90 above as if fully set forth herein, and further state:

100. Defendants have negligently represented that Natural American Spirit cigarettes are "Additive Free," "100% Additive Free," "Natural" and "Organic."

101. Defendants' advertising and labeling campaigns misrepresent material facts to the public, including Plaintiffs and the Class about American Spirits.

102. Defendants markets American Spirits directly to consumers; the cigarettes are sealed and are not changed from the time they leave Defendants' possession until they arrive in stores to be sold to consumers.

103. Defendants knows its misstatements are material to the reasonable consumer and Defendants intend for consumers to rely upon the misstatements when choosing to purchase American Spirits.

104. Defendants have failed to adequately inform consumers, including Plaintiffs and the Class, that American Spirits are not the modified risk tobacco product that Defendants pass them off as. In addition, Defendants has failed to adequately inform consumers of its freebasing and chemical additive procedures and that its advertising and labeling campaign is false.

105. Defendants knew or should have known that its misstatements would materially affect Plaintiffs' and the Class members' decisions to purchase American Spirits.

106. Plaintiffs and other reasonable consumers, including the Class members, reasonably relied on Defendants' representations set forth herein, and, in reliance thereon, purchased American Spirits.

107. Plaintiffs and Class members justifiably relied on Defendants' representations.

108. But for Defendants' representations, Plaintiffs and Class members would not have purchased American Spirits.

109. As a direct and proximate result of Defendants' misrepresentations, Plaintiffs and members of the Class were induced to purchase American Spirits, and have suffered damages, to be determined at trial, in that they have been deprived of the benefit of their bargain in that they bought a product that was not what it was represented to be.

110. Plaintiffs seeks all available remedies, damages, and awards against Defendants as a result of Defendants' negligent misrepresentations.

COUNT III

UNJUST ENRICHMENT

111. Plaintiffs incorporates by reference paragraphs 1-90 above as if fully set forth herein, and further states:

112. As a result of Defendants' unlawful and deceptive actions described above, Defendants were enriched as the expense of Plaintiff and the Class.

113. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits it received from Plaintiff and the Class. Thus, it would be unjust and inequitable for Defendants to retain the benefit without restitution to Plaintiff and the Class for the monies paid to Defendants for the American Spirits.

COUNT IV

INJUNCTIVE RELIEF -- MEDICAL MONITORING & SMOKING CESSATION CLINICS

114. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein, and further allege:

115. As alleged above, Defendants deceived Plaintiffs and the Class into thinking that American Spirits are healthier, safer and less carcinogenic than alternative cigarettes.

116. Defendants have exposed consumers, including Plaintiffs and the Class to a product that is addictive and disease causing.

117. Plaintiffs and Class members switched to smoking American Spirits because they thought that a “Natural,” “Organic,” and “Additive Free” cigarette, as Defendants deceptively advertise, will help them quit smoking or is a healthy alternative to alternative cigarettes.

118. Smoking an addictive and potentially disease-causing product makes medical examinations and smoking cessation programs reasonable and necessary.

119. The extent of the significantly increased risk and the catastrophic nature of the illnesses to which the Defendants have exposed Plaintiffs and the Class require such medical monitoring program and/or smoking cessation programs for Plaintiffs and the Class.

120. Plaintiffs, on behalf of themselves and similarly situated Class members, invoke the equitable and injunctive power of the Court to require Defendants to fund a Court-supervised medical monitoring and smoking cessation programs because of the significantly increased risks of injury attributable to smoking American Spirits.

121. Such relief is available notwithstanding the absence of the manifestations of a present physical injury or symptomatic disease.

122. Failure to establish a medical monitoring and smoking cessation programs will result in the infliction of immeasurable and unconscionable personal injuries which are preventable.

B. Claims on Behalf of the Florida Subclass under Florida Law

COUNT I

**Violation of the Florida Deceptive and Unfair Trade Practices Act
(Fla. Stat. sec. 501.201 et seq.)**

123. Plaintiffs Sam Bowman, Terry Cliver, Gary Cruse, Richard Morelock, Steve Okstad, Deborah Orr, Concetta Schultz, Judy Sell, Shereen Keith, (“Plaintiffs” for purposes of all Florida

Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein, and further alleges:

124. The express purpose of FDUTPA is to “protect the consuming public...from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” § 501.202(2), Fla. Stat.

125. Section 501.204(1), Fla. Stat. declares as unlawful “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

126. Selling, distributing, or introducing American Spirits cigarettes in interstate commerce are “consumer transaction[s]” in the scope of FDUTPA.

127. Plaintiffs are “consumer[s]” as defined by §501.203, Fla. Stat.

128. Defendants’ American Spirits are goods within the meaning of FDUTPA and Defendants are engaged in trade or commerce within the meaning of FDUTPA.

129. Defendants’ unfair and deceptive practices are likely to mislead “and have misled “reasonable consumers, such as Plaintiffs and members of the Class.

130. Defendants have violated FDUTPA by engaging in the unfair and deceptive practices described above, which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers.

131. Specifically, Defendants have represented that American Spirits are “Additive Free,” “100% Additive Free,” “Natural” and “Organic,” when in fact, the cigarettes are engineered to deliver a higher level of nicotine, and/or contain additives and flavorings.

132. Plaintiffs and the Class have been aggrieved by Defendants unfair and deceptive practices in violation of FDUPTA, in that they purchased and consumed Defendants deceptive product.

133. Plaintiffs and the Class, as reasonable consumers, relied on Defendants to honestly and accurately represent the true nature of American Spirits.

134. Defendants have deceived reasonable consumers, like Plaintiffs and the Class, into believing American Spirits were something they were not: healthier and safer than other cigarettes.

135. The knowledge required to discern the true nature of American Spirits is beyond that of the reasonable consumer.

136. Plaintiffs and the Class have sustained damages as a direct and proximate result of Defendants tortious conduct.

137. Pursuant to §§501.211(2) and 501.2105, Fla. Stat., Plaintiffs and the Class demand damages, attorney's fees and costs and any other equitable and legal relief to which they may be entitled.

COUNT II

Injunctive Relief-Medical Monitoring

138. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein, and further allege:

139. As alleged above, Defendants deceived Plaintiffs and the Class into thinking that American Spirits are healthier, safer and less carcinogenic than alternative cigarettes.

