

CIVIL DISTRICT COURT FOR THE  
PARISH OF ORLEANS  
STATE OF LOUISIANA

**GLORIA SCOTT AND DEANIA M. JACKSON, ON  
BEHALF OF THEMSELVES AND ALL OTHER  
PERSONS SIMILARLY SITUATED,**  
Plaintiffs,

v.

**THE AMERICAN TOBACCO COMPANY, INC.;**  
**AMERICAN BRANDS, INC.;** **R.J. REYNOLDS**  
**TOBACCO COMPANY;** **RJR NABISCO, INC.;**  
**BROWN & WILLIAMSON TOBACCO**  
**CORPORATION;** **BATUS, INC.;** **BATUS**  
**HOLDINGS, INC.;** **PHILIP MORRIS, INC.;** **PHILIP**  
**MORRIS COMPANIES, INC.;** **LORILLARD**  
**TOBACCO COMPANY, INC.;** **LORILLARD, INC.;**  
**LOEWS CORPORATION;** **UNITED STATES**  
**TOBACCO COMPANY;** **UST, INC.;** **THE TOBACCO**  
**INSTITUTE, INC.;** **QUAGLINO TOBACCO AND**  
**CANDY COMPANY, INC.;** **IMPERIAL TRADING**  
**COMPANY, INC.;** **GEORGE W. GROETSCH, INC.;**  
**AND J & R VENDING SERVICE, INC.,**  
Defendants.

Civil Action Number USGC 96-1946

May 29, 1996

**PETITION FOR DAMAGES AND  
CLASS ACTION CERTIFICATION**

Now into court, through their undersigned counsel of record, come the individual and representative plaintiffs Gloria Scott and Deania M. Jackson ("Plaintiffs"), on behalf of themselves and all other persons similarly situated, who hereby aver as follows:

**NATURE OF CASE**

1. Through a fraudulent course of conduct that has spanned decades, the Defendants have manufactured, promoted, and sold cigarettes to the Plaintiffs and millions of Americans while knowing, but denying and concealing, that their cigarettes contain a highly addictive drug known as nicotine, and have, without public knowledge, controlled and manipulated the amount of nicotine in their cigarettes for the purposes and with the intent of creating and

sustaining addictions to these products. The Plaintiffs seek damages for their physical and economic losses and emotional distress, and all equitable relief to which they may be entitled, including the establishment of a medical monitoring fund, to remedy violations by the Defendants of Louisiana Civil Code and statutory prohibitions against fraud; negligent misrepresentation; negligence; intentional or negligent infliction of emotional distress; redhibition; and the provisions of the Louisiana Products Liability Act, La. Rev. Stat. Ann. 9:2800.51, *et seq.*

**JURISDICTION AND VENUE**

2. This court has jurisdiction over this class action because this is a claim by residents of the State of Louisiana, including the parish of Orleans, against some defendants that are foreign corporations and some Defendants that are Louisiana corporations, created under the laws of the State of Louisiana, with their domicile and principal place of business in the State of Louisiana.

3. Venue in this court pursuant to article 593 of the Louisiana Code of Civil Procedure. The named Plaintiffs and numerous class members purchased cigarettes, marketed, distributed, and sold by the Defendants in the Parish of Orleans. The Defendants advertised in this Parish, received substantial compensation and profits from the sale of cigarettes in this Parish, made material omissions and misrepresentations about their products in this Parish; and breached expressed and implied warranties in this Parish; and some of the Defendants are domiciled in this Parish and/or have their principal place of business in this Parish.

**PARTIES**

4. Plaintiffs and Proposed Class Representatives:

Now into court, through their undersigned counsel, come Gloria Scott and Deania M. Jackson, both of whom are persons of full age of majority, domiciled in the State of Louisiana, and who further appear on behalf of all persons similarly situated, as follows:

A. Plaintiff Gloria Scott is a resident of the State of Louisiana, Parish of Jefferson. Due to her addiction to cigarettes she has suffered injury including costs of medical treatment, loss of income, mental and emotional suffering, humiliation and frustration, and many other economic and emotional

losses, and other damages to be proven during the trial.

B. Plaintiff Deania M. Jackson is a resident of the state of Louisiana, Parish of Orleans. Her addiction to cigarettes has caused her to suffer out of pocket expenses, mental and physical suffering, and frustration and humiliation among other damages to be proven at trial.

5. Manufacturer and Distributor Defendants:

The parties named and sued as the Defendants herein are as follows:

A. The American Tobacco Company, Inc. and its parent, American Brands, Inc. are Delaware Corporations whose principal place of business is located at Six Stamford Forum, Stamford, Connecticut. The American Tobacco Company and American Brands, Inc., manufacture, advertise and sell Lucky Strike, Pall Mall, Tareyton, Malibu, American, Montclair, Newport, Misty, Berkeley, Iceberg, Silk Cut, Silva Thins, Sobrania, Bull Durham, and Carlton cigarettes throughout the United States, including the State of Louisiana, Parish of Orleans.

B. R.J. Reynolds Tobacco Company, is a New Jersey corporation whose principal place of business is located at Fourth and Main Streets, Winston-Salem, North Carolina. R.J. Reynolds Tobacco Company is a wholly owned subsidiary of RJR Nabisco, Inc. a Delaware corporation, whose principal place of business is 1301 Avenue of the Americas, New York, New York. R.J. Reynolds Tobacco Company and RJR Nabisco, inc., manufacture, advertise and sell Camel, Vantage, Now, Doral, Winston, Sterling, Magna, More, Century, Bright Rite and Salem cigarettes through the United States, including the State of Louisiana, Parish of Orleans.

C. Brown & Williamson Tobacco Corporation, is a Delaware corporation. Batus, Inc., is the Parent of Brown & Williamson Tobacco Corporation and is a Wisconsin corporation. Batus Holdings, Inc., is the parent of Batus,

Inc., and is a Delaware corporation. The principal place of business of Brown & Williamson Tobacco Corporation, Batus, Inc., is 1500 Brown & Williamson Tower, Louisville, Kentu-cky. Brown & Williamson Tobacco Corporation, Batus, Inc., and Batus Holdings, Inc. manufacture, advertise and sell Kool, Barclay, BelAir, Capri, Raleigh, Richland, Laredo, Eli Cutter and Viceroy cigarettes throughout the United States, including the State of Louisiana, Parish of Orleans.

D. Philip Morris, Inc., and its parent, Philip Morris companies, Inc., are Virginia corporations whose principal place of business is located at 120 Park Avenue, New York, New York. Philip Morris, Inc., and Philip Morris Companies, Inc., manufacture, advertise, sell Philip Morris, Merit, Cambridge, Marlboro, Benson & Hedges, Virginia Slims, Alpine, Dunhill, English Ovals, Galaxy, Players, Saratoga and Parliament cigarettes throughout the United States, including the State of Louisiana, Parish of Orleans.

