

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CASE NO. 98-6002-H

LORI ASPINALL and THOMAS  
GEANACOPOULOS, on Behalf of  
Themselves and All Others Similarly  
Situating,

Plaintiffs,

v.

PHILIP MORRIS COMPANIES, INC. and  
PHILIP MORRIS, INC.,

Defendants.

**THIRD AMENDED CLASS ACTION COMPLAINT**

Plaintiffs Lori Aspinall and Thomas Geanacopoulos, by their attorneys, allege on behalf of themselves and all others similarly situated, on information and belief based, *inter alia*, upon the investigation of their counsel, except as to those allegations which pertain to the named Plaintiffs or their attorneys, which are alleged on personal information and belief, as follows:

**I. NATURE OF THE ACTION**

1. This is a class action for economic damages under the Massachusetts Consumer Protection Act, M.G.L. c. 93A, and the common law, on behalf of persons who purchased Marlboro Lights “low-tar,” filtered cigarettes manufactured, distributed and/or sold by Defendants Philip Morris Companies Inc., and Philip Morris Incorporated (hereinafter, collectively “Philip Morris” or “Defendants”) in the Commonwealth of Massachusetts.

2. As more fully set forth herein, Defendants manufacture and sell filtered cigarettes under the brand name “Marlboro Lights” in Massachusetts and throughout the United States. At all relevant times Defendants represented to Plaintiffs and other consumers that Marlboro Lights cigarettes were “light” and that they contained and delivered “LOWERED TAR & NICOTINE” to smokers.

3. By using words such as “Lights,” and “LOWERED TAR & NICOTINE” on the packaging of Marlboro Lights purchased by Plaintiffs and all Class members, Defendants falsely represented to purchasers that these cigarettes contained and delivered lower levels of tar and nicotine to human smokers.

4. Defendants base their claims that Marlboro Lights deliver LOWERED TAR & NICOTINE on measurements obtained through use of smoking machines known as the “Cambridge” testing apparatus. The Cambridge smoking machines purport to measure the amount of tar and nicotine delivered by a cigarette by “smoking” the cigarette in a manner by which the smoke exiting the filter end of the cigarette — where a smoker’s mouth would normally be — passes through a special pad. The tar and nicotine residue from the smoke is collected on the pad and is then analyzed. Under this testing protocol, the amounts of tar and nicotine residue found on the pad are said to indicate the tar and nicotine yield levels of that particular cigarette.

5. Defendants intentionally designed Marlboro Lights cigarettes to deliver higher levels of tar and nicotine to smokers than would be measured by the Cambridge testing apparatus. Defendants used the results of the Cambridge tests to support their false claims that their cigarettes were in fact “light” and that their cigarettes contained and delivered “LOWERED TAR & NICOTINE” to smokers.

6. Defendants engaged in a common course of deceptive and unlawful conduct in connection with their distribution and sale of Marlboro Lights cigarettes by falsely

representing to purchasers that such cigarettes deliver “LOWERED TAR & NICOTINE” in comparison to regular cigarettes. Defendants were aware that the measurements of tar and nicotine deliveries for Marlboro Lights obtained through use of the Cambridge testing apparatus do not accurately reflect the amounts of tar and nicotine actually delivered to Marlboro Lights smokers. Defendants knew that the lower tar and nicotine deliveries measured by the Cambridge smoking machines were the result of their deceptive changes in cigarette design and composition, including the addition of microscopic vent holes on or around the cigarette filter to dilute the tar and nicotine content of smoke per puff when measured by the Cambridge testing apparatus, and alteration of the tobacco in the cigarettes and the materials used in filters and cigarette paper.

7. Defendants intentionally manipulated the design and content of Marlboro Lights in order to maximize nicotine delivery to human smokers. These manipulations include the modification of tobacco blend, weight, rod length, and circumference; the use of reconstituted tobacco sheets and/or expanded tobacco; and the increase of smoke pH level by chemical processing and additives, such as ammonia, which resulted in the delivery of far greater amounts of tar and nicotine when smoked by human smokers under realistic conditions than measured by the Cambridge testing apparatus.