140. Defendants have exposed consumers, including Plaintiffs and the Class to a product that is addictive and disease causing.

141. Plaintiffs and Class members switched to smoking American Spirits because they thought that a “Natural,” “Organic,” and “Additive Free” cigarette, as Defendants deceptively advertise, will help them quit smoking or is a healthy alternative to alternative cigarettes.

142. Smoking an addictive and potentially disease-causing product makes medical examinations and smoking cessation programs reasonable and necessary.

143. The extent of the significantly increased risk and the catastrophic nature of the illnesses to which the Defendants have exposed Plaintiffs and the Class require such medical monitoring program and/or smoking cessation programs for Plaintiffs and the Class.

144. Plaintiffs, on behalf of himself and similarly situated Class members, invoke the equitable and injunctive power of the Court to require Defendants to fund a Court-supervised medical monitoring and smoking cessation programs because of the significantly increased risks of injury attributable to smoking American Spirits.

145. Florida recognizes Plaintiffs and Class members’ rights to medical monitoring as a cognizable cause of action. *See Petito vs. A.H. Robbins Co., Inc.*, 750 So.2d 103 (Fla. 3rd DCA 1999). Such relief is available notwithstanding the absence of the manifestations of a present physical injury or symptomatic disease.

146. Failure to establish a medical monitoring and smoking cessation programs will result in the infliction of immeasurable and unconscionable personal injuries which are preventable.

C. Claims on Behalf of the Alabama Subclass under Alabama Law

COUNT I

**VIOLATION OF ALABAMA DECEPTIVE TRADE PRACTICES ACT
(ALA. CODE § 8-19-1, *et seq.*)**

147. Plaintiff, Tracy Lee, (öPlaintiffö for purposes of all Alabama Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein, and further alleges:

148. Plaintiff intends to assert a claim under the Alabama Deceptive Trade Practices Act (öAlabama DTPAö) which proscribes: ö(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have,ö ö(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another,ö and ö(27) Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.ö ALA. CODE § 8-19-5. Plaintiff will make a demand in satisfaction of ALA. CODE § 8-19-10(e), and may amend this Complaint to assert claims under the DTPA once the required 15 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the DTPA.

D. Claims on Behalf of the California Subclass under California Law

COUNT I

VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT

(CAL. BUS. & PROF. CODE §§ 1750, *et seq.*)

149. Plaintiffs Michael Anderson, Charles Honse, Jodi Kumpula and Tim Paulson (öPlaintiffsö for purposes of all California Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein, and further allege:

150. Plaintiffs bring this Count on behalf of the California Subclass.

151. California's Consumers Legal Remedies Act (öCLRAö), Cal. Bus. & Prof. Code §§ 1750, *et seq.*, proscribes öunfair methods of competition and unfair or deceptive acts or practices

undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer.ö

152. The American Spirit Cigarettes are ögoodsö as defined in Cal. Bus. & Prof. Code § 1761(a).

153. Plaintiffs and the other California Subclass members are öconsumersö as defined in Cal. Bus. & Prof. Code § 1761(d), and Plaintiffs, the other California Subclass members, and Defendants are öpersonsö as defined in Cal. Bus. & Prof. Code § 1761(c).

154. As alleged above, Defendants made numerous representations, and statements stating or implying that American Spirits are öNatural,ö öAdditive Free,ö ö100% Additive Free,ö and öOrganic,ö which, to Plaintiffs meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands.

155. Plaintiffs incurred losses, damages and have suffered injury-in-fact as a result of the activities alleged herein.

156. Defendants conduct, as described hereinabove, was and is in violation of the CLRA. Defendants conduct violates at least the following enumerated CLRA provisions:

- i. Cal. Civ. Code § 1770(a)(5): Representing that goods have sponsorship, approval, characteristics, uses, benefits, or quantities which they do not have;
- ii. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular standard, quality, or grade, if they are of another.

157. Plaintiffs and the other California Subclass members have suffered injury in fact and actual damages resulting from Defendants misrepresentations because they paid an inflated purchase price for the affected cigarettes.

158. In accordance with Cal. Civ. Code § 1780(a), Plaintiffs and members of the Class seek injunctive relief for Defendants violations of the CLRA.

159. While Plaintiffs do not seek to recover damages under the CLRA in this initial Complaint, after mailing appropriate notice and demand in accordance with Civil Code § 1782(a) & (d), Plaintiffs will subsequently amend this Complaint to also include a request for compensatory and punitive damages.

COUNT II

VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW (CAL. BUS. & PROF. CODE §§ 17500, *et seq.*)

160. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

161. Plaintiffs bring this Count on behalf of the California Subclass.

162. California Bus. & Prof. Code § 17500 states: “It is unlawful for any ... corporation ... with intent directly or indirectly to dispose of real or personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, ... or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

163. Defendants caused to be made or disseminated through California and the United States, through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Defendants, to be untrue and misleading to consumers, including Plaintiffs and the other Class members.

164. Defendants have violated § 17500 because the misrepresentations and omissions regarding the safety and reliability of American Spirit Cigarettes as set forth in this Complaint were material and likely to deceive a reasonable consumer.

165. Plaintiffs and the other Class members have suffered an injury in fact, including the loss of money or property, as a result of Defendants unfair, unlawful, and/or deceptive practices. In purchasing American Spirit cigarettes, Plaintiffs and the other Class members relied on the misrepresentations of Defendants with respect to the health, safety and reliability of their cigarettes. Had Plaintiffs and the other Class members known this, they would not have purchased and/or paid as much for them. Accordingly, Plaintiffs and the other Class members overpaid for their cigarettes and did not receive the benefit of their bargain and relied on Defendants representations of American Spirit cigarettes health and safety advantages.

166. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants business. Defendants wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated, both in the State of California and nationwide.

167. Plaintiffs, individually and on behalf of the other Class members, requests that this Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and the other Class

members any money Defendants acquired by unfair competition, including restitution and/or restitutionary disgorgement, and for such other relief set forth below.

COUNT III

Injunctive Relief-Medical Monitoring

168. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein, and further allege:

169. As alleged above, Defendants deceived Plaintiffs and the Class into thinking that American Spirits are healthier, safer and less carcinogenic than alternative cigarettes.

