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CLERK OF COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 CORTNEY REYNOLDS, individually, on  
12 her own behalf, on behalf of all persons  
similarly situated, and on behalf of the  
13 general public,

14 Plaintiff,

15 vs.

16 PHILIP MORRIS U.S.A., INC.

17 Defendant.  
18  
19  
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21  
22  
23

Civil Action No.

05 CV 1870

JAN (DL)

**CLASS ACTION**

COMPLAINT FOR VIOLATIONS OF  
(1) THE UNFAIR PRACTICES ACT  
PURSUANT TO BUSINESS &  
PROFESSIONS CODE § 17200 *ET. SEQ.*;

(2) CALIFORNIA CONSUMERS LEGAL  
REMEDIES ACT, CIVIL CODE §§1750, et  
seq. ("CLRA");

(3) BREACH OF IMPLIED COVENANT  
OF GOOD FAITH AND FAIR DEALING  
AND;

(4) DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

1 Plaintiff CORTNEY REYNOLDS,(hereafter "Plaintiff"), on her own behalf, on behalf of those  
2 similarly situated, and on behalf of the general public alleges as follows:  
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4 **NATURE OF THE ACTION**

5 1. This action seeks redress for Plaintiff Cortney Reynolds, and a class of similarly situated  
6 individuals, who hold or held Marlboro "5 Miles" and/or "Five Miles" award certificates issued by  
7 Defendant Philip Morris USA Inc. ("PHILIP MORRIS") on its packages of Marlboro and Marlboro  
8 Lights cigarettes and who are California residents. PHILIP MORRIS uniformly advertises and offers  
9 ward promotions on its Marlboro cigarettes, including the "Miles" promotional program featuring  
10 Marlboro packaging with "5 Miles" award certificates which are included on each Marlboro and  
11 Marlboro Light package. PHILIP MORRIS includes these certificates with the intent that they be cut  
12 from the packages by consumers who will then present them to PHILIP MORRIS for free gifts. The  
13 more "Miles" certificates the consumer saves, the more valuable a free gift he will receive upon  
14 presentation. Thus PHILIP MORRIS uses these certificates as incentives to consumers to buy more of  
15 its cigarettes. During the class period, PHILIP MORRIS changed the name on the certificates in a subtle  
16 way, specifically changing the "5 Mile" notation to "Five Miles." In PHILIP MORRIS's terminology,  
17 the "5 Miles" certificates are also called "Old Miles"and the "Five Miles" certificates are called "New  
18 Miles." A copy of sample "5 Miles and "Five Miles" award certificates featured on the Marlboro  
19 packaging is attached hereto as Exhibit "1." The "5 Miles" and "Five Miles" award promotions are  
20 also collectively referred to herein as "Marlboro Miles."

21 2. Within the class period, people such as Plaintiff accumulated and saved the Marlboro  
22 Miles for purposes of redeeming their value in exchange for Marlboro promotional items as advertised  
23 in the promotion.

24 3. PHILIP MORRIS has violated California law by imposing illegal expiration dates on the  
25 Marlboro Miles promotion. These expiration dates – not printed or stated on the face of the "5 Miles"  
26 and "Five Miles" award certificates – are illegal, since Section 1749.5 of the California Civil Code  
27 makes it unlawful to issue a certificate for free gifts pursuant to an awards, loyalty, or promotional  
28

1 program subject to an expiration date without stating the expiration date in capital letters in at least  
2 10-point font on the front of the certificate. An expiration date was unilaterally imposed by PHILIP  
3 MORRIS on its Old Miles when it converted to its New Miles promotion, thus making the OLD ("5  
4 Miles") certificates subject to expiration date after they had been distributed to consumers. Later, Philip  
5 Morris has sold its cigarettes with Five Mile certificates not reciting any expiration date while  
6 announcing prospective expiration dates for them in other publications.

7 3. To this date PHILIP MORRIS continues to manufacture, sell or distribute Marlboro  
8 cigarettes featuring the Marlboro Miles packaging without the requisite expiration date appearing on the  
9 front of the Marlboro Miles awards certificate.

10 4. Specifically, PHILIP MORRIS' present Marlboro Miles promotion program features the  
11 "Five Miles" award points, which became effective in March 2005 and is intended to expire on  
12 September 30, 2005. The expiration date is set forth in other publications, including the Marlboro Miles  
13 Catalog. In violation of California law, this date of expiration similarly fails to appear in capital letters  
14 in at least 10-point font on the front of the Marlboro Miles certificate as required under California Civil  
15 Code 1749.5, rendering the Marlboro Miles valueless to holders such as Cortney Reynolds after the date  
16 of expiration.

