

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

Case Type: Products Liability

GREGORY CURTIS, JONI KAY  
HANZAL, JOSEPHINE LEONARD and  
RANDY HOSKINS, Individually and on  
Behalf of All Others  
Similarly Situated,

Court File No: PI01-018042

Plaintiffs,

vs.

PHILIP MORRIS COMPANIES INC.  
and PHILIP MORRIS INCORPORATED,

Defendants.

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**ANSWER OF DEFENDANT PHILIP MORRIS COMPANIES INC. TO  
PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT  
AND DEMAND FOR JURY TRIAL**

Defendant Philip Morris Companies Inc. ("PMC") answers Plaintiffs' Second Amended Class Action Complaint and Demand for Jury Trial (the "Complaint") as follows:

**PRELIMINARY STATEMENT**

The Complaint in this case improperly mixes factual averments with argumentative rhetoric so as to make admissions or denials of such averments difficult or impossible. Furthermore, much of the Complaint consists of a selective recitation of historical facts and rumors, much of which is both irrelevant and inflammatory in tone and content. The Complaint also contains a selective recitation of statistics, scientific premises and conclusions, technical discussions and medical conclusions, few of which are identified as to source or supported by

relevant data. It is not reasonably possible to identify the sources of such allegations so as to meaningfully respond.

Finally, many of the allegations of the Complaint are overbroad, vague or conclusory and include terms which are undefined and which are susceptible to different meanings.

Accordingly, by way of a general response, all allegations are denied unless specifically admitted, and any factual averment admitted is admitted only as to the specific facts and not as to any conclusions, characterizations, implications or speculations which are contained in the averment or in the Complaint as a whole.

These comments and objections are incorporated, to the extent appropriate, into each numbered paragraph of this Answer.

1. PMC admits that Plaintiffs purport to seek various forms of relief as described and alleged in Paragraph 1 on behalf of themselves and other members of a putative class, but denies that this action is appropriate for class action treatment and denies that Plaintiffs and putative class members are entitled to the relief requested in Paragraph 1 or any relief whatsoever. PMC denies that it has ever manufactured, distributed or sold Marlboro Lights cigarettes or any other consumer product. PMC further denies that Philip Morris Incorporated manufactured, distributed or sold a cigarette named "Marlboro Lights 'low-tar,' filtered cigarettes." PMC denies the remaining allegations of Paragraph 1.

2. PMC admits that plaintiffs purport to bring this action on behalf of themselves and other members of a putative class, but denies that this lawsuit is appropriate for class action treatment and denies that Plaintiffs can or should be permitted to act as class representatives.

3. PMC is informed and believes that Plaintiff Gregory C. Curtis is a resident of the City of Hopkins, Minnesota. PMC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3 and, therefore, denies the same.

4. PMC is informed and believes that Plaintiff Joni Kay Hanzal is a resident of the City of Champlin, Minnesota. PMC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 4 and, therefore, denies the same.

5. PMC is informed and believes that Plaintiff Josephine Leonard is a resident of the City of Oakdale, Minnesota. PMC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 5 and, therefore, denies the same.

6. PMC is informed and believes that Plaintiff Randy L. Hoskins is a resident of the City of Brooklyn Park, Minnesota. PMC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 6 and, therefore, denies the same.

7. PMC admits that it is a Virginia corporation with its principal place of business located at 120 Park Avenue, New York, New York. PMC further admits that Philip Morris Incorporated is a wholly-owned subsidiary of PMC. PMC denies that it has ever manufactured, promoted, marketed, distributed or sold Marlboro Lights cigarettes or any other consumer product and denies that it conducts business in the State of Minnesota. PMC denies the remaining allegations of Paragraph 7.

8. PMC admits that Philip Morris Incorporated is a Virginia corporation with its principal place of business located at 120 Park Avenue, New York, New York. PMC is unable to respond to the allegations of the second and fourth sentences of Paragraph 8 in any meaningful manner because the phrases “at all times relevant hereto” and “at all relevant times” are not

defined in the Complaint. To the extent a response is required, PMC admits that Philip Morris Incorporated is a wholly-owned subsidiary of PMC. PMC further admits that Philip Morris Incorporated manufactured, promoted, marketed, distributed and sold Marlboro Lights cigarettes in the United States and that Philip Morris Incorporated sells its cigarettes to its direct customers for ultimate resale to consumers of legal age for purchasing cigarettes throughout the United States, including the State of Minnesota. PMC further admits that Philip Morris Incorporated conducts business in the State of Minnesota. PMC admits that CT Corporation System, located at 405 Second Avenue South, Minneapolis, MN 55401, is a registered agent of Philip Morris Incorporated. PMC denies the remaining allegations of Paragraph 8.

9. Paragraph 9 asserts legal conclusions to which no response is required. To the extent a response is required, PMC admits that this Court has subject matter jurisdiction over this action as to PMC and Philip Morris Incorporated and has personal jurisdiction as to Philip Morris Incorporated. PMC denies that this Court has personal jurisdiction as to PMC. PMC denies the remaining allegations of Paragraph 9.

10. Paragraph 10 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that venue is proper or appropriate as to PMC and reserves the right to seek a transfer of venue.

11. PMC admits that Plaintiffs allege that their purported “damages are less than \$75,000.00,” but is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 that the damages sought by each Plaintiff are less than \$75,000 and, therefore, denies the same. PMC denies that Plaintiffs and putative class members are entitled to any damages whatsoever.

12. PMC admits that Philip Morris Incorporated manufactures Marlboro Lights cigarettes and that the packs of Marlboro Lights cigarettes have contained the words “Lowered Tar & Nicotine” since the introduction of the brand. PMC admits that Philip Morris Incorporated distributes and sells Marlboro Lights cigarettes to its direct customers for ultimate resale to consumers of legal age for purchasing cigarettes throughout the United States, including the State of Minnesota. PMC denies that it has ever manufactured, distributed or sold Marlboro Lights cigarettes or any other consumer product.

13. PMC is unable to respond to the allegations of Paragraph 13 in any meaningful manner because the phrase “at all relevant times” is not defined in the Complaint. To the extent a response is required, PMC admits that Philip Morris Incorporated packages and sells Marlboro Lights cigarettes as having “Lowered Tar & Nicotine.” PMC denies that it has ever sold and packaged Marlboro Lights cigarettes or any other consumer product. PMC denies the remaining allegations of Paragraph 13.

14. PMC denies the allegations of Paragraph 14.

15. PMC denies the allegations of Paragraph 15.

16. PMC denies the allegations of Paragraph 16.

17. PMC denies the allegations of Paragraph 17, including all subparagraphs.

18. PMC denies that it engaged in the conduct alleged and denies the remaining allegations of Paragraph 18.

19. PMC denies that it engaged in the wrongful conduct alleged in this Complaint and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 19 and, therefore, denies the same.

20. PMC denies that it engaged in the wrongful conduct alleged in this Complaint and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 20 and, therefore, denies the same.

21. PMC denies that it engaged in the wrongful conduct alleged in this Complaint and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 21 and, therefore, denies the same.

22. PMC denies that it engaged in the wrongful conduct alleged in this Complaint and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 22 and, therefore, denies the same.

23. PMC denies the allegations of Paragraph 23.

24. PMC admits that Plaintiffs purport to make these allegations pursuant to Minnesota Rules of Civil Procedure (“MRCP”) 23, but denies that this lawsuit is appropriate for class action treatment.

25. PMC admits that Plaintiffs purport to bring this lawsuit as a class action and that Plaintiffs’ putative class “of all other residents of Minnesota” and an apparent alternative putative class of “All persons who purchased Defendants’ Marlboro Lights cigarettes in Minnesota” and putative class period are defined in Paragraph 25. PMC denies that this lawsuit is appropriate for class action treatment, denies that Paragraph 25 states a proper class or class period, and denies the remaining allegations of Paragraph 25.