E. Lorillard Tobacco Company, Inc., and Lorillard, Inc., and their parent Loews Corporation, are Delaware corporations whose principal place of business is located at One Park Avenue, New York, New York. Lorillard Tobacco Company, Inc., Lorillard, Inc., and Loews Corporation manufacture, advertise and sell Old Gold, Kent, Triumph, Satin, Max, Spring, Newport and True cigarettes throughout the United States, including the State of Louisiana, Parish of Orleans.

F. United States Tobacco Company, and its parent, UST, Inc., are Delaware corporation whose principal place of business is located at 100 West Putnam Avenue, Greenwich, Connecticut. United States Tobacco Company and UST, Inc., manufacture and sell Sano cigarettes throughout the United States, including the State of Louisiana, Parish of Orleans.

The Defendants named in paragraphs 5/A-F, above, are sometimes referred to herein collectively as the "Tobacco Companies".

G. The Tobacco Institute, Inc., is a New York corporation, whose principal

place of business is located at 1875 "I" Street, N.W., Suite 800, Washington, D.C. The Tobacco Institute, Inc. at all relevant times operated at the public relations and lobbying arm of the Tobacco Companies. At all relevant time, the Tobacco Institute, Inc., was an agent and/or employee of the Tobacco Companies. In doing the things alleged herein, The Tobacco Institute, Inc., was acting within the course and scope of its agency or employment, and was acting with the consent, permission and authorization of each of the Tobacco Companies. The Tobacco Companies and the Tobacco Institute, Inc., are sometimes referred to herein collectively as "Manufacturer Defendants" or the "Tobacco Industry".

H Each Manufacturer Defendant is sued individually, as a primary violator and as an aider and abettor that rendered substantial assistance in the accomplishment of the acts and/or omissions alleged herein. In acting to aid and abet and substantially assist the commission of the fraud and wrongful conduct and realized that its conduct would substantially assist the accomplishment of that fraud and was aware of: (1) its overall contribution to the conspiracy, scheme and common course of wrongful conduct alleged herein; and (2) the manipulation of nicotine content in cigarettes and the misrepresentation, concealment and suppression of information regarding the addictive properties of nicotine.

I Each Manufacturer Defendant is also sued as a co-conspirator, and the liability if each arises from the fact that each Defendant entered into an agreement with the other Defendants and third parties to pursue, and knowingly pursued, the common course of conduct to commit or participate in the commission of all or part of the unlawful acts, plans, schemes, transactions, and artifices to defraud as alleged herein; the manipulation of nicotine content in cigarettes and the misrepresentation, concealment and suppression of information regarding the addictive properties of nicotine.

J. Quaglino Tobacco and Candy Company, Inc., is a Louisiana corporation, organized under the laws of the State of Louisiana, with its agent for service of process on the Parish of Orleans, and at all relevant times hereto was qualified to do and was doing business in the State of Louisiana, Parish of Orleans, as a wholesale distributor of the tobacco products manufactured by the "Tobacco Companies".

K. Imperial Trading Company, Inc., is a Louisiana corporation, organized under the laws of the State of Louisiana, with its agent for service of process in the Parish of Jefferson and at all relevant times hereto was qualified to do and was doing business in the State of Louisiana Parish of Orleans, as a wholesale distributor of the tobacco products manufactured by the "Tobacco Companies."

L. George W. Groetsch, Inc., is a Louisiana corporation, organized under the laws of the State of Louisiana, with its agent for service of process in the Parish of Jefferson and at all relevant times hereto was qualified to do and was doing business in the State of Louisiana, Parish of Orleans, as a wholesale distributor of the tobacco products manufactured by the "Tobacco Companies".

M. J&R Vending Services, Inc., is a Louisiana corporation, organized under the laws of the State of Louisiana, with its agent for service of process in the Parish of Orleans, and at all relevant times hereto was qualified to do and was doing business in the Sate of Louisiana, Parish of Orleans, as a wholesale distributor of tobacco products manufactured by the "Tobacco Companies".

#### CLASS ACTION ALLEGATIONS

6. The named plaintiffs bring this class action on behalf of themselves and all other persons similarly situated, for the purpose of asserting the claims alleged in this Petition on a common basis. The Plaintiffs proposed class is defined as: A) All nicotine dependent persons who are residents of the State of Louisiana who have purchased and smoked cigarettes

manufactured by the Manufacturer Defendants; B) the estates, representatives, and administrators of these Louisiana residents who were or are nicotine-dependent cigarette smokers; and C) the spouses, children, relatives and "significant others" of these Louisiana residents who were or are nicotine-dependent cigarette smokers as their heirs or survivors. Collectively, all of these persons shall be referred to as the "Class".

7. For Purposes of the class definition (paragraph 6, above), and the claims asserted by the Plaintiffs and Class members in this Petition, "nicotine dependent" refers to persons having or had nicotine dependence under the criteria thereof set forth in the current edition of the American Psychiatric Association's *Diagnostic and Statistic Manual of Mental Disorder*, 3d Ed. Revised ("DSM III-R"). For purposes of the Class definition and the claims asserted by the Plaintiffs and Class members in this Petition, the terms "dependent/dependence" and "addictive/addiction" are used interchangeably.

8. Excluded from the Class are the Defendants named herein; any entity in which any of the Defendants has a controlling interest; any of the officers, directors, or employees of any of the Defendants; and the legal representatives, heirs, successors, and assignees of any of the Defendants.

9. The action is brought and may be properly maintained as a class action pursuant to the provisions of Louisiana Code of Civil Procedure articles 591, *et seq.* This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of these statutory provisions and the jurisprudence of the courts of the State of Louisiana.

10. *Numerosity of the Class -- La. Code Civ. Pro. Art. 591:* The Class is so numerous that the individual joinder of all its members is impracticable. An estimated 50 million Americans smoke cigarettes. Thousands of adolescents begin smoking for the first time every day. Cigarettes contain nicotine. Nicotine is an addictive drug that causes most cigarette smokers to become dependent on cigarettes. The Plaintiffs allege that the Defendants knew and intended that users of the Tobacco Companies' products would become addicted to these products. Accordingly, the Plaintiffs are informed and believe, and on that basis allege, that the Class includes thousands, if not one million or more, members. Class members may be informed of the pendency of this class action by published and broadcast notice.