8. At all relevant times, Defendants have known that the techniques they employed that purportedly reduce the levels of tar in their Marlboro Lights actually *increase* the concentration of the tar ingested by Marlboro Lights smokers over levels received from regular cigarettes.

9. Defendants’ purpose in controlling the tar and nicotine delivery of Marlboro Lights is to achieve artificially low tar and nicotine ratings under testing conditions in order to lend credence to their claims that Marlboro Lights are “light” and contain and deliver “LOWERED TAR & NICOTINE.” In fact, Defendants conducted their own internal tests to

ensure that the actual amounts of tar and nicotine Marlboro Lights delivered to human smokers remained at materially higher levels than shown by the Cambridge testing apparatus.

10. Plaintiffs seek such actual or statutory damages and other relief (both in equity and at law) as may be available to them under M.G.L. c. 93A, including orders that Defendants refund all sums the Plaintiffs and the Class Members paid during the Class Period to purchase Marlboro Lights cigarettes, or that Defendants disgorge all profits which they made on account of any Marlboro Lights purchased by Plaintiffs or members of the Class in Massachusetts during the Class Period, together with any further relief which may be available to them under said statute or the common law.

11. Plaintiffs do not seek to recover damages for themselves or for the Class on account of any personal injuries suffered by any of them.

## **II. PARTIES, JURISDICTION AND VENUE**

12. Plaintiffs bring this action in their individual capacities and on behalf of all others similarly situated.

13. Plaintiffs' damages are each less than \$75,000.00.

14. Plaintiff Lori Aspinall is a resident of Boston, Massachusetts. She purchased and consumed on average approximately one-half to one pack of Marlboro Lights cigarettes per day in the Commonwealth of Massachusetts for a period of approximately six years prior to the filing of this action. Until late 1997, Plaintiff Aspinall was without knowledge of the conduct by Defendants alleged in this complaint, or of any facts from which it might reasonably be concluded that Defendants were so acting, or which would have led to the discovery of such actions.

15. Plaintiff Thomas Geanacopoulos is a resident of Ashburnham, Massachusetts. He purchased and consumed on average approximately one to one and one-half packs of Marlboro Lights cigarettes per day in the Commonwealth of Massachusetts for a period of

approximately seven years prior to the filing of this action. Until late 1997, Plaintiff Geanacopoulos was without knowledge of the conduct by Defendants alleged in this complaint, or of any facts from which it might reasonably be concluded that Defendants were so acting, or which would have led to the discovery of such actions.

16. Defendant Philip Morris Companies, Inc. (“Philip Morris”) is a Virginia corporation with its principal place of business at 120 Park Avenue, New York, New York. At all times since its formation in 1986, Philip Morris engaged in a common enterprise with its wholly owned subsidiary Philip Morris Incorporated (“PMI”) in the business of manufacturing, promoting, marketing, distributing and/or selling Marlboro Lights brand light cigarettes in Massachusetts and elsewhere. During that period, Philip Morris actively and directly controlled PMI in its conduct of business in Massachusetts, which included the manufacture, promotion, marketing, distribution and/or sale of cigarettes in Massachusetts.

17. Defendant PMI is a Virginia corporation with its principal place of business at 120 Park Avenue, New York, New York. PMI is a wholly owned subsidiary of Philip Morris and has at all times since 1986 been actively and directly controlled by Philip Morris. At all times relevant hereto, PMI engaged in the business of manufacturing, promoting, marketing, distributing and/or selling Marlboro Lights brand light cigarettes. PMI conducts business in Massachusetts, and at all relevant times manufactured, promoted, marketed, distributed and/or sold cigarettes in interstate commerce and in Massachusetts.

18. Defendants have sold Marlboro Lights in Massachusetts since approximately 1971.

### **III. CLASS ACTION ALLEGATIONS**

19. This action is brought pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure and M.G.L. c. 93A, § 9(2).

20. Plaintiffs bring this action on their own behalf and on behalf of a Class of all others similarly situated. The Class that Plaintiffs seek to represent consists of all persons who purchased Defendants' Marlboro Lights cigarettes in Massachusetts during the Class Period. The Class Period commences on the first date that Defendants placed their Marlboro Lights into the stream of commerce in Massachusetts, and runs until the date of entry of final judgment in this action. Not included within the Class are individuals who are directors and officers of the Defendant corporations or their affiliates.