170. Defendants have exposed consumers, including Plaintiffs and the Class to a product that is addictive and disease causing.

171. Plaintiffs and Class members switched to smoking American Spirits because they thought that a "Natural," "Organic," and "Additive Free" cigarette, as Defendants deceptively advertise, would help them quit smoking or is a healthy alternative to alternative cigarettes.

172. Smoking an addictive and potentially disease-causing product makes medical examinations and smoking cessation programs reasonable and necessary.

173. The extent of the significantly increased risk and the catastrophic nature of the illnesses to which the Defendants have exposed Plaintiffs and the Class require such medical monitoring program and/or smoking cessation programs for Plaintiffs and the Class.

174. Plaintiffs, on behalf of himself and similarly situated Class members, invoke the equitable and injunctive power of the Court to require Defendants to fund a Court-supervised medical monitoring and smoking cessation programs because of the significantly increased risks of injury attributable to smoking American Spirits.

175. California recognizes Plaintiffs and Class members' rights to medical monitoring as a cognizable cause of action. *See Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 863 P.2d 795 (1993). Such relief is available notwithstanding the absence of the manifestations of a present physical injury or symptomatic disease.

176. Failure to establish a medical monitoring and smoking cessation programs will result in the infliction of immeasurable and unconscionable personal injuries which are preventable.

E. Claims on Behalf of the Colorado Subclass under Colorado Law

COUNT I

VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT
(COLO. REV. STAT. §§ 6-1-101, *et seq.*)

177. Plaintiffs Elijah Bent and Kyle Wiebe, (Plaintiffs for purposes of all Colorado Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein and further state:

178. Plaintiffs bring this Count on behalf of the Colorado Subclass.

179. Colorado's Consumer Protection Act (the "CCPA") prohibits a person from engaging in a "deceptive trade practice," which includes knowingly making "a false representation as to the source, sponsorship, approval, or certification of goods," or "a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods." COLO. REV. STAT. § 6-1-105(1)(b), (e). The CCPA further prohibits "represent[ing] that goods ... are of a particular standard, quality, or grade ... if he knows or should know that they are of another," and "advertis[ing] goods ... with intent not to sell them as advertised." COLO. REV. STAT. § 6-1-105(1)(g), (i).

180. Defendants are each a "person" under § 6-1-102(6) of the Colorado CPA, COL. REV. STAT. § 6-1-101, *et seq.*

181. Plaintiffs and Colorado Class members are "consumers" for the purpose of COL. REV. STAT. § 6-1-113(1)(a) who purchased American Spirit cigarettes.

182. In the course of Defendants' business, Defendants' advertising and other statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, to Plaintiffs' meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands. Accordingly, Defendants engaged in unlawful trade practices, including representing that American Spirit cigarettes have characteristics, benefits, and qualities which they do not have; that their cigarettes are of a particular standard and quality when they are not; and otherwise engaging in conduct likely to deceive.

183. In purchasing American Spirit cigarettes, Plaintiffs and the other Colorado Subclass members were deceived by Defendants' representations and statements.

184. Plaintiffs and Colorado Subclass members reasonably relied upon Defendants' false misrepresentations. They had no way of knowing that such representations were false and gravely misleading. As alleged herein, Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Colorado Subclass members did not, and could not, unravel Defendants' deception on their own.

185. Defendants intentionally and knowingly represented material facts with an intent to mislead Plaintiffs and the Colorado Subclass.

186. Defendants knew or should have known that its conduct violated the Colorado CPA.

187. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

188. Defendants' conduct proximately caused injuries to Plaintiffs and the other Class members.

189. Plaintiffs and the other Class members were injured as a result of Defendants' conduct in that Plaintiffs and the other Class members incurred losses and damages as a result of the activities alleged herein. Plaintiffs have suffered injury-in-fact for which they are entitled to seek monetary damages. These injuries are the direct and natural consequence of Defendants' misleading representations and statements.

190. Pursuant to Col. Rev. Stat. § 6-1-113, Plaintiffs and the Colorado Subclass seek monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial and the discretionary trebling of such damages, or (b) statutory damages in the amount of \$500 for each Plaintiffs and each Colorado Subclass member.

191. Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the Colorado CPA.

F. Claims on Behalf of the Georgia Subclass under Georgia Law

COUNT I

VIOLATION OF GEORGIA'S FAIR BUSINESS PRACTICES ACT

(GA. CODE ANN. § 10-1-390, *et seq.*)

192. Plaintiff, Margie Harris, (Plaintiff, for purposes of all Georgia Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein, and further alleges:

193. Plaintiff intends to assert a claim under the Georgia Fair Business Practices Act (öGeorgia FBPAö) which declares ö[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerceö to be unlawful, GA. CODE. ANN. § 10-1-393(a), including but not limited to örepresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have,ö ö[r]epresenting that goods or services are of a particular standard, quality, or grade ... if they are of another,ö and ö[a]dvertising goods or services with intent not to sell them as advertised.ö GA. CODE. ANN. § 10-1-393(b). Plaintiffs will make a demand in satisfaction of GA. CODE. ANN. § 10-1-399, and may amend this Complaint to assert claims under the Georgia FBPA once the required 30 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the Georgia FBPA.

COUNT II

VIOLATION OF GEORGIA'S UNIFORM DECEPTIVE TRADE PRACTICES ACT (GA. CODE ANN. § 10-1-390, *et seq.*)

194. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

195. This claim is brought only on behalf of the Georgia Subclass.

196. Defendants, Plaintiff, and the Georgia Subclass are öpersonsö within the meaning of Georgia Uniform Deceptive Trade Practices Act (öGeorgia UDTPAö), GA. CODE. ANN. § 101-371(5).

197. The Georgia UDTPA prohibits ödeceptive trade practices,ö which include the ömisrepresentation of standard or quality of goods or services,ö and öengaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.ö GA. CODE. ANN. §

10-1-372(a). By advertising and making statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands, Defendants engaged in deceptive trade practices prohibited by the Georgia UDTPA.

198. In the course of its business, Defendants have known that such statements were inaccurate and would charge a premium for their cigarettes described herein and otherwise engaged in activities with a tendency or capacity to deceive. Defendants have engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of American Spirit cigarettes.

