

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
WINSTON SALEM DIVISION**

Case Number:

JASON COLE and RACHAEL KING, on behalf  
of themselves and all others similarly situated,

Plaintiffs,

v.

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

Defendants.

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**CLASS ACTION COMPLAINT**

Plaintiffs Jason Cole and Rachael King (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, by and through the undersigned counsel, file this Class Action Complaint and allege against Defendants, Santa Fe Natural Tobacco Company, Inc. (“SFNTC”) and Reynolds American Inc. (“Reynolds American”) (collectively, “Defendants”) as follows:

**INTRODUCTION**

Plaintiffs and the Class bring this action after having been misled by the deceptive labeling and advertising of Natural American Spirit cigarettes. Defendants manufacture, market, and sell Natural American Spirit cigarettes. Defendants advertise, label, and market these cigarettes as “Natural,” “Additive Free,” “100% Additive Free,” and “Organic,” The product labeling itself features a picture of a Native American smoking a pipe and describes the cigarettes as “100% Additive-Free.” Many product labels also include that the cigarettes are

“Made with Organic Tobacco.” Defendants chose these terms specifically to deceive consumers into believing that Natural American Spirit cigarettes are less harmful, safer, and less carcinogenic than other tobacco products. Defendants were then able to charge more for Natural American Cigarettes than competitors charge, and consumers were willing to pay the higher prices for the supposedly healthier and safer cigarettes.

There exists no competent or reliable scientific evidence that supports Defendants’ advertising, labeling, and marketing claims. Defendants claim their product is “unadulterated,” but the U.S. Food and Drug Administration (“FDA”) recently determined that Natural American Spirit cigarettes are, in fact, “adulterated.” The cigarettes are not healthier, safer, or less carcinogenic. They are at least as dangerous and harmful as regular cigarettes, if not more so.

Defendants were aware that Natural American Spirit cigarettes were not any safer than other cigarettes, but deceptively marketed them to mislead consumers and convince them to pay higher prices. If Plaintiffs and members of the Class had known that the advertising and product labeling were false, they would not have purchased or would not have paid a premium price for the Natural American Spirit cigarettes. Individually and on behalf of all those similarly situated, Plaintiffs seek a remedy for Defendants’ misleading and deceptive advertising, labeling, and marketing.

## **PARTIES**

1. Plaintiff Jason Cole is a citizen and resident of Cape Coral, Florida. During the Class Period, Plaintiff purchased Natural American Spirits specifically because, based on Defendants’ advertising and product labeling indicating that the cigarettes are “Natural,” “Additive Free,” “100% Additive Free,” and “Organic,” Plaintiff believed that Natural American Spirits are safer, healthier, and less carcinogenic than other cigarette brands. Plaintiff incurred

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

2. Plaintiff Rachael King is a citizen and resident of New Hanover County, North Carolina. During the Class Period, Plaintiff purchased Natural American Spirits specifically because, based on Defendants' advertising and product labeling indicating that the cigarettes are "Natural," "Additive Free," "100% Additive Free," and "Organic," Plaintiff believed that Natural American Spirits are safer, healthier, and less carcinogenic than other cigarette brands. Plaintiff incurred losses and damages as a result of the activities alleged herein. Plaintiff has suffered injury-in-fact for which she is entitled to seek monetary damages.

3. Plaintiffs are informed and believe and therefore allege that Defendant Reynolds American Inc. is a corporation organized and existing under the laws of the state of North Carolina, with its principal place of business located at 401 North Main Street, Winston-Salem, North Carolina 27101.

4. Plaintiffs are informed and believe and therefore allege that Defendant Santa Fe Natural Tobacco Company, Inc. is a corporation organized and existing under the laws of the state of New Mexico, with its principal place of business located at One Plaza La Prensa, Santa Fe, New Mexico 87507.

5. Plaintiffs are informed and believe and therefore allege that SFNTC is a wholly owned subsidiary of Reynolds American. Reynolds American is liable for any and all tort liabilities of SFNTC.

6. Plaintiffs are informed and believe and therefore allege that Defendants are in the business of manufacturing, marketing, and selling Natural American Spirit cigarettes throughout the United States.

## **JURISDICTION AND VENUE**

7. The Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because Plaintiffs are citizens of Florida and North Carolina, 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.