21. The Class is composed of at least hundreds of thousands of persons, the joinder of whom is impracticable except by means of a class action. The disposition of their claims in a class action will benefit both the parties and the Court. Defendants sell hundreds of thousands of packs of Marlboro Lights in Massachusetts every year, and thus the Class is sufficiently numerous to make joinder impracticable, if not completely impossible.

22. There is a well-defined community of interest in the questions of law and fact involving and affecting the parties to be represented. Common questions of law and fact exist and such common questions predominate over any question of law or fact which may affect only individual Class members. Such common questions include the following:

(a) Whether Defendants misrepresented the true tar and nicotine yields of the "light" cigarettes they manufactured, marketed, and/or distributed;

(b) Whether Defendants intentionally designed "light" cigarettes to generate misleading tar and nicotine measurements on the Cambridge testing apparatus while delivering significantly higher quantities of tar and nicotine to human smokers;

(c) Whether the Defendants violated Massachusetts General Laws ch. 93A, §2 and the common law through their common course of deceptive conduct as alleged herein;

(d) Whether by reason of Defendants' violations of M.G.L. c. 93A the Plaintiffs and the Class are entitled to recover actual or statutory damages;

(e) Whether by reason of Defendants' violations of M.G.L. c. 93A Defendants should be required to refund all sums which Plaintiffs and the Class Members paid for Marlboro Light cigarettes in Massachusetts during the Class Period, or whether Defendants should be required to disgorge all profits which they made on account of any such cigarettes;

(f) Whether Defendants were unjustly enriched at the expense of the Plaintiffs and the Class members; and

(g) The nature and extent of any additional relief which the Class is entitled to recover under M.G.L. c. 93A or the common law.

23. Plaintiffs assert claims that are typical of the claims of the entire Class. They will fairly and adequately represent and protect the interests of the Class. Plaintiffs have no interests antagonistic to those of the Class. Plaintiffs have retained counsel who are competent and experienced in class action litigation.

24. Defendants have acted or refused to act on grounds generally applicable to all the members of the Class, thereby making final relief concerning the Class as a whole appropriate.

25. Plaintiffs and the Class have suffered injury and damages as a result of Defendants' wrongful conduct as alleged herein. Absent a representative action, Class members will continue to suffer injury, thereby allowing these alleged violations of law to proceed without remedy, and allowing Defendants to retain the proceeds of their ill-gotten gains.

26. Plaintiffs anticipate that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

#### **IV. FACTUAL ALLEGATIONS**

27. Demand for so-called “light” cigarettes has sky-rocketed in recent years. According to findings published in the Centers for Disease Control and Prevention publication Morbidity and Mortality Weekly Report, in an article entitled “Filter Ventilation Levels in Selected U.S. Cigarettes, 1997” (the “CDC publication”), sales of light cigarettes made up 72.7% of the domestic cigarette market in 1995. According to the U.S. Office of Smoking and Health, “light” cigarettes now have a market share of approximately 87%. Upon information and belief, sales of light cigarettes in 1985 accounted for only slightly more than half (51.9%) of the domestic market.

28. Defendants manipulate the tar and nicotine deliveries of Marlboro Lights cigarettes through a variety of design methods, including but not limited to the inclusion of microscopic ventilation holes in or around cigarette filters; the modification of tobacco blend and weight; the modification of tobacco rod length and circumference; the use of re-constituted tobacco sheets and/or expanded tobacco; and the increase of smoke pH level through the use of chemical additives and processes such as ammoniation.

##### **A. Ventilation Holes**

29. Many brands of light cigarettes are manufactured with ventilation holes in the filter. The holes are designed to allow the smoker to draw in additional air when inhaling. In theory, the additional air mixes with the tar, nicotine, and carbon monoxide in cigarette smoke and thereby reduces the relative levels of these substances per volume of smoke that enters the human body.

