IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDRA CAMACHO; AND ANTHONY CAMACHO,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE NADIA KRALL, DISTRICT JUDGE,
Respondents,
and
PHILIP MORRIS USA, INC., a foreign corporation; R.J. REYNOLDS TOBACCO COMPANY, a foreign corporation, individually, and as successor-by-merger to LORILLARD TOBACCO COMPANY and as successor-in-interest to the United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION, which is the successor-by-merger to THE AMERICAN TOBACCO COMPANY; LIGGETT GROUP, LLC., a foreign corporation; and ASM NATIONWIDE CORPORATION d/b/a SILVERADO SMOKES & CIGARS, a domestic corporation; LV SINGHS NC. d/b/a SMOKES & VAPORS, a domestic corporation,
Real Parties in Interest.

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PETITIONERS' APPENDIX
VOLUME 2 (NOS. 228-367)

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DISTRICT COURT

CLARK COUNTY, NEVADA

SANDRA CAMACHO, individually, and ANTHONY CAMACHO, individually, Plaintiffs, vs. PHILIP MORRIS USA, INC., a foreign corporation; R.J. REYNOLDS TOBACCO COMPANY, a foreign corporation, individually, and as successor-by-merger to LORILLARD TOBACCO COMPANY and as successor-in-interest to the United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION, which is the successor-by-merger to THE AMERICAN TOBACCO COMPANY; LIGGETT GROUP, LLC., a foreign corporation; and ASM NATIONWIDE CORPORATION d/b/a SILVERADO SMOKERS & CIGARS, a domestic corporation, and ROE BUSINESS ENTITIES XI-XX, inclusive. Defendants.	Case No. A-19-807650-C Dept. No. IV **HEARING REQUESTED** **DEFENDANT LIGGETT GROUP LLC'S JOINDER IN PHILIP MORRIS USA INC. AND R.J. REYNOLDS TOBACCO COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' PUNITIVE DAMAGES CLAIM**

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LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Defendant Liggett Group LLC ("Liggett"), by and through its undersigned counsel of record, hereby gives notice to the parties and the court of its notice of adoption of and joinder in Defendants Philip Morris USA Inc. and R.J. Reynolds Tobacco Company's Motion for Partial Summary Judgment on Plaintiffs' Punitive Damages Claim ("Punitive Damages Motion").

Plaintiffs' punitive damages claim was released by a negotiated settlement and is barred by *res judicata*. In 1997, the Nevada Attorney General sued certain tobacco manufacturers including Philip Morris, R.J. Reynolds, Liggett and various other cigarette manufacturers. *See* Complaint, *State of Nevada v. Philip Morris Incorporated, et al.,* Case No. CV97-03279, Second Judicial Court in and for Washoe County, Nevada (Nev. A.G. Compl. (May 21, 1997) (attached as Exhibit A to the Punitive Damages Motion). On or about September 15, 1997, the State of Nevada and Liggett entered into a Settlement Agreement resolving Plaintiffs' claims against Liggett and Liggett was dismissed from that lawsuit with prejudice.

On November 23, 1998, the State of Nevada and certain defendants, including Philip Morris and R.J. Reynolds executed the Master Settlement Agreement ("MSA") (attached to the Punitive Damages Motion at Exhibit B). That same day, the State of Nevada and Liggett executed the General Liggett Replacement Agreement ("Replacement Agreement") through which Liggett's Prior Settlement with the State of Nevada was replaced with the MSA. Thereafter the rights and obligations of Liggett and the State of Nevada were governed by the MSA. (*See* Joint Motion for Approval of General Liggett Replacement Agreement and Entry of Consent Decree and Final Judgment as to Liggett Group Inc. and Order, attached hereto as **Exhibit 1**.)[1]

. . .

. . .

. . .

[1] Although not required to reach the merits of the instant motion, Liggett asks this Court to take judicial notice of the Joint Motion for Approval of General Liggett Replacement Agreement and Entry of Consent Decree and Final Judgment as to Liggett Group Inc. and Order which was approved by the Second Judicial District Court of the State of Nevada in and For Washoe County and filed in *State of Nevada v. Philip Morris Incorporated, et. al.*, Case No. CV97-03279 for the reasons set forth in Philip Morris' Motion for Judicial Notice and Liggett's Joinder in same filed May 25, 2022.

LEWIS ROCA
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Accordingly, as set forth in the Punitive Damages Motion, Plaintiffs' punitive damages claim is also barred against Liggett.

DATED this 25th day of May, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

/s/ J Christopher Jorgensen

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. Rule 5(b) and E.D.C.R. 8.05, I caused a true and correct copy of the foregoing *Defendant Liggett Group LLC's Joinder In Philip Morris USA Inc. and R.J. Reynolds Tobacco Company's Motion For Partial Summary Judgment On Plaintiffs' Punitive Damages Claim* to be served via the Court's EFiling system, which will send an electronic copy to all interested parties. The date and time of the electronic service is in place of the date and place of deposit in the mail.

DATED this 25th day of May, 2022.

/s/ *Annette Jaramillo*
An employee of Lewis Roca
Rothgerber Christie LLP

EXHIBIT 1

EXHIBIT 1

GENERAL LIGGETT REPLACEMENT AGREEMENT

This General Liggett Replacement Agreement is entered into as of 11/23, 1998 by and among each of the Settling States (as that term is defined in the Master Settlement Agreement referenced below); and Liggett Group Inc., a Delaware corporation, Liggett & Myers, Inc., a Delaware corporation (together collectively referred to as "Liggett"), and Brooke Group Ltd., a Delaware corporation ("Brooke").

W I T N E S S E T H:

WHEREAS, the Settling States and the Original Participating Manufacturers have entered into the Master Settlement Agreement to settle and resolve with finality all Released Claims against the Released Parties, including the Original Participating Manufacturers, as set forth in the Master Settlement Agreement dated November of 1998 (as those terms are defined in the Master Settlement Agreement);

WHEREAS, previous settlement agreements have been entered into between various state attorneys general and Liggett and Brooke that is, the Attorneys General Settlement Agreement dated March 15, 1996 as amended, the Attorneys General Settlement Agreement dated March 20, 1997 (and subsequent agreements between Liggett and Brooke and Alaska, California, Nevada and Oregon that incorporate the terms of the March 20, 1997 Agreement) and the Attorneys General Settlement Agreement dated March 12, 1998 (collectively, the "Previous Liggett Settlement Agreements"); and

WHEREAS, the parties wish to enable Liggett to join in the terms and conditions of the Master Settlement Agreement by replacing the Previous Liggett Settlement Agreements with the Master Settlement Agreement as provided herein;

NOW, THEREFORE, Liggett, Brooke and the Settling States hereby covenant and agree as follows:

1. Liggett shall become a Subsequent Participating Manufacturer as defined by, and in accordance with, the terms of the Master Settlement Agreement.

2. Upon State Specific Finality (as that term is defined in the Master Settlement Agreement) as to each Settling State that is also a party to a Previous Liggett Settlement Agreement, such Previous Liggett Settlement Agreement shall be null and void and of no further force and effect as to that Settling State, and the rights and obligations of Liggett and such Settling State shall be thereafter governed by the Master Settlement Agreement; provided, however, that if the Master Settlement Agreement is

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terminated as to any such Settling State for whatever reason, the Previous Liggett Settlement Agreement (subject to the deletion of the provisions relating, and only to the extent such provisions relate, to a Future Affiliate as defined therein) shall be reinstated as to such Settling State.

3. Liggett and each such Settling State agree to take such action as may be necessary and appropriate to request any court that may have previously endorsed the Prior Liggett Settlement Agreements to vacate any such previous order(s) endorsing any provision of the Previous Liggett Settlement Agreements, and to replace such order(s) with an order approving this General Liggett Replacement Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this document as an instrument under seal

BROOKE GROUP LTD.

By: _____

LIGGETT GROUP INC.

By: _____

LIGGETT & MYERS, INC.

By: _____

SETTLING STATES

By: _____

Source: https://www.industrydocuments.ucsf.edu/docs/jmgn0016

terminated as to any such Settling State for whatever reason, the Previous Liggett Settlement Agreement (subject to the deletion of the provisions relating, and only to the extent such provisions relate, to a Future Affiliate as defined therein) shall be reinstated as to such Settling State.

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IN WITNESS WHEREOF, the parties hereto have executed this document as an instrument under seal

BROOKE GROUP LTD.

By: _____

LIGGETT GROUP INC.

By: _____

LIGGETT & MYERS, INC.

By: _____

SETTLING STATES

By: _____

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Source: https://www.industrydocuments.ucsf.edu/docs/jmgn0016

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DISTRICT COURT

CLARK COUNTY, NEVADA

SANDRA CAMACHO, individually, and ANTHONY CAMACHO, individually, Plaintiffs, vs. PHILIP MORRIS USA, INC., a foreign corporation; R.J. REYNOLDS TOBACCO COMPANY, a foreign corporation, individually, and as successor-by-merger to LORILLARD TOBACCO COMPANY and as successor-in-interest to the United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION, which is the successor-by-merger to THE AMERICAN TOBACCO COMPANY; LIGGETT GROUP, LLC., a foreign corporation; ASM NATIONWIDE CORPORATION d/b/a SILVERADO SMOKES & CIGARS, a domestic corporation; and LV SINGHS INC. d/b/a SMOKES & VAPORS, a domestic corporation; DOES I-X; and ROE BUSINESS ENTITIES XI-XX, inclusive, Defendants.	Case No.: A-19-807650-C Dept. No.: IV **APPENDIX OF EXHIBITS: DEFENDANTS PHILIP MORRIS USA INC. AND R.J. REYNOLDS TOBACCO COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' PUNITIVE DAMAGES CLAIM** **VOLUME 1 OF 2**

///

Defendants Philip Morris USA Inc. and R.J. Reynolds Tobacco Company ("Defendants"), by and through their counsel of record, hereby submit this Appendix of Exhibits in support of their Motion for Partial Summary Judgment on Plaintiffs' Punitive Damages Claim.

EX	Description
A.	Complaint for Injunctive Relief, Damages, Restitution, Disgorgement, Penalties, and Other Relief Exempt from Arbitration, filed in *State of Nevada v. Philip Morris, Inc et al.*, 05/21/1997
B.	Master Settlement Agreement
C.	Tobacco Settlement Escrow-Notice of Nevada State-Specific Finality (dated Jan. 21, 1999)
D.	Consent Decree and Final Judgment. Nev. Consent Decree & Final J., § VII.A. (Dec. 10, 1998)
E.	Order for Correction of Consent Decree and Final Judgment Nunc Pro Tunc, filed in *State of Nevada v. Philip Morris, Inc. et al.*, 01/15/1999
F.	Amended Complaint

Dated this 25th day of May, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of May, 2022, a true and correct copy of the foregoing **APPENDIX OF EXHIBITS: DEFENDANTS PHILIP MORRIS USA INC. AND R.J. REYNOLDS TOBACCO COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' PUNITIVE DAMAGES CLAIM – VOLUME 1 OF 2** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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WEINBERG WHEELER HUDGINS GUNN & DIAL

Exhibit A

Case No. CV97-03279

Dept. No. 4

FILED

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JUDI BAILEY, CLERK

BY ~~O. Parsley~~ DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR WASHOE COUNTY

STATE OF NEVADA, Plaintiff, vs. PHILIP MORRIS, INCORPORATED; PHILIP MORRIS COMPANIES, INC.; R.J. REYNOLDS TOBACCO CO.; RJR NABISCO HOLDINGS CORP.; RJR NABISCO, INC.; AMERICAN TOBACCO CO., INC.; AMERICAN BRANDS, INC.; LIGGETT & MYERS, INC.; THE BROOKE GROUP LIMITED; LIGGETT GROUP, INC.; LORILLARD TOBACCO CO., INC.; LOEWS CORP.; UNITED STATES TOBACCO COMPANY; BROWN & WILLIAMSON TOBACCO CORP.; B.A.T. INDUSTRIES, P.L.C.; BRITISH AMERICAN TOBACCO COMPANY LTD.; HILL & KNOWLTON, INC.; THE COUNCIL FOR TOBACCO RESEARCH - U.S.A., INC.; TOBACCO INSTITUTE, INC.; foreign corporations, and DOES 1 through 50, Defendants.	**COMPLAINT FOR INJUNCTIVE RELIEF, DAMAGES, RESTITUTION DISGORGEMENT, PENALTIES, AND OTHER RELIEF EXEMPT FROM ARBITRATION** **1. SEEKS INJUNCTIVE RELIEF;** **2. PROBABLE JURY VALUE EXCEEDS $40,000; AND** **3. PRESENTS SIGNIFICANT PUBLIC POLICY ISSUES.**

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I. INTRODUCTION

1. The State of Nevada, through Attorney General Frankie Sue Del Papa, brings this action for monetary damages, civil penalties, declaratory and injunctive relief, restitution, disgorgement of profits, and punitive damages.

ATTORNEY GENERAL'S OFFICE NEVADA

2. This case challenges a massive unlawful course of conduct and conspiracy perpetrated by the defendants. The defendants' unlawful conduct includes a host of unfair, deceptive, anticompetitive and illegal acts, including without limitation the following:

- Publicly undertaking a supposedly "paramount" special duty to research and disclose to public health authorities and the public at large—including the State of Nevada—the full extent of the health risks of cigarette smoking; but then suppressing and distorting the state of their knowledge of those health risks;

- Creating and/or funding fraudulent "front" organizations such as the Tobacco Industry Research Council (later the Council for Tobacco Research), which were held out to the public as independent research organizations, but were in fact secretly controlled by the tobacco industry's lawyers and public relations firms and were used by the defendants as industry fronts to prevent the public from learning what defendants knew about the health risks of smoking and to falsely create a controversy about the health risks of smoking;

- Secretly destroying, concealing, and shipping overseas incriminating evidence of industry testing and research on the health risks of cigarette smoking and the addictive nature of nicotine, shutting down laboratories overnight and making personal threats against scientists who tried to publish research revealing what the tobacco industry knew, and asserting improper claims of attorney-client privilege and work product to suppress the results of adverse scientific research;

- Conspiring in violation of state antitrust law to eliminate and restrain competition based on the health effects of smoking and by agreeing not to market "safer" cigarettes;

- Conspiring to and concealing the addictive nature of tobacco products and the tobacco companies' deliberate manipulation of the nicotine levels in tobacco products; and

- Engaging in unfair and deceptive trade practices by undertaking a course of conduct designed to promote illegal sales of cigarettes to minors.

As a direct, foreseeable result of these and other actions, the State of Nevada has suffered substantial damages, and minors continue to be lured into the illegal use of tobacco products. The Attorney General seeks to recover those damages and enjoin the continuing deceptive and unlawful practices described below.

A. The Defendants' Unlawful Conduct

3. The Tobacco Industry in the U.S. is a highly profitable oligopoly dominated by defendants Brooke Group, Ltd.; Liggett Group, Inc. (Liggett and Myers Tobacco Co.); Philip

ATTORNEY GENERAL'S OFFICE NEVADA 101-3677

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Morris Companies, Inc. (Philip Morris, Inc.); American Brands, Inc. (the American Tobacco Co.); UST, Inc. (United States Tobacco); RJR Nabisco Holdings Corp.; RJR Nabisco, Inc.; R.J. Reynolds Tobacco Co.; Batus, Inc. (Brown & Williamson Tobacco Company); British American Tobacco Company (BATCO); and Lowes Corporation (Lorillard Tobacco Co.); (collectively referred to as the "defendants" "Tobacco Companies," "Tobacco Industry," Tobacco Conspirators, "the industry", or the "Tobacco Cartel"). For decades, these Tobacco Companies have sold tobacco products at huge profit margins to millions of consumers. The Tobacco Companies have built and sustained the market for their products in large part by concealing and/or misrepresenting the addictive nature of tobacco products, by creating confusion concerning the damage to human health caused by tobacco products, by manipulating the levels of nicotine in tobacco products in order to maintain and boost addiction, by agreeing not to compete for sale of a "safer cigarette" and other innovative products, and by focusing the brunt of their sales efforts on minors.

4. The Tobacco Companies, as well as their public relations agents, lawyers, and industry "fronts," have known for more than 40 years that their tobacco products contain large amounts of nicotine—a highly addictive substance—as well as numerous carcinogens and other harmful elements.

5. Notwithstanding this knowledge, defendants have repeatedly told the public that nicotine, an element in all tobacco products, is not addictive. As recently as April 14, 1994, the CEOs of seven tobacco companies testified under oath that nicotine is "not addictive." These statements are false.

6. Nicotine is addictive. The Tobacco Industry is aware of the addictive nature of nicotine as evidenced by just one of the many internal industry documents addressing this subject: "Moreover, nicotine is addictive. We are, then in the business of selling nicotine, an addictive drug . . . ."

7. Tobacco products are not only addictive, they are abnormally dangerous and unfit for human use. Tobacco products kill, maim, or injure virtually all who use them. The Tobacco

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Companies know this, but continue to deny the existence of adverse health effects in their public statements.

8. The Tobacco Industry's unlawful conduct does not stop with misrepresentations concerning the addictive nature of nicotine and the adverse health effects of tobacco use. The industry has secretly gone a step further by manipulating the level of nicotine in tobacco products in order to increase addiction and sell more product. For example, defendants seek to "graduate" new users from milder products to those with more "kick" in order to addict users. Their campaign to addict new users succeeds, particularly with the young.

9. To continue in its hugely profitable business, in 1953 the Tobacco Industry entered into a multifaceted unlawful conspiracy that continues to this day. One essential element of the conspiracy was an agreement to suppress harmful information concerning tobacco products, which was accomplished as follows. First, defendants agreed to falsely represent that there is no proof that smoking or tobacco use is harmful. Second, they agreed to falsely represent that nicotine and tobacco use is not addictive. And finally, defendants represented to the public and governmental regulators that they would undertake a "special duty" and "responsibility" to determine and report the scientific truth about the health effects of tobacco, both by conducting internal research and by funding "independent" external research.

10. Those representations were false when they were made and continue to be false. The Tobacco Industry knew its products were addictive and harmful. The industry's publicly proclaimed special undertaking to pursue and report the truth about smoking was false. The industry's purported undertaking was part of a conspiracy to refute, undermine, and neutralize information coming from the objective scientific and medical communities and, at the same time, to confuse and mislead the public in an effort to avoid state or federal regulation, to encourage existing smokers to continue smoking and to induce new persons to start smoking.

11. The Tobacco Companies conspired and agreed to restrain competition for sales of an innovative "safer" cigarette. The purpose and effect of this aspect of the conspiracy was to suppress and restrain competition based on claims of health because such competition would have exposed the ill effects and addictive nature of smoking, thereby substantially increasing

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the defendants' liability exposure for the inevitable harm caused by cigarettes and tobacco products, and thereby threatening their shares of the tobacco market.

12. The conspiracy described above originated in response to medical and scientific studies publicizing the adverse health impact of smoking in the early 1950s. In response to what the industry internally called the "health scare" in late 1953 and early 1954, the Tobacco Companies and their public relations agent, Hill & Knowlton, jointly created a purportedly independent entity initially known as the Tobacco Industry Research Council (TIRC). As part of their unlawful conspiracy, the Tobacco Companies publicly represented that the TIRC would undertake, on behalf of the public and those responsible for the public health, including the State of Nevada, to objectively research and gather data concerning the relationship between cigarette smoking and health and truthfully publicize the results of this "independent" research. From 1954 to the present the industry has been using the TIRC and its successor, the Council for Tobacco Research (CTR), to knowingly publish false reports regarding the relationship between smoking and health.

