

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN**

DESIRE GUDMUNDSON, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

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

Defendants.

Civil No. _____/2016

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, Desire Gudmundson, individually, and on behalf of all others similarly situated in the United States Virgin Islands, via undersigned counsel, files this class action Complaint against Defendants, Santa Fe Natural Tobacco Company, Inc., and Reynolds American, Inc., and as grounds in support thereof states the following:

NATURE OF THE CASE

1. Defendants manufacture, market, and sell Natural American Spirit cigarettes (“American Spirits”). Defendants’ product labeling and advertising describes these cigarettes as “Natural,” “Additive Free,” “100% Additive Free,” “Organic,” and an “unadulterated tobacco product.”¹ These terms are intended to suggest a healthier and safer cigarette, allowing Defendants to charge a price premium for the cigarettes. A reasonable consumer, faced with the choice between Defendants’ cigarettes and those with labels that do not bear these deceptive statements, would conclude that American Spirit cigarettes are substantially healthier and cause less harm than other cigarettes.

¹ <https://www.sfntc.com/site/ourCompany/sfntc-story/> (last visited Jan. 27, 2016).

2. Unfortunately, these conclusions by a reasonable consumer would be wrong. In fact, American Spirit cigarettes are not as natural as Defendants' marketing claims, are not a safer alternative, and are more addictive than most other common cigarette brands.

3. This suit is brought pursuant to the Consumer Protection Law of 1973, 12A V.I.C. § 101 *et seq.*, The Consumer Fraud and Deceptive Business Practices Act, 12A V.I.C. § 301, *et seq.*, on behalf of a class of Virgin Islands consumers who purchased Natural American Spirit cigarettes from February 2010 to the present.

PARTIES

1. Plaintiff Desire Gudmundson is a citizen of the Territory of the Virgin Islands with residence in St. Thomas. During the proposed class period, Ms. Gudmundson viewed Defendants' advertisements representing Natural American Spirit cigarettes as "Natural" and Additive-Free" and regularly purchased varieties of Natural American Spirit cigarettes in the Virgin Islands which were all uniformly labeled as "Natural" or "Additive-Free."

2. Defendant Santa Fe Natural Tobacco Company, Inc. is a New Mexico corporation whose principal place of business is in Santa Fe, New Mexico.

3. Defendant Reynolds American Inc. is a North Carolina Corporation whose principal place of business is in Winston-Salem, North Carolina. Santa Fe Natural Tobacco Company, Inc. is an operating subsidiary of Defendant Reynolds American, Inc.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d), the Class Action Fairness Act, the numerosity of class members, minimal diversity of citizenship exists between the Plaintiff Class and the Defendants, and the aggregate claims of the Class (as defined below) exceed the sum or value of \$5,000,000.00.

5. This Court has personal jurisdiction over Defendants since each has minimum contacts within the district as each Defendant intentionally avails itself of the laws and markets in this State through the promotion, marketing, distribution and sale of their products in this district.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because substantial acts in furtherance of the alleged improper conduct giving rise to the claims herein, including the dissemination of misleading, deceptive and unfair information regarding Natural American Spirit cigarettes, occurred within this District.

FACTUAL ALLEGATIONS

A. The Natural American Spirit Cigarette

7. According to Defendant Reynolds American, Defendant Santa Fe Natural Tobacco Company, Inc., manufactured the “fastest growing super-premium cigarette brand” Natural American Spirit, generally known as American Spirits. American Spirits are now one of the top 10 best-selling cigarette brands even though it is priced higher than most other competitive brands.²

B. Defendants’ False and Deceptive Advertising

8. The marketing for American Spirits is the most deceptive of any current major U.S. cigarette brand on the market and largely accounts for the brand’s increased market share within the industry.

9. The brand has increased sales 86 percent from 2009 to 2014, even as overall cigarette sales in the United States fell by 17 percent during the same period.³

² Reynolds American, Inc. Annual Chairman/CEO letter (March 2015), available at http://s2.q4cdn.com/129460998/files/doc_financials/2015_chairman_s_letterweb_v001_e21964.pdf (last visited Jan. 27, 2016).