17 5. This class action is brought by the named Plaintiff to remedy violations of California's  
18 state consumer protection statutes and common and statutory law.

19 6. Both Class members and the general public face damages in terms of, *inter alia*, having  
20 the Marlboro Miles dishonored, and therefore, rendering the value of the Marlboro Miles certificates  
21 worthless.

22 7. In this suit, Class Plaintiff seeks for the members of the Class both equitable relief,  
23 including declaratory, injunctive, restitutionary and other equitable monetary relief, and economic  
24 damages as set forth more fully below, including but not limited to full credits for and/or monetary value  
25 of the improperly and unlawfully expired Marlboro Miles, re-issuance of new Marlboro Miles at full  
26 redemption value, disgorgement of the value of any illegally expired certificates.

1 **PARTIES TO THE ACTION**

2 8. At all times relevant to this Complaint, Plaintiff Cortney Reynolds resided in San Diego  
3 County, California, and within the Southern District of California.

4 9. PHILIP MORRIS is a corporation organized and existing under the laws of the state of  
5 Virginia whose principal place of business is located at 120 Park Avenue, New York, New York 10016.

6 10. PHILIP MORRIS manufactures, advertises, promotes, markets and sells cigarettes,  
7 including but not limited to Marlboro cigarettes on a national scale, specifically including the state of  
8 California. According to PHILIP MORRIS' web site, PHILIP MORRIS has "long been associated"  
9 with "globally recognized cigarette brands" and "today the name is proudly carried by the leading  
10 cigarette manufacturer in the United States."

11 11. At all relevant times, Defendant PHILIP MORRIS was engaged in substantial and not  
12 isolated activities within the State California including but not limited to the sale of Marlboro cigarettes  
13 with Marlboro Miles attached to its packaging and which Plaintiff holds. At all relevant times,  
14 Defendant was responsible for the packaging of the Marlboro cigarettes, including the Marlboro  
15 packaging featuring the Marlboro Miles promotional program. At all relevant times, PHILIP MORRIS  
16 caused damages within the state of California arising out of an act or omission outside of California  
17 while engaged in solicitation activities within California or while it processed, serviced or manufactured  
18 products used or consumed in California in the ordinary course of commerce, trade or use.

19  
20  
21 **JURISDICTION AND VENUE**

22 12. The Court has personal jurisdiction over Defendant PHILIP MORRIS because Defendant  
23 PHILIP MORRIS conducts a substantial amount of business in the State of California, and in particular, the  
24 Southern District of California. During the relevant time period, Defendant did sufficient business in, had  
25 sufficient contacts with, and intentionally availed themselves of the laws and market of the State of  
26 California through the promotion, sale, marketing, distribution and operation of its cigarette businesses.

27 13. This case is also a class action within the meaning of 28 USC §1332(d)(1), as amended by  
28

1 the Class Action Fairness Act of 2005, because at least one class member is a citizen of a state different from  
2 Defendants. Plaintiff and members of the class all reside in the state of California. PHILIP MORRIS is  
3 a Virginia corporation with a principal place of business in New York. The amount in controversy with  
4 respect to the claims for the entire class as alleged herein exceeds \$5,000,000, exclusive of interest and costs.

5 14. Venue is proper in this Court because Plaintiff Cortney Reynolds resides in San Diego  
6 County, California. Further, the acts upon which this action is based occurred in part in this district.  
7 Plaintiff Cortney Reynolds and numerous Class members reside in this district, purchased the products,  
8 were injured and/or were subjected to harm in this venue. Defendants received substantial compensation  
9 and profits from the sale of their products in this district engaged in transactions and/or breached obligations  
10 imposed by law in this County. Thus, Defendant PHILIP MORRIS' liability arose in part in this district.

11  
12  
13 **CLASS ACTION ALLEGATIONS**

14 15. Plaintiff brings this lawsuit as a class action pursuant to Fed.R.Civ.P, 23 on behalf of the  
15 class. The class is composed of:

16 All persons who reside in the State of California and who, within four years  
17 prior to the filing of this Complaint until the end of the Class Period, either  
18 have held or hold Marlboro Miles certificates, and which Philip Morris  
19 dishonored or intends to dishonor on the basis of a date of expiration not  
20 printed or published as specified California's gift certificate law, Civ. Code  
21 § 1749.5 (the "Class").