8. The Court has personal jurisdiction over both Defendants. Reynolds American is a citizen of North Carolina and has its principal place of business in Winston Salem, North Carolina. SFNTC is authorized to do business and, in fact, does business in the Middle District of North Carolina and has sufficient minimum contacts with this District. Each Defendant otherwise intentionally avails itself of the markets in this state through the promotion, marketing, and sale of Natural American Spirits to render the exercise of jurisdiction by this Court permissible under North Carolina law and the U.S. Constitution.

9. Venue is proper in the Middle District of North Carolina pursuant to 28 U.S.C. § 1391(b)(1) because both Defendants reside in this District. Reynolds American is a citizen and resident of this District and has its principal place of business in this District, and SFNTC is a resident of this District pursuant to 28 U.S.C. § 1391(c)(2) because SFNTC is authorized to do business and does business in this District and is subject to the Court's personal jurisdiction.

## **FACTUAL ALLEGATIONS**

### **A. Defendants' Advertising**

10. SFNTC was formed in 1982. In the early 2000s, SFNTC "caught the attention of major players in the tobacco industry<sup>1</sup>" and in 2002, Reynolds America became the parent company of SFNTC.

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<sup>1</sup> <https://www.sfntc.com/site/ourCompany/our-parent-company/> (last visited June 14, 2016).

11. SFNTC's initial business proposal was to "produce a natural tobacco product, an unadulterated tobacco product."<sup>2</sup>

12. The cigarette packaging contains a picture of a Native American smoking a pipe and the words "100% Additive Free." Some packaging also describes the cigarettes as "100% Additive-Free U.S. Grown Tobacco" and "Made with Organic Tobacco."



13. Defendants advertise the Natural American Cigarettes as "Natural" (contained in the name of the cigarettes), "100% Additive-Free," "Organic," and as containing only two ingredients: "TOBACCO + WATER THAT'S ALL."

14. Natural American Spirits are the only widely-known cigarette brand that is marketed as and believed by consumers to be "100% Natural," "100% Additive-Free," and "Organic."

15. Defendants sell Natural American Spirit cigarettes in health food stores.

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<sup>2</sup> <https://www.sfntc.com/site/ourCompany/sfntc-story/> ((last visited June 14, 2016).

16. Defendants include text from “America’s leading natural foods teacher” with their cigarettes, who claims that the cigarettes are medicinal and that Native Americans smoke such additive free cigarettes without developing cancer.

17. In 2012, SFNTC “became big enough to be a reportable business segment for Reynolds American.”<sup>3</sup>

18. From 2009 to 2014, Natural American Spirit sales increased by 86 percent. During the same time period, there was an overall 17 percent decline in cigarette sales.

19. Although priced higher than other competitive cigarettes, American Spirits have become one of the top 10 best-selling cigarette brands.

#### **B. The Targeted Population**

20. Defendants’ deceptive advertising and labeling targets consumers who believe that products that are “100% Additive Free,” “Natural,” or “Organic” are healthier, safer, and contain less carcinogens than other products.

21. Other cigarette manufacturers have disclosed that their cigarettes contain approximately 600 additives, some of which are chemicals that have allegedly been linked to cancer.

22. Defendants’ rely on the belief among consumers, including Plaintiffs and the Class, that because Natural American Spirit cigarettes are advertised as “100% Additive Free,” “Natural,” and “Organic” that they do not contain chemicals that cause cancer and are therefore safer and less carcinogenic than other cigarette brands.

23. Tobacco company studies confirm these consumers associations.

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<sup>3</sup> <https://www.sfntc.com/site/ourCompany/our-parent-company/> (last visited June 14, 2016).

### C. The Deception

24. Defendants' claims that Natural American Spirit cigarettes are "100% Additive Free" are deceptive and misleading.

25. Defendants manufacture, market, and sell menthol cigarettes. Menthol and any other flavoring agents are, in fact, "additives."

26. According to a recent scientific study, Natural American Spirits are actually considerably more toxic and carcinogenic than other cigarettes.<sup>4</sup> 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, Natural American Spirits in general, have the highest tobacco mass. It has 216 mg more mass than the average tobacco mass of 49 other cigarettes.

27. Defendants' deceptive advertising and labeling led Plaintiffs and the Class into believing that Natural American Spirit cigarettes are less carcinogenic than other cigarette brands, when the Natural American Spirits are actually more carcinogenic than other brands.

