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CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re TOBACCO II CASES	D046435 (JCCP No. 4042)

APPEAL from orders of the Superior Court of San Diego County, Ronald S. Praeger, Judge. Affirmed.

Dougherty & Hildre, Donald F. Hildre, William O. Dougherty, Frederick M. Dudek, Thomas D. Haklar; Robinson, Calcagnie & Robinson, Mark P. Robinson, Sharon J. Arkin and Karen Karavatos for Plaintiffs and Appellants.

Munger, Tolles & Olson LLP, Gregory P. Stone, Daniel P. Collins, Steven B. Weisburd, Joseph S. Klapach, Daniel B. Levin; Seltzer Caplan McMahon Vitek, Gerald L. McMahon and Daniel E. Eaton for Defendant and Respondent Philip Morris USA Inc.

Dechert LLP, H. Joseph Escher III; Wright & L'Estrange, Robert C. Wright; Jones Day and William T. Plesec for Defendants and Respondents R.J. Reynolds Tobacco Company and Brown & Williamson Holdings, Inc., formerly known as Brown & Williamson Tobacco Corporation.

Loeb & Loeb LLP, and Sharon S. Mequet for Defendant and Respondent The Council for Tobacco Research-U.S.A., Inc.

DLA Piper Rudnick Gray Cary US LLP, William S. Boggs and Brian A. Foster for Defendant and Respondent Lorillard Tobacco Company.

Reed Smith LLP, and Mary C. Oppedahl for Defendant and Respondent The Tobacco Institute.

The Lendrum Law Firm and Jeffrey P. Lendrum for Defendants and Respondents Liggett Group Inc. and Liggett & Myers, Inc.

Plaintiffs Willard R. Brown, Damien Bierly and Michelle Denise Buller-Seymore (hereafter plaintiffs) appeal an order decertifying a class action for claims under the unfair competition law (UCL) (Bus. and Prof. Code,[1] § 17200 et seq.); an order denying class certification for claims under the Consumer Legal Remedies Act (CLRA) (Civ. Code, § 1750 et seq.); and an order granting summary adjudication of some issues in favor of defendants Phillip Morris USA Inc., R.J. Reynolds Tobacco Company, Lorillard Tobacco Company, Brown & Williamson Tobacco Corporation, The Council for Tobacco Research-U.S.A., Inc., Liggett Group, Inc., Liggett & Myers, Inc., and The Tobacco Institute, Inc. (hereafter defendants or the tobacco companies).

Plaintiffs contend the court erred in ruling they lack standing to pursue the UCL

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1 Statutory references are to the Business & Professions Code unless otherwise stated.

claim because Proposition 64 applies retroactively and eliminates the ability of individuals who have suffered no injury or monetary loss from pursuing UCL claims. They also contend the court erred in ruling that individual issues predominate so this is an inappropriate case for a class action under the UCL or CLRA; and in granting summary adjudication on some class-action causes of action. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

The proposed class is composed of smokers who were residents of California between June 10, 1993, and April 23, 2001, and who were exposed to defendants' "marketing and advertising activities in California." Plaintiffs sought to recover economic losses resulting from purchasing cigarettes.

The complaint was originally filed in 1997 and amended many times. In January 2000, Brown, who was then the only named plaintiff, filed a motion seeking class certification of all claims in his fifth amended complaint, which included both common law claims and a CLRA claim. The trial court denied certification concluding, inter alia, individual issues of causation and injury predominate over common issues. In October 2000, Brown sought certification of a CLRA claim in his then-pending sixth amended complaint, but subsequently filed a seventh amended complaint adding claims under the UCL and the false advertising law (FAL) and also sought class treatment of these additional claims.

In April 2001, the court denied Brown's second CLRA class action motion because it was an improper motion to reconsider the 2000 denial and found that individual issues relating to causation, injury, reliance, materiality, exposure to the

alleged misstatements, statutes of limitations, and choice of law predominate. The trial court, however, granted class certification as to the UCL and FAL claims because these statutes do not require individualized determinations as to reliance.

In 2004, the trial court granted summary adjudication in favor of defendants as to UCL and FAL claims involving defendants' use of the terms "lights," "low tar," "all natural," and "no additives." The court found all the claims are preempted by the Federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1331 et seq.), and further that plaintiffs had failed to present adequate evidence to establish the falsity of the "all natural" and "no additives" claims. The trial court permitted plaintiffs to proceed with a class action as to other UCL claims that the tobacco companies had made false and misleading statements denying or disputing the health hazards and addictiveness of cigarette smoking and their targeting of minors.