13. In actuality, the Tobacco Companies, their lawyers, and Hill & Knowlton controlled the TIRC and manipulated its affairs to "[s]uppress any data demonstrating the addictive nature of cigarette smoking or that cigarette smoking caused human disease," and to publicize information, regardless of its merit, tending to obscure any relationship between cigarette smoking and disease. This course of conduct was designed to create the notion that there was a legitimate and good faith medical/scientific controversy over whether smoking or tobacco is harmful to human health or whether nicotine is addictive. The Tobacco Cartel accomplished this hoax, in part, by assigning all information indicating that cigarette smoking or tobacco use is harmful to human health or that nicotine is addictive to a so-called "Special Projects" division of the TIRC, where the information was wrongfully secreted from the public and wrongfully concealed from discovery in litigation against the Tobacco Companies by the improper assertion of the attorney-client privilege.

14. Also in the 1950s, the Tobacco Companies began, and continued thereafter to the present, to tailor their cigarette advertisements, promotional activities, and public statements

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to conceal and/or misrepresent the addictive nature and the adverse health impact of cigarette smoking and tobacco use, while at the same time presenting cigarette smoking in a glamorous, youthful, exciting, relaxing posture by associating it with professional and economic success, intelligence, athletic ability, and sexual attraction. Defendants suppressed or misstated the addictive nature and the adverse health impact of smoking, so that new smokers, mainly young teenagers, could be "hooked" on smoking and existing smokers would continue smoking.

B. The Damages Caused by Defendants' Unlawful Conduct

15. The intended and foreseeable effects of the conspiracy are several and far-reaching, including but not limited to increased medical costs to the State of Nevada and its agencies, use of tobacco products by minors in violation of state law, and failure of the industry to develop and market "safer" products.

1. Health care costs. One of the foreseeable and intended consequences of defendants' conduct has been to unjustly enrich the defendants at the expense of Nevada's health care system, the state health care authority, state workers' compensation funds, and ultimately, all Nevada residents and taxpayers.

(a) Approximately 50 million residents of the United States smoke cigarettes, and another six million use smokeless tobacco products. Nationwide, tobacco related deaths are a national tragedy: More than 400,000 deaths per year in the United States are tobacco related.

(b) In Nevada, hundreds of thousands of adults are smokers. Thousands of Nevada adults use smokeless tobacco.

(c) Health care costs in the United States amount to hundreds of billions of dollars each year. Tobacco-related health care costs are estimated to be more than 7 percent of total health care costs, and in 1993, tobacco-related health care costs were $50 billion.

(d) The defendants' conduct has wrongfully shifted these increased costs to the State of Nevada in the form of charges directly attributable to tobacco usage and exposure that should have been borne by the defendants, including but not limited to increased

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Medicaid payments and increased health care insurance for public employees.

(e) During the years 1992 to 1994 for example, defendants' conduct caused the State of Nevada to pay more than $35 million in Medicaid costs alone. The State would have avoided these costs if defendants had not engaged in the course of conduct described in this Complaint, and costs are among those the State seeks as damages in this case.

2. **Targeting minors in violation of state law.** A further effect of defendants' course of unlawful conduct and conspiracy is the targeting of and eventual addiction of minors and young people. Recognizing the pernicious addictive nature of their products, defendants seek new customers among the youth of the nation. Because of the deaths of so many of the industry's adult customers, the defendants must constantly add new customers in order to maintain their profits.

(a) According to a 1994 U.S. Surgeon General's Report, every day another 3,000 children become regular smokers. Eighty-two percent of adults who have ever smoked had their first cigarette before age 18 and more than half of them had already become regular smokers by that age. Reports published by the U.S. Centers for Disease Control and Prevention indicate that anyone who does not begin smoking in childhood is unlikely to begin. For those 3,000 children who do become regular users of tobacco products every day, projections of current trends indicate that 1,000 will die prematurely as a result of their tobacco use.

(b) It is against the law of Nevada to sell tobacco to minors, and efforts to encourage minors to use tobacco contravene public policy. Defendants have lured minors into smoking by unfairly and deceptively designing special marketing campaigns particularly appealing to minors and young people. Defendants target minors through promotional materials designed to create the impression that smoking is glamorous, sexy, fun and the "in" thing to do. An integral part of this campaign is use of images particularly appealing to minors and placement of promotional materials in locations likely to be accessed primarily by minors.

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(c) Knowing that products, such as smokeless tobacco, with too much nicotine can be harsh and may deter new users from becoming new addicts, the defendants seek to graduate new users, often minors, from "milder" products to those with more "kick" in order to addict more customers.

(d) As a result of defendants' unlawful acts, each day minors use tobacco products in violation of state law. The Attorney General seeks to halt this practice.

C. The Objectives of This Action

16. In this action, the Attorney General seeks (i) to secure for the people of the State of Nevada a fair and open market, free from unfair or deceptive acts or practices and illegal restraints in trade; (ii) to return to the State the increased costs of health care caused by defendants' wrongful conduct; (iii) to require fair and full disclosure by defendants of the nature and effects of their products; (iv) to unequivocally halt the marketing of tobacco products to minors; and (v) to disgorge defendants' profits from their sales of tobacco products accomplished through violations of state law.

II. JURISDICTION AND VENUE

17. This Complaint is filed and these proceedings are instituted under the provisions of the Nevada Deceptive Trade Practices Act, NRS 598.0903 *et seq.*, the Nevada Unfair Trade Practices Act, NRS 598A.010 *et seq.*, and the common law of the State of Nevada.

18. Authority for the Attorney General to commence this action for injunctions, mandatory injunctions, damages, restitution, disgorgement, civil penalties, attorneys' fees, and such other relief as the Court deems proper, is conferred by, *inter alia*, NRS 598.0963(3), NRS 598A.070 and NRS 228.170(1).

19. The violations alleged herein have been and are being committed in whole or in part in the State of Nevada, and affect commerce in Nevada, and defendants do business throughout the State of Nevada.

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III. THE PARTIES

PLAINTIFF

20. This action is brought for and on behalf of the State of Nevada, by Frankie Sue Del Papa, Attorney General of the State of Nevada, pursuant to, *inter alia*, the provisions of the Nevada Deceptive Trade Practices Act, NRS 598.0903 *et seq.*, the Nevada Unfair Trade Practices Act, NRS 598.0963(3), NRS 228.170(1), and the common law authority of the Attorney General to represent the State of Nevada.

DEFENDANTS

21. Defendant American Tobacco Company, Inc. (American Tobacco), is a Delaware corporation whose principal place of business is Six Stamford Forum, Stamford, Connecticut 06904. American Tobacco, sometimes hereinafter referred to as "ATC," manufactured, advertised, and sold Lucky Strike, Pall Mall, Tareyton, American, Malibu, Montclair, Newport, Misty, Iceberg, Silk Cut, Silva Thins, Sobrania, Bull Durham, and Carlton cigarettes, and other tobacco products throughout the United States. In 1994, American Tobacco was sold to British-American Tobacco Co., parent of defendant Brown & Williamson.

22. Defendant Brown & Williamson Tobacco Corporation (Brown & Williamson) is a Delaware corporation whose principal place of business is 1500 Brown & Williamson Tower, Louisville, Kentucky 40202. Brown & Williamson manufactures, advertises, and sells Kool, Raleigh, Barclay, BelAir, Capri, Richland, Laredo, Eli Cutter, and Viceroy cigarettes and other tobacco products throughout the United States.

23. Defendant Liggett & Meyers, Inc. (Liggett), is a Delaware corporation whose principal place of business is Main and Fuller, Durham, North Carolina. Liggett manufactures, advertises, and sells Chesterfield, Decade, L&M, Pyramid, Dorado, Eve, Stride, Generic, and Lark cigarettes and other tobacco products throughout the United States.

24. Defendant Lorillard Tobacco Company, Inc. (Lorillard), is a Delaware corporation whose principal place of business is 1 Park Avenue, New York, New York 10016. Lorillard manufactures, advertises, and sells Old Gold, Kent, Triumph, Satin, Max, Spring, Newport,

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and True cigarettes and other tobacco products throughout the United States.

25. Defendant Philip Morris Inc. (Philip Morris), is a Virginia corporation whose principal place of business is 120 Park Avenue, New York, New York 10017. Philip Morris manufactures, advertises, and sells Philip Morris, Merit, Cambridge, Marlboro, Benson & Hedges, Virginia Slims, Alpine, Dunhill, English Ovals, Galaxy, Players, Saratoga, and Parliament cigarettes and other tobacco products throughout the United States.

26. Defendant R.J. Reynolds Tobacco Company (Reynolds) is a New Jersey corporation whose principal place of business is Fourth & Main Street, Winston-Salem, North Carolina 27102. Reynolds manufactures, advertises, and sells Camel, Vantage, Now, Doral, Winston, Sterling, Magna, More, Century, Bright Rite, and Salem cigarettes and other tobacco products throughout the United States.

27. Defendant United States Tobacco Company (U.S. Tobacco), is a Delaware corporation whose principal place of business is 100 West Putnam Avenue, Greenwich, Connecticut. U.S. Tobacco manufactures, advertises, and sells Sano cigarettes. U.S. Tobacco also manufactures, advertises and sells approximately 88 percent of the smokeless tobacco (snuff and chewing tobacco) sold in the United States, under various brand names including Happy Days, Skoll, and Copenhagen.

28. Each of the defendant cigarette and tobacco manufacturers advertised, sold, and promoted their tobacco products in the State of Nevada.

29. Defendant Philip Morris Companies, Inc. is a Virginia corporation whose principal place of business is located at 120 Park Avenue, New York, New York 10016. Defendant Philip Morris Companies, Inc. is the parent corporation of defendant Philip Morris Incorporated. At times pertinent to this complaint, defendant Philip Morris Companies, Inc., individually and through its agent, alter ego, subsidiary and/or division, defendant Philip Morris Incorporated designed, tested, manufactured, marketed and sold cigarettes for use in the State of Nevada or materially conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in doing so.

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30. The Brooke Group, Limited is a Delaware corporation whose principal place of business is located at 100 Southeast 2nd Street, Floor 32, Miami, Florida 33131. Defendant Brooke Group, Limited, individually and/or through its agents, alter egos, subsidiaries and divisions, defendant Liggett Group, Inc. and defendant Liggett & Myers, Inc., designed and tested, manufactured, marketed and sold cigarettes for use in the State of Nevada or materially conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in doing so.

31. Defendant Liggett Group, Inc. is a Delaware corporation whose principal place of business is located at 700 West Main Street, Durham, North Carolina 27701. Defendant Liggett Group, Inc., is an agent, alter ego, subsidiary and division of defendant Brooke Group, Limited. Defendant Liggett Group, Inc., is a parent corporation of Liggett & Myers, Inc. At times pertinent to this Complaint, defendant Liggett Group, Inc., individually and/or through its agent, alter ego, subsidiary and division, defendant Liggett & Myers, Inc., designed and tested, manufactured, marketed and sold cigarettes for use in the State of Nevada or materially conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in doing so.

32. Loews Corporation is a Delaware corporation whose principal place of business is located at 1 Park Avenue, New York, New York 10016. Defendant Loews Corporation is the parent corporation of defendant Lorillard Corporation. At times pertinent to the petition, defendant Loews Corporation, individually and/or through its agent, alter ego, subsidiary and division, defendant Lorillard Corporation, designed and tested, manufactured, marketed and sold cigarettes for use in the State of Nevada or materially conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in doing so.

33. Defendant American Brands, Inc. is a Delaware corporation whose principal place of business is located at 1700 East Putnam Avenue, Old Greenwich, Connecticut 06870. Defendant American Brands, Inc., is or was the parent corporation of or the successor in interest to defendant The american Tobacco Company. At times pertinent to this complaint, defendant American Brands, Inc., individually and/or through its agent, alter ego, subsidiary

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and division, defendant The American Tobacco Company, designed and tested, manufactured, marketed and sold cigarettes for use in the State of Nevada or materially conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in doing so.

34. B.A.T. Industries P.L.C. ("B.A.T. Industries" or "BAT-II") is a British corporation whose principal place of business is Windsor House, 50 Victoria St., London, England. Through a succession of intermediary corporations and holding companies, B.A.T. Industries is the sole shareholder of Brown & Williamson. Through Brown & Williamson, B.A.T. Industries has placed cigarettes into the stream of commerce with the expectation that substantial sales of cigarettes would be made in the United States and in the State of Nevada. B.A.T. Industries has also conducted, or through its agents, subsidiaries, associated companies and/or co-conspirators, has conducted significant research for Brown & Williamson on the topics of smoking, disease, and addiction. On information and belief, Brown & Williamson also sent to England, research conducted in the United States on the topics of smoking, disease, and addiction, in order to remove sensitive and inculpatory documents from United States jurisdiction, and such documents were subject to B.A.T. Industries' control. B.A.T. Industries is a participant in the conspiracy described herein and has caused harm and affected commerce in the State of Nevada.

35. British American Tobacco Company, Ltd. (BATCO), is a British Corporation whose registered office is Millbank, Knowle Green, Staines, Middlesex, England TW18 1DY. British American Tobacco Company, Ltd., is or was a related corporation of defendant Brown & Williamson Tobacco Corporation. Both are owned by BAT Industries, PLC. BATCO also advertises, promotes and sells its own tobacco products such as 555 Express cigarettes throughout the State of Nevada. At times pertinent to the Complaint, BATCO, individually or through its affiliate, alter ego, subsidiary and/or division, defendant Brown & Williamson Tobacco Corporation, designed, tested, manufactured, marketed, and sold cigarettes for use in the State of Nevada. BATCO has also conducted, or through its associated companies, agents, or subsidiaries, has conducted significant research for Brown & Williamson on the topics of smoking, disease, and addiction. On information and belief, Brown & Williamson

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also sent to England research conducted in the United States on the topics of smoking, disease, and addiction, in order to remove sensitive and inculpatory documents from United States jurisdiction. BATCO is a participant in the conspiracy described herein and has caused harm and affected commerce in the State of Nevada.

36. Defendant RJR Nabisco Holdings Corp. (RJR Nabisco Holdings) is a Delaware Corporation whose principal place of business is 1301 Avenue of the Americas, New York, New York. RJR Nabisco Holdings is the parent company of wholly-owned subsidiary RJR Nabisco, Inc., which in turn is the parent company of R.J. Reynolds Tobacco Company. According to RJR Nabisco Holdings, its "worldwide tobacco operations are managed in the United States by R.J. Reynolds Tobacco Co." Through R.J. Reynolds Tobacco Company, RJR Nabisco Holdings manufactures, advertises, and sells Camel, Vantage, Now, Doral, Winston, Sterling, Magna, More, Century, Bright Rite, and Salem cigarettes and other tobacco products throughout the United States. Through R.J. Reynolds Tobacco Company, RJR Nabisco Holdings advertises, promotes, and sells its tobacco products throughout the State of Nevada.

37. Defendant RJR Nabisco, Inc. (RJR Nabisco), is a Delaware Corporation whose principal place of business is 1301 Avenue of the Americas, New York, New York. RJR Nabisco is the parent company of wholly-owned subsidiary R.J. Reynolds Tobacco Company. According to RJR Nabisco Holdings, its "worldwide tobacco operations are managed in the United States by R.J. Reynolds Tobacco Co." Through R.J. Reynolds Tobacco Company, RJR Nabisco manufactures, advertises, and sells Camel, Vantage, Now, Doral, Winston, Sterling, Magna, More, Century, Bright Rite, and Salem cigarettes and other tobacco products throughout the United States. Through R.J. Reynolds Tobacco Company, RJR Nabisco advertises, promotes, and sells its tobacco products throughout the State of Nevada.

38. Defendant Hill & Knowlton, Inc., is an international public relations firm with offices located in major United States cities and whose principal place of business is 420 Lexington Avenue, New York, New York. Defendant Hill & Knowlton played an active and knowing role in the conspiracy complained of, aiding the circulation and/or publication

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of many of the false statements of the Tobacco Industry attributable to the TIRC and the CTR. Hill & Knowlton has been the primary advertising agency responsible for dissemination of the false and misleading information in question, in its capacity as the advertising and public relations agency for the Tobacco Institute, the CTR and several members of the Tobacco Industry, including Liggett Group, Inc., Philip Morris, U.S.A., R.J. Reynolds Tobacco Co., the American Tobacco Company, and Lorillard Tobacco Co. In the course of such representation Hill & Knowlton wrongfully aided these defendants in creating and issuing false information and covering up the truth concerning the Tobacco Industry, the link between smoking and cancer or other health hazards, the addictive nature of smoking, and the true nature of the activities of the TIRC/CTR and its relationship to the industry. Hill & Knowlton has been involved in wrongful conduct and conspiracy since its creation. The TIRC was actually formed at the recommendation and with the substantial assistance of Hill & Knowlton in 1954, 11 days after Hill & Knowlton in December 1953 sent members of the Tobacco Industry "preliminary recommendations" for dealing with "a serious problem with public relations," suggesting the Tobacco Industry form the Tobacco Industry Research Committee. Moreover, Hill & Knowlton shared office space with the TIRC and provided staffing for it. Hill & Knowlton also played a major role in the creation, development, and dissemination of "selection criteria" for a publication entitled, "Tobacco & Health Research," which was used as a vehicle for dissemination of the false and misleading information generated by the Tobacco Industry. Hill & Knowlton knew that the CTR and the Tobacco Industry were engaged in the fraudulent conspiracy complained of, but failed to disclose the truth because the Tobacco Industry and its agents had promised Hill & Knowlton enormous fees to help publicize and circulate the false information necessary to conceal the truth and to continue the Tobacco Industry's fraud of issuing misleading statements regarding the health risks of tobacco products.

39. The Council for Tobacco Research - U.S.A., Inc. (CTR), successor in interest to the Tobacco Institute Research Committee (TIRC), is a New York nonprofit corporation with its principal place of business at 900 3rd Avenue, New York, New York 10022. At all relevant

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times, the CTR and the TIRC operated as public relations and lobbying arms of the Tobacco Companies and as agents and employees of the Tobacco Companies. They also acted as facilitating agencies in furtherance of defendants' combination and conspiracy as described in this Complaint. In doing the things alleged, the CTR and the TIRC acted within the course and scope of their agency and employment, and acted with the consent, permission, and authorization of each of the Tobacco Companies. All actions of the CTR and the TIRC alleged were ratified and approved by the officers or managing agents of the defendants. The CTR and the TIRC have been involved continuously in the conspiracy described herein and the actions of the CTR and the TIRC have affected commerce and caused harm in Nevada.

40. Defendant Tobacco Institute, Inc. (Tobacco Institute), is a New York nonprofit corporation with its principal place of business at 1875 I Street Northwest, Suite 800, Washington, D.C. 20006. At all relevant times, Tobacco Institute operated as a public relations and lobbying arm of the Tobacco Companies and was an agent and employee of the Tobacco Companies. It also acted as a facilitating agency in furtherance of the combination and conspiracy of the defendants described in this Complaint. In doing the things alleged, Tobacco Institute acted within the course and scope of its agency and employment, and acted with the consent, permission, and authorization of each of the Tobacco Companies. All actions of the Tobacco Institute as alleged herein were ratified and approved by the officers or managing agents of the defendants. Tobacco Institute has been involved in the conspiracy described in this Complaint and the actions of Tobacco Institute have affected commerce and caused harm in Nevada.