199. Defendants unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, and the Georgia Subclass.

200. Defendants knew or should have known that its conduct violated the Georgia UDTPA.

201. Plaintiff and the Georgia Subclass suffered ascertainable loss caused by Defendants misleading representations and failure to disclose material information. Class members who purchased American Spirit cigarettes either would have paid less for their cigarettes or would not have purchased them at all.

202. Defendants had an ongoing duty to all American Spirit cigarette customers to refrain from unfair and deceptive acts or practices under the Georgia UDTPA. All owners of American Spirit cigarettes suffered ascertainable loss as a result of Defendants deceptive and unfair acts and practices made in the course of Defendants business.

203. As a direct and proximate result of Defendants violations of the Georgia UDTPA, Plaintiff and the Georgia Subclass have suffered injury-in-fact and/or actual damage.

204. Plaintiff seeks an order enjoining Defendants unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Georgia UDTPA per GA. CODE. ANN § 10-1-373.

G. Claims on Behalf of the Illinois Subclass under Illinois Law

COUNT I

VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

(815 ILCS 505/1, *et seq.* and 720 ILCS 295/1A.)

205. Plaintiff Vicki Wilson, (öPlaintiff,ö for purposes of all Illinois Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

206. This claim is brought only on behalf of the Illinois Subclass.

207. Defendants are each a öpersonö as that term is defined in 815 ILCS 505/1(c).

208. Plaintiff and the Illinois Subclass are öconsumersö as that term is defined in 815 ILCS 505/1(e).

209. The Illinois Consumer Fraud and Deceptive Business Practices Act (öIllinois CFAö) prohibits öunfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact ... in the conduct of trade or commerce ... whether any person has in fact been misled, deceived or damaged thereby.ö 815 ILCS 505/2.

210. Defendants participated in misleading, false, or deceptive acts that violated the Illinois CFA. By advertising and making statements stating or implying that American Spirits are

“Natural,” “Additive Free,” “100% Additive Free,” and “Organic,” which, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands, Defendants engaged in deceptive trade practices prohibited by the Illinois CFA.

211. In the course of its business, Defendants have known that such statements were inaccurate and would charge a premium for their cigarettes described herein and otherwise engaged in activities with a tendency or capacity to deceive. Defendants have engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of American Spirit cigarettes.

212. Defendants engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such representations, in connection with the sale of American Spirit cigarettes.

213. Defendants have known of the true nature of its representations.

214. Defendants’ unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, and the Illinois Subclass.

215. Defendants intentionally and knowingly represented material facts regarding American Spirit cigarettes with an intent to mislead Plaintiff and the Illinois Subclass.

216. Defendants knew or should have known that its conduct violated the Illinois CFA.

217. Defendants had an ongoing duty to all American Spirit cigarette customers to refrain from unfair and deceptive acts or practices under the Illinois UDTPA.

218. All owners of American Spirit cigarettes suffered ascertainable loss as a result of Defendants deceptive and unfair acts and practices made in the course of Defendants business.

Class members who purchased American Spirit cigarettes either would have paid less for their cigarettes or would not have purchased them at all.

219. Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

220. As a direct and proximate result of Defendants' violations of the Illinois CFA, Plaintiffs and the Illinois Subclass have suffered injury-in-fact and/or actual damage.

221. Pursuant to 815 ILCS 505/10a(a), Plaintiffs and the Illinois Subclass seek monetary relief against Defendants in the amount of actual damages, as well as punitive damages because Defendants acted with fraud and/or malice and/or was grossly negligent.

222. Plaintiffs also seek an order enjoining Defendants' unfair and/or deceptive acts or practices, punitive damages, and attorneys' fees, and any other just and proper relief available under 815 ILCS § 505/1 *et seq.*

H. Claims on Behalf of the Iowa Subclass under Iowa Law

COUNT I

VIOLATIONS OF THE PRIVATE RIGHT OF ACTION FOR CONSUMER FRAUDS ACT (IOWA CODE §§ 714H.1, *ET SEQ.*)

223. Plaintiff Christopher Jensen, (õPlaintiff,ö for purposes of all Iowa Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

224. Plaintiff brings this Count on behalf of the Iowa Subclass.

225. Defendants are each a õpersonö under Iowa Code § 714H.2(7).

226. Plaintiff and the Iowa Subclass are õconsumers,ö as defined by Iowa Code § 714H.2(3), who purchased one or more American Spirit cigarettes.

227. Defendants participated in unfair or deceptive acts or practices that violated Iowa's Private Right of Action for Consumer Fraud Act (Iowa CFA), Iowa Code § 714H.1, et seq., as described herein. Defendants are directly liable for these violations of law.

228. By advertising and making statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands, Defendants engaged in deceptive trade practices prohibited by the Iowa CFA, including (1) representing that American Spirit cigarettes have characteristics, uses, benefits, and qualities which they do not have, (2) representing that American Spirit cigarettes are of a particular standard, quality, and grade when they are not, (3) advertising American Spirit cigarettes with the intent not to sell them as advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

229. As alleged above, Defendants have known that such statements were inaccurate and would charge a premium for their cigarettes described herein and otherwise engaged in activities with a tendency or capacity to deceive. Defendants have engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of American Spirit cigarettes.

230. Defendants engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such representations, in connection with the sale of American Spirit cigarettes.

231. Defendants have known of the true nature of its representations.

232. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, and the Iowa Subclass.

233. Defendants intentionally and knowingly represented material facts regarding American Spirit cigarettes with an intent to mislead Plaintiff and the Iowa Subclass.

234. Defendants knew or should have known that its conduct violated the Iowa CFA.

235. Defendants had an ongoing duty to all American Spirit cigarette customers to refrain from unfair and deceptive acts or practices under the Iowa CFA.

236. All owners of American Spirit cigarettes suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business. Class members who purchased American Spirit cigarettes either would have paid less for their cigarettes or would not have purchased them at all.

237. Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

238. As a direct and proximate result of Defendants' violations of the Iowa CFA, Plaintiffs and the Iowa Subclass have suffered injury-in-fact and/or actual damage.

239. Plaintiff and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under Chapter 714H of the Iowa Code. Because Defendants' conduct was committed willfully, Plaintiff seeks treble damages as provided in Iowa Code § 714H.5(4).

240. Plaintiff also seeks court costs and attorneys' fees as a result of Defendants' violation of Chapter 714H as provided in Iowa Code § 714H.5(2).