After the standing requirements for UCL lawsuits by private individuals were changed by the passage of Proposition 64 in the General Election of November 2, 2004, defendants successfully moved to decertify the class. The trial court ruled that to establish standing the individual plaintiffs and all class members were now required to show injury in fact consisting of lost money or property caused by the unfair competition. The trial court found the requirement of individual reliance meant the individual issues predominate over the common issues thus making the case unsuitable for a class action.

DISCUSSION

I

Applicability of Proposition 64

Brown contends the trial court erred in ruling the changed standing requirements of Proposition 64 apply to this case, which was pending when the measure was adopted in November 2004.

Before Proposition 64 was adopted, both public attorneys, such as the Attorney General, and private citizens could bring lawsuits under the UCL on behalf of the general public without a showing that anyone had actually been harmed by an unfair business practice. Proposition 64 continues to grant standing to public attorneys to bring lawsuits on behalf of the general public without a showing of harm but significantly restricts the standing of private citizens to bring UCL lawsuits. After Proposition 64, a private citizen has standing to bring a UCL lawsuit only if he or she "has suffered injury in fact and has lost money or property as a result of such unfair competition." (§§ 17204, 17203.)

This issue has now been resolved by the California Supreme Court. In *Californians for Disability Rights v. Mervyns, LLC* (2006) 39 Cal.4th 223, the court held Proposition 64's new standing requirements apply to pending cases. We are bound by this decision. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Accordingly, we uphold the trial court's ruling that Proposition 64's standing requirements apply to this case.

II

Class Decertification was Proper

After finding Proposition 64 applies to this lawsuit, the court decertified the class. The court noted there are "significant questions" that "undermin[e] the purported commonality among the class members, such as whether each class member was exposed to [d]efendants' alleged false statements and whether each member purchased cigarettes 'as a result' of the false statements. Clearly, here, as in [p]laintiffs' CLRA case, individual issues predominate, making class treatment unmanageable and inefficient. Further, it appears from the record that not even [p]laintiffs' named class representatives satisfy Prop 64's standing requirement."

The court's decision denying certification for the CLRA cause of action more fully detailed the court's determination that common issues do not predominate. Among other things, the court noted there were "differing representations associated with a multitude of products, altered over the course of the many years at issue . . . ." The court noted, "The sheer plethora of misrepresentations alleged by [p]laintiff is but one example of the divergent possible scenarios surrounding each putative class member's claim." Further, the court observed, "Whether the information disseminated/concealed by [d]efendants over the vast span of years at issue was the causative factor of each class member's smoking and presumptive resulting addiction is fact specific to each putative member of the class depending upon their then knowledge and behavioral activity." The court observed there are statute of limitation issues as to "when each putative class member discovered or should have discovered his/her injury was sustained as a consequence of

the wrongful acts allegedly committed by the [d]efendants" and questioned whether Brown was an adequate class representative since he admitted "he was not in fact deceived by the host of alleged misrepresentations asserted by the putative class endemic to successful assertion of a cause of action under the CLRA . . . ."

An individual bringing a class action UCL lawsuit must meet the standing requirements of section 17204, that is, an individual must have "suffered injury in fact and [have] lost money or property as a result of such unfair competition" (§ 17204) and meet the class action requirements of Code of Civil Procedure section 382. (Bus. & Prof. Code § 17203.)

Section 382 of the Code of Civil Procedure authorizes class suits in California "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court . . . ." The class action statute is a procedural device for collectively litigating substantive claims. (*Madrid v. Perot Systems Corp.* (2005) 130 Cal.App.4th 440, 461; *Corbett v. Superior Court* (2002) 101 Cal.App.4th 649, 670.) " 'The definition of a class cannot be so broad as to include individuals who are without standing to maintain the action on their own behalf. Each class member must have standing to bring the suit in his [or her] own right.' " (*Collins v. Safeway Stores, Inc.* (1986) 187 Cal.App.3d 62, 73.) "[C]lass action status does not alter the parties' underlying substantive rights. [Citations.] If a specific form of relief is foreclosed to claimants as individuals, it remains unavailable to them even if they congregate into a class." (*Feitelberg v. Credit Suisse First Boston, LLC* (2005) 134 Cal.App.4th 997, 1018.) Proposition 64 forecloses relief to a private plaintiff

who has not suffered an injury in fact and lost money or property as a result of an unfair business practice. (§ 17203.) Thus, the named plaintiff as well as class members must have suffered an injury in fact or lost money or property. Only the Attorney General, district attorneys, county counsels, city attorneys, and city prosecutors are exempted from the UCL and class action standing requirements and may pursue a class action on behalf of the general public without a showing of an injury in fact. (§ 17203.)