30. Defendants’ Marlboro Lights cigarettes contain ventilation holes. However, the holes are often obstructed during normal use of the product because the holes are placed in the area of the filter that is often covered by the smoker’s lips or fingers. This blocking



problem is exacerbated with Marlboro Lights, because their vent holes are virtually invisible to the naked eye.

31. Marlboro Lights smokers may not receive LOWERED TAR& NICOTINE when they smoke Marlboro Lights, if the ventilation holes in the filter are blocked, and the air inhaled by the smoker is not diluted, as it is when the cigarette is smoked on the Cambridge testing machine. According to studies cited in the CDC publication, blocking even some of the ventilation holes in light cigarettes can dramatically increase the smoker's intake of the tar and nicotine contained in cigarette smoke.

32. After analyzing fifteen different cigarette brands, including Marlboro Lights, a Massachusetts Department of Public Health ("MDPH") study stated that:

Many brands have vents that are so tiny they are invisible to the naked eye. Often the placement of the holes makes it difficult if not impossible for a smoker to smoke a cigarette without blocking some or all of the vents.

The cigarettes are designed so that it is "natural" to cover-up some or all of the filter vents and "natural" to breathe in heavier amounts of tar and nicotine.

33. In 1980, researchers conducted a study on low tar cigarettes, the results of which are cited in the 1997 CDC publication. The study showed that blocking just half of the ventilation holes in a cigarette containing 4 mg of tar, 0.5 mg of nicotine, and 5 mg of carbon monoxide increased the Cambridge testing system-measured tar yields by 60%, nicotine levels by 62% and carbon monoxide levels by 73%.

34. Based on this study, smokers of "light" cigarettes who block just half of the vent holes in their cigarettes could inhale as much, or even more, tar, nicotine, and carbon monoxide as from a regular Marlboro cigarette.

35. A 1997 MDPH study concluded that “when smokers place their mouth or fingers over the vents, they keep outside air from diluting the mixture and so take in higher levels of tar and nicotine.” These facts were known to Defendants.

**B. “Compensation”: Increasing Puff Volume & Frequency**

36. Defendants designed Marlboro Lights so that even if a smoker *does not* block the vent holes, the smoker may achieve total tar, nicotine and carbon monoxide deliveries equivalent to or greater than that of a regular Marlboro simply by increasing puff volume and/or frequency. Defendants have long been aware of this tendency, known as “compensation,” and yet have continued to represent to consumers that Marlboro Lights are “light” and deliver “LOWERED TAR & NICOTINE” to smokers.

37. A September, 1975 Philip Morris internal memorandum entitled "Marlboro-Marlboro Lights Study Delivery Data," concluded that:

The smoker data collected in this study are in agreement with results found in other project studies. The panelists smoked the cigarettes according to physical properties, i.e., the dilution of the lower RTD [resistance to draw] of Marlboro Lights caused smokers to take larger puffs on that cigarette than on Marlboro 85's. The larger puffs, in turn, increased the delivery of the Marlboro Light proportionally. In effect, the Marlboro 85 smokers in this study did not achieve any reduction in smoke intake by smoking a cigarette (Marlboro Lights) normally considered lower in delivery.

38. Defendants have at all relevant times been fully aware of the discrepancies between the amount of tar and nicotine delivered to smokers and those achieved under machine-testing conditions.

39. This knowledge is demonstrated by a 1974 Philip Morris document entitled, “Some Unexpected Observations on Tar and Nicotine and Smoker Behavior,” which notes: “Generally, people smoke in such a way that they get more than predicted by machines. This

is especially true for dilution cigarettes [i.e. low tar, low nicotine]. . . . The FTC standardized [Cambridge] test should be retained: It gives low ratings.”