28. Natural American Spirits also contain the highest levels of freebase nicotine. The more freebase nicotine, the more addictive the cigarette. Natural American Spirits' freebase

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<sup>4</sup> 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.

nicotine levels are at 36 percent, compared to Camel's 2.7 percent, Winston's 6.2 percent, and Marlboro's 9.6 percent.<sup>5</sup>

29. Defendants' deceptive advertising and labeling led Plaintiffs into believing they could smoke Natural American Spirits as an alternative to quitting or as a means to help them quit smoking, when the Natural American Spirits are actually more addictive than other cigarette brands.

30. Natural American Spirit cigarettes are priced higher than other brands, and Plaintiffs and the Class were willing to pay the higher price because they believed Natural American Spirits were safer and less carcinogenic than other cigarettes. Defendants' public financial statements reveal that they purposefully price Natural American Spirits higher than other brands.

#### **D. The Food and Drug Administration's Warning Letter**

31. On August 27, 2015, the Center for Tobacco Products of the U.S. Food and Drug Administration issued a warning letter to Defendants.<sup>6</sup>

32. The FDA determined that Natural American Spirit cigarettes are adulterated "because they are modified risk tobacco products sold or distributed without an FDA order in effect that permits such sale or distribution."

33. The FDA concluded that the Natural American Spirit labels describing the cigarettes as "natural" and "additive-free" make the cigarettes a "modified risk tobacco product" because such labeling "represents explicitly and/or implicitly that the products or their smoke do not contain or are free of a substance and/or that the products present a lower risk of tobacco-

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<sup>5</sup> 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.

<sup>6</sup> <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm459778.htm> (last visited June 16, 2016).



related disease or are less harmful than one or more other commercially marketed tobacco products.”

34. The FDA found Natural American Spirit cigarettes to be a “modified risk tobacco product.” A “modified risk tobacco product” is defined as “any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.” 21 U.S.C.A. § 387k(b)(1).

35. Because the FDA determined that Natural American Spirit labeling represents that the cigarettes are less harmful or present a lower risk of tobacco related diseases and “because these products are sold or distributed to customers in the United States without an appropriate FDA order in effect under section 911(g) of the FD&C Act (21 U.S.C. § 387k(g)), these products are adulterated under section 902(8) of the FD&C Act (21 U.S.C. § 387b(8) ).”

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

36. Defendants know and have known that their advertising, labeling, and marketing of Natural American Spirit cigarettes is deceptive and misleading.

37. Defendants have knowingly and intentionally misled consumers into believing that Natural American Spirit cigarettes are healthier or less harmful than other cigarettes, even though there is no research or evidence supporting these claims, and even though they possess knowledge that Natural American Spirit cigarettes contain additives and are not natural.

38. Defendants have continued their advertising, labeling, and marketing practices to consumers, including Plaintiffs and the Class, without disclosing the truth of their deceptive advertising, labeling, and marketing.

### **CLASS ACTION ALLEGATIONS**

39. Pursuant to Rule 23(a),(b)(1),(b)(2),(b)(3) and (c)(4) of the Federal Rules of Civil Procedure, Plaintiffs bring this action on behalf of themselves and the following Class and Subclass (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 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.

40. Excluded from the Classes 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 court staff; all persons that properly execute and timely file a request for exclusion from the Classes.

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

42. 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.

43. 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).

44. 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 Plaintiffs, 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.

45. 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 unfair or deceptive or unconscionable business practices alleged herein;
- b. Whether Defendants made deceptive 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' unfair and deceptive trade 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 their deceptive practices; and

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

46. Typicality—Plaintiffs’ claims are typical of the claims of the members of the Class because Plaintiffs purchased American Spirits that Defendants’ deceptively promoted, sold and distributed. Plaintiffs are asserting the same rights, making the same claims, and seeking the same relief for themselves and for all other class members. Defendants’ unfair and/or deceptive 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 Defendants’ conduct.

47. The injuries of each Class member were caused directly by Defendants’ wrongful conduct. The factual underpinning of Defendants’ misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all Class members. Plaintiff’s 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.