22 Excluded from the Class are all Defendant PHILIP MORRIS's agents, attorneys, directors, officers and  
23 employees; and all members of the judiciary sitting in judgment on this case.

24 16. The proposed Class is ascertainable and so numerous that the individual joinder of all its  
25 members in one action is unreasonable and impracticable. While the exact number and the identities of  
26 Class members are unknown at this time, Plaintiff estimates the Class includes thousands of individual  
27 members. PHILIP MORRIS' records, available through discovery, will show how many Marlboro Miles  
28 were issued with Marlboro cigarette sales and the rate of redemption of Marlboro Miles certificates before  
the expiration date(s). Notice to class members from PHILLIP MORRIS' customer database, and through

1 publication in media of general circulation in California, is authorized by law.

2 17. The claim of Plaintiff is typical of the claims of the members of the Class. Like the Class  
3 Members, the named Plaintiff has sustained and will sustain damage from the conduct complained of  
4 herein.

5 18. Plaintiff will fairly and adequately represent and protect the interests of the Class and has  
6 retained counsel competent and experienced in class action litigation. The interests of the Class coincide  
7 with, and are not antagonistic to, those of Plaintiff.

8 19. A class action is superior to other methods for the fair and efficient adjudication of this  
9 controversy and will provide substantial benefit both to the parties and to the court system. Since the  
10 practices PHILIP MORRIS engaged in are uniform and common to all members of the Class, judicial  
11 economy will be promoted by treating this case as a class action. It would not be economically practicable  
12 for Plaintiff or Class Members to maintain individual actions because of the amounts at issue in a given  
13 transaction.

14 20. The expenses and burdens of litigation would make it costly and inefficient for Class  
15 Members to seek redress on an individual basis for the wrongs done to them. When the liability of PHILIP  
16 MORRIS has been adjudicated, the claims of all Class Members can be administered efficiently and/or  
17 determined by the courts.

18 21. This action will promote an orderly and expeditious administration of Class claims; promote  
19 economies of time, effort and resources; and promote uniformity of decisions. A multitude of individual  
20 actions would work a hardship on the court system and would be impractical to coordinate by any means  
21 other than a class action.

22 22. There are questions of law and fact common to the Class, which predominate over any  
23 questions affecting only individual Class Members. These questions arise from Defendant PHILIP  
24 MORRIS's common, standardized practices and procedures. Among others, the issues include but are not  
25 limited to:

- 26 a. Whether PHILIP MORRIS violated state consumer protection statutes, specifically section  
27 1749.5 of the Civil Code;

- 1 b. Whether the Marlboro Miles at issue were subject to an illegal expiration date;
- 2 c. Whether PHILIP MORRIS' uniform course of conduct resulted in the inclusion of provisions
- 3 as part of a transaction that were illegal;
- 4 d. Whether PHILIP MORRIS knew or reasonably should have known or were obligated by law
- 5 to know that the effective imposition of an expiration date without providing the actual
- 6 expiration date in capital letters in at least 10-point font on the front of the Miles Certificate
- 7 was illegal under California law;
- 8 e. When PHILIP MORRIS learned such activities were illegal;
- 9 f. Whether PHILIP MORRIS continued to collect or retain the monies or value of the Marlboro
- 10 Miles here at issue despite their knowledge of the illegality of the expiration dates;
- 11 g. Whether the conduct at issue had a likelihood of deceiving Class members or was unfair;
- 12 h. The amount of revenues and profits PHILIP MORRIS received, retained and/or the amount
- 13 of monies or other obligations lost by Class members as a result of such wrongdoing;
- 14 i. Whether Class members are entitled to restitutionary disgorgement or payment of damages
- 15 plus interest thereon, and if so, what is the amount of such relief.

16 23. There will be no difficulty in the management of this lawsuit as a Class action. Class-wide

17 resolution of such consumer claims is the superior method for resolution of these claims.

18

19 **FACTUAL ALLEGATIONS**

20 24. PHILIP MORRIS sells Marlboro cigarettes featuring promotional Marlboro Miles

21 throughout the state of California and generate many millions of dollars each year in California through the

22 sales of Marlboro and Marlboro Light cigarettes alone. PHILIP MORRIS created the Marlboro Miles

23 promotion as an incentive to increase cigarette sales by offering its loyal customers free gifts of merchandise

24 if they collected and redeemed Marlboro Miles certificates. Customers were given an incentive to buy more

25 cigarettes because more valuable gifts could be acquired for more certificates. The Marlboro Miles incentive

26 program is one of the most important marketing techniques used by PHILIP MORRIS to maintain brand

27 loyalty. The use of the Marlboro Miles promotion resulted in continued and increased sales of Marlboro

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1 prohibits acts of unfair competition, which include any "unlawful, unfair, or fraudulent business act or  
2 practice."