41. The true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants named herein as Does 1 through 50 are unknown to the plaintiff, who sues those defendants by such fictitious names. Does 1 through 50, upon information and belief, conspired with the defendants and engaged in the wrongful conduct described in this complaint to the detriment and to the damage of the plaintiff and are therefore liable to the plaintiff for damages. Each of the Doe defendants is legally responsible negligently or in some other manner for the events and happenings referred to herein and proximately caused

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damages to the plaintiff as alleged herein. Plaintiff prays leave to amend this complaint to include those defendants' true names and capacities when the same have been ascertained.

IV. ADDITIONAL JURISDICTIONAL ALLEGATIONS REGARDING BAT INDUSTRIES, P.L.C.

42. BAT Industries describes itself as "one of the U.K.'s leading business enterprises with interests principally in tobacco and financial services." "[B.A.T. Industries] is the world's most international cigarette manufacturer," with an unrivaled range of both international and domestic brands. In 1995, the "B.A.T. Industries Group" sold "more than 670 billion cigarettes . . . achieving a 12.4% share of the world market [and] B.A.T. Industries has the leading cigarette brand in over 30 markets." In 1995, BAT-II's total revenue amounted to about $38.8 billion, and pre-tax profit reached a record $4.6 billion.

43. The defendant, B.A.T. Industries P.L.C. (or "BAT-II") repeatedly refers to itself and its subsidiaries as the "B.A.T. Industries Group," or "the BAT Group," "the Group" or simply "BAT" in publicly required filings and promotional material. Bat-II and subsidiary annual reports are replete with references to BAT-II as being in the business of selling cigarettes. This is a clear indication of the close cooperation of the affiliated BAT-II companies worldwide. The term "BAT-II" as used herein, refers to the corporate defendant, B.A.T. Industries P.L.C.; the term "BAT-I" refers to British American Tobacco Corporation Limited, an English corporation that, from 1902 until 1976, was the ultimate parent company for the BAT commercial enterprise. After 1976, BAT-I has functioned largely as only one of many of the BAT Group's tobacco operating companies, and since 1976 the defendant has typically referred to BAT-I simply as "BATCo," a usage which is similarly adopted for the post-1976 period. The terms "BAT," the "BAT Group," and "BAT Industries Group" shall be used to refer to BAT-II and its subsidiaries, a usage adopted by BAT-II in its own documentation.

44. For the past 20 years, BAT-II has played a significant role in the BAT Group process that leads to the sale of tens of millions of packs of cigarettes in Nevada annually. The BAT-II board and senior officers established and enforced coordinated cigarette research,

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tobacco growing, and other development policies for the BAT Group. BAT-II also established and enforced policies and guidelines for the design and manufacture of addictive cigarettes in the United States. BAT-II also established and enforced coordinated marketing and public relations policies for the BAT Group in the United States. In sum, BAT-II is the ultimate decision-maker on all significant issues—whether it be research, tobacco agriculture, design, manufacture, marketing or administration—that affect the BAT Group's sale of cigarettes in Nevada.

45. BAT-II acted in complicity not only with the corporate members of the BAT Group itself, but with the American Tobacco Industry as a whole, in connection with the wrongdoing alleged in this case. The promulgation and enforcement of deceptive smoking and health policies, or of the manipulative nicotine design of cigarettes to addict smokers, did not remain within the walls of BAT-II's Windsor House headquarters—they spread throughout the BAT Group and into BAT-II's American tobacco business. And, by combining with the wider Tobacco Industry in the United States, these policies were implemented on an industry-wide basis.

46. BAT-II has purposely availed itself of the American economy, including Nevada cigarette and financial markets. BAT Group tobacco reaps substantial revenues in Nevada—sales ultimately directed and controlled by BAT-II. Over time, BAT-II has reaped millions of dollars in profits from Nevada consumers, upstreaming those profits to diversify its global commercial enterprise and pay dividends. BAT-II has succeeded in its aggressive United States corporate acquisition plan; a plan that has had significant effects upon the Nevada economy. For example, in 1994 BAT-II purchased the American Tobacco Company, then the fifth largest tobacco operation in the country, for approximately $1 billion.

47. BAT-II has directly and substantially engaged in key decision making for the research, development, design, manufacture, and marketing of millions of dollars worth of cigarettes sold in Nevada. Through secret programs such as "Project GHOST" or "Project BATTALION," and through formal "delegation" of authority, BAT-II directly participated in fundamental, strategic, and implementive decisions leading to the sale of cigarettes in the U.S.

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by the BAT Group, and more particularly, its wholly owned subsidiary, Brown & Williamson. The participation was detailed, and covered many important aspects of the research, development, manufacture, design, and marketing of cigarettes, along with the political relations to accompany the business generally, and the administrative infrastructure to carry on that work. BAT-II's actions were intentional, and they were directed at the sale of cigarettes in Nevada (as well as other states). BAT-II is the hub of the BAT Group industrial enterprise, which sells millions of dollars worth of cigarettes in Nevada. In short, BAT-II regularly does or solicits business in Nevada.

48. BAT-II is also subject to personal jurisdiction for causing tortious injury by an act or omission in Nevada. BAT-II has participated in a fraud against Nevada and the public; has assured that substantial scientific and other knowledge not be disclosed to Nevada and its citizens; has directed the research and design of cigarettes sent into Nevada for sale and consumption; and has assured the complicity of B&W and the other BAT-II operating companies in the United States Tobacco Industry conspiracy alleged in the Complaint. As a result, BAT-II has directly or by an agent caused tortious injury by an act or omission in this state.

49. BAT-II also has minimum contacts with Nevada under a stream-of-commerce analysis. BAT-II has played *the* most significant and important role in the research, development, design, and marketing of cigarettes for the BAT Group, including B&W. BAT-II established and enforced the coordinated research and development policies of the BAT Group for 20 years up to the present. BAT-II established and enforced policies and programs for the design and manufacture of addictive cigarettes in the United States for many years, such as Project AIRBUS, Project GREENDOT, Project WHEAT and "Y-1" tobacco. BAT-II established and enforced coordinated marketing and public relations policies of the BAT Group in the United States and elsewhere for over 20 years. BAT-II has been and is the ultimate decision-maker for the BAT Group on the issues which go to the heart of this case, including decisions on research, design, manufacture, distribution, marketing, and public relations of cigarettes in the United States for 20 years. It is, therefore, subject to personal

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jurisdiction in Nevada.

50. When it suits BAT-II's own purposes, BAT-II does not hesitate to subject itself to jurisdiction in the United States. For example, when it sought to consummate its $5.2 billion purchase of the Farmer's Group, BAT-II subjected itself to jurisdiction in various states in undertaking the insurance approval process for that transaction; when it sought to purchase American Tobacco Company for $1 billion, it submitted to the jurisdiction of the Federal Trade Commission, and admitted that it was involved in "commerce" between the various states; when it sought to raise hundreds of millions of dollars on the American financial markets through the sale of promissory notes through a BAT-II United States subsidiary, BAT-II submitted to the jurisdiction of New York courts and unconditionally guaranteed payment on the notes.

51. The United States, including Nevada, has been central to BAT-II's global tobacco and financial businesses.

V. CONSPIRACY ALLEGATIONS

52. In committing the wrongful acts alleged, all the defendants and other entities and persons identified, with the assistance and knowledge of their counsel, have pursued a common course of conduct, acted in concert with, aided and abetted and conspired with one another and other conspirators not yet named or known, in furtherance of their common plan and scheme outlined herein.

VI. FACTUAL ALLEGATIONS

A. Background

53. Today, 50 million Americans smoke and, it is estimated that 22 percent of adult Americans will still be smokers in the year 2000. In the latter half of the 20th century, some 10 million Americans have been killed by cigarette disease. This year (and every year into the foreseeable future), nearly half a million Americans will die prematurely due to disease caused by cigarette smoking. Based upon current smoking trends, of the American children alive today, more than 5 million will be killed by cigarette disease during the 21st century.

54. Cigarette and smokeless tobacco diseases share a common root cause—a highly

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addictive product that has been fraudulently and falsely promoted by the corporations comprising the Tobacco Cartel. Smoking causes lung cancer. It is also virtually the only cause of throat cancer and emphysema. Smoking-caused heart disease actually results in more deaths than lung cancer. Smoking is responsible for approximately one-fourth of all cancer deaths as well as one-third of all heart disease deaths.

55. Several factors account for the persistence of cigarette smoking and other tobacco use. First, largely as a result of the Tobacco Industry's false and fraudulent advertising, smoking and other tobacco use became socially acceptable before it was proven to be a cause of lung cancer and other diseases. Second, the long latency period between the initiation of tobacco use and disease contraction masked the causal relationship for decades. Third, cigarettes and other tobacco products contain large amounts of nicotine, an extraordinarily addictive substance, which makes it difficult for a person to stop smoking. Fourth, the Tobacco Industry has conspired not to compete on the basis of relative health risk, and has conspired to restrict output in safer and alternate products, and to create confusion as to whether smoking or other tobacco use is really harmful, and to make it appear that there is a legitimate good faith scientific dispute over the health impact of smoking and other tobacco use, while presenting cigarette smoking in an attractive, youthful, and positive way—concealing all the while that tobacco products are, in fact, highly addictive and unquestionably dangerous.

56. Despite their knowledge that nicotine is extremely addictive, the Tobacco Companies to this day, pursuant to their conspiracy, deny that smoking is the cause of disease or that nicotine is addictive. Recently, and in furtherance of the conspiracy, each of the CEOs of the defendant Tobacco Companies knowingly testified falsely under oath before Congress that smoking was not addictive.

B. The Cartel's Pre-Conspiracy Advertising and Promotional Activities: False Claims of Health and Safety

57. The promotional activities and conduct of the Tobacco Industry, after the conspiracy was agreed to and implemented (which is described below), can only be understood in the

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context of the fraudulent and false claims they had engaged in pre-conspiracy regarding cigarette smoking and health. Until the mid-1950s, explicit or implied health claims and/or medical endorsements for smoking were major advertising campaign themes for many cigarette brands and were included in the public statements issued by the Tobacco Industry.

58. Cigarette smoking increased dramatically in the first half of the 20th century. With the increase of cigarette smoking came an increase in lung cancer. Dr. Alton Ochsner, a New Orleans surgeon and regional medical director of the American Cancer Society, told an audience at Duke University on October 23, 1945, that "there is a distinct parallelism between the incidence of cancer of the lung and the sale of cigarettes. . . . [T]he increase is due to the increased incidence of smoking and . . . smoking is a factor because of the chronic irritation it produces."

59. In 1946, Tobacco Company chemists themselves reported concern for the health of smokers. A 1946 letter from a Lorillard chemist to its manufacturing committee states that "[c]ertain scientists and medical authorities have claimed for many years that the use of tobacco contributes to cancer development in susceptible people. Just enough evidence has been presented to justify the possibility of such a presumption."

60. Despite evidence showing their cigarettes caused lung disease and cancer, the Tobacco Companies chose sales over public health and safety. Starting in the 1930s and continuing until the mid-1950s, the Tobacco Companies made express claims and warranties as to the healthiness of their products with reckless disregard to the falsity of their claims and the consequential adverse impact on consumers. Examples of these health warranties include the following: Old Gold - "Not a cough in a Carload"; Camel - "Not a single case of throat irritation due to smoking Camels"; Philip Morris - "The throat-tested cigarette."

61. One of the key themes used to promote cigarette smoking during this period was a promise that individual cigarette brands were either "less irritating" or that "harmful irritants" had been removed. At one point or another during this period every major cigarette brand made a false claim regarding health and/or irritation. These pre-1954 advertisements and representations demonstrate defendants' understanding that consumers wanted safer products,

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and as a result, the Tobacco Companies engaged in vigorous competition on the basis of claims of health and safety as detailed above and elsewhere in this Complaint.

C. The 1953 "Big Scare" and Beginning of the Industry Conspiracy to Suppress the Truth and Curtail Competition

62. The defendants and their co-conspirators knew that published information about health risks would (i) increase consumer demand for safer tobacco products, (ii) induce some competitors to promote their own brands or denigrate competing brands on the basis of relative health risk, (iii) materially reduce their profits and market shares, and (iv) increase the likelihood of government regulation and decrease the likelihood that they could shift to the public and public agencies the health costs caused by use of tobacco products. Armed with this knowledge, and as set forth below, defendants ultimately agreed to not compete in the market based on health claims, or in the market for "safer" or alternative products, and agreed to suppress adverse information concerning health risks and addiction.

63. In the early 1950s, scientists published two significant scientific studies warning of the health hazards of cigarettes. The first was published in 1952 by Dr. Richard Doll, a British researcher, who found that lung cancer was more common among people who smoked and that the risk of lung cancer was directly proportional to the number of cigarettes smoked. A second study was published in December 1953 by Dr. Ernest Wynder and others of the Sloan-Kettering Institute whose experiments with mice confirmed the cancer causing properties of cigarettes. The widespread reporting of these studies caused what cigarette company officials called the "Big Scare."

64. The cigarette industry responded quickly to the Big Scare that by late 1953 had caused a decrease in consumption of tobacco products and in the stock prices of many tobacco companies. Thus, on December 14, 1953, in the direct aftermath of the Wynder study and the public concern over it, B&W President Timothy V. Hartnett circulated a memorandum to his counterparts at other tobacco companies and set out his proposals on how the industry should *collectively* deal with the "health issue."

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65. Hartnett proposed a two-prong collective response to his competitors "to get the industry out of this hole": (a) "unstinted assistance to scientific research," with the most difficult part of this effort being the group deciding "how to handle significantly negative research results if, as, and when they develop"; and (b) "the best obtainable" public relations counsel since none "has ever been handed so real and yet so *delicate* a multimillion dollar problem."

66. Hartnett's proposal was an invitation to his competitors to agree to wrongfully restrain independent economic best interest in favor of collusion.

67. The next day, December 15, 1953, accepting Hartnett's offer to conspire, the presidents of the leading tobacco companies met at an extraordinary gathering in the Plaza Hotel in New York City. Present were the presidents of American Tobacco, Benson & Hedges, B&W, Lorillard, Philip Morris, R.J. Reynolds, and U.S. Tobacco. This gathering was unprecedented—it was the first time the Tobacco Companies had met together outside occasional dinners. Also in attendance was Hill & Knowlton, who coordinated the meeting and was to play a major role in formulating and executing the industry's response.

68. According to a Hill & Knowlton memorandum summarizing the meeting, the companies exchanged proprietary information and "voluntarily admitted" that "their own advertising and [past] competitive practices have been a principal factor in creating a health problem," and acknowledged that they had "<u>informally talked over the problem and will try and do something about it</u>." (Emphasis added). The defendants realized that the subject of doing something collectively about competitive advertising practices "is one of the important public relations activities that might very clearly fall within the purview of the antitrust act." In order to conceal their intentions to wrongfully, collectively restrain competition, they concluded, "it is doubtful that we will be able to make <u>any formal recommendation</u> with regard to the advertising or selling practices and claims." (Emphasis added.)

69. At the Plaza Hotel meeting, the defendants entered into a contract, combination, and conspiracy to cease to compete on the basis of relative health risks, an agreement that is a violation of the Nevada Unfair Trade Practices Act and which continues to this day.

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70. At the time of the December 15, 1953, meeting, the cigarette industry did not have a trade association, and cigarette manufacturers had never before met in a formal business meeting or discussed business, because, according to the Hill & Knowlton memo, the Tobacco Companies were prevented, by a 1911 dissolution decree and criminal convictions for price fixing in 1939, from carrying on many group activities.

71. Despite the illegality of the meeting, the competitors met because they viewed the current problem "as being extremely serious and worthy of drastic action." An indication of the seriousness of the problem was "that salesmen in the industry are frantically alarmed and that the decline in tobacco stocks on the stock exchange market has caused grave concern."

72. The agreement reached at the Plaza Hotel, to conceal adverse information and not compete on the basis of health, was to be a permanent fixture of defendants' future relationship. According to the Hill & Knowlton memorandum, "[e]ach of the company presidents attending emphasized the fact that they consider the program to be a long term one," and the meeting participants were "emphatic in saying that the entire activity is a long-term, continuing program, since they feel the problem is one of promoting cigarettes and protecting them from these and other attacks that may be expected in the future." (Emphasis added.)

73. Thus, at the December 15, 1953, meeting the course of conduct agreed to included, but was not limited to:

a. "The chief executive officers of all the leading companies -- R.J. Reynolds, Philip Morris, Benson & Hedges, U.S. Tobacco Company, Brown & Williamson -- have agreed to go along with a public relations program on the health issue.

b. "Because of the antitrust background, the companies do not favor the incorporation of a formal association. Instead, they prefer strongly the organization of an informal committee which will be specifically charged with the public relations function and readily identified as such."

c. Hill & Knowlton, a public relations firm, was to play a central role in the industry association. "The current plans are for Hill & Knowlton to serve as the

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operating agency of the companies, hiring all the staff and disbursing all funds."

d. All of the leading manufacturers, except Liggett, agreed to join in the public relations strategy. Liggett decided not to participate at that time "because that company feels that the proper procedure is to ignore the whole controversy."

74. In furtherance of the conspiracy, nine days later Hill & Knowlton presented a detailed recommendation to the tobacco companies and their co-conspirators. The recommendation recognized the importance of gaining public trust, and avoiding the appearance of bias, if the industry's "pro-cigarette" public relations strategy were to succeed. According to the memorandum:

> a. [T]he grave nature of a number of recently highly publicized research reports on the effects of cigarette smoking . . . have confronted the industry with a serious problem of public relations.
> b. It is important that the industry do nothing to appear in the light of being callous to considerations of health or of belittling medical research which goes against cigarettes.
> c. The situation is one of extreme delicacy. There is much at stake and the industry group, in moving into the field of public relations, needs to exercise great care not to add fuel to the flames.

75. John Hill suggested that the word "research" be included in the name of the Committee. An organization designed to pursue a very delicate "public relations function" was given the intentionally misleading name of the "Tobacco Industry Research Committee."

76. Five of the Big Six cigarette manufacturers were original members of the TIRC. Liggett did not join until 1964. In 1964, the TIRC changed its named to the Council for Tobacco Research. The industry formed equivalent organizations in other countries as well, including the Tobacco Advisory Committee, formerly Tobacco Research Council in the United Kingdom, and Verbrand der Cigarettenindustrie in Germany. The U.S. companies, either directly or through affiliates, are members of the other organizations.

77. The wrongful agreement that the industry would not compete based on claims of health was documented and communicated in a number of ways. One example is a June 21, 1954, Hill & Knowlton memorandum:

> Early in the life of the Tobacco Industry Research Committee, <u>it was accepted as a basic principle that every effort should be made to avoid</u>

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stimulating more adverse publicity and controversy on the subject of tobacco and health.

The principle has been and will continue to be carefully adhered to in the work carried on for the committee.

(Emphasis added.)

78. The "every effort" referred to the agreement not to compete on the basis of health claims for fear of stirring up any controversy regarding health and safety.

79. A July 31, 1954, Hill & Knowlton "Confidential Memorandum" acknowledges that formation of the TIRC was the result of a decision that "joint action" was imperative.

80. The defendants were keenly aware that the agreement creating the TIRC was a wrongful/illegal restraint on competition: "On the Continent individual companies and monopolies have agreed to pool research on the health question, thereby reducing it as a basis for competition." (Emphasis added.)