³“FDA Warning about Deceptive Marketing of Natural American Spirit Cigarettes, Other Brands Is Critically Important to Protect Consumers” available at: <http://www.prnewswire.com/news-releases/fda-warning-aboutdeceptive-marketing-of-natural-american-spirit-cigarettes-other-brands-is-critically-important-to-protect-consumers-300134309.html> (last visited Jan. 27, 2016).

10. Defendants sell a variety of Natural American Spirit cigarettes (such as regular, light, organic, and menthol), all of which Defendants uniformly and prominently label and advertise with representations that the cigarettes are “Natural” and “Additive-Free.”

11. For example, the label of Natural American Spirit cigarettes prominently states that the cigarettes are “Natural” and “100% Additive-Free.” A true and correct copy of the Natural American Spirit cigarettes label is reproduced below:



12. Defendants make the following claims in their advertisements:

We make our cigarettes with 100 percent additive-free tobacco, including styles with 100 percent U.S. grown tobacco, and with certified organic tobacco. Our blenders create the highest quality tobacco blends and only use two ingredients: whole leaf tobacco and water.⁴

13. Similarly, throughout the proposed class period, Defendants’ advertising for Natural American Spirit cigarettes have been replete with the uniform representations that cigarettes are “Natural” and “Additive-Free.” A collection of Defendants’ advertisements for Natural American Spirit cigarettes shows use of the “Natural” and “Additive-Free” representations has grown increasingly prominent during the proposed class period.⁵

⁴ <https://www.sfntc.com/site/ourProduct/overview/> (last visited Jan. 27, 2016).

⁵ Slideshow: Advertising for Natural American Spirit Cigarettes 2000-2015, Campaign for Tobacco Free Kids, http://www.tobaccofreekids.org/press_office/2015/natural_american_spirit (last visited November 2, 2015).

14. By marketing Natural American Spirit cigarettes as “Natural” and “Additive-Free,” Defendants represent explicitly and/or implicitly that Natural American Spirit cigarettes present a lower risk of tobacco-related disease and/or are less harmful than other commercially marketed tobacco products.

15. While consumers understand that smoking cigarettes is generally unhealthy, a reasonable consumer will expect that a cigarette that is all natural and free of additives to be a healthier cigarette.

16. As Defendants are well aware, consumer research and cigarette industry documents establish that smokers associate the terms “Natural” and “Additive-Free” with reduced risk. Indeed, reasonable consumers buying cigarettes marketed as “Natural” and “Additive-Free” expect to get a healthier more wholesome product.⁶

17. Defendants deceptively and unfairly exploit its marketing message in other ways. It sells its cigarettes in health food stores and even accompanies its cigarettes with literature from “America’s leading natural foods teacher” who claims that the cigarettes are medicinal and that Native Americans have smoked such additive free cigarettes without developing cancer.⁷

18. Due to the claims and beliefs that Defendants’ cigarettes are “Natural” and “Additive-free” consumers are willing to pay a price premium for Natural American Spirit cigarettes as compared to other cigarettes that are not so labeled.

19. On these grounds, 28 public health organizations, including the American Cancer Society, American Heart Association, and American Lung Association wrote the Food and Drug

⁶ McDaniel, Patricia A. & Ruth E. Malone, *“I Always Thought They Were All Pure Tobacco”: American Smokers’ Perceptions of ‘Natural’ Cigarettes and Tobacco Industry Advertising Strategies*, 16 Tobacco Control e7 (2007), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2807204/> (last visited Nov. 2, 2015).

⁷ McDaniel, Patricia, *“I always thought they were all pure tobacco”: American smokers’ perceptions of “natural” cigarettes and tobacco industry advertising strategies*, Tob. Control (Dec. 16, 2007), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2807204/> (last visited Jan. 27, 2016).

Administration (“FDA”) urging them to commence an enforcement action against the brand’s deceptive marketing.⁸

20. The FDA subsequently issued a “warning letter” to Defendants informing them that the use of descriptors like “Natural” and “Additive-Free” lead consumers to believe that such cigarettes pose less of a health risk than other cigarettes, when there is no scientific support for such a claim.⁹

21. Additionally, the FDA warned that such product labeling was not in compliance with Section 911(b)(1) of the Federal Food, Drug, and Cosmetic Act, as the FDA has not determined that American Spirit cigarettes qualify whatsoever as a “modified risk tobacco product” in order to lawfully use such labeling in the stream of interstate commerce.