I. Claims on Behalf of the Maine Subclass under Maine Law

COUNT I

VIOLATIONS OF MAINE UNFAIR TRADE PRACTICES ACT
(ME. REV. STAT. ANN. TIT. 5 § 205-A, *et seq.*)

241. Plaintiff Christos Christolow (öPlaintiff,ö for purposes of all Maine Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein, and further states:

242. Plaintiff intends to assert a claim under the Maine Unfair Trade Practices Act (öMaine UTPAö) which makes unlawful ö[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce....ö ME. REV. STAT. ANN. TIT. 5 § 207. Plaintiffs will make a demand in satisfaction of ME. REV. STAT. ANN. TIT. 5, § 213(A), and may amend this Complaint to assert claims under the Maine UTPA once the required 30 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the Maine UTPA.

J. Claims on Behalf of the Maryland Subclass under Maryland Law

COUNT I

VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT
(MD. CODE COM. LAW § 13-101, *ET SEQ.*)

243. Plaintiffs Robert Litwin and Matokie Brim, (öPlaintiffs,ö for purposes of all Maryland Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein and further states:

244. This claim is brought only on behalf of members of the Maryland Subclass.

245. Defendants, Plaintiffs, and the Maryland Subclass are öpersonsö within the meaning of MD. CODE COM. LAW § 13-101(h).

246. The Maryland Consumer Protection Act (öMaryland CPAö) provides that a person may not engage in any unfair or deceptive trade practice in the sale of any consumer good. MD. COM. LAW CODE § 13-303. Defendants participated in misleading, false, or deceptive acts that violated the Maryland CPA. By advertising and making statements stating or implying that American Spirits are öNatural,ö öAdditive Free,ö ö100% Additive Free,ö and öOrganic,ö which meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands, Defendants engaged in deceptive business practices prohibited by the Maryland CPA.

247. In the course of its business, Defendants have known that such statements were inaccurate and would charge a premium for their cigarettes described herein and otherwise engaged in activities with a tendency or capacity to deceive. Defendants have engaged in unlawful trade and business practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of American Spirit cigarettes.

248. Defendants engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such representations, in connection with the sale of American Spirit cigarettes.

249. Defendants have known of the true nature of its representations.

250. Defendantsö unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, and the Maryland Subclass.

251. Defendants intentionally and knowingly represented material facts regarding American Spirit cigarettes with an intent to mislead Plaintiff and the Maryland Subclass.

252. Defendants knew or should have known that its conduct violated the Maryland CPA.

253. Defendants had an ongoing duty to all American Spirit cigarette customers to refrain from unfair and deceptive acts or practices under the Maryland CPA.

254. All owners of American Spirit cigarettes suffered ascertainable loss as a result of Defendants deceptive and unfair acts and practices made in the course of Defendants business. Class members who purchased American Spirit cigarettes either would have paid less for their cigarettes or would not have purchased them at all.

255. Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

256. As a direct and proximate result of Defendants violations of the Maryland CPA, Plaintiffs and the Maryland Subclass have suffered injury-in-fact and/or actual damage.

257. Pursuant to MD. CODE COM. LAW § 13-408, Plaintiffs and the Maryland Subclass seek actual damages, attorneys' fees, and any other just and proper relief available under the Maryland CPA.

K. Claims on Behalf of the New Jersey Subclass under New Jersey Law

COUNT I

**VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT
(N.J. STAT. ANN. §§ 56:8-1, *ET SEQ.*)**

258. Plaintiff Kathleen Lelli (õPlaintiff,ö for purposes of all New Jersey Class Counts) incorporate by reference all preceding allegations as though fully set forth herein, and further state:

259. Plaintiff brings this Count on behalf of the New Jersey Subclass.

260. The New Jersey Consumer Fraud Act, N.J. STAT. ANN. §§ 56:8-1, *et seq.* (NJ CFA), prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

261. Defendants participated in misleading, false, or deceptive acts that violated the New Jersey CFA. By advertising and making statements stating or implying that American Spirits are "Natural," "Additive Free," "100% Additive Free," and "Organic," which, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands, Defendants engaged in deceptive trade practices prohibited by the New Jersey CFA.

262. In the course of its business, Defendants have known that such statements were inaccurate and would charge a premium for their cigarettes described herein and otherwise engaged in activities with a tendency or capacity to deceive. Defendants have engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of American Spirit cigarettes.

263. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

264. Defendants' conduct proximately caused injuries to Plaintiff and the other New Jersey Subclass members.

265. Plaintiff and the other New Jersey Subclass members were injured as a result of Defendants' conduct in that Plaintiff and the other New Jersey Subclass members overpaid for American Spirit cigarettes and did not receive the benefit of their bargain. These injuries are the direct and natural consequence of Defendants' misrepresentations.

266. Pursuant TO N.J. STAT. ANN. § 56:8-20, Plaintiffs will serve the New Jersey Attorney General with a copy of this Complaint.

L. Claims on Behalf of the North Carolina Subclass under North Carolina Law

COUNT I

VIOLATIONS OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT

(N.C. GEN. STAT. §§ 75-1.1, *et seq.*)

267. Plaintiffs Charlene Blevins, Collin Jass, and Rudolph Miller, (öPlaintiffs,ö for purposes of all North Carolina Class Counts) incorporates by reference all preceding allegations as though fully set forth herein and further state:

268. Plaintiffs brings this Count on behalf of the North Carolina Subclass.

269. North Carolina's Unfair and Deceptive Trade Practices Act, N.C. GEN. STAT. §§ 75-1.1, *et seq.* (öNCUDTPAö), prohibits a person from engaging in ö[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce[.]ö The NCUDTPA provides a private right of action for any person injured öby reason of any act or thing done by any other person, firm or corporation in violation ofö the NCUDTPA. N.C. GEN. STAT. § 75-16.

270. Defendants acts and practices complained of herein were performed in the course of Defendants trade or business and thus occurred in or affected öcommerce,ö as defined in N.C. GEN. STAT. § 75-1.1(b).

271. In the course of Defendants business, Defendants participated in misleading, false, or deceptive acts that violated the North Carolina NCUDTPA. By advertising and making statements stating or implying that American Spirits are öNatural,ö öAdditive Free,ö ö100% Additive Free,ö and öOrganic,ö which, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands, Defendants engaged in deceptive trade practices prohibited by the North Carolina NCUDTPA.