48. Adequacy—Plaintiffs are adequate representatives 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 seek to represent. Plaintiffs are represented by experienced and able counsel who have successfully litigated numerous consumer class actions, and Plaintiffs’ counsel intends to prosecute this action vigorously for the benefit of the entire Class. Plaintiffs and

Plaintiffs' counsel can fairly and adequately protect the interests of the members of the Plaintiffs Class.

49. Superiority—The class action is the best available method for the efficient adjudication of this litigation because individual litigation of the 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 a 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.

**FIRST CLAIM FOR RELIEF**  
**UNJUST ENRICHMENT**  
**(By Plaintiffs and the Nationwide Class)**

50. Plaintiffs reallege and incorporate by reference paragraphs 1-49 above as if fully set forth herein.

51. Plaintiffs bring this claim individually and on behalf of the members of the Nationwide Class and all Subclasses against Defendants.

52. Defendants received a benefit from Plaintiffs and the Nationwide Class members when Plaintiffs and the Nationwide Class members purchased Natural American Spirit cigarettes and paid a premium price for the cigarettes.

53. Defendants knowingly and willingly accepted this benefit of monies paid to them by Plaintiffs and the Class members in the purchase of Natural American Spirits.

54. Plaintiffs and the Nationwide Class members purchased Natural American Spirit cigarettes because the cigarettes were advertised, labeled, and marketed as being “100% Additive Free,” “Natural,” and “Organic,” and Plaintiffs and the Class believed that the Natural American Spirits were safer, less harmful, and less carcinogenic than other cigarette brands. Plaintiffs and the Nationwide Class members would not have purchased the Natural American Spirits or would not have paid a premium price for them if they had known that the cigarettes are not safer, less harmful, or less carcinogenic than other cigarette brands, and may even be more harmful.

55. Plaintiffs and the Nationwide Class members did not confer a gratuitous benefit on Defendants, and expected that they were purchasing cigarettes that were as Defendants advertised.

56. Defendants have unjustly retained a benefit to the detriment of Plaintiffs and members of the Nationwide Class. Defendants continue to hold the funds that Plaintiffs and the Nationwide Class paid to purchase the Natural American Spirits, and Defendants are not entitled to these funds.

57. Equity demands disgorgement of Defendants’ ill-gotten gains. Defendants will be unjustly enriched unless Defendants are ordered to disgorge those profits for the benefit of Plaintiffs and the Class.

58. It is inequitable for Defendants to retain this benefit that they received at the expense of Plaintiffs and members of the Nationwide Class.

59. As a direct and proximate result of Defendants' deceptive and misleading advertising, labeling, and marketing, Plaintiff and the Nationwide Class members have sustained damages. Defendants were enriched at the expense of Plaintiffs and the Class.

60. Based on the above described facts, it would be unjust and inequitable for Defendants to retain the benefit without restitution to Plaintiffs and the Class for the monies paid to Defendants for the Natural American Spirit cigarettes.

**SECOND CLAIM FOR RELIEF**  
**INJUNCTIVE RELIEF—MEDICAL MONITORING & SMOKING CESSATION**  
**CLINICS**  
**(By Plaintiffs and the Nationwide Class)**

61. Plaintiffs reallege and incorporate by reference paragraphs 1-60 above as if fully set forth herein.

62. Plaintiffs brings this claim individually and on behalf of the members of the Nationwide Class and all Subclasses against Defendants.

63. As detailed above, Defendants' deceptive and misleading advertising, labeling, and marketing misled Plaintiffs and the Nationwide Class into believing that Natural American Spirits were healthier, safer, and less carcinogenic than other cigarette brands.

64. Defendants exposed Plaintiffs and the Class to a product that is addictive and causes disease.

65. Plaintiffs and Nationwide Class members began smoking Natural American Spirit cigarettes because the deceptive advertising, labeling, and marketing convinced Plaintiffs and the Class that there were health benefits to switching to Natural American Spirits and that switching would help them to quit smoking.

66. Because smoking Natural American Spirits is addictive and potentially disease-causing, medical examinations and smoking cessation programs are reasonable and necessary.

67. Medical monitoring programs and/or smoking cessation programs are necessary for Plaintiff and the Nationwide Class because of the highly increased risk of catastrophic illnesses to which Defendants have exposed Plaintiffs and the Nationwide Class.