81. British research conducted by the Tobacco Manufacturers' Standing Committee (TMSC), an equivalent organization to the TIRC (and including companies, such as British American Tobacco (BAT) who were affiliated with U.S. companies) had known competitive impacts. BAT's Chairman, Sir Charles Ellis said, "The Board has decided that if this Company (BAT) makes any significant scientific discovery clearly relevant to health it will share its knowledge with its co-members of TMSC and not seek to obtain competitive commercial advantage." (Emphasis added.)

82. In compliance with the conspiracy not to compete, at least one of the companies, American Tobacco, did nothing on its own to evaluate the risks of use of its products: "The Council for Tobacco Research was the source of expertise on that."

83. To further the existing conspiracy, a second trade group, the Tobacco Institute, was formed by cigarette manufacturers in 1958. It performs a variety of functions and provided opportunities for the conspirators to exchange information, to police the wrongful agreement, and otherwise to coordinate activities.

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D. Representations and Special Undertakings by the Industry

84. The cigarette industry announced the formation of the TIRC on January 4, 1954, with newspaper advertisements placed in virtually every city with a population of 50,000 or more, reaching a circulation of more than 43 million Americans. The advertisement was captioned "A Frank Statement to Cigarette Smokers," and was run under the auspices of the TIRC with, *inter alia*, five of the Big Six manufacturers listed by name. The advertisement stated as follows:

> "A Frank Statement to Cigarette Smokers"
>
> RECENT REPORTS on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked with lung cancer in human beings.
>
> Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research. However, we do not believe that any serious medical research, even though its results are inconclusive should be disregarded or lightly dismissed.
>
> At the same time, we feel it is in the public interest to call attention to the fact that eminent doctors and research scientists have publicly questioned the claimed significance of these experiments.
>
> Distinguished authorities point out:
>
> 1. That medical research of recent years indicates many possible causes of lung cancer.
>
> 2. That there is no agreement among the authorities regarding what the cause is.
>
> 3. That there is no proof that cigarette smoking is one of the causes.
>
> 4. That statistics purporting to link cigarette smoking with the disease could apply with equal force to any one of many other aspects of modern life. Indeed the validity of the statistics themselves is questioned by numerous scientists.
>
> We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business.
>
> We believe the products we make are not injurious to health.
>
> We always have and always will cooperate closely with those whose task it is to safeguard the public health.
>
> For more than 300 years tobacco has given solace, relaxation and enjoyment to mankind. At one time or another during these years critics have held it responsible for practically every disease of the human body.

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> One by one of these charges have been abandoned for lack of evidence.
>
> Regardless of the record of the past, the fact that cigarette smoking today should even be suspected as a cause of a serious disease is a matter of deep concern to us.
>
> Many people have asked us what we are doing to meet the public's concern aroused by the recent reports. Here is the answer:
>
> 1. We are pledging aid and assistance to the research effort into all phases of tobacco use and health. This joint financial aid will of course be in addition to what is already being contributed by individual companies.
>
> 2. For this purpose we are establishing a joint industry group consisting initially of the undersigned. This group will be known as Tobacco Industry Research Committee.
>
> 3. In charge of the research activities of the Committee will be a scientist of unimpeachable integrity and national repute. In addition there will be an Advisory Board of scientists disinterested in the cigarette industry. A group of distinguished men from medicine, science, and education will be invited to serve on this Board. These scientists will advise the Committee on its research activities.
>
> This statement is being issued because we believe the people are entitled to know where we stand on this matter and what we intend to do about it.

(Emphasis added.) Listed as sponsors of this announcement were, *inter alia*, the defendants American Tobacco Company, Brown & Williamson Tobacco Corporation, P. Lorillard Company, Philip Morris Co. Ltd., Inc., R.J. Reynolds Tobacco Company, and United States Tobacco Company.

85. By issuing this publication and others that followed, the industry undertook a special and continuing duty to protect the public health by representing that it would conduct and disclose unbiased and authenticated research on the health risks of cigarette smoking. When they made this representation, defendants intended that the public and government regulators believe and rely upon it, and knew or should have known that consumers would consider the representation material to their decisions to purchase and smoke cigarettes and that government regulators would consider the representation material to their decisions to regulate cigarettes. At that time, and continuing to the present, defendants intended and/or knew or should have known their failure to fulfill the duty they undertook would directly increase health care costs to the State of Nevada. The issuance of this statement and others that have followed was also

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intended by defendants to assure public health officials that the industry would respond to health issues in an honest manner so that no government regulation was necessary. The issuance of this publication was an integral step in the conspiracy to suppress and conceal information that might reduce the Cartel's sale of tobacco products.

E. Repeated False Promises to the Public

86. Despite increasing internal knowledge of the dangers of cigarette smoking which they did not disclose, the defendants continued, renewed, and repeated the representations and undertakings of the 1954 "Frank Statement to Cigarette Smokers." The cigarette industry continued to pursue its two-prong strategy of falsely representing the objectivity of industry research to the public in order to gain credence, and then misrepresenting, distorting, and suppressing information in order to support its pro-cigarette position.

87. Other public statements issued by the Tobacco Industry through the TIRC/CTR or the TI, repeated several themes: (1) that the industry was working to report the full and complete truth concerning tobacco and health; (2) that those scientists working on reporting the truth were "independent" scientists; and (3) that the results of this independent research cast grave doubt on any study linking tobacco use with health problems. These statements include, but are not limited to, the following:

a. On June 4, 1955, the TIRC issued a release entitled "Anti-smoking Theories Not Based on Scientific Knowledge." The release represented that according to the TIRC's associate scientific director, "little is established scientifically about tobacco effects on the heart"; tobacco has "even been reported as killing various harmful bacteria." The release represented that the TIRC "is supporting scientific investigation into many phases of tobacco use and human health in order to get the facts." (Emphasis added.)

b. On December 16, 1957, the TIRC issued a release representing that "extensive scientific research now underway into tobacco use does not substantiate generalized charges against smoking as a cause of cancer." Reporting on the findings of Dr. Clarence Cook Little, "Scientific Director" of the TIRC, the release represented that "no substance has been found in tobacco smoke known to cause cancer." According to Dr. Little, the research

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program was designed "solely to obtain new information and to advance human knowledge in every possible phase of the tobacco and health relationship." (Emphasis added.)

c. On or about December 27, 1958, the TIRC issued a release representing that "during the past year many scientists of high professional standing have produced additional evidence and opinions that challenge the validity of broad charges made against tobacco use." According to the TIRC, its research had developed several "essential facts," including the fact that "the cause or causes of lung cancer remain undetermined" and that "compelling doubts have been raised about statistics and their interpretations involving smoking and health." The release concluded with the following promise:

> At its formation in January 1954, the Tobacco Industry Research Committee stated its fundamental position: 'We believe the products we make are not injurious to health. We are providing aid and assistance to research efforts into all phases of tobacco use and health.'
>
> That statement and pledge are reaffirmed today by members of the Tobacco Industry Research Committee.

d. On March 28, 1960, the TIRC issued a release challenging any link between smoking and lung cancer. In the release the TIRC repeated that "we have frankly accepted a responsibility for financing independent research into health problems, including lung cancer, in an effort to get needed facts and evidence." (Emphasis added.)

e. George Allen, President of the Tobacco Institute, issued a report pledging that the TI, for the benefit of the "public interest" would "encourage the kind of research that will provide the necessary facts." Further, Allen promised that this type of research "is what the industry has tried to do in the past" and "is what we shall do in the future, until enough facts are known to provide solutions to the health questions involved." (Emphasis added.)

f. In 1962, the TIRC issued a release announcing it was in its ninth year of supporting research by independent scientists relevant to questions about tobacco and health. The release represented that "the Tobacco Industry continues its support of the search for truth and knowledge." (Emphasis added.)

g. On May 28, 1962, the TIRC in a release confirmed that its purpose was to "make the facts known to the public."

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h. In 1964, the TIRC issued a "year end statement" representing that its research "will intensify," that $7.25 million had been apportioned to date involving 125 grants and that the TIRC "is dedicated to support its program of research by independent scientists until all the answers are known."

i. In 1979 the TI issued a document entitled "Tobacco Industry Research on Smoking and Health." In it, the TI represented that "[t]here are still eminent scientists who question whether a causal relationship has been proven between cigarette smoking and human disease." The report went on to claim the industry had a great desire to "learn the truth":

> [A] major portion of this scientific inquiry has been financed by the people who knew the most about cigarettes and have a great desire to learn the truth -- the Tobacco Industry.
>
> The industry has committed itself to this task in the most objective and scientific way possible.

The report describes how the industry spent $82 million in research "into all phases of tobacco use and health." Further the report proclaimed that "the findings are not secret" and reaffirmed the commitment to the Tobacco Industry: "From the beginning the Tobacco Industry has believed the American people deserve objective, scientific answers. With this credo in mind, the Tobacco Industry stands ready today to make new commitments for additional valid scientific research that may shed light on the question of smoking and health." (Emphasis added.)

88. Additional representations were made by the defendant tobacco companies themselves repeating the promise that they would investigate and report all facts relating to smoking and health. For example:

a. On February 28, 1956, the President of ATC issued a release indicating that "many highly respected medical scientists challenge the anti-tobacco claims."

b. On November 14, 1957, ATC issued a release representing that its own research produced "evidence directly contradicting the theory that smoking causes lung cancer or heart disease."

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c. On April 9, 1962, ATC issued a release indicating that research contradicting any statistical association between cigarettes and higher death rates was "very difficult to refute."

d. On June 4, 1963, ATC issued a release, quoting Dr. Robert Heiman, Assistant to the President and prime author of studies, refuting any link between smoking and health. In the release, Heiman claimed that workers for the company smoked twice as much as the average while having a mortality rate of 29 percent below average.

e. On October 3, 1963, ATC again issued a release, this time citing Heiman for proof that the statistical association between smoking and lung cancer is "fallacious" and leads to "absurd consequences." (Emphasis added.)

f. In 1967, ATC issued a release describing a 46-page booklet prepared by the Tobacco Industry which "refutes anticigarette charges." ATC called the evidence on smoking and health "an open one," refuted the studies linking smoking with cancer in mice, and claimed that "no one does more" about smoking and health than "The Tobacco People": "No one does more. The Tobacco Industry supports more scientific research into the problems than any other source . . . ." The release claimed that: "The Tobacco Industry continues to endure unfair and unjustified harassment from government and private sources." ATC also claimed that "the cold hard fact remains that no clinical or biological evidence has been produced which demonstrates how cigarettes relate to cancer or any other disease in human beings."

89. Additional representations were made in 1970 when the cigarette industry, through its lobbying group the Tobacco Institute, placed a number of announcements similar to the 1954 "Frank Statement." These announcements stated in part:

> a. After millions of dollars and over 20 years of research: the question about smoking and health is still a question.
> b. [N]o particular ingredient, as it occurs in cigarette smoke, has been demonstrated as the cause of any particular disease.
> c. [A] major portion of this scientific inquiry has been financed by the people who know the most about cigarettes and have a great desire to learn the truth . . . the Tobacco Industry. And the industry has committed itself to this task in the most objective and scientific way possible.
> d. A $35,000,000 program.

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e. In the interest of absolute objectivity, the Tobacco Industry has supported totally independent research efforts with completely non-restrictive funding.

f. In 1954, the Industry established what is now known as CTR, the Council for Tobacco Research--U.S.A., to provide financial support for research by independent scientists into all phases of tobacco use and health. Completely autonomous, CTR's research activity is directed by a board of ten scientists and physicians who retain their affiliations with their respective universities and institutions. This board has full authority and responsibility for policy, development and direction of the research effort.

g. The findings are not secret.

h. From the beginning, the Tobacco Industry has believed that the American people deserve objective, scientific answers.

i. The Tobacco Industry stands ready today to make new commitments for additional valid scientific research that offers to shed light on new facets of smoking and health.

90. On March 24, 1965, the TI issued a release in which it represented that regulations on advertising should not be implemented, in part because the "industry is profoundly conscious of the questions concerning smoking and health" and the industry is conducting scientific research through the CTR. In the release, Bowman Gray of RJR, represented that "it has not been established that smoking causes lung cancer or any other disease."

91. Another industry publication in 1970 stated that the industry believed the American public is "entitled to complete, authenticated information about cigarette smoking and health. The Tobacco Industry recognizes and accepts a responsibility to promote the progress of independent scientific research in the field of tobacco and health."

92. Yet another announcement co-sponsored by the TIRC and the Tobacco Industry, called "A Statement about Tobacco and Health," stated:

> We recognize that we have a special responsibility to the public, to help scientists determine the facts about tobacco and health, and about certain diseases that have been associated with tobacco use.
>
> We accepted this responsibility in 1954 by establishing the Tobacco Industry Research Committee, which provides research grants to independent scientists. We pledge continued support of this program of research until the facts are known.
>
> . . . .
>
> Scientific advisors inform us that until much more is known about such diseases as lung cancer, medical science probably will not be able to determine whether tobacco or any other single factor plays a causative role, or whether such a role might be direct or indirect, incidental or important.

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> We shall continue all possible efforts to bring the facts to light. In that spirit we are cooperating with the Public Health Service in its plan to have a special study group review all presently available research.
>
> (Emphasis added.)

93. In 1972, Tobacco Institute President Horace Kornegay testified before Congress:

> Let me state at the outset that the cigarette industry is as vitally concerned or more so than any other group in determining whether cigarette smoking causes human disease, whether there is some ingredient as found in cigarette smoke that is shown to be responsible and if so what it is.
>
> That is why the entire Tobacco Industry . . . since 1954 has committed a total of $40 million for smoking and health research through grants to independent scientists and institutions.

94. The industry repeated these statements to members of the public, including citizens of the State of Nevada.

95. RJR Chairman Bowman Gray told Congress in 1964: "If it is proven that cigarettes are harmful, we want to do something about it regardless of what somebody else tells us to do. And we would do our level best. It's only human."

96. In 1984, RJR placed an editorial style announcement in the New York Times stating, "Studies which conclude that smoking causes disease have regularly ignored significant evidence to the contrary. These scientific findings come from research completely independent of the tobacco industry."

97. Each of the representations to the public that defendant tobacco companies were sponsoring independent objective research, that they were endeavoring to bring the truth to light, and that the public could therefore rely upon the statements made, were false and deceptive and were known to be so by defendants at the time they were made. These misrepresentations were designed to gain the trust of the public and public health authorities in order to better distort and suppress substantive information about smoking and health.

F. The True Nature of the TIRC: A Front for the Tobacco Cartel

98. The TIRC was an agent of the conspirators and operated, among other things, to facilitate their implementation of the Plaza Hotel agreement/conspiracy to suppress and/or misrepresent information and to not compete in the development of a "safer" cigarette. Its

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acts were the acts of defendants in furtherance of their agreement not to compete.

99. The TIRC was physically established in the Empire State Building, one floor below the Hill & Knowlton offices. Hill & Knowlton, and not independent scientists as represented, actually ran the TIRC.

100. In 1954, the TIRC's first year of operation, 35 staff members of Hill & Knowlton worked full- or part-time for the TIRC. In that year, the TIRC spent $477,955 on payments to Hill & Knowlton, over 50 percent of the TIRC's entire budget.

101. The TIRC was a sham, the true nature of which was to influence media and scientific reports, to cloud the issue of smoking and health, and to suppress all harmful information. Hill & Knowlton--not the independent scientists--actually ran the Tobacco Industry Research Committee, and "provided assistance in selecting" the Scientific Advisory Board, "proposed" Dr. Little for the Scientific Director, and "handled liaison, agendas, organizational plans, business affairs, reports, and materials for meetings of the TIRC [and] the Scientific Advisory Board . . . in addition to developing operating procedures for the research program." (Emphasis added.)

102. By spring 1955, the unlawful strategy recommended by Hill & Knowlton and implemented by defendants through the "Frank Statement" was largely successful. Hill & Knowlton reported to the TIRC:

> a. [P]rogress has been made . . . The first "big scare" continues on the wane.
>
> b. The research program of the TIRC has won wide acceptance in the scientific world as a sincere, valuable and scientific effort.
>
> c. Positive stories are on the ascendancy.

103. In 1970, H. Wakeham, a Vice President of Philip Morris, observed that the stated objective of the Council for Tobacco Research (CTR), the successor to the TIRC, was "to make available to the public" information on tobacco use and health. He noted this "broad statement" had been interpreted more narrowly by the CTR. Wakeham also noted that the public statement of the purpose of CTR is "to find out about smoking and health." In this regard, rather than be independent as publicly represented, Wakeham wrote "we are interested

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in evidence which we believe denies the allegation that cigaret [sic] smoking causes disease." Wakeham then posited alternatives for the future of the CTR, one of which was to use the CTR as a means for expert witnesses in "legislative halls" and "in litigation." This option was the true function of the CTR.

104. In 1977, Addison Yeaman, Chairman and President of CTR, stated during a published speech that "[CTR] has no propaganda function of any kind or any degree." The defendants' joint efforts undertaken through TIRC, and later through CTR, were not disinterested or objective. Rather, they were designed and used to promote favorable research, to suppress negative research when possible, and to attack negative research where it could not be suppressed, all in order to convince the public that smoking was not dangerous or, at least, that any danger from smoking had been exaggerated.

105. A 1972 internal document from a Tobacco Institute official to the group's president described the importance of using joint industry research to maintain public doubt about the link between smoking and disease:

> For nearly twenty years, this industry has employed a single strategy to defend itself on three major fronts--litigation, politics, and public opinion. While the strategy was brilliantly conceived and executed over the years helping us win important battles, it is only fair to say that it is not—nor was it ever intended to be—a vehicle for victory. On the contrary, it has always been a holding strategy, consisting of
>
> * creating doubt about the health charge without actually denying it
>
> * advocating the public's right to smoke, without actually urging them to take up the practice
>
> * encouraging objective scientific research as the only way to resolve the question of the health hazard.
>
> As an industry, therefore, we are committed to an ill-defined middle ground which is articulated by variations on the theme that, 'the case is not proved.'
>
> In the cigarette controversy, the public--especially those who are present and potential supporters (e.g. tobacco state congressmen and heavy smoker)--must perceive, understand, and believe in evidence to sustain their opinions that smoking may not be the causal factor. As things stand, we supply them with too little in the way of ready-made credible alternatives.

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106. A 1974 report to the CEO of Lorillard from a research executive described CTR's scientific projects as "hav[ing] not been selected for specific scientific goals, but rather for various purposes such as public relations, political relations, position for litigation, etc.

107. A 1978 memo addressed to the CTR file from a Philip Morris official characterized CTR as "an industry 'shield.'" The memorandum goes on to state: "the 'public relations' value of CTR must be considered and continued . . . It is extremely important that the industry continue to spend their dollars on research to show that we don't agree that the case against smoking is closed for 'PR' purposes . . . ."

108. In 1993, a former 24-year employee of CTR confirmed publicly that the joint industry research efforts were not objective: "When CTR researchers found out that cigarettes were bad and it was better not to smoke, we didn't publicize that. The CTR is just a lobbying thing. We were lobbying for cigarettes."

109. This and other evidence demonstrates that the role and purpose of TIRC and CTR in the tobacco companies' strategy was to seek to use the public's trust to propagate "pro-tobacco" propaganda. An industry official wrote in his personal notes describing a meeting that included high-level officials from various tobacco companies that: "CTR is the best & cheapest insurance the Tobacco Industry can buy and without it the Industry would have to invent CTR or would be dead."

110. Nonetheless, in its annual reports published between 1985 and 1992, CTR stated that its Scientific Advisory Board funded peer-reviewed research projects "judging them solely on the basis of scientific merit and relevance." In 1994, Dr. James F. Glenn, CEO of CTR, submitted testimony to the Waxman Subcommittee that:

> a. The Council . . . sponsors research into questions of tobacco use and health and makes the results available to the public.
>
> b. [G]rantees are assured complete scientific freedom in conducting these studies . . . [P]ublication [of research results] is encouraged in every instance.