272. In the course of its business, Defendants have known that such statements were inaccurate and would charge a premium for their cigarettes described herein and otherwise engaged in activities with a tendency or capacity to deceive. Defendants have engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of American Spirit cigarettes.

273. Defendants engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such representations, in connection with the sale of American Spirit cigarettes.

274. Defendants conduct proximately caused injuries to Plaintiffs and the other Class members.

275. Defendants acted with willful and conscious disregard of the rights of others, and acted with fraud and/or malice and/or was grossly negligent subjecting Plaintiffs and the other Class members to unjust hardship as a result, such that an award of punitive damages is appropriate.

276. All owners of American Spirit cigarettes suffered ascertainable loss as a result of Defendants deceptive and unfair acts and practices made in the course of Defendants business. Class members who purchased American Spirit cigarettes either would have paid less for their cigarettes or would not have purchased them at all. These injuries are the direct and natural consequence of Defendants false and misleading representations and omissions.

277. Plaintiffs, individually and on behalf of the other Class members, seek treble damages pursuant to N.C. GEN. STAT. § 75-16, and an award of attorneys' fees pursuant to N.C. GEN. STAT. § 75-16.1.

M. Claims on Behalf of the Ohio Subclass under Ohio Law

COUNT I

VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT
(OHIO REV. CODE §§ 1345.01, *et seq.*)

278. Plaintiff Clinton Horton, (õPlaintiff,ö for purposes of all Ohio Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein, and further states:

279. Plaintiff brings this Count on behalf of the Ohio Subclass.

280. Plaintiff and the other Ohio Subclass members are õconsumersö as defined by the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 (õOCSPAö). Defendants are a õsupplierö as defined by the OCSPA. Plaintiff and the other Ohio Subclass membersøpurchases of American Spirit cigarettes were õconsumer transactionsö as defined by the OCSPA.

281. By advertising and making statements stating or implying that American Spirits are õNatural,ö õAdditive Free,ö õ100% Additive Free,ö and õOrganic,ö which, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands, Defendants engaged in deceptive business practices prohibited by the OCSPA, including (1) representing that American Spirit cigarettes have characteristics, uses, benefits, and qualities which they do not have, (2) representing that American Spirit cigarettes are of a particular standard, quality, and grade when they are not, (3) advertising American Spirit cigarettes with the intent not to sell them as advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

282. As alleged above, Defendants have known that such statements were inaccurate and would charge a premium for their cigarettes described herein and otherwise engaged in activities with a tendency or capacity to deceive. Defendants have engaged in unlawful trade practices by

employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of American Spirit cigarettes.

283. Defendants engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such representations, in connection with the sale of American Spirit cigarettes.

284. Defendants have known of the true nature of its representations.

285. Defendants had an ongoing duty to all American Spirit cigarette customers to refrain from unfair and deceptive acts or practices under the OCSPA.

286. Defendants' unfair or deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers, including Plaintiff and the Ohio Subclass, about the true characteristics of American Spirit cigarettes.

287. As a result of its violations of the OCSPA, as detailed above, all owners of American Spirit cigarettes suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business. Class members who purchased American Spirit cigarettes either would have paid less for their cigarettes or would not have purchased them at all. These injuries are the direct and natural consequence of Defendants' false and misleading representations and omissions.

288. Plaintiff and the Class sustained damages as a result of Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under the OCSPA.

289. Plaintiff also seeks court costs and attorneys' fees as a result of Defendants' violations of the OCSPA as provided in Ohio Rev. Code § 1345.09

N. Claims on Behalf of the Oregon Subclass under Oregon Law

COUNT I

VIOLATION OF THE OREGON UNLAWFUL TRADE PRACTICES ACT
(OR. REV. STAT. §§ 646.605, *et seq.*)

290. Plaintiffs Brook Balocca, Asher King and Linda MacDonald-Lewis (öPlaintiffs,ö for purposes of all Oregon Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

291. This claim is brought only on behalf of the Oregon Subclass.

292. Defendants are a person within the meaning of OR. REV. STAT. § 646.605(4).

293. The American Spirit cigarettes at issue are ögoodsö obtained primarily for personal family or household purposes within the meaning of OR. REV. STAT. § 646.605(6).

294. The Oregon Unfair Trade Practices Act (öOregon UTPAö) prohibits a person from, in the course of the person's business, doing any of the following: ö(e) Represent[ing] that ... goods ... have ... characteristics ... uses, benefits, ... or qualities that they do not have; (g) Represent[ing] that ... goods ... are of a particular standard [or] quality ... if they are of another; (i) Advertis[ing] ... goods or services with intent not to provide them as advertised;ö and ö(u) engag[ing] in any other unfair or deceptive conduct in trade or commerce.ö OR. REV. STAT. § 646.608(1).

295. By advertising and making statements stating or implying that American Spirits are öNatural,ö öAdditive Free,ö ö100% Additive Free,ö and öOrganic,ö which, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands, Defendants engaged in deceptive trade practices prohibited by the Oregon UTPA, including (1) representing that American Spirit cigarettes have characteristics, uses, benefits, and qualities which they do not have, (2) representing that American Spirit cigarettes are of a particular standard, quality, and grade when they are not, (3) advertising American Spirit cigarettes with the intent not to sell them as advertised

and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

296. In the course of its business, Defendants have known that such statements were inaccurate and would charge a premium for their cigarettes described herein and otherwise engaged in activities with a tendency or capacity to deceive. Defendants have engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of American Spirit cigarettes.

297. Defendants engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such representations, in connection with the sale of American Spirit cigarettes.

298. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

299. Defendants' unfair or deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers, including Plaintiffs and the Oregon Subclass, about the true characteristics of American Spirit cigarettes.

300. As a result of its violations of the Oregon UTPA, as detailed above, all owners of American Spirit cigarettes suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business. Class members who purchased American Spirit cigarettes either would have paid less for their cigarettes or would not have purchased them at all. These injuries are the direct and natural consequence of Defendants' false and misleading representations and omissions.

301. Defendants intentionally and knowingly misrepresented material facts regarding the American Spirit cigarettes with an intent to mislead Plaintiff and the Oregon Subclass.