3 33. By its actions described above, Defendant PHILIP MORRIS has violated and continues to  
4 violate the UCL in that it has engaged and continues to engage in unfair business practices within the  
5 meaning of the UCL.

6 34. PHILIP MORRIS has engaged in an "unlawful" business act and/or practice by imposing  
7 actually or effectively expiration dates not appearing "in capital letters in at least 10-point on the front" of  
8 the Miles Certificated issued and therefore, not permissible under the law. As detailed herein, these  
9 business acts and practices violated provisions of law, including, inter alia, Cal. Civil Code §1749.5.

10 35. Through the above-described conduct, PHILIP MORRIS has engaged in an "unfair" business  
11 act or practice in that the business acts and practices is (1) outweighed by the gravity of the resulting harm,  
12 particularly considering the available alternatives, and/or (2) violates the spirit or intent of California law  
13 as declared by the legislature, offends public policy or causes injury to consumers and competitors. Both  
14 Plaintiff and the members of the Class have sustained damages and lost money by paying for cigarettes  
15 containing certificates which were subject to expiration dates not disclosed on their faces in violation of  
16 California law.

17 36. The above-described unlawful practices engaged in by PHILIP MORRIS continue to this  
18 day, and present a threat to the Class and the general public in that PHILIP MORRIS has failed to rescind  
19 its expiration dates. As a result of this practice, Plaintiffs and the other members of the Class have lost  
20 money and property because they can no longer redeem their collected Marlboro Miles for valuable  
21 merchandise and property.

22 37. Pursuant to California Business & Professions Code §17203, Plaintiff, individually  
23 and on behalf of the Class, and on behalf of the general public, seeks an order of this Court prohibiting  
24 Defendant PHILIP MORRIS from continuing to engage in the unlawful, unfair, or fraudulent business acts  
25 or practices set forth in this Complaint and/or ordering PHILIP MORRIS to engage in a corrective  
26 informational campaign. Plaintiff additionally requests an order from the Court requiring that PHILIP  
27 MORRIS provide (1) complete equitable monetary relief, including that it disgorge and retribute or pay over  
28

1 the value of certificates subject to previous expiration dates, and (2) equitable relief adjudging that  
2 prospective expiration dates are invalid unless in compliance with section 1749.5.

3  
4 **SECOND COUNT**

5 **Violation of the California Consumers Legal Remedies Act (Injunctive Relief Only)**

6 38. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth  
7 herein.

8 39. The California Consumers Legal Remedies Act, Cal. Civ. Code §§1750, et seq. ("CLRA"),  
9 has adopted a comprehensive statutory scheme prohibiting various deceptive practices in connection with  
10 the conduct of a business providing goods, property or services to consumers primarily for personal,  
11 household or family purposes.

12 40. PHILIP MORRIS' sold either directly or indirectly Marlboro cigarettes featuring packaging  
13 with Marlboro Miles as part of an awards promotional program. The Marlboro Miles failed to include an  
14 expiration date in "capital letters in at least 10-point font on the front" of the certificate in violation of  
15 California Civil Code § 1749.5.

16 41. As alleged above, PHILIP MORRIS' violated and continues to breach its obligations under  
17 California law by imposing expiration dates not appearing on the front of the Marlboro Miles "in capital  
18 letters in at least 10-point on the front."

19 42. The transactions, policies, acts, omissions and practices engaged in by PHILIP MORRIS and  
20 alleged herein were intended to, and did, result in the continued sale of the goods and services here at issue  
21 to members of the Class primarily for personal, household or family purposes, and violated and continued  
22 to violate the CLRA in at least the following respects:

23 a. In violation of Cal. Civ. Code §1770(a)(5), PHILIP MORRIS' acts and practices constitute  
24 representations regarding the characteristics, benefits or uses of the certificates which they  
25 do not have; and

26 b. In violation of Cal. Civ. Code §1770(a)(14), PHILIP MORRIS' acts and practices constitute  
27 representations regarding the rights, remedies or obligations of the certificates which they  
28

1 do not have or are prohibited by law.

2 43. As a result, Plaintiff and the other members of the Class are entitled to equitable relief.  
3 Plaintiff seeks and is entitled to, pursuant to California Civil Code §1780(a)(2), an order enjoining the  
4 above-described wrongful acts and practices of defendants.