11. *Existence and Predominance of*

*Common Questions of Law and Fact-La Code Civ. Pro. Art. 591:* Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual questions arise from two central issues, which do not vary from Class member to Class Member, and which may be determined without reference to the individual circumstances of any particular Class member; A) All Defendants' course of conduct in manufacturing, selling and/or distributing cigarettes in the State of Louisiana; and B) the biochemical and psychoactive properties of nicotine. These common legal and factual questions include, but are not limited to, the following:

- 1) Whether nicotine is addictive;
- 2) Whether and when the Defendants knew that nicotine is addictive;
- 3) Whether the Defendants knew or should have known that the levels of nicotine in their cigarettes were addictive;
- 4) Whether the Defendants manipulated the levels of nicotine in their cigarettes;
- 5) Whether the Defendants manipulated the nicotine levels in their cigarettes for the purpose of causing and sustaining dependence on their products;
- 6) Whether the Defendants' course of conduct in denying that nicotine is addictive and manipulating the levels of nicotine in their cigarettes so as to addict consumers or sustain addiction constitutes fraud, deception, intentional misrepresentation and/or concealment of material facts; La. Civ. Code art. 1953;
- 7) Whether the Defendants' conduct constitutes forms of negligent misrepresentations; La Civ. Code art. 2315;
- 8) Whether the defendants' conduct constitutes negligence; La Civ. Code art. 2315;
- 9) Whether the Defendants violated the Louisiana Product Liability

Act; La. Rev. Stat. Ann. 9:2800.51, *et seq.*;

10) Whether the Defendants breached expressed warranties; La. Rev. Stat. Ann. 9:2800.58;

11) Whether the Defendants breached any implied warranties of merchantability;

12) Whether the defendants are liable for intentional infliction of emotional distress; La. Civ. Code art. 2315;

13) Whether the Defendants negligently designed their cigarettes in terms of nicotine content; La. Rev. Stat. Ann. 9:2800.57;

14) Whether the Defendants failed to warn adequately or notify the Class regarding the addictive nature of cigarettes; La. Rev. Stat. Ann. 9:2800.57

15) Whether the consistent presence of certain levels of nicotine in Defendants' cigarettes and Defendants' course of conduct in marketing them constitute a manufacturing, design, and/or marketing defect for purposes of strict products liability; La. Rev. Stat. Ann. 9:2800.51, *et seq.*; La. Civ. Code art. 2317;

16) Whether the Defendants are strictly liable in tort for selling a dangerously defective product; La. Civ. Code art. 2317;

17) Whether the Class members are threatened with irreparable harm and whether they are entitled to injunctive and other equitable relief, an, if so, the nature of the relief;

18) Whether the class members are entitled to medical monitoring at the Defendants' expense; and

19) Whether the Class is entitled to compensatory damages, and, if so, the nature of such damages.

12. *Typicality of Claims -- jurisprudence of the courts of the State of Louisiana*; The Plaintiffs'

claims are typical of the claims of the members of the Class, all of whom have purchased and smoked cigarettes manufactured and/or distributed by the Defendants in the State of Louisiana and have become addicted to those products. The Plaintiffs and all members of the Class have sustained and/or will continue to sustain damages and injuries and are facing irreparable harm arising out of the Defendants' common course of fraudulent and/or negligent conduct designed to create and sustain addiction to and dependency on cigarettes.

13. *Adequacy of Representation -- La. Code Civ. Pro. Art. 592*: The Plaintiffs are adequate representatives of the Class because they are members of the Class and their interests do not conflict with the interests of the members of the Class that they seek to represent. They have retained counsel competent and experienced in the prosecution of complex consumer fraud, mass tort, and products liability class actions, and they intend to prosecute this action vigorously for the benefit of the Class. The interests of the members of the Class will be fairly and adequately protected by the Plaintiffs and their undersigned counsel.

14. *Superiority -- jurisprudence of the courts of the State of Louisiana*: A Class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of the Class members' claims is impracticable. Even if some Class members could afford individual litigation, the courts of the State of Louisiana could not. It would be unduly burdensome to the court of this State, in which individual litigation of the facts of thousands of identical cases would proceed. Individual litigation increases the delay and expense to all parties and the courts in resolving the complex legal and factual issues of these cases. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court; La. Code Civ. Pro. Art. 593.1. Notice of the pendency and of any resolution of this class action can be provided to Class members by publication and broadcast.

## FACTUAL ALLEGATIONS

### I

#### THE NICOTINE IN CIGARETTES IS HIGHLY ADDICTIVE.

15. The Tobacco Companies reap enormous profits from their manufacture and sale of cigarettes throughout the United States, including the State of Louisiana, Parish of Orleans. The Tobacco Companies' earnings of the last year alone exceeded six

billion dollars. The Tobacco Companies make, advertise and sell cigarettes despite their knowledge of the following facts: More than 10 million Americans have died as a result of smoking cigarettes; more than 400,000 Americans die every year as a result of smoking cigarettes; almost one death in every five is due to a smoking related illness; the leading cause of preventable death in the United States today is smoking cigarettes; smoking causes cardiovascular disease and is responsible for approximately one-third of all heart disease deaths; smoking causes almost all lung and throat cancers and is responsible for approximately one-tenth of all cancer deaths; smoking causes various pulmonary diseases, including emphysema; smoking causes stillbirths and neonatal deaths among the babies of mothers who smoke; and cigarettes may contain any number of approximately 700 "additives", including a number of toxic and dangerous chemicals. Congressman Henry W. Waxman (D. Calif.) former Chairman of the house Subcommittee on Health and the Environment, has stated "that cigarettes are the single most dangerous consumer product ever sold."

16. Despite the overwhelming weight of the scientific evidence that cigarette smoking poses serious health risks, and despite the gruesome statistical legacy being left by the Tobacco Industry, thousands, if not millions or more, Louisiana residents continue to smoke cigarettes, including many new teenage smokers everyday, because they are *addicted* to or are *dependent upon* these products. More specifically, they are addicted to nicotine, the drug in tobacco that causes an addiction similar to that suffered by users of heroin and cocaine.

17. Cigarettes contain nicotine. Nicotine is an addictive substance and the use of cigarettes results in addiction to them. Nicotine causes compulsive use of cigarettes, despite knowledge that they are harmful, if not lethal; nicotine has a psychoactive (mood-altering) effect in the brain; and, nicotine invokes what is called "reinforcing behavior", causing continued use of nicotine-containing products. Cigarette smokers suffer an inability to quit, notwithstanding a desire to do so, and those who do quit (or attempt to) endure withdrawal symptoms such as headaches, insomnia, depression, lack of concentration, and anxiety.