26. PMC admits that Plaintiffs purport to bring this lawsuit as a class action, that Plaintiffs’ putative class period is defined in Paragraph 26, and that Plaintiffs purport to exclude certain persons from the putative class. PMC states that the putative class period as defined in Paragraph 25 of the Complaint is not consistent with that defined in Paragraph 26 of the

Complaint. PMC denies that this lawsuit is appropriate for class action treatment, denies that Paragraph 26 states a proper class period, and denies the remaining allegations of Paragraph 26.

27. PMC denies that this lawsuit is appropriate for class action treatment, and denies the remaining allegations of Paragraph 27.

28. PMC denies that this lawsuit is appropriate for class action treatment and denies the remaining allegations of Paragraph 28.

29. PMC denies that purported common questions of law and fact exist and predominate over individual issues, denies that common issues of law and fact apply to all members of the putative class, denies that it and Philip Morris Incorporated have violated any Minnesota laws, denies that this lawsuit is appropriate for class action treatment, and denies the remaining allegations of Paragraph 29, including all subparagraphs.

30. Paragraph 30 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that this lawsuit is appropriate for class action treatment and denies the remaining allegations of Paragraph 30, including all subparagraphs.

31. PMC denies that this lawsuit is appropriate for class action treatment and denies the remaining allegations of Paragraph 31.

32. Paragraph 32 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that this lawsuit is appropriate for class action treatment and denies the remaining allegations of Paragraph 32.

33. Paragraph 33 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that this lawsuit is appropriate for class action treatment and denies the remaining allegations of Paragraph 33.

34. Paragraph 34 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that this lawsuit is appropriate for class action treatment and denies the remaining allegations of Paragraph 34.

35. PMC is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35 and, therefore, denies the same.

36. PMC restates, realleges and incorporates by reference its responses to Paragraphs 1 through 35 of this Complaint as if fully set forth herein.

37. PMC states that the provisions of the Minnesota Prevention of Consumer Fraud Act speak for themselves. PMC admits that Plaintiffs purport to bring this claim pursuant to Minn. Stat. § 8.31, Subd. 3a. and the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68-.70, but denies that Plaintiffs and putative class members have any claims or are entitled to any relief thereunder.

38. Paragraph 38 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies the allegations of Paragraph 38.

39. Paragraph 39 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies the allegations of Paragraph 39.

40. Paragraph 40 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies the allegations of Paragraph 40, including all subparagraphs.

41. Paragraph 41 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that Plaintiffs and putative class members are entitled to any of the relief requested in Paragraph 41, or any relief whatsoever. PMC denies that it engaged in the conduct alleged and denies the remaining allegations of Paragraph 41.

42. PMC restates, realleges and incorporates by reference its responses to Paragraphs 1 through 41 of this Complaint as if fully set forth herein.

43. PMC admits that Plaintiffs purport to bring this claim pursuant to the Minnesota Unlawful Trade Practices Act, §§ 325D.09-.16, and Minn. Stat. 8.31, Subd. 1, but denies that Plaintiffs and putative class members have any claims or are entitled to any relief thereunder.

44. PMC states that the provisions of the Minnesota Unlawful Trade Practices Act speak for themselves.

45. Paragraph 45 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies the allegations of Paragraph 45.

46. Paragraph 46 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies the allegations of Paragraph 46.

47. Paragraph 47 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies the allegations of Paragraph 47.

48. Paragraph 48 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies it engaged in the conduct alleged and denies the remaining allegations of Paragraph 48, including all subparagraphs.

49. Paragraph 49 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies it engaged in the conduct alleged and denies the remaining allegations of Paragraph 49.

50. Paragraph 50 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that Plaintiffs and putative class members are entitled to any of the relief requested in Paragraph 50, or any relief whatsoever. PMC denies it engaged in the conduct alleged and denies the remaining allegations of Paragraph 50.

51. PMC restates, realleges and incorporates by reference its responses to Paragraphs 1 through 50 of this Complaint as if fully set forth herein.