5  
6 **THIRD COUNT**

7 **Breach of Implied Covenant of Good Faith and Fair Dealing**

8 44. The allegations of the preceding paragraphs are incorporated by reference as if fully set  
9 forth herein.

10 45. Through the sale of cigarette packages with Marlboro Miles as set forth above, PHILIP  
11 MORRIS entered into a contract of sale with consumers. Such contracts provided not only that the  
12 consumer would receive cigarettes in exchange for the purchase price, but also that he would receive  
13 Marlboro Miles certificates redeemable for free gifts. Under California law, every contract contains an  
14 implied covenant of good faith and fair dealing that a party will take no action which deprives the other party  
15 of the right to enjoy the benefits of the contract. Thus PHILIP MORRIS' sale contracts contain an implied  
16 covenant that PHILIP MORRIS will act toward Plaintiff and the class in good faith and fair dealing, and  
17 not impose expiration dates on already issued certificates after-the-fact which would render them valueless  
18 and so deprive consumers of a benefit of the contracts. This is especially true in this case because much of  
19 the offered merchandise and property requires consumers to collect and save Marlboro Miles for a very long  
20 time in order to have sufficient Miles to redeem.

21 46. By reason of unilaterally imposing expiration dates on its Miles certificates,  
22 PHILIP MORRIS has breached the covenant of good faith and fair dealing with the class members and has  
23 undermined the value of the Marlboro Miles.

24  
25 **FOURTH COUNT**

26 **Declaratory Relief and Payment for Unjust Enrichment**

27 47. The allegations of the preceding paragraphs are incorporated by reference as if fully set  
28

1 forth herein.

2 48. There currently exists between the parties an actual controversy regarding the respective  
3 rights and liabilities of the parties regarding, *inter alia*, the obligation of PHILIP MORRIS to honor and  
4 remit the full redemption value of the Marlboro Miles held by Plaintiff and the class members,  
5 irrespective of the imposition of an expiration date. Plaintiff contends that the imposition of expiration  
6 dates not appearing on the face of Marlboro Miles certificates violates California law; whereas, upon  
7 information and belief, PHILIP MORRIS contends that its expiration dates do not violate California law.  
8 Accordingly, declaratory relief is necessary to adjudicate the right of Plaintiff and class members on the  
9 one hand, and PHILIP MORRIS on the other, to said controversy.

10  
11 **PRAYER FOR RELIEF**

12 Plaintiff and members of the class, on behalf of themselves, on behalf of the General Public, and  
13 on behalf of the class, pray for judgment and relief against Defendant as follows:

- 14 1. For an order certifying that this action may be maintained as a class action against  
15 Defendant PHILIP MORRIS, appointing Plaintiff and counsel to represent the Class, as  
16 alleged herein, and directing the reasonable notice of this action to be given by Defendant  
17 PHILIP MORRIS to the members of the Class;
- 18 2. For restitutionary disgorgement, rebates and restitution, according to proof, including  
19 prejudgment interest thereon as allowed by law;
- 20 3. For the declaratory, equitable, injunctive and/or monetary relief requested in the Counts  
21 as appropriate for the particular causes of action;
- 22 4. For damages according to proof under the Third Count only;
- 23 5. For interest at the legal rate of interest on the foregoing sum(s);
- 24 6. That pursuant to section 17206 of the Business and Professions Code, section 1021.5 of  
25 the Code of Civil Procedure, common law principles, and the Court's inherent power,  
26 Plaintiff and the Class members recover their costs, including costs of suit, and  
27 reasonable attorneys' fees; and  
28

1           7.       For such other and further relief as the Court deems proper.

2  
3 Dated: September 28 2005

BLUMENTHAL & MARKHAM

4  
5  
6 By: 

Norman B. Blumenthal, Esq.  
David R. Markham, Esq.  
Kyle Nordrehaug, Esq.  
Cathy K. Kazemi, Esq.  
Attorneys for Plaintiff

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11                                   **DEMAND FOR JURY TRIAL**

12           Plaintiff demands a trial by jury on all claims so triable and an advisory jury for a factual  
13 determination on all equitable claims.

14 Dated: September 28 2005

BLUMENTHAL & MARKHAM

15  
16 By: 

Norman B. Blumenthal, Esq.  
David R. Markham, Esq.  
Kyle Nordrehaug, Esq.  
Cathy K. Kazemi, Esq.  
Attorneys for Plaintiff

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