18. The addictive power of nicotine is further illustrated by these statistical facts: at least two-thirds of adults who smoke say they wish they could quit; 17 million Americans try to quit smoking each year, but fewer than 1 out of 10 succeed; for every smoker who quits 9 try and fail; 8 out of 10 smokers say they wish they had never started smoking; after

surgery for lung cancer, almost half of the smokers resumed smoking; among smokers who suffered heart attack, 38% resume smoking while they are still in the hospital; even when a smoker has their larynx removed, 40% try smoking again; 70% of young people ages 12-18 who smoke say they believe that they are already dependent on cigarettes; and 40% of high school seniors who smoke regularly have tried to quit and failed. According to David A. Kessler, M.D., Commissioner of the United States Food and Drug Administration, "once they have started regularly, most smokers are in effect deprived of the choice to stop smoking....Seventeen million Americans try to quit smoking each year. But more than fifteen million are unable to exercise that choice because they cannot break their addiction to cigarettes"

19. The 1988 Surgeon General's Report, "The Health Consequences of Smoking; Nicotine Addiction" contained these conclusions: A) "Cigarettes and other forms of tobacco are addicting"; B) "nicotine is the drug in tobacco that causes addiction"; and C) "The pharmacologic and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine". Nicotine in cigarettes is now recognized as an addictive substance by such major medical organizations as the Office of the U.S. Surgeon General, the World Health Organization, the American Medical Association, the American Psychiatric Association, the American Psychological Association, the American Society of Addiction Medicine, the American Public Health Association and the Medical Research Council in the United Kingdom. The National institute on Drug Abuse recently called cigarette smoking the most common example of drug dependence in the United States.

20. Despite the recent recognition of nicotine's addictive properties by these and other organizations, the Tobacco Companies and their Distributors continue to misinform the American public in general and the Louisiana residents who are members of this Class. Although it now appears that the Tobacco Companies have *known* for decades, on the basis of their own long concealed research and testing, that nicotine is addictive, they have denied, and continue to deny, that nicotine is addictive.

## II.

### **DESPITE ITS KNOWLEDGE THAT NICOTINE IS ADDICTIVE, THE TOBACCO MANUFACTURERS FALSELY CLAIM THE NICOTINE IS NOT ADDICTIVE.**

21. By no later than the early 1960s, and

perhaps as early as the 1940s, the Tobacco Companies were fully aware, based on their own scientific research, that nicotine is an addictive substance and that regular cigarette smoking results in nicotine dependence. For example, an internal Philip Morris report from 1971 describes the difficulties a smoker has in stopping smoking once they are addicted to nicotine. "Even after eight months, quitters were apt to report having neurotic symptoms, such as feeling depressed, being restless and tense, being ill-tempered, having a loss of energy, being apt to doze off, etc. They were further troubled by constipation and weight gains..."

22. An internal report written in 1973 by William J. Dunn, Jr., a senior scientist with Philip Morris, says the following:

The Primary incentive to cigarette smoking is the immediate salutatory effect of inhaled smoke upon body function.... As with eating and copulating, so it is with smoking. The physiological effects serve as the primary incentive; all other incentives are secondary...Without nicotine, the argument goes, there would be no smoking. Some strong evidence can be marshaled to this argument:

- (1) No one has ever become a smoker by smoking cigarettes without nicotine.
- (2) Most of the physiological responses to inhaled smoke have been shown to be nicotine related.

23. Another internal Philip Morris document, this one from 1981, acknowledges that:

Nicotine is a powerful pharmacological agent with multiple sites of action and may be the most important component of cigarette smoke. Nicotine and an understanding of its properties are important to the continued well being of our cigarette business since this "alkaloid has been cited often as the reason for smoking" and theories have been advanced for "nicotine titration" by the smoker. Nicotine is known to have effects on the central nervous system as influencing memory, learning, pain perception, response to stress, and level of arousal.

24. Patent filings by the Tobacco Companies further reveal their knowledge of the addictive quality of nicotine. In a 1971 patent filing, Philip Morris discusses maintaining the "nicotine content at a sufficiently high level to provide the desired physiological activity." Years of numerous patent filings by the Tobacco Companies underscore the industry's knowledge that nicotine is addictive.

25. Despite their knowledge that cigarette smoking is, as a result of nicotine, extremely addictive, the Tobacco Companies still continue to deny that smoking is addictive. Through their individual advertising and public relations campaigns, and collectively through the work of the Tobacco Institute, the Tobacco Companies have successfully promoted and sold cigarettes by concealing and misrepresenting their highly addictive nature. The Congressional Subcommittee on Health and the Environment commenced a public hearing March 25, 1994, on the potential regulation of nicotine-containing products under the Federal Food, Drug, and Cosmetic Act. In the wake of the March 25, 1994, Congressional Hearings, spokes people for the Tobacco Institute and the Tobacco Companies have denied in nationwide television broadcasts and print publications that nicotine is addictive. On April 14, 1994, the chief executives of each of the Tobacco Companies testified under oath before Congress and told the American public that nicotine is not addictive. Following the appearance of the Tobacco Companies' executives before Congress, Philip Morris took out full-page newspaper ads that stated, in part: "Philip Morris does not believe that cigarette smoking is addictive."

26. The American public is now beginning to learn about the measures taken by the Tobacco Industry to conceal the truth about nicotine. On March 31, 1994, Congressman Waxman released a copy of a previously secret Philip Morris-funded research study substantiating the addictive nature of nicotine. Philip Morris scientists, upon conducting tests, found strong evidence that nicotine might be addicting, which suggested further testing should be done. The experiment used in the study -- self administration by rats -- is one of the primary tests used by the U.S. Food and Drug Administration, the U.S. Drug Enforcement Agency, and the World Health Organization to determine whether a drug is addictive. The research was submitted in 1983 to the scientific journal *Psychopharmacology* and was accepted for publication. Prior to publication, the journal was notified by the scientist that the article was being withdrawn "due to factors beyond (his) control." The scientist subsequently left Philip Morris and in 1986 resubmitted a revised version of the article to the journal. After the article was accepted for publication

again, the scientist was forced to withdraw it by Philip Morris.

27. If the Tobacco Companies had disclosed their knowledge of the addictive nature of nicotine when they first acquired this knowledge, then the public would have learned about the addictiveness of nicotine many years ago. As a result, the scientific and medical community would have access to critical Tobacco Industry secrets on the subject, which would have resulted in a more rapid popular determination and consensus on the subject. The Tobacco Industry concealed and continues to attempt to conceal the truth about nicotine in order to sustain the addiction of existing cigarette smokers and to "hook" thousands of new smokers every day, so that the Tobacco Companies can continue to profit at the expense of the lives and health of the American public.

28. Not only does the Tobacco Industry know and conceal that nicotine is an addictive drug, the Plaintiffs are informed and believe that the Tobacco companies intend that their products contain sufficient nicotine to satisfy addiction on the part of smokers, and therefore control the levels of nicotine in these products to create and sustain the addiction. It is this scheme to deceive the American public that enables the Tobacco Companies to sell its life-threatening products to tens of millions of Americans as their captive customers.