" 'The burden is on the party seeking certification to establish the existence of both an ascertainable class and a well-defined community of interest among the class members.' " (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104.) "The 'community of interest' requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) "A trial court ruling on a certification motion determines 'whether . . . the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.' " (*Ibid*.) The trial court must " 'carefully weigh respective benefits and burdens and . . . allow maintenance of the class action only where substantial benefits accrue both to litigants and the courts.' " (*In re Cipro Cases I & II* (2004) 121 Cal.App.4th 402, 410.)

Trial courts are "afforded great discretion in granting or denying certification" because they are "ideally situated to evaluate the efficiencies and practicalities of

permitting group action." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) We review the trial court's decision for an abuse of discretion. (*Sav-On Drug Stores, Inc. v. Superior Court, supra,* 34 Cal.4th 319, 326.) "[W]e will affirm the trial court so long as [its class certification] ruling is supported by substantial evidence and is not based on improper criteria or erroneous legal assumptions." (*Wilens v. TD Waterhouse Group, Inc.* (2003) 120 Cal.App.4th 746, 752.)

Here, the proposed class consists of smokers who were residents of California between June 10, 1993, and April 23, 2001, and who were exposed to defendants' "marketing and advertising activities in California." Plaintiffs sought restitution, that is, the cost of purchasing cigarettes. Plaintiffs' theory of liability is that the class members became smokers and purchased defendants' cigarettes as a result of defendants' misrepresentations about the health risks and addictiveness of smoking. Therefore, the class excludes persons who were unaware of defendants' advertising and marketing campaign or did not believe their representations as to the health risks and addictiveness of smoking.

The lawsuit is not based on a single misrepresentation but a general marketing and advertising campaign. Plaintiffs contend "defendants' marketing programs . . . were intended to create a general, cultural understanding on the part of the target audience — smokers and potential smokers — that cigarettes are safe and non-addictive. Having achieved their goal, defendants are bound by it. Smokers bought cigarettes because of their general understanding — resulting from defendants' own unfair conduct — that they could safely smoke." Plaintiffs explain, "[T]he question for class certification . . . is not

whether each class member saw or relied on a specific advertisement, but whether a reasonable person would, in light of defendants' campaign of misrepresentations, buy — and continue to buy — cigarettes." Plaintiffs argue the fact a class member continued to smoke after becoming fully aware of the health risks is irrelevant since at that point the class member had already become addicted. Under plaintiffs' theory, the key misrepresentations occurred before an individual class member began to smoke.

The marketing and advertising campaign consisted of a myriad of representations occurring over a long period, indeed, over more than half a century. The complaint[2] alleges the tobacco companies were aware cigarette smoking was harmful in the 1950's and by the 1960's were fully aware nicotine was addictive. In the 1940's and 1950's, the tobacco companies ran advertisements suggesting cigarettes had no harmful effects, could protect against colds, and claimed filters were effective in removing tar and nicotine. In the 1970's, The Tobacco Institute ran advertisements suggesting there was continuing scientific debate about the connection between smoking and lung cancer. In 1994, tobacco company executives, during hearings by the congressional subcommittee on health and environment on the potential regulation of nicotine-containing products, claimed nicotine was not addictive.

Over this period, changes occurred in the dissemination of information about the health hazards of smoking and in cigarette marketing. For example, in the mid-1960's, Congress enacted the Federal Cigarette Labeling and Advertising Act requiring health

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2 When we refer to the complaint, we mean the ninth amended complaint.