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111. In fact, CTR-sponsored research projects were directed away from research that might add to the evidence against the use of tobacco products. When CTR-sponsored research

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did produce unfavorable results the information was distorted or simply suppressed. For example, Dr. Freddy Homburger, a researcher in Cambridge, Massachusetts, undertook a study of smoke exposure on hamsters. According to Dr. Homburger, he received a grant from CTR that was changed halfway through the study to a contract "so they could control publication--they were quite open about that." Dr. Homburger has testified that when the study was completed in 1974, the scientific director of CTR and a CTR lawyer "didn't want us to call anything cancer," and that they threatened Dr. Homburger with "never get[ting] a penny more" if his paper were published without deleting the word cancer.

112. An internal CTR document describes how Dr. Homburger attempted to call a press conference about the incident and how CTR stopped it:

> He . . . was to tell the press that the Tobacco Industry was attempting to suppress important scientific information about the harmful effects of smoking. He was going to point specifically at CTR . . . I arranged later that evening for it to be canceled. Homburger was given a cordial welcome and nicely hastened out the door. P.S. I doubt if you or Tom will want to retain this note.

G. Role of the CTR as a "Front" for Disseminating False Information

113. In 1964, the year of the first Surgeon General's report on smoking, the CTR formed a "Special Projects" division to assist the industry in concealing unfavorable information. A series of research grants designated as CTR "Special Projects" were developed by defendants in a manner so as to appear to merit the protection of the attorney-client or attorney work product privilege. The "Special Projects" division was under the auspices of the CTR.

114. The true purpose of the "Special Projects" division was to conduct research regarding the links between smoking and disease in order to develop a number of expert witnesses for defense purposes in tort suits against the Tobacco Industry. Consistent with this purpose, the Tobacco Industry's counsel were substantially involved in strategic and specific decision making within the "Special Projects" division, to secrete dangerous evidence from the public. For example, the notes of one CTR meeting, written in 1981, state, "When we started the CTR Special Projects, the idea was that the scientific director of CTR would

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review a project. If he liked it, it was a CTR special project. If he did not like it, then it became a lawyers' special project." Another memorandum from 1981 explained, "Difference between CTR and Special Four (lawyers' projects). Director of CTR reviews special projects--if project was problem for CTR, use Special Four."

115. Defendants successfully used the CTR Special Projects division to wrongfully conceal harmful information. Research from the Special Projects division remains wrongfully shielded from public scrutiny. Defendants furthered the conspiracy by shielding company documents with false claims of attorney-client privilege and through tactics such as that undertaken by Brown & Williamson, which over the years has transferred documents described as "deadwood" to its British parent company, BAT Industries, so that they would not be discovered in legal proceedings in the United States.

116. Other internal industry documents also shed light on the true nature of the conspirators' wrongful associations, as the following excerpts demonstrate by way of example:

> a. CTR began as an organization called Tobacco Industry Research Council (TIRC). It was set up as an industry "shield" in 1954. That was the year statistical accusations relating smoking to diseases were leveled at the industry; litigation began; and the Wynder/Graham reports were issued. CTR has helped our legal counsel by giving advice and technical information, which was needed at court trials . . . [T]he "public relations" value of CTR must be considered and continued . . . It is very important that the industry continue to spend their dollars on research to show that we don't agree that the case against smoking is closed.
>
> b. CTR is best & cheapest insurance the Tobacco Industry can buy and without it the Industry would have to invent CTR or would be dead.
>
> c. Historically, the joint industry funded smoking and health research programs have not been selected against specific scientific goals, but rather for various purposes such as public relations, political relations, position for litigation, etc. . . . In general, these programs have provided some buffer to public and political attack of the industry, as well as background for litigious (sic) strategy.
>
> d. Historically, it would seem that the 1954 emergency was handled effectively. From this experience there arose a realization by the Tobacco Industry of a public relations problem that must be solved for the self-preservation of the industry.
>
> e. To date, the TIRC program has carried its fair share of the public relations load in providing materials to stamp out brush fires as they arose. While effective in the past, this whole approach requires both revision and expansion. The public relations program . . . was like the early symptoms

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of diabetes - certain dietary controls kept public opinion reasonably healthy. When some new symptom appeared, a shot of insulin in the way of a news release . . . kept the patient going.

f. When the products of an industry are accused of causing harm to users, certainly it is the obligation of that industry to endeavor to determine whether such accusations are true or false. Money spent for such purpose should not be regarded as a charitable contribution but as a business expense--an expense necessary to keep that industry alive. In view of the billions of dollars of annual sales of our industry our expenditures for health research has been of a minimal order.

g. For nearly twenty years, this industry has employed a single strategy to defend itself on three major fronts--litigation, politics, and public opinion. While the strategy was brilliantly conceived and executed over the years helping us win important battles, it is only fair to say that it is not--nor was it intended to be--a vehicle for victory. On the contrary, it has always been a holding strategy, consisting of creating doubt about the health charge without actually denying it . . . In the cigarette controversy, the public--especially those who are present and potential supporters (*e.g.* tobacco state congressmen and heavy smokers)--must perceive, understand, and believe in evidence to sustain their opinions that smoking may not be the causal factor.

h. A July 1963 industry report acknowledged that the TIRC was not qualified to conduct research in reaction to the Surgeon General's report because it "was conceived as a public relations gesture . . . and it has functioned as a public relations gesture." The report noted that the TIRC did not have the breadth of research to adequately respond to the Surgeon General.

117. Despite overwhelming scientific evidence, and the confirmation of this evidence by their own internal research, the defendants continue to wrongfully deny uniformly that there is a causal connection between cigarette smoking and adverse health effects, or that nicotine is addictive. As one industry representative testified: "[A company can't represent that] smoking doesn't cause cancer. You can't say that. But you can say it is a risk factor, and scientificallv it hasn't been established. And that's what the research is for . . . I don't agree [that nicotine is addictive]. From what I've read on nicotine is that it contributes to the flavor, the taste of the product." These representations are intentionally misleading, unfair and deceptive. They are moreover a result of the industry's ongoing conspiracy and combination arising from the Plaza Hotel agreement, and are made to maintain defendants' market and profits from a deadly and addictive product. (Emphasis added.)

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118. Special Projects was not the only instance where the industry used lawyers to shield the truth. For example, in 1984, BAT began internally plotting how to shield documents produced by scientists from discovery. This plan included having BAT's "scientific literature review publication . . . set up as a Law Department function." BAT internally noted that "Direct lawyer involvement is needed in all BAT activities pertaining to smoking and health from conception through every step of the activity." This is a direct admission of BAT's efforts to shield adverse scientific information from discovery. This goal was being frustrated because "[t]he problem posed by BAT scientists and frequently used consultants who believe cause is proven is difficult." (Emphasis added.)

119. The Kansas City law firm of Shook, Hardy & Bacon and other lawyers played a critical role in furthering the conspiracy to suppress and conceal information about the adverse health effects caused by the use of tobacco products. The lawyers' strategy was to attempt to protect damaging tobacco related documents from disclosure under the attorney-client or work product privileges regardless of whether such documents were prepared in anticipation of litigation or represented confidential communications made between lawyer and client for the purpose of rendering legal advice. Lawyers routinely provided a number of non-legal services to the defendants such as deciding which CTR Special Projects should receive funding, dispensing funding to the "scientists" involved in such projects and designing the scope and approach of the special project. Shook, Hardy & Bacon also undertook to coordinate the tobacco companies CTR Special Projects subterfuge.

120. For example, in 1976, Donald K. Hoel of Shook, Hardy & Bacon wrote to in-house lawyers at the various tobacco companies that a study to measure environmental tobacco smoke should be modified in such a way so that the study would yield more favorable results for the tobacco companies' position. The study was subsequently modified to deemphasize the role of second-hand tobacco smoke relating to indoor environmental quality.

121. In addition, a May 19, 1981, letter from Ernest Pepples, Vice President and General Counsel of Brown & Williamson, to Patrick Sirridge of Shook, Hardy & Bacon requested that Sirridge evaluate the qualifications of various scientists seeking to conduct

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scientific studies for Brown & Williamson. Shook, Hardy & Bacon responded by providing biographical sketches of potential consultants including whether they previously had taken a scientific position favorable to the industry's position. Sirridge also cooperated with Pepples' request in 1984 to transfer the funding of some helpful research by a cooperative scientist from a CTR account to a law firm project: "I do not think . . . that we should continue burdening CTR with such programs, and instead suggest that they be handled as law firm projects."

122. In 1972, William Shinn of Shook, Hardy & Bacon wrote to tobacco company officials that a potentially favorable study should be secretly funded by the tobacco companies as a Special Project (non-CTR) in order to make the study appear independent of the industry and thus heighten its perception as unbiased and reliable.

123. By becoming intimately involved in the funding and design of these scientific studies, these lawyers attempted to further the conspiracy and fraud of the tobacco companies and CTR by (1) clothing such studies in the attorney-client or work product privilege in order to protect them from disclosure if their results were unfavorable; and (2) creating the perception that CTR and the tobacco companies were fairly and appropriately fulfilling their obligations and promises to the public that they would, in a vigorous and unbiased manner, investigate and report to the public the link between their products and human disease.

124. Defendant Brown & Williamson used similar tactics in-house to wrongfully suppress and avoid disclosure of its internal research on smoking and disease. At a time when the company was resisting discovery in a number of personal injury lawsuits, Brown & Williamson's general counsel, J. Kendrick Wells, recommended in a memorandum dated January 17, 1985, that most of the company's biological research be declared "deadwood" and shipped to England. He recommended that no notes, memos, or lists be made about these documents. Wells stated, "I had marked certain of the document references with an X . . . which I suggested were deadwood in the behavioral and biological studies area. I said that the B series are Janus series studies and should also be considered as deadwood." (Janus was a name of a project that attempted to isolate and remove the harmful elements of tobacco.)

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Wells further recommended that the research, development and engineering department also should undertake "to remove the deadwood from the files."

125. In a 1978 memo, B&W's Pepples wrote that use of the CTR avoids the dilemma of a manufacturer that needs to know the state of the art, but "on the other hand cannot afford the risk of having the in-house work turn sour. . . . The point here is the value of having CTR doing work on a nondirected and independent fashion as contrasted with either in-house or under B&W contract which, if it goes wrong, can become the smoking pistol in a lawsuit!"

126. The defendants and their lawyers have wrongfully used claims of attorney/client privilege to insulate CTR-funded research projects and internal documents from disclosure to the public and to government officials. This conduct demonstrates the falsity of the tobacco companies' representations that they would jointly fund objective research and report the results of that research to the public.

H. Beyond 1953: The Continuing Conspiracy to Restrain Trade

1. The "Gentlemen's Agreement"

127. The industry's 1953 combination and conspiracy was supplemented and aided by a commitment jointly to conduct research because of "a general feeling that an industry approach as opposed to an individual company approach was highly desirable." This approach was desirable to prevent, among other things, competition on the basis of health risk comparisons.

128. As part and in furtherance of the agreement not to compete to develop a "safer" cigarette, there was a "gentlemen's agreement" among the defendants to suppress independent research on the issue of smoking and health, for the purpose of and with the effect of restricting output. Despite increasing market demand, the defendants agreed not to market any safer or alternative products. The means of effecting this output reduction conspiracy included suppression of independent research and policing violators, as described below. This agreement was referenced in a 1968 internal Philip Morris draft memo, which stated, "We have reason to believe that in spite of gentlemans (sic) agreement from the Tobacco Industry in previous years that at least some of the major companies have been increasing biological

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studies within their own facilities." This memo also acknowledged that cigarettes are inextricably intertwined with the health field, stating, "Most Philip Morris products both tobacco and non-tobacco are directly related to the health field." (Emphasis added.)

129. As indicated by this memo, it was believed within the industry that individual companies were performing certain research on their own, in addition to the joint industry "research." Some companies viewed the strengthening demand for safer and alternative products as a potential future marketing opportunity. But the fundamental understanding and agreement remained: That information and activities deemed harmful to the unified, defensive posture of the industry or inconsistent with the non-competition conspiracy would be restrained, suppressed, and/or concealed. As American Tobacco's CEO testified, "[If the health studies are correct], consumers have the right to know whatever is affecting their health. I think that's what, the public health agencies and the government have that responsibility" (emphasis added).

130. The agreement not to compete was explicitly referenced in an October 1964 memorandum entitled "Reports on Policy Aspects of the Smoking and Health Situation in U.S.A.": "The informal agreement between TRC members not to make health claims was explained to Philip Morris." (Emphasis added.)

131. Defendants' activities in furtherance of the output-restriction/non-competition combination included wrongfully restraining, suppressing, and concealing research on the health effects of smoking, including the addictive properties of tobacco products, and wrongfully restraining, concealing, and suppressing the research and marketing of safer cigarettes. Despite the ability to produce "safer" cigarettes, the defendants did not market such products, except in limited test markets, because it was agreed among the conspirators that no company would characterize or promote a product as biologically "safer."

132. Defendants policed their conspiracy internally and externally. One member of the conspiracy, US Tobacco, went so far as to terminate an employee and apologize to the Big 6 cigarette companies when the employee was quoted in a New York Post article referring to smokeless tobacco as less dangerous than smoking. Ernest Pepples of Brown & Williamson

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reported this in a memo, where he wrote that he had been called by UST's General Counsel, Jim Chapin. Pepples stated,

> Chapin says the statements quoted were unauthorized and do not represent his company's views. He has asked me to extend U.S. Tobacco's apology to each of the cigarette companies and advised me that the individual quoted in the article is no longer employed at U.S. Tobacco. Chapin says U.S. Tobacco has instituted smoking and health seminars throughout the company.

(Emphasis added.) This action is totally contrary to the self-interest of U.S. Tobacco, and is consistent with the conspiracy among the defendants not to compete on the basis of safety and health.

2. Suppression of Liggett's "Safer" Cigarette

133. In response to perceived growing demand, several defendant companies researched the possibility of marketing "safer" (less harmful to humans) cigarettes. One of the ways in which the defendants acted in concert to exclude the products from the market and to exclude potential new entrants was by patenting the processes for these less harmful products, which they neither marketed nor licensed to any other actual or potential competitor.

134. In response to demand, defendant Liggett succeeded in researching and actually developing a less biologically active cigarette. However, in response to retaliation and threats from defendant co-conspirators, Liggett agreed not to market this product.

135. Liggett initiated its safer cigarette project, called XA, in 1968. After a minimal expenditure of only $14 million, Liggett was able, internally, to proclaim the project a success in 1979. By applying an additive of palladium metal and magnesium nitrate to tobacco to act as a catalyst in the burning process, Liggett found that "[c]igarette tar has been neutralized" and that there was "[n]o evidence for new or increased hazard . . . ."

136. Using this process, Liggett was able to produce cigarettes "which are believed to be of commercial quality." These cigarettes, however, were never marketed.

137. Liggett abandoned its XA project for the reason, because it faced retaliation from industry leader Philip Morris if Liggett broke ranks. Another reason for abandoning the project was fear that the marketing of a "safer" cigarette would be, in essence, a confession

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that its and the industry's other cigarettes were not safe. One Liggett executive wrote that, "Any domestic activity will increase risk of cancer litigation on existing products."

138. James Mold, who was assistant director of research at Liggett during the development of the safer cigarette, the XA project, has provided testimony including the following overview of the XA project and its abandonment:

a. Mold stated that the XA project produced a safer cigarette. He stated, "We produced a cigarette which was, we felt, commercially acceptable as established by some consumer tests, which eliminated carcinogenic activity. . . ." (emphasis added).

b. Mold testified that after 1975, all meetings on the project were attended by lawyers, lawyers collected all notes after the meetings, and all documents were directed to the law department to maintain the attorney-client privilege. He stated, "Whenever any problem came up on the project, the Legal Department would pounce upon that in an attempt to kill the project, and this happened time and time again."

c. Mold testified that he was at a conference of scientists in Buenos Aires prepared to present his research regarding a less harmful cigarette when he received a "frantic call" from legal counsel and was told not to present the paper or issue the press release. He was instructed not to publish his results in the Journal of Preventative Medicine.

d. Mold was asked why Liggett didn't market a safer cigarette. He answered,

> Well, I can't give you, you know, a positive statement because I wasn't in the management circles that made the decision, but I certainly had a pretty fair idea why . . . [T]hey felt that such a cigarette, if put on the market, would seriously indict them for having sold other types of cigarettes that didn't contain this, for example. Also, there was a meeting we held in . . . New Jersey at the Grand Met headquarters . . . at which the various legal people involved and the management people involved and myself were present. At one point Mr. Dey who at that time, and I guess still is the president of Liggett Tobacco, made the statement that he was told by someone in the Philip Morris company that if we tried to market such a product that they would clobber us.

(Emphasis added.)

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3. Brown & Williamson's Efforts to Develop a Safer Cigarette

139. Brown & Williamson also developed "safer" cigarettes, which it did not market despite promising test results, because, among other reasons, such efforts would violate the output-restriction conspiracy. Jeffrey Wigand, a former Vice President for Research and Development for Brown & Williamson, was instructed by the President of the company to abandon all efforts to develop a safer product. He was told, generally, "That there can be no research on a safer cigarette. Any research on a safer cigarette would clearly expose every other product as being unsafe and, therefore, present a liability issue in terms of any type of litigation." Brown & Williamson's Project "Ariel" used a heating, as opposed to burning system. Its Project "Janus" was intended to identify hazardous components of cigarette smoke so they could be removed.

140. Brown & Williamson also conducted research on tobacco substitutes or analogues, as did a number of the other companies. These substitutes were sought as a means to duplicate some of the effects of nicotine without toxic or harmful effects. For example, Brown & Williamson's parent BAT developed "Batflake," a tobacco substitute. Laboratory tests showed that use of "Batflake" reduced a number (though not all) of the harmful effects of smoking in direct proportion to the amount used in a cigarette. So far as is known, none of the substitute products was ever marketed in the United States. In 1980, BAT and Brown & Williamson abandoned the "safer" product search: "Dangerous area [research into irritation and smoke inhalation]. Please do not publish or circulate. No more work is needed on biological side." (Emphasis added.)

141. Despite increasing market demand for their products, such innovative products were not marketed because of the defendant's agreement not to compete; *i.e.* to restrict output of alternative or safer products. No other member of the conspiracy broke ranks by competitively marketing products that improved biologic performance despite individual competitive reasons for marketing such product:

> Within B & W, we have rarely attempted to develop new products specifically designed to deliver low CO [carbon monoxide], except perhaps a prototype of FACT that was kept ready on a turn-key basis in the event

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> of a marketing need for such product. This was done through a combination of filter ventilation, cigarette paper permeability, and appropriate cigarette paper additive. Needless to say, such need did not arise.

(Emphasis added.)

4. Philip Morris: Avoiding an Industry War

142. Philip Morris also explored research to develop a safer cigarette, or, in the words of one memorandum to the board of directors, cigarettes with "superior physiological performance." This memorandum noted competitive pressures to produce "less harmful" cigarettes. However, the memorandum was careful to state that, "[o]ur philosophy is not to start a war, but if war comes, we aim to fight well and to win." Philip Morris never broadly marketed such a "safer" cigarette. Its documents recognize the strong market demand and state that "after much discussion we decided not to tell the physiological story which might have appealed to a health conscious segment of the market. The product as test marketed didn't have good "taste" and consequently was unacceptable to the public ignorant of its physiological superiority." Subsequently, taste was improved and Philip Morris attempted to promote the product. However, "The imposition of FTC rules and the industry advertising code took the starch out of the program . . . ." (Emphasis added.)

5. Reynolds' Safer Product

143. Reynolds also developed an alternative product which had reduced physiological consequences. Except for a brief test in several cities, because of the output-restriction conspiracy Reynolds did not market its safer product, "Premier."

144. The Federal Trade Commission Cigarette Advertising Guides, adopted September 22, 1955 and modified March 25, 1966, did not allow claims based on unsubstantiated health effects. However, it was clear in the industry that the Guides could be modified if justification were shown. Indeed, the 1966 modification of the Guides was based on development of a method, albeit not without difficulties of its own, of measuring tar and nicotine content. In the context of development of a potentially less hazardous product, a Brown & Williamson document by Addison Yeaman states, "I would submit that the FTC in the face of 1) the industry's research effort, 2) the truth of our claims, and 3) the "public

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interest" in our filter, cannot successfully deny us the right to inform the public." In truth, the defendants used the FTC Guides as a shield behind which it concealed its agreement not to compete. The voluntary agreement with the FTC was characterized by the Consumers Union as being "to the industry's advantage and to the public's disadvantage . . . ."

145. The Cigarette Advertising Code, adopted by the defendants, was another mechanism used to enforce the illegal agreement not to compete on the basis of safety or health characteristics of tobacco products. Among other provisions, it prohibits health claims in industry advertisements unless the "Code Administrator," to whom all cigarette advertisements are required to be submitted, approves of the advertisement. The Code, a blatant restraint of trade, provided a mechanism to monitor and police defendants' illegal agreement.

6. The Industry Position on "Safer" Cigarettes

146. In furtherance of their illegal combination and conspiracy, defendants collectively denied that a safer cigarette could be produced.

147. A memorandum authored by an attorney at the firm of Shook, Hardy & Bacon, long-time lawyers for the cigarette industry, confirmed that there was an industry-wide position regarding the issue of a safer cigarette.

148. The 1987 memorandum was written in the context of the marketing by R.J. Reynolds of a smokeless cigarette, Premier, which heated rather than burned tobacco. The Shook, Hardy attorney wrote that the smokeless cigarette could "have significant effects on the Tobacco Industry's joint defense efforts" and that "[t]he industry position has always been that there is no alternative design for a cigarette as we know them." The attorney also noted that, "Unfortunately, the Reynolds announcement . . . seriously undercuts this component of industry's defense." This fundamental position of the "industry" defense had been identified much earlier. In 1970, David Hardy of the Shook, Hardy firm wrote to DeBaun Bryant, General Counsel at Brown & Williamson, expressing concerns about some of the industry research into alternative products. In critiquing the minutes of a conference, he stated: "It is our opinion that statements such as [references to research into safer products, products which are less biologically active, and to "healthy cigarettes"] constitute a real threat to the

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continued success in the defense of smoking and health litigation. Of course, we would make every effort to 'explain' such statements if we were confronted with them during a trial, but I seriously doubt that the average juror would follow or accept the subtle distinctions and explanations we would be forced to urge. . . . [E]mployees in both companies [Brown and Williamson and British American Tobacco] should be informed of the possible consequences of careless statements on this subject."

149. All defendants were keenly aware of the risk to the industry if any of them sought a competitive advantage by developing and marketing a safer product. The risk was avoided by agreeing to not compete on that basis. As one industry representative testified: "[A]s a company, we cannot position our products as being healthy. We've already agreed that they are a risk factor [the "agreement" referenced is the industry's acceptance of the warning labels on cigarette packages]. [W]e wouldn't run any advertising that positions any of our products as being healthier than others."

150. As part of the conspiracy, the companies agreed to avoid research that might produce bad results for the industry. For example, on March 31, 1980, Philip Morris scientist Robert Seligman wrote Lorillard scientist Alex Spears, suggesting "subjects to be avoided." These subjects included developing new tests for carcinogenicity, attempts to relate human desires to smoking, and tests which would show the "addictive" effect of smoking on carcinogenicity.

7. Suppression of the R.J. Reynolds "Mouse House" Research

151. For a period of time in the late 1960s, defendant R.J. Reynolds had a state of the art laboratory in Winston-Salem, nicknamed "the mouse house." Here, scientists conducted research with mice, rats, and rabbits and began to uncover promising avenues of investigation into the mechanisms of smoking related diseases. In 1970, this entire research division was disbanded in one day, and all 26 scientists were fired without notice. Company attorneys collected dozens of research notebooks, still undisclosed, from the biochemists several months before the firings.

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8. Suppression of Philip Morris Research on Nicotine Analogues

152. In the early 1980s, researchers working at a Philip Morris laboratory in Richmond worked to develop a synthetic form of nicotine that would avoid its cardiovascular complications. However, in April 1984 the company abruptly shut the laboratory. The researchers were fired and threatened with legal action if they published their work.

153. The research was conducted by Victor J. DeNoble and his colleague Paul C. Mele, who remained silent about their work under confidentiality agreements imposed by Philip Morris until testifying in 1994 before a congressional committee in Washington.

154. The research was so secretive that laboratory animals were brought in at night under cover. The researchers discovered that nicotine demonstrated addictive qualities and that the animals self-administered the substance, pressing levers to obtain nicotine. The researchers also discovered nicotine analogues, artificial versions of nicotine. These analogues affected the brain much like nicotine. But the analogues did not seem to produce the harmful cardiovascular effects of nicotine. Thus, rats using the analogue behaved as if they had a nicotine "high" but did not show signs of heart distress such as rapid heart beat.

155. By 1983, this Philip Morris research was becoming particularly problematic. A number of personal injury cases had been filed against the industry, with nicotine dependence being a critical issue. In June 1983, DeNoble was called to the Philip Morris headquarters in New York to brief top executives. Following the meeting, company lawyers visited the lab and reviewed research notebooks. There were discussions of shifting the research out of the company, perhaps to DeNoble and Mele as outside contractors or to a lab in Switzerland, to distance Philip Morris from the results.

156. Finally, in April 1984, the researchers were abruptly told to halt their work, kill all the rats, and turn in their security badges. The researchers also were forced to withdraw a paper on the addictive qualities of nicotine, even after it had been accepted for publication by a scientific journal.

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I. History of Industry Knowledge that Smoking is Harmful

157. Even before defendants represented in the Frank Statement that "there is no proof that cigarette smoking is one of the causes" of lung cancer, an industry researcher had reported the contrary.

158. As early as 1946, Lorillard chemist H.B. Parmele, who later became Vice President of Research and a member of Lorillard's Board of Directors, wrote to his company's manufacturing committee: "Certain scientists and medical authorities have claimed for many years that the use of tobacco contributes to cancer development in susceptible people. Just enough evidence has been presented to justify the possibility of such a presumption."

159. As early as 1953, prior to the issuance of the Frank Statement, RJR's Claude Teague created an internal survey of cancer research and concluded that "studies of clinical data tend to confirm the relationship between heavy and prolonged tobacco smoking and the incidence of lung cancer." Teague recommended that "management take cognizance of the problem and its implications to our industry."

160. After the 1954 Frank Statement, the defendants immediately breached their assumed duty to report objective facts on smoking and health. As evidence mounted, both through industry research and truly independent studies, that cigarette smoking causes cancer and other diseases, the defendants continued publicly to represent that nothing was proven against smoking. Internal documents show that the truth was very different. The defendants knew and acknowledged among themselves the veracity of scientific evidence of the health hazards of smoking, and at the same time wrongfully suppressed such evidence where they could, and attacked it when it did appear.

161. Internal cigarette industry documents reveal, for example:

a. A 1956 memorandum from the Vice President of Philip Morris' Research and Development Department to top executives at the company regarding the advantages of "ventilated cigarettes" stated that: "Decreased carbon monoxide and nicotine are related to decreased harm to the circulatory system as a result of, smoking. . . . Decreased irritation is desirable . . . as a partial elimination of a potential cancer hazard."

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b. A 1958 memorandum from a Philip Morris researcher to the company's Vice President of Research, who later became a member of its Board of Directors, stated "the evidence . . . is building up that heavy cigarette smoking contributes to lung cancer either alone or in association with physical and physiological factors. . . ."

c. A 1961 document presented to the Philip Morris Research and Development Committee by the company's Vice President of Research and Development included a section entitled "Reduction of Carcinogens in Smoke." The document states, in part:

> To achieve this objective will require a major research effort, because Carcinogens are found in practically every class of compounds in smoke. This fact prohibits complete solution of the problem by eliminating one or two classes of compounds.
>
> The best we can hope for is to reduce a particularly bad class, *i.e.*, the polynuclear hydrocarbons, or phenols. . . .
>
> Flavor substances and carcinogenic substances come from the same classes, in many instances.

d. A 1963 memorandum to Philip Morris' President and CEO from the company's Vice President of Research describes a number of classes of compounds in cigarette smoke which are "known carcinogens." The document describes the link between smoking and bronchitis and emphysema:

> Irritation problems are now receiving greater attention because of the general medical belief that irritation leads to chronic bronchitis and emphysema. These are serious diseases involving millions of people. Emphysema is often fatal either directly or through other respiratory complications. A number of experts have predicted that the cigarette industry ultimately may be in greater trouble in this area than in the lung cancer field.

e. A 1961 "Confidential" memorandum from the consulting research firm hired by defendant Liggett to do research for the company states:

> There are biologically active materials present in cigarette tobacco.
>
> They are:
> a) cancer causing
> b) cancer promoting
> c) poisonous
> d) stimulating, pleasurable, and flavorful.

. . .

. . .

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f. A 1963 memorandum from the Liggett consulting research firm states:

> Basically, we accept the inference of a causal relationship between the chemical properties of ingested tobacco smoke and the development of carcinoma, which is suggested by the statistical association shown in the studies of Doll and Hill, Horn, and Dorn with some reservations and qualifications and even estimate by how much the incidence of cancer may possible be reduced if the carcinogenic matter can be diminished, by an appropriate filter, by a given percentage.

162. A 1965 report to the B&W Executive Committee on research activities at BATCO's facility at Harrogate acknowledged that BATCO's research found that smoke is "weakly carcinogenic" and noted that these "results may have more impact since they will come from a tobacco supported facility." The report noted that release of the contents of the Harrogate report "would have a significant impact on the American Tobacco Industry." The results of this report were not released by the defendants.

163. These internal Liggett documents sharply contrast with the information Liggett provided to the Surgeon General in 1963. Liggett wrongfully withheld from the Surgeon General the views of its researchers and consultants that the evidence shows cigarette smoking causes human disease. A "Draft of an Outline for a Background Paper on the Smoking Problem to be Used in Connection with a Presentation of Arguments Before the Surgeon General's Committee" states:

> a. <u>All Types of Smoking are Associated with Increased Mortality</u> from all causes combined. . . .
> b. For cigarette smokers who smoke regularly, excess mortality <u>increases with current number of cigarettes</u> smoked. . . .
> c. <u>Lung cancer extremely rare among nonsmokers</u> . . . .
> d. (As) reported by Hammond . . . Excess Mortality [is] (1) <u>higher for cigarette smokers</u> than others and (2) <u>increases with daily cigarette consumption</u>.
> e. For both sexes, <u>all chronic respiratory diseases, chronic bronchitis, irreversible obstructive lung diseases</u> . . . <u>increased in prevalence</u> with <u>increasing current amount of smoking</u>.

(Emphasis added.)

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164. The report defendant Liggett presented to the Surgeon General did not contain any of these conclusions, and instead, focused on alternative causes of disease, such as air pollution, coffee and alcohol consumption, diet, lack of exercise, and genetics. Liggett criticized the known statistical association between smoking and mortality and various diseases

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as based upon "unreliably conducted" studies and "inadequately analyzed" data. The Liggett report disingenuously concluded that the association between smoking and disease was inconclusive, and was in fact due to other factors coincidentally associated with smoking.

165. Philip Morris also concealed from the public its actual views of the research conducted outside the influence of the industry. A 1971 memorandum written by Dr. H. Wakeham, then Vice President of Research and Development, discussed a recent study which found cigarette smoke inhalation caused lung cancer in beagles:

> 1970 might very properly be called the year of the beagle. Early in the year, the American Cancer Society announced that they had finally demonstrated the formation of lung cancer in beagles by smoke inhalation in the now infamous Auerbach and Hammond study. I am sure all of you have read extensively about this in the newspapers, how the industry asked to have independent panel of pathologists review the histological sections showing cancer, how the Society refused, how generally the ACS was put on the defensive, how publication was refused by two medical journals and how the story was changed somewhat by the time it was published . . . .

166. The memorandum describes how the industry publicly dismissed the mice cancer studies, such as the 1953 Wynder research. Dr. Wakeham explained that "mouse skin is not human lung tissue," "smoke condensate has different chemical composition from inhaled smoke," and "painting is not the method of application practised [sic] by human smokers."

167. In contrast to the mice studies, however, Dr. Wakeham continued:

> The logical extension of these objections is that an inhalation test in which an animal breathed smoke like a human would be a better model system. Presumably, in such a test, the formation of lung cancers in the test animal would be strong evidence for the cigarette causation hypothesis. That is why the beagle test was a critical one. . . . So the test was not conclusive. But it was a lot closer than skin painting.
>
> The strong opposition of the industry to the beagle test is indicative of a new more aggressive stance on the part of the industry in the smoking and health controversy. We have gone over from what I have called the "vigorous denial" approach, the take it on the chin and keep quiet attitude, to the strongly voiced opposition and criticism. I personally think this counter-propaganda is a better stance than the former one.

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168. Taken together with the internal acknowledgments of cigarette smoking as a cause of human disease, this memorandum from a senior Philip Morris researcher demonstrates that the 1954 Frank Statement representations were deceptions, and that the cigarette industry promptly breached the duties it had undertaken. Far from "accept[ing] an interest in people's

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health as a basic responsibility, paramount to every other consideration in our business" and "cooperat[ing] closely with those whose task it is to safeguard the public health," the defendants' approach was to wrongfully deny and attack with "counter-propaganda" the mounting evidence that smoking caused human disease—evidence that the industry plainly viewed internally as accurate.

169. Defendant Brown & Williamson, like the other manufacturers, was aware early on of the dangers of cigarettes. A Brown & Williamson review of published statistical research, including the 1952 report by Dr. Doll, noted that the studies offered "frightening testimony from epidemiological studies."

170. By 1957, one of Brown & Williamson's British affiliates, which conducted much of the health research for the U.S. company, was using the code-name "zephyr" for cancer. For example, in a March 1957 report, the British affiliate stated, "As a result of several statistical surveys, the idea has arisen that there is a causal relation between zephyr and tobacco smoking, particularly cigarette smoking."

171. In 1962, Brown & Williamson's London based parent company conducted a meeting of its worldwide subsidiaries in Southampton, England. A transcript of the meeting reveals the following remarks:

a. One researcher stated that "smoking is a habit of addiction" and that "[n]icotine is not only a, very fine drug, but the technique of administration by smoking has considerable psychological advantages." (Several years later, in 1967, the researcher admitted that the company "is in the nicotine rather than the Tobacco Industry.")

b. Another research executive "thought we should adopt the attitude that the causal link between smoking and lung cancer was proven because then at least we could not be any worse off."

c. Another researcher stated that "no industry was going to accept that its product was toxic, or even believe it to be so, and naturally when the health question was first raised, we had to start denying it at the P.R. level. But by continuing that policy, we had got ourselves into a corner and left no room to maneuver. In other words, if we did get a

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breakthrough and were able to improve our product, we should have to about-face, and this was practically impossible at the P.R. level."

d. The chairman of Brown & Williamson's British affiliate stated that it:

> . . . was very difficult when you were asked as chairman of a tobacco company to discuss the health question on television. You had not only your own business to consider but the employees throughout the industry, retailers, consumers, farmers growing the leaf and so on. And you were in much too responsible a position to get up and say, 'I accept that the product which we and all our competitors are putting on the market gives you cancer,' whatever you might think privately.

e. The chairman also stated that if the company manufactured safer brands, "how to justify continuing the sale of other brands? . . . It would be admitting that some of its products already on the market might be harmful. This would create a very difficult public relations situation."

172. The next year, 1963, Brown & Williamson engaged in an internal debate over whether to disclose what it knew about the adverse effects of smoking to the Surgeon General, who was preparing his first official report on cigarettes. It was decided that its information would not be disclosed. Some of the documents generated by Brown & Williamson as part of this process were shared with its London based parent company, as well as other cigarette manufacturers and the TIRC/CTR. Addison Yeaman, who was then general counsel at Brown & Williamson and who authored some of the most critical memoranda from this time, subsequently became a director of the CTR.

173. Yeaman wrote in a 1963 analysis that:

a. "[N]icotine is addictive."

b. "We are, then, in the business of selling nicotine, an addictive drug . . . ."

c. Cigarettes "cause, or predispose, lung cancer . . ."

d. "They contribute to certain cardiovascular disorders . . ."

e. "They may well be truly causative in emphysema, etc."

174. Yeaman suggested that Brown & Williamson "accept its responsibility" and disclose the hazards of cigarettes to the Surgeon General. He noted that this would allow the company to openly research and develop a safer cigarette.

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175. Yeaman warned that one danger of candid disclosure was that jurors would learn that the cigarette companies knew of the hazards of their products and had the means to make safer cigarettes—but didn't. Yeaman noted that this might cause an "emotional reaction" in jurors. Ultimately, Yeaman's suggestion for full disclosure was rejected.

176. Subsequently, Brown & Williamson continued to conduct and wrongfully conceal biological research. Some of these research projects confirmed causation.

177. The more sensitive research was often undertaken by Brown & Williamson's British affiliate, acting on behalf of both companies. Much of the work was performed at a British laboratory called Harrogate, which performed work for a number of cigarette manufacturers, and some of this research was shared with these other companies and the Tobacco Institute.

178. Brown & Williamson also attempted to develop a safer cigarette or, in the words of an internal document, "a device for the controlled administration of nicotine." There were at least two safer cigarette projects, Project Ariel, which focused on heating rather than burning tobacco, and Project Janus, which focused on isolating and removing the harmful elements of tobacco. At least some of the work was performed by Battelle Laboratories in Frankfurt. By the end of the 1970s, however, in a pattern that was repeated throughout the industry, Brown & Williamson closed its research labs and halted work on a safer cigarette.

J. Industry Knowledge of the Addictive Nature of Nicotine

1. Industry Statements and Documents Reveal the Tobacco Companies' Long-Standing Knowledge that Nicotine is a Powerful and Addictive Drug

179. As alleged above, the defendants wrongfully continue to deny and conceal that tobacco products are addictive while secretly manipulating levels of nicotine to increase or maintain addiction. Defendants have known and hidden for decades the addictive nature of tobacco products.

180. Numerous Tobacco Company documents contain statements by company researchers and executives acknowledging that nicotine is, in fact, addictive. For example, more than 30 years ago, a report was completed for BATCO that specifically addressed the mechanism of nicotine addiction in smokers. The researchers concluded that chronic intake of nicotine, such

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as that which occurs in regular smokers, creates a need for ever-increasing levels of nicotine to maintain the desired action: "[u]nlike other dopings, such as morphine, the rate of increasing demand for greater dose levels is relatively slow for nicotine." The report continues: "A body left in this unbalanced state craves for renewed drug intake in order to restore the physiological equilibrium. This unconscious desire explains the addiction of the individual to nicotine."