### III.

#### **THE TOBACCO COMPANIES MANIPULATED THE LEVEL OF NICOTINE IN CIGARETTES WITH THE INTENT FOR THE PURPOSE OF CREATING AND SUSTAINING ADDICTIONS TO THEIR PRODUCTS.**

29. The Plaintiffs are informed and believe that the Tobacco Companies control, or manipulate, the levels of nicotine in cigarettes. The Tobacco Companies developed technology years ago to remove nicotine from tobacco and to control precisely the amount of nicotine in cigarettes. Nevertheless, the Tobacco Companies continue to manufacture, market and sell their products with levels of nicotine that are sufficient to produce and sustain addiction. Rather than remove nicotine from cigarettes and smokeless tobacco -- and hence remove the addictive drug contained therein -- the Tobacco Companies add nicotine to their cigarettes through a variety of methods, to maintain levels of nicotine sufficient to make their cigarettes addictive to consumers.

30. The Tobacco Companies prepare a substantial portion of the contents of their cigarettes

through what is called a "Reconstitution process". Prior to the 1940s, the waste products from cigarettes -- tobacco leaf scraps and stems, dried tobacco dust, adhesive reinforcing fibers, mineral ash modifiers, humectants and some other inexpensive materials -- were discarded. Thereafter, the tobacco companies began to use these previously unusable materials to make reconstituted tobacco. As part of the process, the Tobacco Companies removed ingredients from these materials at an early stage of the process and replaced some of the nicotine in later stages. The reconstitution process allows the Tobacco Companies to manufacture cigarettes at a lower cost by using less tobacco, which is the most expensive part of the cigarette, and by making up the difference in content with reconstituted tobacco. By removing the nicotine and then carefully replacing as much nicotine as desired, the Tobacco Companies are able to control the precise amount of nicotine in cigarettes.

31. LTR Industries, a subsidiary Kimberly-Clarke corporation, specializes in the tobacco reconstitution process and, as LTR says, in helping tobacco companies "control" their nicotine. The LTR reconstitution process is the most widely used in the world. An LTR advertisement, entitled "More Nicotine, Or Less," published in tobacco trade publication states:

Nicotine levels are becoming a growing concern to the designers of modern cigarettes, particularly those with lower "tar" deliveries. The Kimberly-Clarke tobacco reconstitution process, used by LTR industries, permits adjustment of nicotine to your exact requirements. These adjustments will not affect the other important properties of customized reconstituted tobacco produced at LTR industries: low tar delivery, high filling power, high yield, and the flexibility to convey organoleptic modifications. We can help you control your tobacco.

In fact, the process described in the LTR advertisement can raise the level of nicotine beyond what is naturally found in tobacco materials. In 1985, a *Tobacco Journal* article describing the LTR process states: "Those standard reconstituted Tobacco Products contained 0.7-1.0 nicotine. LTR offers the possibility of increasing the nicotine content of the final sheet to a maximum of 3.5%... A dramatic increase in tobacco taste and smoke is noted in the nicotine fortified reconstituted tobacco."

32. Without informing the American public, the Tobacco Companies have long viewed

cigarettes in terms of their nicotine delivery function. For example, Philip Morris' William L. Dunn Jr., wrote in a 1973 internal memorandum:

Why then is there not a market for nicotine per-se; to be eaten, sucked, drunk, injected, inserted or inhaled as a pure aerosol? The answer, and I feel quite strongly about this, is that the cigarette is in fact among the most awe inspiring examples of the ingenuity of man.

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The cigarette should be perceived not as a product, but as a package. The product is nicotine. The cigarette is but one of many package layers. There is the carton, which contains the pack, which contains the cigarette, which contains the smoke. The smoke is the final package. The smoker must rip off all of these packaged layers to get what he seeks.... Think of the cigarette as a storage container for [a] days' supply of nicotine.... Think of the cigarette as a dispenser for a dose unit of nicotine.... Think of a puff of smoke as the vehicle for nicotine.... Smoke is beyond question the most optimized vehicle of nicotine and the cigarette the most optimized dispenser of smoke.

Likewise, a 1981 Lorillard study indicates that "current research is directed toward increasing the nicotine levels while maintaining or marginally reducing the 'tar' deliveries."

33. Evidence of the Tobacco Industry's intent and ability to provide the "desired physiological activity" is found in years of Tobacco Company patent applications. Tobacco Company patents illustrate an intent an ability by the Tobacco Companies to control the amount of nicotine in cigarettes; to provide desired physiological effects; to increase nicotine content in cigarettes by adding nicotine to various parts of the cigarette; to manipulate nicotine levels in cigarettes; and to manipulate the rate at which the nicotine is delivered in the cigarettes. For example:

A. A 1966 Philip Morris patent application discusses an invention that "permits the release into tobacco smoke, in controlled amounts, of desirable flavorants, as well as the release, in controlled amounts and when desired, of

nicotine into tobacco smoke.

B. A 1971 Philip Morris patent states:

It has long been known in the Tobacco Industry that in order to provide a satisfactory smoke, it is desirable to maintain a nicotine content of Tobacco Products at a uniform level. However, it is difficult to accomplish this result since the nicotine content of tobacco varies widely, depending on the type of tobacco and the conditions under which the tobacco was grown.

Maintaining the nicotine content at a sufficiently high level to provide the desired physiological activity, taste, and odor which this material imparts to the smoke, without raising the nicotine content through an undesirably high level, can thus be seen to be a significant problem in the tobacco art. The addition of nicotine to tobacco in such a way that it remains inert and stable in the product, and yet is released in a controlled amount into the smoke aerosol when the tobacco is paralyzed, is a result that is greatly desirable.

The present invention provides a solution to this longstanding problem and results in accurate control of the nicotine which is released in the tobacco smoke. By employing the nicotine-releasing agents in methods of the present invention, it is possible to incorporate exact amounts of nicotine into tobacco composition, which will remain constant over extended periods of time and which will ultimately yield a smoke containing a controlled amount of nicotine.

C. Another 1971 Philip Morris patent application discusses a design to increase the nicotine content in the smoke of the tobacco product by adding nicotine. One of the expressed objects of the invention was to "provide an agent for the treatment of tobacco smoke whereby nicotine is easily released under controlled amounts." The same Philip Morris application explains that the proposed invention "is particularly useful for the maintenance of the proper

amount of nicotine in tobacco smoke," and notes that "previous efforts have been made to add nicotine to Tobacco Products when the nicotine level in the tobacco was undesirably low."

D. A 1980 Loews' Corporation patent application discusses a process that "enables the manipulation of the nicotine content of tobacco material, such as cut leaf and reconstituted leaf, by removal of nicotine from a suitable nicotine tobacco source, or by the addition of nicotine to a low nicotine material."

E. A 1986 R.J. Reynolds Tobacco Company patent indicates that the Tobacco Companies can precisely manipulate the rate at which the nicotine is delivered in the cigarette: "It is a further object of this invention to provide a cigarette which delivers a larger amount of nicotine in the first few puffs of the cigarettes than in the last few puffs."