52. PMC admits that Plaintiffs purport to bring this claim pursuant to Minn. Stat. §§ 325D.43-.48 and Minn. Stat. § 8.31, Subd. 1, but denies that Plaintiffs and putative class members have any claims or are entitled to any relief thereunder.

53. PMC states that the provisions of the Minnesota Deceptive Trade Practices Act speak for themselves.

54. Paragraph 54 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that it made any “representations” as alleged in Paragraph 54, including all subparagraphs, denies it engaged in the conduct alleged and denies the remaining allegations of Paragraph 54, including all subparagraphs.

55. Paragraph 55 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies the allegations of Paragraph 55.

56. PMC denies that Plaintiffs and putative class members are entitled to the relief requested in Paragraph 56, or any relief whatsoever.

57. PMC restates, realleges and incorporates by reference its responses to Paragraphs 1 through 56 of this Complaint as if fully set forth herein.

58. PMC admits that Plaintiffs purport to bring this claim pursuant to Minn. Stat. § 8.31, Subd. 3a. and the Minnesota False Statement in Advertisement Act, but denies that Plaintiffs and putative class members have any claims or are entitled to any relief thereunder.

59. PMC states that the provisions of the Minnesota False Statement in Advertisement Act speak for themselves.

60. Paragraph 60 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that it engaged in the conduct alleged and denies the remaining allegations of Paragraph 60, including all subparagraphs.

61. Paragraph 61 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that Plaintiffs are entitled to the relief requested in Paragraph 61, or any relief whatsoever. PMC denies that it engaged in the conduct alleged and denies the remaining allegations of Paragraph 61.

62. PMC restates, realleges and incorporates by reference its responses to Paragraphs 1 through 61 of this Complaint as if fully set forth herein.

63. Paragraph 63 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that it made any “misrepresentation” and denies the remaining allegations of Paragraph 63.

64. Paragraph 64 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that it engaged in the conduct alleged and denies the remaining allegations of Paragraph 64.

65. PMC denies that it made any “representations” as alleged in Paragraph 65 and denies the remaining allegations of Paragraph 65.

66. PMC denies that it engaged in the conduct alleged and denies the remaining allegations of Paragraph 66.

67. PMC denies that it engaged in the conduct alleged and denies the remaining allegations of Paragraph 67.

68. Paragraph 68 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies the allegations of Paragraph 68.

69. PMC denies that it made any “false representations” and denies the remaining allegation of Paragraph 69.

70. Paragraph 70 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that it made any “false representations” and denies the remaining allegations of Paragraph 70.

71. Paragraph 71 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that it made any “misrepresentations.” PMC further denies that Plaintiffs and putative class members are entitled to the relief requested in Paragraph 71, or any relief whatsoever. PMC denies the remaining allegations of Paragraph 71.

72. PMC restates, realleges and incorporates by reference its responses to Paragraphs 1 through 71 of this Complaint as if fully set forth herein.

73. Paragraph 73 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that it engaged in the conduct alleged and denies the remaining allegations of Paragraph 73.

74. PMC denies that it engaged in the conduct alleged and denies the remaining allegations of Paragraph 74.

75. PMC denies that it engaged in the conduct alleged and denies the remaining allegations of Paragraph 75.

76. Paragraph 76 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies the allegations of Paragraph 76.

77. Paragraph 77 asserts legal conclusions to which no response is required. To the extent a response is required, PMC denies that Plaintiffs and putative class members are entitled

to the relief requested in Paragraph 77, or any relief whatsoever. PMC denies the remaining allegations of Paragraph 77.

WHEREFORE, PMC denies that Plaintiffs and putative class members are entitled to the relief requested in the Prayer for Relief, or any relief whatsoever, and denies the remaining allegations of the Prayer for Relief, including all subparagraphs.