C. Natural American Spirit Cigarettes are altered.

22. Natural American Spirit cigarettes are not as “natural” as Defendants repeatedly claim. Natural American Spirit cigarettes contain added ammonia.

23. Researchers at the Oregon Health and Science University looked at 11 U.S. cigarette brands and found that some had up to 20 times more freebase nicotine – a form of the drug that is quickly absorbed and transmitted to the brain and central nervous system. Defendants’ cigarettes, for example, had 36% freebase nicotine, compared to 1% in a benchmark cigarette, 2.7% in Camel, 5-6.2% in Winston, and 9.6% in Marlboro.¹⁰

24. Natural nicotine is not typically this potent; on information and belief; the high level of freebase nicotine in Natural American Spirit cigarettes is achieved through the addition of

⁸ Letter to FDA (Aug. 24, 2015) available at <http://www.tobaccofreekids.org/pressoffice/2015/NASletter.pdf> (last visited Jan. 27, 2016).

⁹ FDA News Release (Aug. 27, 2015) available at <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm459840.htm> (last visited Jan. 26, 2016).

¹⁰ 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.

ammonia. Ammonia has been used by the tobacco companies to increase nicotine levels since the early 1960s.¹¹

25. Generally, the more freebase nicotine, the more addictive the cigarette.

26. Additionally, Defendant adds menthol or other flavors to its cigarettes. Menthol and flavoring agents, like ammonia, are chemical additives. Mentholated, flavored, and ammoniated cigarettes are particularly insidious because they make people (particularly young adults, teenagers/children) more likely to start smoking, lead to greater nicotine dependence/addiction due to physiological changes in a younger developing brain, and decrease the future rate of successfully quitting smoking.

CLASS ACTION ALLEGATIONS

27. The Plaintiff brings this action on her own behalf and on behalf of all those similarly situated; those residents of the United States Virgin Islands who purchased American Spirits cigarettes within the last six years.

28. The numerosity of the class is not yet defined, but surpasses 100 or more class members on St. Thomas, St. Croix, St. John and Water Island. Identification of the total amount of sales and the plaintiffs in the Territory can be made by sales records and other information kept by the Defendants or other third parties in the usual course of business and within their control.

29. This action is appropriate for class treatment for the following reasons:

- a. The size of the Class is so numerous that joinder of all members is impracticable;
- b. This Complaint alleges common legal and factual issues of the defendants' wrongful conduct, specifically consumer protection issues, unfair and deceptive trade practices, and punitive damages;

¹¹ Proctor, Robert, "The SECRET and SOUL of Marlboro" American Journal of Public Health (July 2008), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2424107/> (last visited Jan. 26, 2016).

- c. Plaintiff will fairly and adequately protect the interests of the Class and Plaintiff has retained attorneys experienced in class and complex litigation, including class litigation involving consumer protection;
- d. Prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members, which could establish incompatible standards of conduct for Defendants;
- e. A class action will permit an orderly and expeditious administration of Class claims, foster economies of time, effort, and expense, and ensure uniformity of decisions;

COUNT I

UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER VIRGIN ISLAND LAW

Consumer Protection Law of 1973 – 12A V.I.C. § 101, et al.

30. Plaintiff incorporates by reference and realleges all preceding paragraphs as if fully set forth herein, and further states:

31. The purpose of the Virgin Islands Consumer Protection Law is to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or misleading, deceptive, or unfair acts or practices in the course of trade or commerce.

32. Defendants engaged, and continue to engage, in a deceptive and unfair trade practice in the labeling, advertising, and sale of Natural American Spirit cigarettes.

33. Defendants' trade practices misrepresented, deceived, or unfairly influenced objective and reasonable consumers in the Virgin Islands through oral and written statements describing the cigarettes as "natural" and "additive free."

34. The consumer protection laws of the Virgin Islands are to be liberally construed to protect the people and businesses of the Virgin Islands.

35. Individual reliance is not an element of proof under the consumer protection statutes of the Virgin Islands because the laws are intended to be enforced by class action. The standard is that of an objective and reasonable consumer in the Virgin Islands.

36. Defendants' wrongful actions represent a deceptive and unfair trade practice in that Defendants unfairly took advantage of the lack of knowledge, ability, experience, or capacity of consumers when labeling, advertising, and selling Natural American Spirit cigarettes as "natural" and "additive free."