181. Internal Tobacco Company documents reveal that all of this research has convinced company researchers and executives that nicotine in tobacco functions as a drug with powerful psychoactive effects. For example, in 1962, even before much of this research had been completed, Charles Ellis, of BATCO, expressed his view that nicotine in tobacco functions as a drug much like stimulants and tranquilizers:

> It is my conviction that nicotine is a very remarkable beneficent drug that both helps the body to resist external stress and also can as a result show a pronounced tranquilising effect. You are all aware of the very great increase in the use of artificial controls, stimulants, tranquilisers, sleeping pills, and it is a fact that under modern conditions of life people find that they cannot depend just on their subconscious reactions to meet the various environmental strains with which they are confronted: they must have drugs available which they can take when they feel the need. Nicotine is not only a very fine drug, but the techniques of administration by smoking has considerable psychological advantages and a built-in control against excessive absorption.

(Emphasis added.)

182. In the decades that followed this statement, BATCO and Brown & Williamson held many research conferences, some of which were devoted entirely to discussing nicotine's pharmacological effects. The records of these conferences demonstrate that, at almost every conference, Tobacco Company officials from around the world discussed the results of research on nicotine pharmacology and reached agreement that nicotine had been shown to have pharmacological effects on tobacco users.

183. Researchers and executives from the other major Tobacco Companies and associated with the CTR have also made statements revealing their knowledge that nicotine is a psychoactive drug. For example, the authors of a research paper funded by the CTR reporting on the "beneficial" pharmacological effects of nicotine in cigarettes said that "[n]icotine is

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recognized as the primary psychoactive compound in cigarette smoke."

184. More than 30 years ago, in 1962 through 1963, BATCO received the results of its Project HIPPO study (HIPPO I and HIPPO II), the aim of which was to "understand some of the activities of nicotine--those activities that could explain why smokers are so fond of their habit." A second purpose of the Project HIPPO study was to compare the effects of nicotine with those of then-new tranquilizers, "which might supersede tobacco habits in the near future." Thus, these researchers believed that tobacco containing nicotine and tranquilizers were used for the same purposes by consumers.

185. The Project HIPPO reports were disseminated to officials of B&W. The exchange of information between BATCO and B&W is important because it demonstrates B&W's awareness of the results of studies such as Project HIPPO, which was just one of a number of studies commissioned by BATCO to study the physiological and pharmacological effects of nicotine. For example, a 1980 report addresses the critical role of nicotine's drug effects:

> Nicotine is an extremely biologically active compound capable of eliciting a range of pharmacological, biochemical, and physiological responses . . . . In some instances, the pharmacological response of smokers to nicotine is believed to be responsible for an individual's smoking behavior, providing the motivation for and the degree of satisfaction required by the smoker.

186. The BATCO documents include not only some of the research reports themselves, but also summaries or minutes of numerous BATCO research and development (R&D) meetings at which nicotine's drug effects and importance to the industry were discussed. These papers demonstrate both the consistency and the extent of the industry's interest in and knowledge of nicotine as the primary pharmacological agent in tobacco. For example, at a 1974 BATCO Group R&D Meeting, it was noted that: "Nicotine (which has been assumed to be the main pharmacologically active component in smoke) may act in a bi-phasic manner, either as a stimulant (CNV increase) or depressant (CNV decrease)."

187. Subsequent BATCO research conferences offer equally revealing statements about the drug effects of nicotine. A BATCO Group R&D Smoking Behavior-Marketing Conference held in 1984 focused almost entirely on the role of nicotine pharmacology in smoking.

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Summaries of the presentations at that conference include numerous references to the pharmacological effects of nicotine and the importance of these effects in maintaining tobacco use. For example, one presentation included the following observation:

> Smoking is then seen as a personal tool used by the smoker to refine his behavior and reactions to the world at large.
>
> It is apparent that nicotine largely underpins these contributions through its role as a generator of central physiological arousal effects which express themselves as changes in human performance and psychological well-being.

(Emphasis added.]

188. Another BATCO conference focusing on nicotine was held in 1984. One of the presentations was characterized by a Brown and Williamson official:

> The presentation was concerned with summarizing and outlining the central role of nicotine in the smoking process and our business generally. . . . There are two areas of nicotine action that are of primary importance: (i) to identify to what extent the pharmacological properties or responses to nicotine are influenced by blood and tissue levels of nicotine. (ii) what is the significance and role of nicotine in eliciting the impact response and upper respiratory tract responses . . . .

(Emphasis added.)

189. Philip Morris researchers conducted extensive research on nicotine pharmacology from the late 1960s until at least the mid-1980s. The nature and magnitude of the research, as well as statements made in internal documents, show that the Philip Morris researchers strongly believed that nicotine has potent psychoactive effects and that these effects provide a primary motivation for smoking. In 1974, Philip Morris researchers began a study designed to test their theory that hyperkinetic children take up smoking in adolescence because nicotine may perform the same pharmacological function as prescription medications used to treat hyperkinesis:

> It has been found that amphetamines, which are strong stimulants, have the anomalous effect of quieting these children down . . . Many children are therefore regularly administered amphetamines throughout grade school years. . . . We wonder whether such children may not eventually become cigarette smokers in their teenage years as they discover the advantage of self-stimulation via nicotine. We have already collaborated with a local school system in identifying some such children in the third grade.

(Emphasis added.)

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190. More than three decades ago, in 1961, a presentation by Dr. Helmut Wakeham, a senior Philip Morris research scientist, to the company's Research and Development Committee noted that: "Low nicotine doses stimulate, but high doses depress functions . . . It is also recognized that smoking produces pleasurable reactions or tranquility, and that this is due at least in part to nicotine. . . ."

191. Dr. Wakeham also noted that "nicotine is believed essential to cigarette acceptability," a view later restated by William Dunn, Jr., another high-ranking Philip Morris official. In summarizing a 1972 conference sponsored by the Council for Tobacco Research, Dr. Dunn reported: "Most of the conferees would agree with this proposition: The primary incentive to cigarette smoking is the immediate salutary effect of inhaled smoke upon body function." (Emphasis added.)

192. After describing "the physiological effect" as "the primary incentive" for smoking, Dr. Dunn continued:

> The majority of the conferees would go even further and accept the proposition that nicotine is the active constituent of cigarette smoke. Without nicotine, the argument goes, there would be no smoking. Some strong evidence can be marshalled to support this argument:
>
> 1) No one has ever become a cigarette smoker by smoking cigarettes without nicotine.
>
> 2) Most of the physiological responses to inhaled smoke have been shown to be nicotine-related.
>
> 3) Despite many low nicotine brand entries in the market place, none of them have captured a substantial segment of the market . . . .

(Emphasis added).

193. A 1971 secret internal report distributed to Philip Morris executives showed that tobacco executives knew the powerfully addictive nature of nicotine in cigarettes. The report studied persons who had tried to stop smoking and concluded that only 28 percent of those who tried to quit were still non-smokers eight months later:

> Even after eight months quitters were apt to report having neurotic symptoms, such as feeling depressed, being restless and tense, being ill-tempered, having a loss of energy, being apt to doze off. They were further troubled by constipation and weight gains which averaged about five pounds per quitter . . . This is not the happy picture painted by the Cancer

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> Society's anti-smoking commercial which shows an exuberant couple leaping into the air and kicking their heels with joy because they've kicked the habit. A more appropriate commercial would show a restless, nervous, constipated husband bickering viciously with his bitchy wife who is nagging him about his slothful behavior and growing waistline.

194. In a research paper funded by the CTR, reporting on the "beneficial" pharmacological effects of nicotine in cigarettes, the authors said: "Nicotine is recognized as the primary psychoactive compound in cigarette smoke."

195. Nicotine is repeatedly identified as a primary reason consumers smoke or use other nicotine-containing products. A "Proposal for Low Delivery Project for B&W" prepared by a marketing firm by B&W in the late 1970s contained the statement <u>that a sufficient dose of nicotine is essential to sell cigarettes and, implicitly, to maintain market share based on nicotine addiction</u>:

> Current market trends clearly indicate a major trend toward low-tar brands although current "ultra" low "tar" brands have had limited success because of their failure to deliver . . . [I]f a satisfying, low-nicotine cigarette were to be developed, it could represent an effective means of withdrawal . . . <u>with severe implications for long-term market growth</u>.

(Emphasis added.)

196. In 1972, RJR's Claude Teague wrote that the Tobacco Industry was really part of the pharmaceutical industry because it delivers nicotine, "a potent drug." According to Teague, nicotine is known to be habit forming and a smoker chooses his product according to his "individual nicotine requirements" . . . thus a tobacco product is, in essence, a vehicle for delivery of nicotine." According to Teague, "our industry is then based upon design, manufacture, and sale of attractive dosage forms of nicotine." Teague confirmed that the industry had concealed the importance of nicotine, "we have deliberately played down the role of nicotine, hence the non-smoker has little or no knowledge of what satisfaction it offers him."

197. A 1976 BATCO Conference on Smoking Behavior further underscores Tobacco Industry researchers' awareness of the fundamental importance (to the huge majority of smokers) of nicotine's effects on the brain: "Some insight into the likely benefits of smoking follows from a consideration of the properties of <u>nicotine</u>, which <u>is considered to be the</u>

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reinforcing factor in the smoking habit for at least 80% of smokers . . . ." (Emphasis added.)

198. In 1988, during the case *Cipollone v. Liggett*, Joseph Cullman III, former CEO of the Philip Morris Tobacco Company, testified as follows:

> Q: Let me ask you the question, then, Mr. Cullman. Is nicotine a drug?
>
> A: Well it's so described in every book on pharmacology.
>
> Q: So then you agree that it's a drug?
>
> A: I have no reason to disagree with books on pharmacology.

199. A memorandum from a Philip Morris official in 1980 confirms the company's view that nicotine's pharmacological effects on the central nervous system are critical to the Tobacco Industry's success:

> Nicotine is a powerful pharmacological agent with multiple sites of action and may be the most important component of cigarette smoke. Nicotine and an understanding of its properties are important to the continued well being of our cigarette business since this alkaloid has been cited often as "the reason for smoking" and theories have been advanced for "nicotine titration" by the smoker. Nicotine is known to have effects on the central and peripheral nervous system as well as influencing memory, learning, pain perception, response to stress and level of arousal.

(Emphasis added.)

200. Despite the 1994 sworn testimony of tobacco CEOs that nicotine is not addictive, high-ranking tobacco company officials have repeatedly acknowledged that nicotine is addictive and that this is the reason people use tobacco.

201. The smokeless Tobacco Industry also recognizes that almost all consumers use tobacco products to obtain the pharmacological effects of nicotine. The senior vice-president for marketing of U.S. Tobacco wrote in a 1981 letter on new product development: "Flavorwise we should try for innovation, taste and strength, nicotine should be medium . . . Virtually all tobacco usage is based upon nicotine, "the kick," satisfaction."

202. In contrast, Thomas E. Sandefur, former CEO of Brown & Williamson, testified before Congress that nicotine was not addictive and that B&W scientists had concluded that none of B&W's research indicated that nicotine was addictive. These statements were false and were known to be false when they were made. Sandefur further testified that "nicotine is a very important constituent in the cigarette smoke for taste." In fact, nicotine tastes bad,

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and the industry has conducted hundreds of tests designed to increase nicotine without injecting a bad taste.

203. In 1994, in testimony before the Waxman Committee, Edward Horrigan, Chairman and CEO of RJR, testified that as far as the industry had been concerned "no causal link has been shown" between smoking and heart diseases, lung disease and cancer. Further, Horrigan testified that there is "no proof that cigarettes are addictive." Sandefur and Horrigan, by issuing these statements, continued the industry misrepresentation concerning nicotine.

2. Long-Standing Industry Awareness of the Difficulty Smokers Have in Quitting Underscores the Tobacco Companies' Knowledge of Addiction

204. The strongest evidence of the addictive power of nicotine is the fact that a substantial majority of smokers (75 percent to 85 percent in most surveys) say they would like to quit, and they are concerned for their health, yet a vast majority of those who attempt to quit are unable to do so. The failure rate of people who attempt to stop or reduce smoking is dramatic, even in the face of life-threatening tobacco related illnesses. Thus, <u>even after a heart attack or lung cancer surgery, approximately one-half of survivors return to smoking within one year</u>. A study of drug use by high school seniors conducted annually by the University of Michigan shows that of high school seniors who smoke, more than half have tried unsuccessfully to quit. Follow-up surveys show that eight years later three of four are still smoking, and those still smoking are smoking more heavily. As a result of these characteristics and others, the FDA in 1995 found that "nicotine satisfies the classic criteria for an addictive substance."

205. The Tobacco Companies are aware of the large number of smokers who have tried to quit using tobacco, and of the very small number who actually succeed. The evidence known to the Tobacco Companies about smokers' unsuccessful attempts to quit shows that the Tobacco Companies know that a large percentage of their market consists of people who demonstrate one of the characteristic features of addiction.

206. The great difficulty smokers experience when they try to quit was conceded by Joseph F. Cullman, III, the former chief executive officer of Philip Morris. Mr. Cullman was

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called as a witness in the *Cipollone* lawsuit and gave the following answers in response to questions from one of the Plaintiff's attorneys:

> Q. But it is difficult [to quit]?
>
> A. That's what it says here and I'm not disagreeing with it.
>
> Q. They said it was very difficult. Do you agree with that?
>
> A. I would say it's difficult.
>
> Q. And it's difficult for the vast majority of smokers, you would agree with that, too, would you not?
>
> A. That's a question of semantics. What's the vast majority? A lot of smokers have a hard time quitting [sic].
>
> Q. Let's see, most smokers have a tough time giving up cigarettes?
>
> A. Well, if they didn't, there would be many fewer smokers than there are today. (Emphasis added.)

207. A presenter responsible for summing up the results of cessation studies at a 1984 BATCO conference agreed that, while a large percentage of smokers do not want to smoke, most of those smokers feel compelled to continue to smoke: "Although intentions and attempts to quit are relatively high (30-40% of smokers [in a given year]), the actual success rate of quitting is relatively low and stable." It was thus well known to the participating companies that a very large percentage of their customers were smoking not out of choice but because they could not quit.

208. Other companies also acknowledge that many of their consumers would like to quit but are unable to do so. A Philip Morris researcher who studied a "cold turkey" campaign in the small Iowa town of Greenfield in 1969 reported that those who succeed in quitting smoking over the long term are a much smaller group than those who would like to quit and who attempt to quit. The researcher cited the findings of Hunt and Matarazzo that most attempts to quit smoking are not long-lasting: "[I]n summarizing many reports of long-term quitting using various techniques, [the authors] show that the percentage of nonrecidivists [successful quitters] decreases as a function of time . . . in a negatively accelerated fashion."

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The Philip Morris researcher found that in Greenfield only 28 percent of those smokers who agreed to quit as part of the cold turkey campaign were still not smoking after seven months. The researcher then observed that the small number of Greenfield residents who managed to stay off cigarettes for more than seven months was, based on other published reports of success rates for quitting smoking, about average.

209. The researcher also described findings that revealed in part why it is so hard for smokers to quit. He reported that smokers who quit for more than seven months continued to suffer a variety of adverse effects related to quitting, including weight gain, restlessness, depression, ill-temper, constipation, nervous mannerisms, and loss of energy. These are some of the classic symptoms of nicotine withdrawal, described earlier.

210. Market research documents also show that the Tobacco Companies have conducted research in quitting behavior and have documented the reasons people quit and the reasons they fail to quit, despite a desire to do so. A market research firm reporting on a survey of smokers' views about the health implication of smoking observed that:

> . . . a minority expresses a resentment about the addictive aspects of smoking. Being "out of control," unable to quit causes them to feel somehow unworthy. . . . Nicotine is usually singled out as the culprit here. However, even these smokers would be reluctant to give up the satisfaction elements in smoking. So they are in a quandry [sic].

Another market research firm reported its findings about the inability of young smokers to quit when they want to: "However intriguing smoking was at 11, 12 or 13, by the age of 16 and 17 many regretted their use of cigarettes for health reasons and because they feel unable to stop smoking when they want to."

211. The fact that many smokers smoke even though they do not enjoy smoking is conceded in a candid marketing research document prepared for Imperial Tobacco Ltd., which reported that it is particularly difficult to sell cigarettes by "trading on the positives" because the industry is "vexed by the unique problem that users of the category do not necessarily like the product." Another document reports that many smokers of ultra-low tar and nicotine cigarettes want to quit and "refer to their behavior in terms of 'satisfying a craving' while smokers of stronger cigarettes talk about taste and satisfaction."

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212. In summary, the Tobacco Companies' data shows that users find it extremely difficult to quit smoking and that many tobacco users would quit if they could. Their data also shows that, of those smokers who try to quit, only a small percentage succeed permanently. Defendants are aware that the large percentage of their customers who try to quit but fail continue to buy and use tobacco products, in large part to satisfy their dependence on nicotine-containing tobacco. Despite this overwhelming knowledge, the defendants have misrepresented and suppressed the truth regarding nicotine and addiction. Instead, they have falsely claimed that smoking is simply a matter of individual choice and that nicotine is not addictive.

K. Suppression and Concealment of Research on Nicotine Addiction

213. Defendants, rather than fulfilling their promise to the public to disclose material information about smoking and health, wrongfully chose and continue to follow a course of suppression, concealment, and disinformation about the true properties of nicotine and the addictiveness of smoking.

214. For example, Philip Morris hired Victor DeNoble in 1980 to study nicotine's effects on the behavior of rats and to research and test potential nicotine analogues. DeNoble, in turn, recruited Paul C. Mele, a behavioral pharmacologist. DeNoble and Mele discovered that nicotine met two of the hallmarks of potential addiction—self-administration (rats would press levers to inject themselves with a nicotine solution) and tolerance (a given dose of nicotine over time had a reduced effect).

215. However, Philip Morris instructed DeNoble and Mele to keep their work secret, even from fellow Philip Morris scientists. Test animals were delivered at dawn and brought from the loading dock to the laboratory under cover.

216. DeNoble was later told by lawyers for the company that the data he and Mele were generating could be dangerous. Philip Morris executives began talking of killing the research or moving it outside of the company so Philip Morris would have more freedom to disavow the results. DeNoble recalled that Philip Morris discussed several possible scenarios, including having DeNoble and Mele leaving the company payroll and continuing as contractors, and shifting their work to a lab in Switzerland.

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217. In August 1983, Philip Morris ordered DeNoble to withdraw from publication a research paper on nicotine that had already been accepted for publication after full peer review by the journal Psychopharmacology. According to DeNoble, the company changed its mind because it did not want its own research showing nicotine was addictive or harmful to compromise the company's defense in litigation recently filed against it. DeNoble subsequently told Jack Heningfield, Ph.D., Chief of the Clinical Pharmacology Branch of the National Institute on Drug Abuse's Addiction Research Center, that Philip Morris officials had rightly interpreted the suppressed nicotine studies as showing that, in terms of addictiveness, "nicotine looked like heroin."

218. In April 1984, Philip Morris, apparently to ensure that DeNoble and Mele's nicotine research remained suppressed and concealed, told DeNoble and Mele that the lab was being closed. DeNoble and Mele were forced abruptly to halt their studies, turn off their instruments and turn in their security badges. Philip Morris executives threatened them with legal action if they published or talked about their nicotine research. According to DeNoble, the lab literally vanished overnight. The animals were killed, the equipment was removed and all traces of the former lab were eliminated. DeNoble recalled, "The lab was gone, everything was gone. The cages were gone, the animals were all gone, all the data was gone. It was empty rooms."