PMC denies each and every allegation of the Complaint not specifically admitted herein.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

PMC states that it has never manufactured, advertised or sold cigarettes in the State of Minnesota, or anywhere else. Accordingly, this Court lacks personal jurisdiction over PMC and any assertion of personal jurisdiction over PMC violates PMC's rights under the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' and putative class members' claims for equitable relief are not available under any of the alleged causes of action.

#### **THIRD AFFIRMATIVE DEFENSE**

The injunctive relief Plaintiffs and putative class members seek to remedy the Defendants' alleged conduct is inappropriate because it would require regulation by the Court on an ongoing basis.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs and putative class members are not entitled to the relief requested in the Complaint because the Court lacks any sufficiently certain, nonspeculative basis for fashioning such relief.

**FIFTH AFFIRMATIVE DEFENSE**

The Complaint fails to state a cause of action against PMC upon which relief can be granted.

**SIXTH AFFIRMATIVE DEFENSE**

The causes of action and claims alleged in the Complaint may not be properly maintained or certified as a class action.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' and putative class members' claims, if any, are barred, in whole or in part, by the applicable statutes of limitation, statutes of repose, and the equitable doctrines of laches, waiver, estoppel, and/or the doctrine of prohibition against splitting a cause of action.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' and putative class members' claims are barred, in whole or in part, by the Supremacy Clause of the United States Constitution, art. VI, § 2, because those claims are preempted and precluded by federal law, including but not limited to, the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1331 *et seq.* and the Federal Trade Commission's policies and regulations regarding the cigarette industry.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' and putative class members' claims are barred, in whole or in part, by the First Amendment to the United States Constitution.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs' and putative class members' claims are barred, in whole or in part, by Article I of the Constitution of the State of Minnesota.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

While denying at all times that it has ever manufactured, advertised or sold cigarettes, PMC avers that it did not know, and in light of the existing reasonably available scientific and technological knowledge, could not have known, of (1) the design characteristics, if any, that allegedly caused the damages complained of herein or the alleged danger of such characteristics, or (2) any alternative design referred to by Plaintiffs. PMC further avers that any alternative design was not feasible, either scientifically or technologically, nor was one economically practical.

#### **TWELFTH AFFIRMATIVE DEFENSE**

Plaintiffs and putative class members failed to mitigate any damages which they allegedly suffered, which failure bars or reduces any recovery by Plaintiffs and putative class members.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' and putative class members' claims are barred, in whole or in part, because any alleged damages sustained by Plaintiffs and putative class members were caused, in whole or in part, by Plaintiffs' and putative class members' assumption of the risk, including, among other things, Plaintiffs' and putative class members' choice to smoke.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

The alleged risks associated with cigarette smoking, including smoking Marlboro Lights cigarettes, are and have been commonly known; these alleged risks were known to Plaintiffs and putative class members; and these alleged risks, if any, were consented to and voluntarily assumed by Plaintiffs and putative class members.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs and putative class members are barred from recovering any damages by virtue of the fact that the dangers alleged by Plaintiffs and putative class members, if any, were open and obvious.

**SIXTEENTH AFFIRMATIVE DEFENSE**

The class action allegations of the Complaint are barred in that, if this action is certified as a class action, PMC's rights under the United States Constitution, including but not limited to, its rights under the Fourteenth Amendments, and PMC's rights under the constitutions of the various states whose laws may apply to this action including, but not limited to, the State of Minnesota, would be violated.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

The causes of action set forth in the Complaint may not be certified or maintained as a class action because the questions of fact at issue are not common to the alleged class, but rather, are factually specific and will vary dramatically from person to person.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

PMC is not liable to Plaintiffs and putative class members because it had no legal duty to disclose any information allegedly not disclosed.

**NINETEENTH AFFIRMATIVE DEFENSE**

PMC is not liable to Plaintiffs and putative class members because all information allegedly not disclosed was in the public domain.