302. Defendants knew or should have known that its conduct violated the Oregon UTPA.

303. Defendants had an ongoing duty to all American Spirit cigarette customers to refrain from unfair and deceptive acts or practices under the Oregon UTPA.

304. Plaintiffs and the Oregon Subclass suffered ascertainable loss caused by Defendants false and misleading representations.

305. Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

306. As a direct and proximate result of Defendants' violations of the Oregon UTPA, Plaintiffs and the Oregon Subclass have suffered injury-in-fact and/or actual damage.

307. Plaintiffs and the Oregon Subclass are entitled to recover the greater of actual damages or \$200 pursuant to OR. REV. STAT. § 646.638(1). Plaintiffs and the Oregon Subclass are also entitled to punitive damages because Defendants engaged in conduct amounting to a particularly aggravated, deliberate disregard of the rights of others.

O. Claims on Behalf of the Pennsylvania Subclass under Pennsylvania Law

COUNT I

**VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND
CONSUMER PROTECTION LAW**

(73 P.S. § 201-1, *et seq.*)

308. Plaintiff Marilyn Komarinski, (õPlaintiff,ö for purposes of all Pennsylvania Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

309. This claim is brought only on behalf of the Pennsylvania Subclass.

310. Plaintiff purchased American Spirit cigarettes primarily for personal, family or household purposes within the meaning of 73 P.S. § 201-9.2.

311. All of the acts complained of herein were perpetrated by Defendants in the course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

312. The Pennsylvania Unfair Trade Practices and Consumer Protection Law (õPennsylvania CPLö) prohibits unfair or deceptive acts or practices, including: (i) õRepresenting that goods or services have ... characteristics, Benefits or qualities that they do not have;ö (ii) õRepresenting that goods or services are of a particular standard, quality or grade ... if they are of another;;ö (iii) õAdvertising goods or services with intent not to sell them as advertised;ö and (iv) õEngaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding.ö 73 P.S. § 201-2(4).

313. By advertising and making statements stating or implying that American Spirits are õNatural,ö õAdditive Free,ö õ100% Additive Free,ö and õOrganic,ö which, meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands, Defendants engaged in deceptive trade practices prohibited by the Pennsylvania CPL, including (1) representing that American Spirit cigarettes have characteristics, uses, benefits, and qualities which they do not have, (2) representing that American Spirit cigarettes are of a particular standard, quality, and grade when they are not, (3) advertising American Spirit cigarettes with the intent not to sell them as advertised,

and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

314. In the course of its business, Defendants have known that such statements were inaccurate and would charge a premium for their cigarettes described herein and otherwise engaged in activities with a tendency or capacity to deceive. Defendants have engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of American Spirit cigarettes.

315. Defendants engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such representations, in connection with the sale of American Spirit cigarettes.

316. Defendants have known of the true nature of its representations.

317. Defendants engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such representations, in connection with the sale of American Spirit cigarettes.

318. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

319. Defendants' unfair or deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers, including Plaintiff and the Pennsylvania Subclass, about the true characteristics of American Spirit cigarettes.

320. Defendants intentionally and knowingly misrepresented material facts regarding the American Spirit cigarettes with an intent to mislead Plaintiff and the Pennsylvania Subclass

321. As a result of its violations of the Pennsylvania CPL, as detailed above, all owners of American Spirit cigarettes suffered ascertainable loss as a result of Defendants deceptive and unfair acts and practices made in the course of Defendants business. Class members who purchased American Spirit cigarettes either would have paid less for their cigarettes or would not have purchased them at all. These injuries are the direct and natural consequence of Defendants false and misleading representations and omissions.

322. Defendants intentionally and knowingly misrepresented material facts regarding the American Spirit cigarettes with an intent to mislead Plaintiff and the Pennsylvania Subclass.

323. Defendants knew or should have known that its conduct violated the Pennsylvania CPL.

324. Defendants had an ongoing duty to all American Spirit cigarette customers to refrain from unfair and deceptive acts or practices under the Pennsylvania CPL.

325. Plaintiff and the Pennsylvania Subclass suffered ascertainable loss caused by Defendants false and misleading representations.

326. Defendants violations present a continuing risk to Plaintiff as well as to the general public. Defendants unlawful acts and practices complained of herein affect the public interest.

327. As a direct and proximate result of Defendants violations of the Pennsylvania CPL, Plaintiff and the Pennsylvania Subclass have suffered injury-in-fact and/or actual damage.

328. Defendants are liable to Plaintiffs and the Pennsylvania Subclass for treble their actual damages or \$100, whichever is greater, and attorneys fees and costs. 73 P.S. § 2019.2(a). Plaintiffs and the Pennsylvania Subclass are also entitled to an award of punitive damages given

that Defendants conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others.

COUNT II

Injunctive Relief-Medical Monitoring

329. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein, and further allege:

330. As alleged above, Defendants deceived Plaintiffs and the Class into thinking that American Spirits are healthier, safer and less carcinogenic than alternative cigarettes.

331. Defendants have exposed consumers, including Plaintiffs and the Class to a product that is addictive and disease causing.

332. Plaintiffs and Class members switched to smoking American Spirits because they thought that a “Natural,” “Organic,” and “Additive Free” cigarette, as Defendants deceptively advertise, would help them quit smoking or is a healthy alternative to alternative cigarettes.

333. Smoking an addictive and potentially disease-causing product makes medical examinations and smoking cessation programs reasonable and necessary.

334. The extent of the significantly increased risk and the catastrophic nature of the illnesses to which the Defendants have exposed Plaintiffs and the Class require such medical monitoring program and/or smoking cessation programs for Plaintiffs and the Class.

335. Plaintiffs, on behalf of himself and similarly situated Class members, invoke the equitable and injunctive power of the Court to require Defendants to fund a Court-supervised medical monitoring and smoking cessation programs because of the significantly increased risks of injury attributable to smoking American Spirits.

336. Pennsylvania recognizes Plaintiffs and Class members' rights to medical monitoring as a cognizable cause of action. *See Redland Soccer Club, Inc. v. Dep't of the Army & Dep't of Def. of the U.S.*, 548 Pa. 178, 195, 696 A.2d 137, 145 (1997). Such relief is available notwithstanding the absence of the manifestations of a present physical injury or symptomatic disease.