40. Defendants’ knowledge is further demonstrated by other facts:

(a) Defendants manufacture, test and market their light cigarettes, thereby providing them with increased knowledge and insight into the design aspects and potential defects in their product with regard to tar and nicotine intake levels; and

(b) Because Defendants are members of an industry that conducts testing for tar, nicotine, and carbon monoxide levels in cigarettes, Defendants were, or should have been, particularly cognizant of the inaccuracies in their testing methodologies and aware of the alternative, more accurate methods of testing available, such as, for example, the Massachusetts method for testing tar and nicotine (discussed in the MDPH study, *supra*), that were more reflective of actual human smoking patterns.

**C. Design of Cigarettes to Manipulate Nicotine Amount, Form and Impact**

41. Defendants also employed various chemical processes and additives in designing and manufacturing Marlboro Lights in order to increase the discrepancy between the “LOWERED TAR & NICOTINE” claimed to be delivered and the amounts of tar and nicotine actually delivered to smokers. Defendants deliberately increased the amount of nicotine in Marlboro Lights and chemically altered its form so that it would escape detection by the Cambridge test apparatus. Defendants knew that these manipulations would ensure that smoking light cigarettes would not make it easier for smokers to quit and that smokers of light cigarettes would receive the nicotine “satisfaction” of a regular cigarette. Defendants tested their “light” cigarette designs against their own internally established measure of “cigarette acceptability.”

42. Defendants also control and manipulate the nicotine levels in cigarettes through the use of reconstituted tobacco. Reconstituted tobacco is an amalgamation of tobacco

stalks, stems, floor sweepings and dust that Defendants previously discarded, but now re-deploy to enhance profits. In the reconstitution process, pieces of tobacco material undergo treatment that results in the extraction of some soluble components, including nicotine. The pieces are then combined to form a sheet, to which Defendants directly apply nicotine extract in the exact amounts they desire. Through this application procedure, Defendants are able to control and manipulate the amount of nicotine that ultimately winds up in cigarettes smoked by consumers.

43. Defendants manipulate the smoke pH in their light cigarettes in order to create more “free” nicotine in the smoke and thereby enhance the actual nicotine delivery to smokers beyond that measured by the smoking machines. Defendants add ammonia and other substances to tobacco to create a more potent “kick” in their Marlboro Lights cigarettes. Some of these additives liberate nicotine from its salt form and transform it into an extremely potent vaporized form. Thus, the nicotine is converted into a “free-base” form. Defendants knew that the “LOWERED TAR & NICOTINE” levels represented by Defendants as measured by the Cambridge testing method do not reflect the additional, free-base nicotine particles that are able to evade detection by the Cambridge test apparatus.

44. In addition to the use of chemical additives to increase nicotine bioavailability to actual smokers while at the same time generating reduced nicotine levels on the Cambridge testing apparatus, Defendants employ design techniques to control and manipulate tar levels. Tobacco blend and weight, rod length and circumference, filters, tobacco processing, special cigarette papers, and air dilution methods are all actively used to manipulate and control tar and nicotine levels.

45. These tobacco manipulation techniques allow Defendants to maximize the amount of tar and nicotine delivered to smokers. Notwithstanding that manipulation, Defendants continue to misrepresent that Marlboro Lights are “light” and deliver “LOWERED

TAR & NICOTINE" to consumers so that Defendants may retain customers and maximize their own profits by cornering higher market share.

46. Defendants' manipulations and deception are further evidenced by the following internal documents and studies, among others:

(a) A November, 1971, Philip Morris internal report entitled, "Tar, Nicotine, and Smoking Behavior," which illustrates Defendants' knowledge and ability to add nicotine to "reduced tar" cigarettes:

Tar reduction [in our study] was accomplished by means of an air dilution technique. This results in a reduction of tar delivery. However, it also results in a reduction of nicotine delivery. Therefore, when the tar delivery was reduced to get the medium tar delivery, it also reduced the nicotine delivery by a like amount. Thus, just to maintain the original nicotine delivery required that nicotine be added to that cigarette.

This report determined that the level of nicotine which "resulted in the greatest cigarette acceptability" was apparently 1.3 mg. The report is evidence of Defendants' motivation to manipulate their light cigarettes in order to maintain higher levels of tar: "Low tar resulted in least acceptability at all levels of nicotine."