F. A 1991 R.J. Reynolds Tobacco Company patent application states that "processed tobacco can be manufactured under conditions suitable to provide products having various nicotine levels."

34. Information about the Tobacco Companies' manipulation of the nicotine level in cigarettes, with the intent and purpose of creating and sustaining addictions to their cigarettes, has only recently come to the public's attention. An ABC television show, "Day One," broadcast an episode February 28, 1994, entitled "Smokescreen -- Cigarette Companies and Nicotine Levels," during which "Day One's" investigators reported their findings that the Tobacco Companies have been carefully controlling the levels of nicotine in their products for years. "Day One's" investigators reported that, to verify that nicotine is being added to reconstituted tobacco portion of several brands of R.J. Reynolds Tobacco Company cigarettes. According to "Day One," the samples tested had up to 70% of the nicotine that would be found in regular tobacco.

35. During the March 25, 1994, Congressional Hearings, FDA Commissioner Dr. David Kessler testified that accumulating evidence suggests that the Tobacco Companies "may be controlling smokers' choice by controlling the level of nicotine in

their products in a manner that creates and sustains an addiction in the vast majority of smokers." Dr. Kessler went on to say that some of "today's cigarettes may, in fact, qualify as high technology nicotine delivery systems that deliver nicotine in precisely calculated quantities -- quantities that are more than sufficient to create and sustain an addiction in the vast majority of individuals who smoke regularly.

36. Just as the Tobacco Companies deny that the nicotine contained in cigarettes is addictive, through their individual advertising and public relations campaigns and collectively through The Tobacco Institute, the Tobacco Companies have denied unequivocally that they are engaged in controlling the level of nicotine in cigarettes for the purpose of developing and sustaining addiction to their products. Since the "Day One" program broadcast by ABC and the March 24, 1994 Congressional Hearings, spokes people for The Tobacco Institute and the Tobacco Companies have in nationwide television broadcasts and publications denied all the charges that the Tobacco Companies have manipulated nicotine levels in cigarettes. During the appearance before Congress on April 14, 1994, the chief executives of each of the Tobacco Companies testified that their companies do not manipulate nicotine levels in or otherwise add nicotine to their cigarettes to create or sustain addiction to their products.

#### INTERRUPTION OF PRESCRIPTION

37. Prescription as to the Plaintiffs and all Class members has been interrupted by the Defendants' affirmative and intentional acts fraudulent concealment, suppression and denial of the facts as alleged above. The Plaintiffs are informed and believe that such acts of fraudulent concealment included intentionally concealing and refusing to disclose internal documents, suppressing and subverting medical and scientific research, and failing to disclose and suppressing information concerning the addictive properties of nicotine and the Tobacco Companies' manipulation of the levels of nicotine in their cigarettes to addict consumers. Through such acts of fraudulent concealment, the Tobacco Companies have successfully concealed from the public the truth about the addictive nature of tobacco, and their manipulation of nicotine levels in their cigarettes, thereby interrupting prescription to the Plaintiffs and all Class members. The Plaintiffs and all other Class members could not reasonably have discovered the true facts until very recently, the truth having been fraudulently and knowingly concealed by the Tobacco Companies for years. Accordingly, the Plaintiffs and all class members specifically plead the application of the doctrine of *contra non valentem*.

38. The Tobacco Companies were under a duty to disclose their manipulation of nicotine levels in their cigarettes because this is a non-public information over which the Tobacco Companies had exclusive control, because the Tobacco Companies knew that this information was not generally available to the Plaintiffs or Class members, and because this information was crucial to the Plaintiffs and Class members in making their purchasing decisions. As a result of this concealment, Class members were deprived of informed consent regarding their ingestion of an addictive drug, and deprived of any choice on which to make a risk/benefit assessment.

39. Until shortly before the filing of the complaint in the matter of *Dianne Castano, et al v. The American Tobacco Company, Inc., et al*, in the United States District Court for the Eastern District of Louisiana, Civil Action No. 94-1044, the Plaintiffs and the members of this Class had no knowledge that the Defendants were engaged in the wrongdoing alleged herein. Because of the fraudulent and active concealment of the wrongdoing by the Tobacco Companies the passive concealment by their distributors, including certain deliberate efforts -- which continue to this day -- to give the Plaintiffs and the Class members the materially false impression that nicotine is not addictive and that the Tobacco Companies are not manipulating the nicotine levels of their cigarettes, the Plaintiffs and the members of the Class could not reasonably have discovered the wrongdoing at any time prior to the filing of the *Dianne Castano* case. The filing of the *Dianne Castano* case, together with the application of the doctrine of *contra non valentem*, interrupts the running of prescription as to the Plaintiffs and the Class members.

**FIRST CLAIM FOR RELIEF  
(Fraud and Deceit)**

40. The Plaintiffs, on behalf of themselves and all other persons similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 39 above, and further allege:

41. At all times relevant hereto, the Defendants have repeatedly used advertising, marketing, and silence in the mass media to represent to the Plaintiffs and the Class members that nicotine is not addictive. Moreover, the Tobacco Companies have recently stated under oath that they do not manipulate nicotine levels in their cigarettes so as to addict or maintain the addiction of consumers.

42. In representations to the Plaintiffs

and members of the Class, the Defendants uniformly omitted and were silent about the following material information: Nicotine is addictive and the Tobacco Companies manipulate nicotine levels in their cigarettes so as to addict consumers.

43. Because of the health dangers and risks of smoking cigarettes, the Defendants were under the duty to inform and warn the Plaintiffs and Class members about the addictive nature of nicotine, the Tobacco Companies' manipulation of the nicotine levels in their cigarettes, and the Tobacco Companies' intent to addict the Plaintiffs and Class members. The Defendants had access to material facts concerning the addictive nature of nicotine, the Tobacco Companies' manipulation of nicotine levels in Defendants' cigarette, and the Tobacco Companies' intent to addict or maintain the addiction of the Plaintiffs and Class members. The Defendants knew that, prior to the Plaintiffs' addiction to nicotine, the Plaintiffs and Class members could not reasonably have discovered the addictive nature of nicotine, the Tobacco Companies' manipulation of nicotine levels in their cigarettes, and the Tobacco Companies' intent to addict or maintain the addiction of the Plaintiffs and Class members. In addition, the Defendants actively concealed and/or remained silent about the addictive nature of nicotine, the Tobacco Companies' manipulation of nicotine levels in their cigarettes, and the Tobacco Companies' intent to addict or maintain the addiction of the Plaintiffs and the Class members.

44. The representations were false when made and the Defendants knew, reasonably should have known, or were reckless in not knowing that they were false. In fact, nicotine was known to the Defendants to be addictive, the level of nicotine in the Tobacco Companies' cigarettes was known to be manipulated by the Tobacco companies, and the intent to addict or maintain the addiction of the Plaintiffs and Class members was known to the Tobacco Companies.