warnings on cigarettes. (15 U.S.C. § 1331 et seq.) The act was amended in 1970 and 1984 and currently requires all cigarette packages, billboards and other advertising to display one of four different rotating warnings. (15 U.S.C. § 1333.) Plaintiffs' expert, Martin Goldberg, noted there were only a small number of anti-smoking articles through 1979, thus people who smoked before 1979 were exposed to fewer anti-smoking messages than those who started smoking after 1979. While lawsuits by smokers were generally unsuccessful during the 1950's through the 1980's, in the 1990's litigation was renewed and different strategies used resulting in the disclosure of internal memoranda from the tobacco companies revealing that the tobacco companies had known about but concealed the harmful effects of smoking. (Scott, *The Continuing Tobacco War: State and Local Tobacco Control in Washington* (2000) 23 Seattle U.L.Rev. 1097, 1101.) Excerpts from these documents are contained in the complaint. Restrictions on the marketing, advertising and promotion of cigarette advertising occurred in 1998 as a result of the four major tobacco companies entering into a Master Settlement Agreement (MSA) with the Attorneys General of 46 states, the District of Columbia and five United States territories. (Patel, *The Tobacco Litigation Merry-Go-Round: Did the MSA make it stop?* (2005) 8 DePaul J. Health Care L. 615, 615-617.)

Because of the number of misrepresentations and the lengthy period involved, this case is unlike those cases where the courts have essentially presumed misrepresentations detrimentally affected all class members on an equal basis. It is evident that not all class members here were exposed to the same or even similar misrepresentations.

For example, some of the class members were not born until decades after the initial misrepresentations were made. Further, because of the long period, changing representations and changing dissemination of information about the harmful effects of smoking, not all class members would have been affected by the misrepresentations to the same degree. While the Supreme Court has recognized that in some situations, a misrepresentation may be so material that it can be inferred or presumed that all class members relied on the misrepresentation (see *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 814 (*Vasquez*)), this is not such a case. In *Vasquez*, the court reasoned that proof as to the representative plaintiffs "will supply the proof as to all." (*Id*. at p. 815; see also *Occidental Land, Inc. v. Superior Court* (1976) 18 Cal.3d 355, 363; *Massachusetts Mutual Life Ins. Co. v. Superior Court* (2002) 97 Cal.App.4th 1282, 1292-1293.) In *Vasquez*, it was alleged defendant's salesmen used a common sales pitch from a manual, made the same representations to all class members and the falsity was common to all class members. (*Vasquez, supra,* at pp. 811-812.) In that situation, the Supreme Court indicated it could be presumed that material representations were relied upon by all class members. (*Id*. at p. 814.) However, the Supreme Court in *Vasquez* also recognized that if the alleged misrepresentations vary too much among the class members, then certification of a class action may not be based on presumed or inferred reliance. (*Id*. at p. 819.)

Here, the record makes it clear that proof as to the representative plaintiffs will not supply proof as to all class members. As we pointed out above, merely as a function of the lengthy time covered by the complaint, different class members would have heard

different statements by defendants and would have had differing degrees of other sources of information available to them to assess the health risks and addictiveness of smoking.

Not even the representative plaintiffs were exposed to all the misrepresentations nor believed them.[3] For example, Brown began to smoke sometime before the mid-1960's. He was not aware of any bad publicity in the 1960's, but by the mid-1970's he knew he was addicted to cigarettes, by 1986 he knew smoking could cause lung cancer, and by the 1994 congressional hearings when the tobacco company executives denied nicotine was addictive, it crossed his mind that they were lying. Although he had known for years that cigarette smoking was addictive and harmful, that information alone was not sufficient to persuade him to quit smoking. Bierly testified he knew before he started smoking that cigarettes were addictive. He thought the tobacco executives were lying during the 1994 congressional hearings. Buller-Seymore testified she never heard

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3 We note that plaintiffs in their opening brief to support their contention that the named plaintiffs "testified that they saw defendants' ads and they bought defendants' products" cite over 50 pages of the appellants' appendix. It is a party's duty to support the argument in its briefs by appropriate references to the record, which includes providing exact page citations, and the court may strike a brief which does not meet this requirement. (Cal. Rules of Court, rule 14(a)(1)(C); *People v. Woods* (1968) 260 Cal.App.2d 728, 731.) "As a practical matter, the appellate court is unable to adequately evaluate which facts the parties believe support their position when nothing more than a block page reference is offered in the briefs--e.g., CT 1-20, which upon examination turns out to be twenty non-sequential pages of deposition testimony." (*Bernard v. Hartford Fire Ins. Co*. (1991) 226 Cal.App.3d 1203, 1205.) Nonetheless, we have read the excerpts of the plaintiffs' depositions contained in the record.

anyone claim smoking was safe, would not hurt her health or was not addictive.[4] Thus, even the three named plaintiffs reflect a range from being unaware that smoking is unhealthy at the commencement of smoking to being aware that smoking is harmful and addictive and yet began to smoke anyway.