(b) A 1973 report by researcher Claude E. Teague, Jr. of competitor R.J. Reynolds, entitled "Implications and Activities Arising From the Correlation of Smoke pH with Nicotine Impact, Other Smoke Qualities, and Cigarette Sales," evidences the alteration of smoke pH by Philip Morris. The increase in smoke pH (usually through the addition of ammonia) increases the level of "free" nicotine in the cigarettes and provides a greater nicotine "kick" to smokers through faster absorption of nicotine into the blood stream. The report notes that "the most significant difference" between Reynolds' brands and Philip Morris' brands "has been in the area of smoke pH." More specifically:

Our data show that smoke from our brands, and all other significant competitive brands, in recent years has been consistently and significantly lower in pH (less alkaline) than

smoke from Marlboro. . . . All evidence indicates that the relatively high smoke pH (high alkalinity) shown by Marlboro (and other Philip Morris brands) and Kool is deliberate and controlled.

(c) A March, 1978, Philip Morris report by J. Ryan and the Philip Morris USA Research Center entitled, “Exit-Brand Cigarettes, a Study of Ex-Smokers,” notes:

If the industry’s introduction of acceptable low-nicotine products does make it easier for dedicated smokers to quit, then the wisdom of the introduction is open to debate (emphasis in original).

(d) An October, 1990, Philip Morris research report which notes that nicotine strength in tobacco smoke can be increased through the addition of ammonia, nicotine salt or nicotine citrates. These chemical additives increase smoke pH, which “governs the ratio of nicotine in free and protonated forms.”

(e) Research performed for Philip Morris by researcher Frank Ryan illustrated that cigarette sales could be predicted at a 96% accuracy rate using data on nicotine and acetaldehyde (a chemical compound with dopamine-type euphoria-enabling characteristics). According to an April 6, 1994 report entitled, “Philip Morris Research on Nicotine Pharmacology and Human Smoking Behavior,” Ryan’s studies could accurately “predict blindly which cigarettes would sell and which wouldn’t based on the combination of nicotine and acetaldehyde delivery.”

47. At all relevant times, Defendants knew of (a) the inaccuracies associated with the Cambridge system of measurement of the tar and nicotine levels in Marlboro Lights, and (b) the deceptive nature of the terms used on their Marlboro Lights cigarette packages to describe the allegedly “LOWERED TAR & NICOTINE” cigarettes.

48. Defendants’ motivation for engaging in such deceptive conduct is evidenced by the following:

(a) Philip Morris' 1978 report entitled "Exit-Brand Cigarettes, a Study of Ex-smokers," *supra*, which explains:

The very fact, then, that a smoker has decided to switch from a full-flavor cigarette to a low-delivery cigarette tells us something very important about him: he is concerned about his health, and he is willing to do something about it.

(b) March 20, 1984 edition of Philip Morris' "The Cigarette Consumer," which states:

- Historically, motivation has come from health issue
- People willing to stick with lower tar because they feel they are doing themselves a favor
- Most successful new brands have had low tar/health motivation: Merit

49. Because they knew that the tar and nicotine delivery as measured by the Cambridge testing apparatus dramatically understated the amount of tar and nicotine delivered to actual smokers, Defendants engaged in conscious misrepresentations and deceptions when they stated — based on Cambridge test results — that Plaintiffs and members of the Class would receive "LOWERED TAR & NICOTINE" if they smoked Marlboro Lights.

### **COUNT I** **DECEPTIVE AND UNFAIR TRADE PRACTICES**

50. Plaintiffs reallege and incorporate by reference paragraphs 1 through 50 as if fully set forth herein and further allege:

51. This claim is brought pursuant to M.G.L. c. 93A, §§2 and 9.

52. At all times relevant hereto, Plaintiffs and the Class were "persons" within the meaning of M.G.L. c. 93A, §1(a) and are entitled to relief under the Act in accordance with M.G.L. 93A, §9.

53. At all times relevant hereto, Defendants were engaged in "trade or commerce" as defined by M.G.L. c. 93A, §1(b).

54. Plaintiffs and the Class entered into consumer transactions with Defendants by purchasing Marlboro Lights cigarettes.