45. The misrepresentations and omissions were made deliberately, willfully, maliciously, and/or negligently to mislead the Plaintiffs and the members of the Class into reliance and action thereon, and to cause them to purchase the Defendants' cigarettes.

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

47. By reason of their reliance on the Defendants' misrepresentations and omissions, the

Plaintiffs and the members of the Class are addicted or subject to addicted to the Defendants' cigarettes and have been injured in an amount to be proven at trial. The Plaintiffs and the Class members therefore seek an award of all compensable and equitable relief to which they are entitled by law.

48. The Tobacco companies knew that nicotine was addictive, that they manipulated the amount of nicotine level in their cigarettes, and that they intended to addict the Plaintiffs and the Class members, but they failed and/or refused to disclose these facts to the Plaintiffs and the Class members, all with the purpose of inducing them to purchase the Tobacco Companies' cigarettes, thus causing the Plaintiffs and the Class to incur physical, emotional, economic and other damages in an amount to be proven at trial. Additionally, the Distributors knew or reasonably should have known that nicotine was addictive, and as the Distributor of a product known to cause health hazards and health risks, they owed a duty to the Plaintiffs and the Class to inform or warn them of this fact.

49. All of the Defendants, therefore, are liable to the Plaintiffs and to the members of the Class jointly, severally, and *in solido* for all general, special, and equitable relief to which the Plaintiffs and the class are entitled by law.

**SECOND CLAIM FOR RELIEF**  
**(Negligent Misrepresentation)**

50. The Plaintiffs, on behalf of themselves and all other persons similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 49, above, and further allege:

51. By reason of their knowledge and expertise regarding the addictive nature of nicotine, manipulation of the amount of nicotine level in their cigarettes, and the Tobacco Companies' intent to addict, and by reason of their statements to consumers in advertisements and other communications, and by reason of their silence and inaction at all times relevant hereto, the Defendants owed the Plaintiffs and the members of the Class a duty of care which required, among other things, that the Defendants be truthful and accurate in their representations to the Plaintiffs and members of the Class concerning their cigarettes. La. Civ. Code. Art. 2315.

52. The Defendants breached their duty of care to the Plaintiffs and the Class by negligently making the material misrepresentations alleged in the First Claim for relief.

53. The Plaintiffs and the members of the Class reasonably relied on the Defendants' representations, when in fact those representations, omissions, and silence constituted negligent misrepresentations.

54. This reliance by the Plaintiffs and the Class was not only foreseeable by the Defendants, but also was intended by them.

55. By reason of their reliance on the Defendant's negligent misrepresentations, omissions, and silence, the Plaintiffs and the members of the Class are addicted or subject to being addicted to cigarettes and have been damaged in an amount to be proved at trial. All of the Defendants, therefore, are liable to the Plaintiffs and to the members of the Class jointly, severally, and *in solido* for all general, special, and equitable relief to which the Plaintiffs and the Class are entitled by law.

**THIRD CLAIM FOR RELIEF**  
**(Intentional Infliction of Emotional Distress)**

56. The Plaintiffs, on behalf of themselves and all other persons similarly situated, reallege as if fully set forth, each and every allegation contained in paragraphs 1 through 55 hereof, and further allege:

57. The Defendants acted in an extreme and outrageous manner toward the Plaintiffs and the members of the Class through a course of conduct that included denying that nicotine is addictive while manipulating the levels of nicotine in their cigarettes so as to addict or maintain the addiction of the Plaintiffs and the members of the Class to their cigarettes, and/or by remaining silent about the addictive properties of nicotine. The Defendants acted with the intention of causing, or reckless disregard the probability of causing, emotional distress to the Plaintiffs and members of the Class. La. Code Civ. 2315.

58. As a direct, foreseeable, actual and proximate result of the Defendants' conduct, the Plaintiffs and the Class have suffered and continue to suffer physical injury and severe emotional distress for which they are entitled to damages.

59. At all times relevant hereto, the Defendants' conduct was intentional and/or outrageous and beyond the bounds of reasonableness, and was in reckless disregard for the safety of the Plaintiffs and the Class. All of the Defendants, therefore, are liable to the Plaintiffs and to the members of the Class jointly, severally, and *in solido* for all

general, special, and equitable relief to which the Plaintiffs and the Class are entitled by law.

**FOURTH CLAIM FOR RELIEF  
(Negligence, Negligent Infliction of  
Emotional Distress)**

60. The Plaintiffs, on behalf of themselves and all other persons similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 59 thereof, and further allege:

61. The Defendants had a duty to the Plaintiffs and Class members to produce and sell a reasonably safe product in design and manufacture, and to warn of the addictive nature of nicotine.

62. The Defendants breached their duty of reasonable care to the Plaintiffs and Class members by the following acts and omissions:

A. Failure to design, manufacture, and sell cigarettes that were not addictive and/or that did not contain unreasonable levels of nicotine; La. Rev. Stat. Ann. 9:2800.56;

B. Failure to warn the Plaintiffs and the Class of the addictive nature of nicotine, when they knew or reasonably should have known of nicotine's addictive nature; La. Rev. Stat. Ann. 9:2800.57; and,

C. Otherwise failing to exercise proper care under the circumstances, due to the health hazards and health risks of smoking cigarettes.

63. As a direct and proximate result of the carelessness, negligence, fault, silence, omission, and inaction of the Defendants, including the Tobacco Companies, the Manufacturer Defendants, and the Distributor Defendants, the Plaintiffs and Class members have suffered reasonable and foreseeable damages in an amount to be proven at trial including, without limitation, physical and economic injury, and severe emotional distress. All of the Defendants, therefore, are liable to the Plaintiffs and to the members of the class jointly, severally, and *in solido* for all general, special, and equitable relief to which the Plaintiffs and the Class are entitled by law.

**SIXTH CLAIM FOR RELIEF  
(Breach of Express Warranty)**

64. The Plaintiffs, on behalf of themselves and all other persons similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 63, hereof, and further allege:

65. The Defendants' advertisements and promotional statements alleged above contained broad claims amounting to a warranty that the Tobacco Companies' cigarettes were not addictive, that the Tobacco Companies did not manipulate the nicotine levels in their cigarettes, and that the Tobacco companies did not intend to addict or maintain the addiction of the Plaintiffs and Class members. La. Rev. Stat. Ann. 9:2800.58

66. As alleged above, the Defendants breached their warranties by offering for sale, and selling as non-addictive, the Tobacco Companies' cigarettes that were addictive, and contained levels of nicotine manipulated by the Tobacco Companies to make them addictive.

67. The Defendants' breach of their express warranties has caused the Plaintiffs and the Class members to become addicted or remain addicted to nicotine. All of the Defendants, therefore, are liable to the Plaintiffs and to the members of the Class jointly, severally, and *in solido* for all general, special, and equitable relief to which the Plaintiffs and the Class are entitled by law.