This case is also distinguishable from *Anunziato v. eMachines, Inc., supra,* 402 F.Supp.2d 1133 (*Anunziato*), upon which plaintiffs heavily rely. *Anunziato* is a post-Proposition 64 case interpreting the standing requirements in a UCL class action. In *Anunziato*, the plaintiff, alleged inter alia, a violation of the UCL and FAL based on misrepresentations as to a computer that overheated. The *Anunziato* court found most of the defendant's representations were mere puffery but concluded the defendant's representation the computer had been subjected to the "most stringent of quality control tests" was actionable. (*Id*. at p. 1140.) *Anunziato* held that all class members, regardless of whether they had actually read or relied on the defendant's representation the computer had been subjected to quality control testing had suffered a cognizable injury in fact under the UCL. In the course of its discussion, *Anunziato* rejected an argument that it is necessary to prove each individual class member relied on the misrepresentation, explaining:

> "The goal of both the UCL and the FAL is the protection of consumers. However, the Court can envision numerous situations in

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4 We note Buller-Seymore's opinion that tobacco advertising was deceptive was primarily based on the tobacco companies' use of "beautiful young models" instead of "old wrinkly ladies who have been smoking," making "it appear as though you're going to be gorgeous and beautiful" and "get the hot guy" or "get the girl to look like a supermodel" and failure to emphasize the health hazards.

> which the addition of a reliance requirement would foreclose the opportunity of many consumers to sue under the UCL and the FAL. One common form of UCL or FAL claim is a 'short weight' or 'short count' claim. For example, a box of cookies may indicate that it weighs sixteen ounces and contains twenty-four cookies, but actually be short. Even in this day of increased consumer awareness, not every consumer reads every label. If actual reliance were required, a consumer who did not read the label and rely on the count and weight representations would be barred from proceeding under the UCL or the FAL because he or she could not claim reliance on the representation in making his or her purchase. Yet the consumer would be harmed as a result of the falsity of the representation." (*Anunziato, supra*, at p. 1137.)

Plaintiffs interpret *Anunziato* and its cookie analogy as supporting a conclusion they were not required to show that the individual class members heard or relied on any particular misrepresentations and therefore that this class action based on a general advertising and marketing campaign is proper. This is an over-broad reading of the holding in *Anunziato*. *Anunziato* did not address a situation where the complaint alleged numerous misrepresentations occurring over a lengthy period and where not all of the misrepresentations were made to all class members. In *Anunziato*, both the computer misrepresentation and the cookie example involved a single false statement that was made to each and every class member. *Anunziato* is factually distinguishable and provides little aid to plaintiffs.

Plaintiffs also rely on two cases involving lawsuits by smokers, *Whiteley v. Philip Morris, Inc.* (2004) 117 Cal.App.4th 635 and *Boeken v. Philip Morris, Inc.* (2004) 127 Cal.App.4th 1640, for the proposition that recovery may be based on misrepresentations occurring over time rather than based on a discrete statement in a single advertisement.

While these cases may lend some support to this position,[5] they do not support a conclusion that in this case it should be presumed all class members were similarly affected by defendants' marketing and advertising campaign. Both *Whiteley* and *Boeken* involved individual plaintiffs and individual proof as to how the specific plaintiff was influenced by the respondents' statements. As we pointed out above, not even the named plaintiffs were similarly affected by defendants' marketing and advertising campaign.

Moreover, to the extent plaintiffs assert that the only reasonable inference is that all class members began to smoke and became addicted to cigarettes because of defendants' advertising and marketing campaigns, we disagree. Plaintiffs argue even if class members did not believe defendants' representations about the health risks and addictiveness of cigarette smoking, defendants' misleading advertising and marketing campaign induced class members to begin smoking. They contend the positive imaging broadcast by defendants induced them to smoke out of a desire to "be cool." Such a vague representation, that using a product will make a person "cool" or successful, is little more than puffery used to promote a variety of products from toothpaste to automobiles and is insufficient to support a claim of an unfair business practice or false advertising. (See *Anunziato, supra,* 402 F.Supp.2d at p. 1139.) Moreover, becoming