**TWENTIETH AFFIRMATIVE DEFENSE**

While denying at all times that it has ever manufactured, advertised or sold cigarettes, PMC avers that Plaintiffs' and putative class members' claims cannot be sustained because PMC

did not have superior knowledge of material facts pertaining to Marlboro Lights that were not also readily available to Plaintiffs and putative class members.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

While denying at all times that it has ever manufactured, advertised or sold cigarettes, PMC avers that to the extent that Plaintiffs' and putative class members' claims are based on an alleged duty to disclose the risks allegedly associated with cigarette smoking, and smoking of Marlboro Lights, Plaintiffs' and putative class members' claims are barred because those risks, to the extent they exist, are and always have been commonly known.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

While denying at all times that it has ever manufactured, advertised or sold cigarettes, PMC avers that Plaintiffs' and putative class members' claims are barred to the extent that Plaintiffs and putative class members seek to impose liability retroactively for conduct that was not actionable at the time it occurred.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

While denying at all times that it has ever manufactured, advertised or sold cigarettes, PMC avers that Plaintiffs' and putative class members' claims are barred, in whole or in part, because the alleged damages for which Plaintiffs and putative class members seek to recover were allegedly caused by an inherent characteristic of cigarettes, including Marlboro Lights, which is a generic aspect of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability and which is recognized by the ordinary person with the ordinary knowledge common to the community.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

While denying at all times that it has ever manufactured, advertised or sold cigarettes, PMC avers that Plaintiffs' and putative class members' claims are barred, in whole or in part, because the cigarettes manufactured and sold by Philip Morris Incorporated are, and always have been, consistent with available technological, medical, scientific and industrial state-of-the-art and comply, and have complied, with all applicable governmental regulations.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

While denying at all times that it has ever manufactured, advertised or sold cigarettes, PMC avers that Plaintiffs' and putative class members' claims are barred, in whole or in part, because Philip Morris Incorporated's advertisements for its cigarettes comply, and always have complied, with all applicable regulations of the Federal Trade Commission.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' and putative class members' claims are barred, in whole or in part, to the extent that Plaintiffs and putative class members have released, settled, entered into an accord and satisfaction or otherwise compromised their claims.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

To the extent Plaintiffs and putative class members seek equitable relief, they are not entitled to such relief because they have an adequate remedy at law.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs and putative class members did not suffer any economic harm and are, therefore, precluded from monetary recovery under the Minnesota Prevention of Consumer Fraud Act and the Minnesota Unlawful Trade Practices Act, and the other causes of action alleged.

### **TWENTY-NINTH AFFIRMATIVE DEFENSE**

While denying at all times that Plaintiffs and putative class members have stated a valid claim under the Minnesota False Statement in Advertisement Act or any other statute, Plaintiffs and putative class members are precluded from recovery because the representations and action alleged by Plaintiffs were and are not material.

### **THIRTIETH AFFIRMATIVE DEFENSE**

While denying at all times that Plaintiffs and putative class members have stated a valid claim under the Minnesota Prevention of Consumer Fraud Act and the Minnesota Unlawful Trade Practices Act or any other statute, the remedy of disgorgement to Plaintiffs and putative class members is barred because PMC did not profit from alleged violations of the Minnesota Prevention of Consumer Fraud Act and the Minnesota Unlawful Trade Practices Act or any other statute, and any such disgorgement does not reasonably approximate the amount of any alleged unjust enrichment.

### **THIRTY-FIRST AFFIRMATIVE DEFENSE**

While denying at all times that Plaintiffs have stated a valid claim under the Minnesota Prevention of Consumer Fraud Act and the Minnesota Unlawful Trade Practices Act or any other statute, Plaintiffs and putative class members are precluded from recovery under the Minnesota Prevention of Consumer Fraud Act and the Minnesota Unlawful Trade Practices Act or any other statute because the representations and actions alleged by Plaintiffs were not fraudulent, false, misleading or deceptive, and were not made with the intent that Plaintiffs and putative class members rely thereon.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

While denying at all times that Plaintiffs and putative class members have stated a valid claim under the Minnesota Prevention of Consumer Fraud Act and the Minnesota Unlawful Trade Practices Act, if such a claim is found to exist, Plaintiffs and putative class members are barred, in whole or in part, by the provisions of the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68-.70 and the Minnesota Unlawful Trade Practices Act, Minn. Stat. §§ 325D.09-.16.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiffs and putative class members may not recover under a theory of unjust enrichment because Plaintiffs have failed to allege any cognizable “enrichment” of PMC.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

The Complaint fails to allege facts or a cause of action sufficient to support a claim for attorneys’ fees.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs’ and putative class members’ claims are barred, in whole or in part, by the equitable doctrine of unclean hands.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs and putative class members are not entitled to any of the injunctive relief requested in the Complaint because the hardship that would be imposed on PMC by the relief is greatly disproportionate to any hardship that Plaintiffs and putative class members might suffer in its absence.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' and putative class members' claims are barred, in whole or in part, by the doctrines of comparative and/or contributory negligence.

**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' and putative class members' claims are barred, in whole or in part, by the doctrines of res judicata, waiver and estoppel and by executed releases by the State of Minnesota.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' and putative class members' claims are barred, in whole or in part, to the extent that the claims or relief sought are moot.

**FORTIETH AFFIRMATIVE DEFENSE**

Plaintiffs' and putative class members' claims are barred because the alleged conduct of PMC was undertaken in good faith for a valid business purpose.

**FORTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' and putative class members' claims are barred, in whole or in part, because Plaintiffs and putative class members had the means of knowing, by the exercise of ordinary intelligence, the truth or real quality of alleged statements concerning smoking and health.

**FORTY-SECOND AFFIRMATIVE DEFENSE**

PMC is entitled to set-off, should any damages be awarded against it, in the amount of damages or settlement amounts recovered by Plaintiffs and/or putative class members with respect to the same or related alleged damages.

**FORTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' and putative class members' claims are barred, in whole or in part, because the sale of cigarettes to persons of legal age for purchasing cigarettes is a legal activity in the State of Minnesota.

**FORTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' and putative class members' claims are barred, in whole or in part, because they violate the Due Process provisions of § 1 of the Fourteenth Amendment to the United States Constitution, as well as Article 1, Section 7 of the Minnesota Constitution, to the extent that they seek to deprive PMC of procedural and substantive safeguards, including traditional defenses to liability.

**FORTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' and putative class members' claims are barred, in whole or in part, because of Plaintiffs' and putative class members' lack of awareness of, and lack of reliance upon, the representations alleged.

**FORTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs and putative class members lack either standing or capacity, or both, to bring some or all of the claims alleged.

**FORTY-SEVENTH AFFIRMATIVE DEFENSE**

PMC hereby gives notice that it intends to rely upon any other defense that is now or may become available or appear during, or as a result of, the discovery proceedings in this action and hereby reserves its right to amend its Answer to assert such defense.

**FORTY-EIGHTH AFFIRMATIVE DEFENSE**

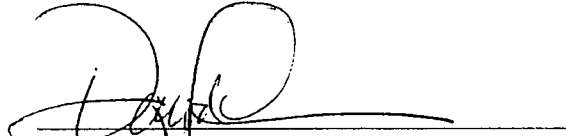
PMC reserves the right to assert such other and related defenses as may become available in the event of a determination that the action, or some part thereof, is governed by the substantive law of a state other than Minnesota.

PMC demands a trial by jury on all issues so triable.

WHEREFORE, PMC respectfully requests that the Court enter judgment in its favor and against Plaintiffs and putative class members, dismissing the Complaint for failure to state a claim and granting such further relief as the Court deems just and proper.

Respectfully submitted,

Dated: November 21, 2002



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Philip Morris Companies Inc.

ACKNOWLEDGMENT

Defendant by its undersigned attorney acknowledges that the costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party pursuant to Subdivision 2, Minnesota Statutes Section 549.21.

Dated: November 21, 2002

A handwritten signature in black ink, appearing to read 'W. Studer', written over a horizontal line.

William P. Studer (#106781)

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