68. Plaintiffs, on behalf of themselves and similarly situated Nationwide Class members, invoke the equitable and injunctive power of the Court to require Defendants to fund a Court-supervised medical monitoring and smoking cessation program due to the increased risks of harm to Plaintiffs and the Class caused by smoking Natural American Spirits.

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

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

**THIRD CLAIM FOR RELIEF**  
**VIOLATIONS OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE**  
**PRACTICES ACT**  
**(By Plaintiff King and the North Carolina Subclass)**

71. Plaintiffs reallege and incorporate by reference paragraphs 1-70 above as if fully set forth herein.

72. Plaintiff King brings this claim individually and on behalf of the members of the North Carolina Subclass against Defendants.

73. At all times relevant hereto, there was in full force and effect the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat §75-1.1 *et seq.*



74. N.C. Gen. Stat. § 75-1.1 *et. seq.* makes unlawful, "Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce."

75. Plaintiff King and the Class members are consumers within the meaning of N.C. Gen. Stat. § 75-1.1 *et. seq.* given that Defendants' business activities involve trade or commerce, are addressed to the market generally, and otherwise implicate consumer protection concerns.

76. By selling, distributing, and marketing Natural American Spirit cigarettes throughout the State of North Carolina and the United States and by undertaking the acts complained of herein, including the sale of Natural American Spirits to Plaintiffs and the Class through deceptive and misleading advertising, labeling, and marketing, Defendants' actions are in or affecting commerce within the meaning of N.C. Gen. Stat. § 75-1.1 *et. seq.*

77. Defendants engaged in unfair or deceptive acts or practices in violation of N.C. Gen. Stat. §75-1. 1 *et. seq.* by, among other things:

a. Misleading Plaintiffs and the Class into believing Natural American Spirit cigarettes are safer, healthier, less harmful, and/or less carcinogenic through labeling, advertising, and marketing Natural American Spirit cigarettes as "Natural," "100% Additive Free," and "Organic," when, in fact, the cigarettes are not any safer, healthier, less harmful, or less carcinogenic than other cigarette brands, and may even be more harmful and more carcinogenic.

b. Targeting the large segment of the population who believe that things that are "Natural," "100% Additive Free," and "Organic," are better for you and that cigarettes without chemical additives are less harmful and less carcinogenic.

c. Advertising, labeling, and marketing menthol cigarettes as “Additive Free,” “Natural,” and “Organic,” when the cigarettes are engineered to deliver a higher level of nicotine and/or contain additives and flavorings, including menthol.

d. Charging Plaintiffs and the Class premium prices for Natural American Spirit cigarettes because the cigarettes are labeled, advertised, and marketed as “Natural,” “100% Additive Free,” and “Organic,” when, in fact, the cigarettes are not any safer, healthier, less harmful, or less carcinogenic than other cigarette brands, and may even be more harmful and more carcinogenic.

78. Plaintiffs and the Class have been damaged by Defendants’ deception because: (a) they would not have purchased or would not have paid a premium price for Natural American Spirit cigarettes if they had not been misled by Defendants into believing that Natural American Spirits were healthier, less harmful, or less carcinogenic than other cigarette brands.

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

80. Defendant has committed deceptive acts or practices within the meaning of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat §75-1.1 *et seq.* by engaging in the acts and practices alleged herein, including, but not limited to, misleading and deceptive advertising, labeling, and marketing of Natural American Spirit cigarettes.

81. As a direct and proximate result of the unfair acts or practices of Defendants alleged herein, Plaintiff King and other members of the proposed Subclass were damaged and are entitled to receive compensation for these damages, have those damage awards trebled, and recover an award of attorney’s fees.

**FOURTH CLAIM FOR RELIEF**  
**UNJUST ENRICHMENT**  
**(By Plaintiff King and the North Carolina Subclass)**

82. Plaintiffs reallege and incorporate by reference paragraphs 1-81 above as if fully set forth herein.

83. Plaintiff King brings this claim individually and on behalf of the members of the North Carolina Subclass against Defendants.

84. Defendants received a measurable benefit from Plaintiff King and the North Carolina Subclass members when Plaintiffs and the North Carolina Subclass members purchased Natural American Spirit cigarettes and paid a premium price for the cigarettes.

85. Defendants knowingly and willingly accepted this benefit of monies paid to them by Plaintiff King and the North Carolina Subclass in the purchase of Natural American Spirits.