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5 See *Whiteley v. Philip Morris, Inc., supra*, 117 Cal.App.4th at pages 680-681 ("Contrary to defendants' contention, Whitely did not have to prove that she saw or heard any specific misrepresentations of fact or false promises that defendants made or that she heard them directly from defendants or their agents"); *Boeken v. Phillip Morris, supra,* 127 Cal.App.4th at page 1666 (sufficient evidence to show plaintiff was a target of tobacco company's "misrepresentations and that he actually relied upon its campaign of doubt").

addicted to a harmful substance does not require an advertising campaign minimizing health risks and suggesting an individual may "be cool" if he or she uses a particular product. For example, numerous people have become addicted to heroin despite the absence of any advertising or marketing campaign promoting its use and despite undisputed, widely distributed information detailing its harmfulness and addictiveness.

We agree with the trial court's determination this case is not suitable for class action on the basis that individual issues predominate over common issues. There were numerous misrepresentations occurring over more than a half a century. The representations changed over time as did the general dissemination of information about the health risks and addictiveness of cigarette smoking. Further, while the class was restricted to smokers who resided in California between 1993 and 2001, these class members began to smoke at different points over several decades and some class members were not even born when some of the representations were made. Therefore, all class members were not exposed to the same representations or information about the health risks and addictiveness of cigarettes. Individual determinations would have to be made as to when the class members began smoking, what representations they were exposed to, what other information they were exposed to, and whether their decision to smoke was a result of defendants' misrepresentations (and thus they suffered an injury due to defendants' conduct) or was for other reasons. The numerous individual determinations render this case unsuitable for a class action.

This conclusion is consistent with that reached by other courts. As one Maryland court observed, "A myriad of federal and state courts have shown a predominant, indeed

almost unanimous reluctance to certify, or, in the case of appellate courts, to uphold the certification of class actions for mass tobacco litigation. Moreover, this aversion bears out regardless of (1) whether the plaintiffs represented a putative class membership that was nationwide or one that was restricted to a singular forum state, (2) whether the filed lawsuit presented multifaceted causes of action, more streamlined complaints, or even a single claim, and (3) whether the relief sought was comprised of compensatory damages, punitive damages, injunctive remedies, or a combination thereof." (*Philip Morris, Inc. v. Angeletti* (2000) 358 Md. 689, 729-730; see also *Estate of Mahoney v. R.J. Reynolds Tobacco Co.* (D. Iowa 2001) 204 F.R.D. 150, 157 [class certification denied, " 'What influenced a particular individual to start smoking inevitably varies from person to person . . . .' "].)

We find no abuse of discretion in the trial court's decision to decertify the UCL class action.

III

Denial of Class Certification for CLRA Claims

The parties dispute whether plaintiffs may properly raise in this appeal the denial of their motion for class certification of the CLRA claims. Defendants contend the time has long since expired for appealing the denial of class certification for the CLRA claims and the CLRA class action claims were waived because they are not included in plaintiffs most recently amended complaint. Plaintiffs respond that the CLRA class action issue was not properly appealed until the court decertified the UCL class action and thus rang the "death knell" for the class action.

We need not resolve this dispute since our determination that the individual issues predominate making this case unsuitable for a class action moots plaintiffs' arguments.

IV

Summary Adjudication

The parties dispute whether plaintiffs can raise in this appeal the court's granting of summary adjudication on causes of action based on advertising relating to "light," "low tar, "natural," or "no additive" cigarettes. They argue these summary adjudication issues "tie directly into the class certification issues" and thus should be addressed in this appeal.[6]

We need not address this issue. Plaintiffs' argument that we should address the summary adjudication is premised on a theory we will resurrect the UCL or CLRA class actions. They argue the interests of judicial economy favor our consideration of these additional class action issues. This argument fails since we have affirmed the trial court's conclusion this case is not suitable for a class action. We adhere to the general rule that summary adjudications are not appealable orders. (See *Jennings v. Marralle* (1994) 8 Cal.4th 121, 128; *Jacobs-Zorne v. Superior Court* (1996) 46 Cal.App.4th 1064, 1070.)

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6 Defendants made a motion we take judicial notice of three judicial decisions addressing class actions addressing light and lowered nicotine and tar cigarettes. These matters are suitable for judicial notice but given our holding that these issues are mooted, it is not necessary to judicially notice these decisions.

DISPOSITION

The orders are affirmed. Defendants are awarded their costs on appeal.

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MCCONNELL, P. J.

WE CONCUR:

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HALLER, J.

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MCDONALD, J.