37. Plaintiff is entitled to an award of attorneys' fees.

38. Each Defendant is jointly and severally liable for the torts alleged herein.

COUNT II

UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER VIRGIN ISLANDS LAW

The Consumer Fraud and Deceptive Business Practices Act, 12A V.I.C. § 301, et seq.

39. Plaintiff incorporates by reference and realleges the preceding paragraphs as if fully set forth herein, and further states:

40. The purpose of the Consumer Fraud and Deceptive Business Practices Act is to protect the consuming public from those who engage in fraudulent and deceptive acts in the course of trade or commerce.

41. Defendants engaged, and continue to engage, in fraudulent and deceptive trade practice in the labeling, advertising, and sale of Natural American Spirit cigarettes.

42. Defendants' trade practices misrepresented, deceived, or unfairly influenced objective and reasonable consumers in the Virgin Islands through statements describing the cigarettes as "natural" and "additive free."

43. The consumer protection laws of the Virgin Islands are to be liberally construed to protect the people and businesses of the Virgin Islands.

44. Individual reliance is not an element of proof under the consumer protection statutes of the Virgin Islands because the laws are intended to be enforced by class action. The standard is that of an objective and reasonable consumer in the Virgin Islands.

45. Defendants' wrongful actions represent a deceptive and unfair trade practice in that Defendants unfairly took advantage of the lack of knowledge, ability, experience, or capacity of consumers when labeling, advertising, and selling Natural American Spirit cigarettes as "natural" and "additive free."

46. Plaintiff is entitled to an award of attorneys' fees under the statutory provision of this Act.

47. Each Defendant is jointly and severally liable for the torts alleged herein.

**NOTICE OF ALLEGATION OF
PUNITIVE DAMAGES**

48. Plaintiff incorporates by reference and realleges all preceding paragraphs as if fully set forth herein, and further states:

49. Defendants are liable for punitive damages for their intentional, willful, and reckless disregard of the rights of others, particularly in misleading, deceiving or unfairly influencing consumers to unjustly and unlawfully enrich themselves at the expense of the health and well-being of Virgin Islanders.

50. Defendants' intentionally misleading advertisements to increase profits at the expense of the public (and other business trying to compete lawfully) is an intentional and/or reckless conduct which constitutes malice and fraud and evinces a conscious or reckless indifference to the rights, health, well-being and safety of others, including the plaintiffs and the public, which thereby warrants the imposition of punitive damages against Defendants.

51. For the sake of example and by way of punishing Defendants, Plaintiffs seek punitive damages according to proof.

52. Each Defendant is jointly and severally liable for the torts alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of other Class members, respectfully requests this Honorable Court to enter judgment against Defendants as follows:

- A. Certifying this action as a class action, with a class as defined above;
- B. Finding that Plaintiff is a proper representative of the Class;
- C. Requiring Defendants pay for notifying the Class members of the pendency of this suit;
- D. Awarding Plaintiff and the Class monetary damages in an amount to be determined at trial, trebling those damages awarded pursuant to law, together with pre- and post-judgment interest;
- E. Awarding Plaintiff and the Class statutory damages in the maximum amount provided by law;
- F. Awarding Plaintiff and other Class members the reasonable costs and expenses of suit, including their attorneys' fees; (as provided by statute) and
- G. Any further relief that the Court deem just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all claims in this action so triable.

Respectfully submitted,

DATED: February 20, 2016

/s/ J. Russell B. Pate

J. Russell B. Pate, Esq.
THE PATE LAW FIRM (V. I. Bar No: 1124)
P.O. Box 890, St. Thomas, USVI 00804
Telephone: (340) 777 - 7283
Pate@SunLawVI.com

Attorney for the Plaintiff and proposed class

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
(b) County of Residence of First Listed Plaintiff USVI
(c) Attorney's (Firm Name, Address, and Telephone Number)
J.Russell B.Pate,Esq., P.O.Box 890, STT, USVI 00804 (340)777-7283

DEFENDANTS
County of Residence of First Listed Defendant New Mexico
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Diversity, 28 USC 1332
Brief description of cause:
Class Action under local USVI consumer protection laws

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 02/20/2016
SIGNATURE OF ATTORNEY OF RECORD /s/ J. Russell B. Pate, Esq.

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: