

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.

**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.