55. As heretofore alleged, during the course of these transactions, Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, in the conduct of trade or commerce, in violation of M.G.L. c. 93A, §2.

56. Defendants' false statements that Marlboro Lights cigarettes are "light" and deliver "LOWERED TAR& NICOTINE" to smokers could reasonably be found to have caused consumers to have acted differently than they would have acted in the absence of such statements.

57. Defendants' acts, practices and conduct were willful and knowing violations of M.G.L. c. 93A, §2 and invaded the rights of the Plaintiffs and the Class to be free from deceptive business practices.

58. As a direct result of Defendants' violations, Plaintiffs and the Class are entitled to judgment under M.G.L. c. 93A (a) awarding such actual damages as they may prove, or statutory damages, tripled, and (b) requiring Defendants to refund all sums Plaintiffs and the Class Members paid to purchase Marlboro Lights in Massachusetts during the Class Period or to disgorge all profits which they made on account of such cigarettes sold to Plaintiffs or members of the Class in Massachusetts during the Class Period.

59. More than 30 days prior to filing the initial Complaint in this action, Plaintiffs made a written demand for relief on Defendants pursuant to M.G.L. c. 93A, §9(3). As of the time of filing this Third Amended Complaint, Plaintiffs had received no reply to their demand letter.



60. Defendants' refusal to grant relief upon demand was made in bad faith and with knowledge or reason to know that the acts or practices complained of herein violated M.G.L. c. 93A, §2.

**COUNT II**  
**UNJUST ENRICHMENT**

61. Plaintiffs reallege and incorporate by reference paragraphs 1 through 61 as if fully set forth herein and further allege:

62. As stated more particularly above, Defendants sold Marlboro Lights cigarettes by falsely and deceptively stating that such cigarettes were "light," and contained and delivered "LOWERED TAR & NICOTINE."

63. Defendants' practices resulted in Plaintiffs and the Class purchasing purportedly "light" cigarettes, but failing to obtain the purported "LOWERED TAR & NICOTINE" qualities of light cigarettes under normal patterns of use.

64. Defendants' practices further resulted in Plaintiffs and the Class purchasing Marlboro Lights cigarettes without understanding the true nature of Defendants' product or that Defendants manipulated the tobacco in their light cigarettes to increase their own ill-gotten profits.

65. The monies paid by Plaintiffs and the Class to Defendants in the purchase of Marlboro Lights conferred substantial benefits upon Defendants. Defendants knew of and appreciated the benefits conferred upon them by Plaintiffs and the Class and accepted and retained these benefits. By reason thereof, Defendants were unjustly enriched.

**PRAYERS FOR RELIEF**

WHEREFORE, Plaintiffs and the Class request the following relief:

Certification of this action as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure and M.G.L. c. 93A, § 9(2), and designation of Plaintiffs as the representatives of the Class;

2 A judgment that Defendants' acts, practices and conduct have violated M.G.L. c. 93A, § 2 and the common law, awarding any actual damages proved or statutory damages in the amount of \$25 per class member, whichever is greater, tripled, and directing that Defendants either (a) refund all sums paid by Plaintiffs and the Class Members for Marlboro Light cigarettes in Massachusetts during the Class Period, or (b) disgorge all profits which Defendants made on account of any such cigarettes sold to Plaintiffs or members of the Class in Massachusetts during the Class Period;

3 Prejudgment and post-judgment interest as provided by law;

4 Attorneys' fees, expenses and costs of this action; and

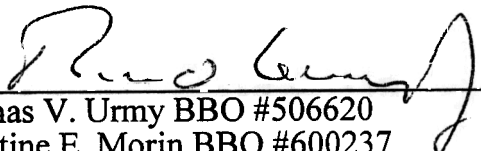
5. Such further relief as this Court deems necessary, just and proper.

**JURY DEMAND**

Plaintiffs, on behalf of themselves and all other similarly situated, hereby demand trial by jury on all issues raised in this complaint which are triable by jury.

Dated: October 17, 2002

By their attorneys,

  
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