86. Plaintiff King and the North Carolina Subclass purchased Natural American Spirit cigarettes because the cigarettes were advertised, labeled, and marketed as being “100% Additive Free,” “Natural,” and “Organic,” and Plaintiffs and the Class believed that the Natural American Spirits were safer, less harmful, and less carcinogenic than other cigarette brands. Plaintiffs and the Nationwide Class members would not have purchased the Natural American Spirits or would not have paid a premium price for them if they had known that the cigarettes are not safer, less harmful, or less carcinogenic than other cigarette brands, and may even be more harmful.

87. Plaintiff King and the North Carolina Subclass did not confer a gratuitous benefit on Defendants and expected that they were purchasing cigarettes that were as Defendants advertised.

88. Defendants have unjustly retained a benefit to the detriment of Plaintiff King and the North Carolina Subclass. Defendants continue to hold the funds that Plaintiff King and the

North Carolina Subclass paid to purchase the Natural American Spirits, and Defendants are not entitled to these funds.

89. Equity demands disgorgement of Defendants' ill-gotten gains. Defendants will be unjustly enriched unless Defendants are ordered to disgorge those profits for the benefit of Plaintiff King and the North Carolina Subclass.

90. As a direct and proximate result of Defendants' deceptive and misleading advertising, labeling, and marketing, Plaintiff King and the North Carolina Subclass have sustained damages. Defendants were enriched at the expense of Plaintiff King and the North Carolina Subclass.

91. Based on the above described facts, it would be unjust and inequitable for Defendants to retain the benefit without restitution to Plaintiff King and the North Carolina Subclass for the monies paid to Defendants for the Natural American Spirit cigarettes.

**FIFTH CLAIM FOR RELIEF**  
**NEGLIGENT MISREPRESENTATION**  
**(By Plaintiff King and the North Carolina Subclass)**

92. Plaintiffs reallege and incorporate by reference paragraphs 1-91 above as if fully set forth herein.

93. Plaintiff King brings this claim individually and on behalf of the members of the North Carolina Subclass against Defendants.

94. Defendants, in the course of their business and in the course of inducing Plaintiff King and the North Carolina Subclass to purchase Natural American Spirit cigarettes, supplied misleading and deceptive information.

95. Defendants owed a duty of care to Plaintiff King and the North Carolina Subclass because they were within the class of persons to whom Defendants intended to supply

information in order to influence their decision to purchase Natural American Spirit cigarettes. At all times, Defendants were aware that the information that they supplied to Plaintiff King and the North Carolina Subclass would be relied upon by Plaintiff King and the North Carolina Subclass in making their decision to purchase Natural American Spirit cigarettes.

96. Defendants failed to exercise reasonable care in communicating said information relied upon by Plaintiff King and the North Carolina Subclass in making their decisions to purchase Natural American Spirit cigarettes.

97. Defendants knew or should have known they were misrepresenting material facts and that Plaintiff King and the North Carolina Subclass would be relying on Defendants' representations to their detriment and damage.

98. Plaintiff King and the North Carolina Subclass were unaware of the misleading and deceptive nature of Defendants' representations, and as a result, they justifiably relied upon them in purchasing Natural American Spirit cigarettes.

99. Defendants made the deceptive representations in the course of their business with the intent that Plaintiff King and the North Carolina Subclass would rely on them and purchase Natural American Spirits.

100. As a direct, proximate, and foreseeable result of Defendants' misrepresentations of material facts, Plaintiff King and the North Carolina Subclass suffered damage in that they purchased natural American Spirits and would not have done so or would not have paid a premium price for them if they had not been misled by Defendants' deceptive advertising, labeling, and marketing.

**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(a), (b)(1), (b)(2), (b)(3) and (c)(4), establishing an appropriate Class and any Subclasses the Court deems appropriate, and finding that Plaintiffs are proper representatives of the Class;
- B. Actual damages 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 interest;
- E. The costs of this proceeding and attorneys' fees;
- F. Treble damages;
- G. Any further compensatory, injunctive, equitable, or declaratory relief as may be just and proper.
- H. Trial by jury on all issues so triable.

This the 21st day of June, 2016.

Respectfully submitted,

**RHINE LAW FIRM, P.C.**

/s/ Joel R. Rhine

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