337. Failure to establish a medical monitoring and smoking cessation programs will result in the infliction of immeasurable and unconscionable personal injuries which are preventable.

P. Claims on Behalf of the Texas Subclass under Texas Law

COUNT I

VIOLATION OF THE DECEPTIVE TRADE PRACTICES ACT

(TEX. BUS. & COM. CODE §§ 17.41, *et seq.*)

338. Plaintiffs Richard Peavy, Harrison Thomas, Tom Weir, Dani Weir and George Coon, (Plaintiffs, for purposes of all Texas Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein, and further state:

339. Plaintiffs intend to assert a claim under the Texas Deceptive Trade Practices Act (TDTPA), which makes it unlawful to commit "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce." TEX. BUS. & COM. CODE § 17.46. Plaintiffs will make a demand in satisfaction of TEX. BUS. & COM. CODE § 17.45(2), and may amend this Complaint to assert claims under the TDTPA once the required 60 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the TDTPA.

Q. Claims on Behalf of the Wisconsin Subclass under Wisconsin Law

COUNT I

**VIOLATION OF THE WISCONSIN DECEPTIVE TRADE PRACTICES ACT
(WIS. STAT. § 110.18.)**

340. Plaintiff Richard Kusick, (öPlaintiff,ö for purposes of all Wisconsin Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

341. This claim is brought only on behalf of the Wisconsin Subclass.

342. Defendants are a öperson, firm, corporation or associationö within the meaning of WIS. STAT. § 100.18(1).

343. Plaintiff and Wisconsin Subclass Members are members of öthe publicö within the meaning of WIS. STAT. § 100.18(1). Plaintiff and Wisconsin Subclass Members purchased one or more American Spirit cigarettes.

344. The Wisconsin Deceptive Trade Practices Act (öWisconsin DTPAö) prohibits a örepresentation or statement of fact which is untrue, deceptive or misleading.ö WIS. STAT. § 100.18(1). By advertising and making statements stating or implying that American Spirits are öNatural,ö öAdditive Free,ö ö100% Additive Free,ö and öOrganic,ö which meant that American Spirits are safer, healthier and less carcinogenic than other cigarette brands, Defendants engaged in unfair and deceptive acts and practices and violated the Wisconsin DTPA.

345. In the course of its business, Defendants have known that such statements were inaccurate and would charge a premium for their cigarettes described herein and otherwise engaged in activities with a tendency or capacity to deceive. Defendants have engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of American Spirit cigarettes.

346. Defendants engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such representations, in connection with the sale of American Spirit cigarettes.

347. Defendants have known of the true nature of its representations.

348. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, and the Wisconsin Subclass.

349. Defendants intentionally and knowingly represented material facts regarding American Spirit cigarettes with an intent to mislead Plaintiff and the Wisconsin Subclass.

350. Defendants knew or should have known that its conduct violated the Wisconsin DTPA.

351. Defendants had an ongoing duty to all American Spirit cigarette customers to refrain from unfair and deceptive acts or practices under the Wisconsin DTPA.

352. Defendants' unfair or deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers, including Plaintiff and the Wisconsin Subclass, about the true characteristics of American Spirit cigarettes.

353. As a result of its violations of the Wisconsin DTPA, as detailed above, all owners of American Spirit cigarettes suffered ascertainable loss as a result of Defendants deceptive and unfair acts and practices made in the course of Defendants business. Class members who purchased American Spirit cigarettes either would have paid less for their cigarettes or would not have purchased them at all. These injuries are the direct and natural consequence of Defendants false and misleading representations and omissions.

354. Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

355. As a direct and proximate result of Defendants' violations of the Wisconsin DTPA, Plaintiff and the Wisconsin Subclass have suffered injury-in-fact and/or actual damage.

356. Plaintiff and the Wisconsin Subclass are entitled to damages and other relief provided for under WIS. STAT. § 100.18(11)(b)(2). Because Defendants' conduct was committed knowingly and/or intentionally, Plaintiff and the Wisconsin Subclass are entitled to treble damages.

357. Plaintiff and the Wisconsin Subclass also seek court costs and attorneys' fees under WIS. STAT. § 110.18(11)(b)(2).

WHEREFORE, Plaintiffs, on behalf of themselves individually and on behalf of all Class members, seek the following relief against all Defendants:

- A. An order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing an appropriate Class and any Subclasses the Court deems appropriate, and finding that Plaintiffs are proper representatives of the Class;
- B. Actual and/or compensatory damages and/or exemplary damages and/or the recovery of civil penalties as provided under common law and by the respective Subclass state statutes and/or an award equal to the amount by which the Defendants have been unjustly enriched;
- C. An order requiring medical monitoring and smoking cessation programs;
- D. An order awarding pre-judgment and post-judgment interest;

- E. The costs of this proceeding and attorneys' fees,
- F. Punitive damages in an appropriate amount;
- G. Any further compensatory, injunctive, equitable or declaratory relief including refunds as may be just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: January 27, 2016

Respectfully submitted,

s/Scott P. Schlesinger
Scott P. Schlesinger
Jonathan R. Gdanski
Jeffrey L. Haberman
SCHLESINGER LAW OFFICES, P.A.
1212 SE Third Avenue
Ft. Lauderdale, FL 33316
Tel: 954-320-9507
Fax: 954-320-9509
scott@schlesingerlaw.com
jhaberman@schlesingerlaw.com
jgdanski@schlesingerlaw.com

Attorneys for Plaintiffs and the Class

JS 44 (Rev. 12/12)

CIVIL COVER SHEET 3:16-cv-84-J-34 PDB

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

STEVE OKSTAD, et al.,

(b) County of Residence of First Listed Plaintiff Duval County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
SCHLESINGER LAW OFFICES, P.A.
1212 Southeast 3rd Avenue
Fort Lauderdale, FL 33316 954-320-9507

DEFENDANTS

SANTA FE NATURAL TOBACCO COMPANY, INC.
REYNOLDS AMERICAN, INC.

County of Residence of First Listed Defendant Leon County
(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
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 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 checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input 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 checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input 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):

Brief description of cause:
Fraud & Deceptive Trade Practices

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/27/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

\$400

APPLYING IFP

JUDGE

34

MAG. JUDGE

PDB

JAX019034