**SEVENTH CLAIM FOR RELIEF  
(Breach of Implied Warranty)**

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

69. The Defendants impliedly warranted that their cigarettes, which they designed, manufactured, distributed, and sold to the Plaintiffs and members of the Class, were merchantable for their ordinary use, that the nicotine in the cigarettes was non-addictive, and that the Tobacco Companies have not manipulated and do not manipulate nicotine levels so as to make them addictive to the Plaintiffs and the Class. La. Civ. Code art. 2524.

70. The Defendants' cigarettes purchased and consumed by the Plaintiffs and the members of the Class were addictive, unmerchantable, and therefore unfit for use when sold, and subjected the Plaintiffs and the members of the Class to addiction and/or increasing addiction. Therefore, the Defendants

breached the implied warranty of merchantability at a time that the Defendants' cigarettes were sold to the Plaintiffs and Class members in that the Defendants' cigarettes were not fit for their ordinary purposes.

71. As a direct and proximate result of the Defendants' breach of the implied warranty of merchantability, the Plaintiffs and Class members are addicted or subject to addiction to the Defendants' cigarettes. All of the Defendants, therefore, are liable to the Plaintiffs and the members of the Class, jointly, severally, and *in solido* for all general, special, and equitable relief to which the Plaintiffs and the Class are entitled by law.

**EIGHTH CLAIM FOR RELIEF**  
**(Strict Product Liability)**

72. The Plaintiffs, on behalf of themselves and all other persons similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 71, above, and further allege against the Tobacco Companies:

73. At all relevant times herein the Tobacco Companies were engaged in the business of manufacturing and selling their cigarettes for ultimate retail sale to the Plaintiffs and the members of the Class. The Tobacco Companies manufactured their cigarettes, manipulated the level of nicotine in their cigarettes, and then sold these cigarettes to the distributors, who sold the Tobacco Companies' cigarettes to the Plaintiffs and Class members.

74. The Tobacco Companies' cigarettes were expected to and did reach the Plaintiffs and the members of the Class without substantial change in their condition as manufactured, manipulated and sold by the Tobacco Companies.

75. The Plaintiffs and the Class members consumed the cigarettes in the manner in which the cigarettes were intended to be used, that is, for personal consumption, causing and/or subjecting the Plaintiffs and Class members to become addicted to nicotine.

76. The Plaintiffs and the members of the Class were not aware of, and reasonably could not have discovered, the addictive nature of cigarettes, the Tobacco Companies' manipulation of the nicotine levels of their cigarettes, and the Tobacco Companies' intent to addict or maintain the addiction of the Plaintiffs and Class members, because the cigarettes were marketed and sold without adequate warnings of their addictive dangers.

77. The Tobacco companies' cigarettes,

containing levels of nicotine manipulated by the Tobacco Companies, caused or subjected the Plaintiffs and Class members to become addicted to nicotine upon personal consumption, and therefore constitute a product unreasonably dangerous for normal use due to their defective design, defective manufacture, and the Tobacco Companies' inadequate warnings to the Plaintiffs and the members of the Class.

78. The Tobacco Companies and the Distributor Defendants, therefore, are strictly liable to the Plaintiffs and the members of the Class jointly, severally, and *in solido* for all general, special, and equitable relief to which the Plaintiffs and the Class are entitled by law.

**NINTH CLAIM FOR RELIEF**  
**(Redhibition)**

79. The Plaintiffs, on behalf of themselves and all other persons similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 through 78, hereof, and further allege:

80. The Defendant's concealment of nicotine's addictive nature, the Tobacco Companies' manipulation of nicotine levels in their cigarettes, and the Tobacco Companies' concealed intent to addict or maintain the addiction of the Plaintiffs and Class members constitutes a redhibitory vice or defect in the Defendants' cigarettes, which renders their use and consumption so inconvenient and imperfect that it must be supposed that the Plaintiffs and the members of the Class would not have purchased the Defendants' cigarettes had they been informed or warned of the vice. La. Civ. Code art. 2520.

81. The Tobacco Companies, as manufacturers of their cigarettes, are conclusively presumed to know of the addictive nature of nicotine, the Tobacco Companies' manipulation of nicotine levels in their cigarettes, and the Tobacco Companies' intent to addict or maintain the addiction of the Plaintiffs and Class members, and are thus bad-faith sellers answerable to the Plaintiffs and members of the Class in damages, as well as restitution of the purchase price, and repayment of all expenses, including reasonable attorney's fees.

82. The Tobacco Companies, by manufacturing for sale the above-mentioned cigarettes, are bound to the implied warranty protecting against any hidden defects in the things sold, or their redhibitory vices, that is, the addictive nature of nicotine, the Tobacco Companies' manipulation of nicotine levels in their cigarettes, and the Tobacco

Companies' intent to addict or maintain the addiction of the Plaintiffs and Class members.

83. In the event it is determined that the Distributors did not know, or reasonably could not have known of the redhibitory vice or defect in the Tobacco Companies' cigarettes at the time the Distributors sold these products, then it is argued in the alternative that the Distributors are liable to the Plaintiffs and the members of the Class to return the sale price to the Plaintiffs and the Class with interest from the time of sale, and to reimburse the Plaintiffs and the Class for the reasonable expenses occasioned by the sale. La. Civ. Code art 2531.

84. The redhibitory vice or defect in the Defendant's cigarettes has caused the Plaintiffs and members of the Class to sustain damages, including the cost of remedy, and correction, and/or the repayment of the expenses, and/or non-pecuniary damages associated with the addiction to nicotine and the Tobacco Companies' manipulation of nicotine levels in their cigarettes, because the redhibitory defect or vice has rendered the Defendants' cigarettes so inconvenient and imperfect for ordinary use that it must be supposed that the Plaintiffs and members of the Class would not have purchased them if they had known of or been warned about the defect or vice. All of the Tobacco Companies, therefore, are liable to the Plaintiffs and the members of the Class jointly, severally, and *in solido* for all general, special, and equitable relief to which the Plaintiffs and the Class are entitled by law.

#### PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, on behalf of themselves and all other parties similarly situated, pray for judgment against the Defendants, and each of them, jointly, severally and *in solido* as follows:

1. An order certifying the Class and any appropriate subclass thereof under the appropriate provisions of Louisiana Code of Civil Procedure articles 591, *et seq.* and appointing the Plaintiffs and their counsel to represent the Class;

2. For compensatory damages as alleged herein;

3. For medical monitoring, whether denominated as damages or in the form of equitable relief.

4. For pre-judgment interest from the date of the filing of this suit.

5. For all costs of this proceeding; and,

6. For all general, special and equitable relief to which the Plaintiffs and the members of the Class are entitled by law.

Respectfully Submitted by,

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