219. DeNoble testified to the Waxman Subcommittee that "senior research management in Richmond, Virginia, as well as top officials at the Philip Morris Company in New York continually reviewed our research and approved our research." DeNoble also stated that these officials were specifically told about nicotine's addictiveness.

L. The Industry's Secret Manipulation of Nicotine Levels

220. Not content to conceal the addictive nature of nicotine, the defendants have developed sophisticated technology to control the levels of nicotine in order to maintain their market and guarantee that their customers become and remain addicted. David A. Kessler, M.D., Commissioner of Food and Drugs, recently testified before a congressional committee that cigarette manufacturers can manipulate precisely nicotine levels in cigarettes, manipulate

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precisely the rate at which the nicotine is delivered in cigarettes, and add nicotine to any part of cigarettes.

221. Dr. Kessler testified that "the cigarette industry has attempted to frame the debate on smoking as the right of each American to choose. The question we must ask is whether smokers really have that choice." Dr. Kessler stated:

> a. Accumulating evidence suggests that cigarette manufacturers may intend this result--that they may be controlling smokers' choice by controlling the levels of nicotine in their products in a manner that creates and sustains an addiction in the vast majority of smokers.
> b. We have information strongly suggesting that the amount of nicotine in a cigarette is there by design.
> c. The public thinks of cigarettes as simply blended tobacco rolled in paper. But they are much more than that. Some of today's cigarettes may, in fact, qualify as high technology nicotine delivery systems that deliver nicotine in precisely calculated quantities -- quantities that are more than sufficient to create and to sustain addiction in the vast majority of individuals who smoke regularly.
> d. The history of the Tobacco Industry is a story of how a product that may at one time have been a simple agricultural commodity appears to have become a nicotine delivery system.
> e. [T]he cigarette industry has developed enormously sophisticated methods for manipulating nicotine levels in cigarettes.
> f. In many cigarettes today, the amount of nicotine present is a result of choice, not chance.
> g. [Since] the technology apparently exists to reduce nicotine in cigarettes to insignificant levels, why, one is led to ask, does the industry keep nicotine in cigarettes at all?

222. The Tobacco Industry has used techniques such as adding chemicals to increase nicotine potency. In general, by increasing the alkalinity, or smoke pH, of tobacco blends, the industry can deliver an enhanced "nicotine kick."

223. The FDA's August 1995 report Nicotine In Cigarettes and Smokeless Tobacco Products contained the following conclusion:

> The information in the preceding sections demonstrates that cigarette manufacturers manipulate and control the delivery of nicotine in marketed products. Cigarettes are designed to supply nicotine at consistent levels despite the wide variations in the nicotine levels of the raw materials, the immensely complicated combustion chemistry, and the complex chemical flow properties of a modern cigarette.
>
> Manufacturers use many techniques to control nicotine deliveries. The application of these modifications in cigarette design and their interactive nature pose complex problems in maintaining brand uniformity and consistency regarding nicotine delivery. Yet, the nicotine content and delivery of each brand of cigarettes is remarkably consistent from batch-to-batch and year-to-year. This level of control is analogous to that of the

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> pharmaceutical industry in the production of prescription drugs. In fact, to determine how well nicotine content is controlled in cigarettes, FDA laboratories compared the content uniformity of drugs in tablet or capsule form to the content uniformity of nicotine in cigarettes. The results showed that nicotine content varies from cigarette to cigarette no more than the content of active ingredients in marketed pharmaceuticals.
>
> FDA's investigation has also disclosed that the Tobacco Industry uses a number of methods to boost nicotine delivery in low-yield cigarettes. The cigarette industry has successfully used these methods to maintain adequate nicotine delivery from low-yield products. Without the independent manipulation of nicotine, many of the techniques used to reduce tar would also substantially reduce nicotine. Instead, regardless of differences in labeled/advertised FTC nicotine yields and manufacturers' claims of low-nicotine delivery for certain brands, all cigarettes contain approximately the same amount of nicotine in the rod, and deliver about 1 mg of nicotine, enough to produce pharmacological effects. Moreover, studies by FDA and others have demonstrated that the lowest-yield cigarettes have the highest concentrations of nicotine, demonstrating that nicotine delivery has been independently manipulated.
>
> The Tobacco Industry's control and manipulation of nicotine delivery from cigarettes provides additional evidence of the industry's intent to deliver pharmacologically satisfying levels of nicotine to smokers.

(Emphasis added.)

224. The FDA based its findings, in part, on the following:

a. The first manufacturing step in nicotine control is the development and selection of raw materials. The Tobacco Industry has, through breeding and cultivation practices, developed high-nicotine tobacco plants that provide higher-potency raw material, giving manufacturers greater flexibility in blending and in providing uniform and sufficient nicotine deliveries.

b. Even without the selective breeding and cultivation of plants for nicotine content, careful tobacco leaf purchasing plants permit the manufacturers to control nicotine content in their products. For example, nicotine content varies among types of tobacco and from one crop year to the next. Awareness of these basic differences and monitoring of the nicotine levels in purchased tobacco allows the companies to produce cigarettes with nicotine deliveries consistent to a tenth of one percent, despite variations as high as 25 percent in the nicotine content of the raw material originating in the same area, from year to year.

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c. The primary control of nicotine delivery (the amount received by the smoker), however, is in the design and careful, sophisticated manufacture of the cigarette, to ensure that the smoker obtains the precise amount of nicotine intended by the manufacturer. According to the FDA's investigation, despite reductions in the amount of tar delivered by cigarettes over the past several decades, nicotine delivery in low-yield cigarettes has not fallen proportionately with the reductions in tar. Instead, nicotine delivery has apparently risen over the last decade, a result that confirms that nicotine delivery is being independently and carefully manipulated by tobacco manufacturers. The FDA specifically found that "this newly gathered information, together with the other evidence of the industry's breeding, purchasing, blending, and manufacturing practices, reveals that the tobacco manufacturers control the amount of nicotine that is delivered to the consumer from cigarettes." Such manipulation is accomplished, in part, as set forth below.

1. Tobacco Leaf Growing

d. The defendant's control and manipulation of nicotine in the production of cigarettes begins long before the cured tobacco leaf reaches the manufacturing plant. The characteristics of leaf tobacco, including nicotine content, are established by the genetic makeup of the plant, developed during growing and fixed by post-harvest handling. Like other raw agricultural commodities, the physical and chemical properties of tobacco, including nicotine, can vary widely, depending on genetic differences, growing season conditions and soil type. The defendants use these differences to control and manipulate nicotine through careful genetic breeding and agronomic practices.

e. Modern types of cultivated tobacco (Nicotiana tabacum L) have been selected for a relatively high level of nicotine. Five major types of tobacco make up nearly all tobacco products marketed in the United States: Burley, flue-cured, Maryland, the Dark tobaccos, and Oriental. These tobaccos vary both in nicotine levels and in pH. The pH of a tobacco can have a significant influence on the amount of, and rate at which, nicotine is absorbed into the bloodstream of the tobacco user and delivered to the brain.

f. American tobaccos of all types have undergone cumulative increases in total

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nicotine levels since the 1950s. Nicotine levels in the most widely grown American tobaccos increased almost 10 percent for Burley and more than 50 percent for flue-cured between 1955 and 1980.

g. According to the FDA, two Tobacco Industry activities over the last several decades appear to be responsible for this increase: (1) the industry's active and controlling participation in the Minimum Standards Program, which ensures that nicotine levels of U.S.-grown and marketed tobacco are maintained within specified ranges; and (2) the industry maintains control over which varieties are suitable for growing in the United States and thereby eligible for price support.

h. One key objective of the Tobacco Industry's involvement in the Minimum Standards Program is to ensure that nicotine levels in marketed tobacco do not fall below specified levels. The program was initiated in response to the emergence, in the 1950s, of several so-called "discount" varieties of tobacco (*e.g.*, "Coker 139," "Coker 187-Golden Wilt," "Coker 282," "Coker 140," "Coker 316," and "Reams 64") that failed to meet current industry specifications established, among other things, to control the amount of nicotine delivery when used in manufacturing filtered cigarettes. To ensure the elimination of "discount" or low-nicotine varieties from the market, the industry obtained the necessary cooperation from USDA to eliminate these varieties from the price-support program. In fact, to be eligible under this program, growers must certify, even to this day, that "discount" varieties are not being grown.

i. While the Minimum Standards Program ensured that nicotine levels in marketed tobaccos did not fall, breeding and cultivation initiatives undertaken by the industry caused nicotine levels to increase. In the 1960s and 70s, the industry turned to tobacco breeders to develop tobacco varieties that produced less tar. Breeders found that without intervention in the breeding of these varieties, nicotine levels were reduced along with tar levels. Thus, the industry has long been able to grow low-tar and low-nicotine varieties of tobacco for use in manufacturing cigarettes.

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j. By 1978, however, the industry abandoned its interest in the development of low-tar/low-nicotine varieties of tobacco for manufacturing low-yield cigarettes, and instead turned to the development of higher nicotine varieties.

k. In addition to breeding high-nicotine tobacco varieties, the Tobacco Industry engages in agronomic practices that increase nicotine levels in tobacco. Heavy application of nitrogen fertilizers, early topping, and tight "sucker" (*i.e.*, bud growth at the junction of stalk and leaves) control have all acted in concert to push nicotine levels upward. In addition, tobacco varieties have been selected for tolerance to brown spot, a leaf disease that makes early harvest necessary. Leaves of disease-resistant varieties tend to remain in the field longer, resulting in maximum nicotine accumulation. Since the introduction in 1965 of the acreage-poundage control system, farmers have reduced the number of harvestable leaves per plant and have tended to increase plant spacing. Both of these practices tend to increase nicotine content in the leaf. Finally, tobacco growers are transplanting tobacco crops earlier, which, coupled with the widespread use of pesticides in the soil, often results in slow early season growth, and also tends to increase nicotine content in the leaves.

l. The foregoing facts led the FDA to conclude that:

> These nicotine-raising agronomic practices have been adopted by U.S. growers in recent years, even though over 50% of the U.S. cigarette market is now characterized as low delivery. Thus, the Tobacco Industry has developed a number of sophisticated methods for manipulating nicotine levels through breeding and cultivation of tobacco plants and has used these methods to maintain and increase concentrations of nicotine in tobacco leaves. These methods enable the industry to use high-nicotine leaf in low-tar cigarettes, so that, paradoxically, certain low-tar cigarettes now contain more of the higher nicotine tobacco in their blend than cigarettes with higher tar deliveries. The use of these methods demonstrates that the industry manipulates nicotine independently of other tobacco components to ensure that cigarettes contain sufficient nicotine to satisfy smokers.

2. Leaf Purchasing

m. The defendants also manipulate nicotine levels through leaf purchasing. The key factor related to nicotine in leaf purchasing is stalk position. The concentration of nicotine is lowest at the bottom of the plant and highest in the top leaves of flue-cured tobacco. Thus, the position of the leaf on the stalk determines how much nicotine the leaf will contain. In

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fact, "stalk position" is an industry euphemism for nicotine content. The stalk position of a leaf can be determined by its appearance, shape, color, and thickness, even after harvest. Therefore, an experienced buyer, whose instructions are dictated by the manufacturer's chemists, need only be concerned with these physical characteristics in identifying leaves of varying nicotine content.

n. Representatives of the Tobacco Industry described to FDA investigators the significant role that nicotine plays in the purchase of tobacco leaf. Brown & Williamson informed the FDA that stalk position is the "first thing" they look for during leaf purchasing.

3. Leaf Blending

o. After purchase, tobacco leaves are blended to attain target levels of nicotine and tar in the smoke. FDA's investigation noted particular attention on the part of manufacturers to the nicotine content of the leaf in the blending operation. As noted above, blending practices by manufacturers are designed to: (1) control the naturally occurring variations in nicotine and other components caused by genetics, growing season conditions, and soil type within a given type and grade; and (2) particularly for low-tar cigarettes, to increase nicotine concentrations and thereby maintain an acceptable nicotine level in the cigarettes.

p. The pH of cigarette smoke directly affects the delivery of nicotine because it alters the amount of nicotine that is absorbed in the mouth or lungs. PH is controlled by the manufacturer in the selection of the type of tobacco used and blended. For example, smoke-condensate pH is higher from certain tobacco varieties as well as from leaves at upper stalk positions.

q. According to the FDA, blending techniques have been used to finely control nicotine concentrations in marketed cigarettes.

r. The foregoing led the FDA to conclude that:

> Significant evidence also demonstrates that tobacco manufacturers have used blending techniques to increase nicotine concentrations in low-tar cigarettes and thereby maintain nicotine delivery while reducing tar delivery. FDA has observed the industry's use of proportionately greater amounts of higher nicotine-containing Burley tobacco in the tobacco blends of the lowest-tar varieties of cigarettes. In fact, Thomas Sandefur, the chief executive officer of Brown and Williamson, admitted to Congress that

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> nicotine levels can be adjusted "up or down" depending on the blend of tobaccos used in a particular cigarette. Industry scientists have also acknowledged that tobacco manufacturers blend high-nicotine tobaccos to compensate for the reductions in nicotine caused by innovations in cigarette design and manufacturing to reduce tar delivered. These examples demonstrate that tobacco manufacturers deliberately increase the proportion of high-nicotine delivery that would otherwise result in these products.

(Emphasis added.)

4. Additional Evidence of Nicotine Manipulation

225. Reconstituted tobacco is made from stalks and stems and other waste that cigarette companies used to discard and now use to make cigarettes more cheaply. On information and belief, ordinarily, reconstituted tobacco contains 25 percent or less of the nicotine in regular tobacco. A former RJR manager who demanded anonymity told the ABC news program "Day One," that on the average, currently marketed brands contain about 22 percent reconstituted tobacco and that cut rate or generic brands typically contain about double that amount.

226. A laboratory analysis commissioned by "Day One" and conducted by the American Health Foundation confirmed the industry's heavy use of reconstituted tobacco. One RJR brand had 25 percent and another had about 33 percent reconstituted tobacco. Yet, tested samples of the reconstituted tobacco implanted in RJR brands, Winston, Salem, Magna and Now had up to 70 percent, rather than the expected 25 percent, of the nicotine that would be found in regular tobacco, indicating that RJR had fortified the reconstituted tobacco with additional nicotine.

227. On information and belief, reconstituted tobacco has inferior taste and less nicotine, so the cigarette manufacturers or their agents apply a powerful tobacco extract either alone or as part of a solution of flavorings to the reconstituted tobacco. RJR and the other cigarette manufacturers have the technology to add flavorings with or without nicotine, so the addition of nicotine to reconstituted tobacco is purely at the manufacturer's discretion.

228. The Kimberly-Clark tobacco reconstitution process is believed to be used throughout the Tobacco Industry in a number of countries. A Kimberly-Clark advertisement published in Tobacco Industry trade publications states:

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> Nicotine levels are becoming a growing concern to the designers of modern cigarettes, particularly those with lower "tar" deliveries. The Kimberly-Clark tobacco reconstitution process used by LTR INDUSTRIES permits adjustments of nicotine to your exact requirements. These adjustments will not affect the other important properties of customized reconstituted tobacco produced at LTR INDUSTRIES: low tar delivery, high filling power, high yield and the flexibility to convey organoleptic modifications. We can help you control your tobacco.

229. Furthermore, the Tobacco Industry's own trade literature explains that the Kimberly-Clark process enables manufacturers to triple or even quadruple the nicotine content of reconstituted tobacco, thereby increasing the nicotine content of the final manufactured product.

230. Another enterprise quite explicitly specializes in the manipulation of nicotine and its use as an additive. This company does business under the name "The Tobacco Companies of the Contraf Group." An advertisement run by the Contraf Group in the international trade press states: "Don't Do Everything Yourself! Let us do it More Efficiently!" Calling itself "The Niche Market Specialists," Contraf lists among its areas of specialization "Pure Nicotine and other special additives."

231. The cigarette industry has also used a process called "denaturing" to add nicotine to cigarettes. Nearly-pure nicotine is combined with alcohol and then applied to tobacco during the manufacturing process. Trucking records show that Philip Morris, for example, received thousands of gallons of this nicotine/alcohol mixture during the 1980s.

232. Against this mounting body of evidence of the cigarette industry's manipulation and control of nicotine levels in cigarettes, the defendants wrongfully continue to deny to the public, and recently denied to Congress under oath, that they manipulate and control nicotine levels:

a. William I. Campbell, President and CEO of Philip Morris, told Congress on April 14, 1994, that "Philip Morris does not manipulate nor independently control the level of nicotine in our products. . . . Cigarettes contain nicotine because it occurs naturally in tobacco."

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b. James W. Johnston, President and CEO of RJR Nabisco, told Congress that "We do not add or otherwise manipulate nicotine to addict smokers."

c. Andrew J. Schindler, President and Chief Operating Officer U.S.A., R.J. Reynolds Tobacco Company, told Congress that "We do not restore any nicotine anywhere in our process. . . . We lose nicotine, for example, in the reconstituted sheet process. . . . [N]owhere in that process is any nicotine being incrementally added into the process." Contradicting Johnston's and Schindler's statements, Dr. Robert Suber, a toxicologist with RJR, admitted, however, that RJR controls the nicotine in its products. He told CNN that "In order to deliver to the consumer a product that he wants, a consistent level of nicotine, we have to blend the tobaccos accordingly. So we do control it."

d. Andrew H. Tisch, Chairman and CEO of Lorillard, told Congress that "Lorillard does not take any steps to assure a minimum level of nicotine in our products. Lorillard does not add nicotine to cigarette tobacco for the purpose of manipulating or spiking the amount of nicotine received by the smoker."

e. Edward A. Horrigan, Jr., Chairman and CEO of Liggett Group, Inc., told Congress that "In all my years in this business worldwide, I have never known of a product-designed objective or goal that included even the notion of spiking the amount of nicotine in a cigarette to achieve a level that would hook or addict smokers." Horrigan, however, former Chairman and CEO of RJR through the late 1980s, participated in the development and marketing of Premier and other RJR cigarette brands whose manufacturing process included the manipulation of nicotine content and delivery.

f. Thomas E. Sandefur, Jr., CEO of Brown & Williamson, in the face of overwhelming evidence to the contrary, denied secretly growing Y-1 in sworn testimony before Congress on June 23, 1994, and stated that his company was being "set up." He admitted that the company controlled nicotine, but in a shop-worn and now familiar refrain, stated that the company did so only for "taste."

g. T.F. Riehl, Vice President for Research and Development at Brown & Williamson, denying that the company mixed the tobacco for the Barclay cigarette to have a

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higher concentration of nicotine, told Congress, "No, sir. We blend for taste, not nicotine." However, internal documents from Brown & Williamson indicate that Riehl, himself, has conducted research focusing on the adjustment of nicotine and tar levels without regard to taste. In fact, at the 1984 Smoking Behavior-Marketing Conference, Riehl gave a presentation on Project Aries, Brown & Williamson's safer cigarette project, which emphasized tar reduction and nicotine enrichment in later puffs, but never addressed the issue of taste.

233. The cigarette industry's "taste" argument is belied by the testimony of health policy expert, Clifford E. Douglas, testifying before the FDA's Drug Abuse Advisory Committee, who asked "why so many smokers who have endured tracheostomies due to throat cancer find it necessary to continue to smoke through the holes in their throats, where they cannot taste a thing."

234. The newly discovered evidence of nicotine manipulation by the cigarette industry and the recent disclosures about nicotine addiction and manipulation made before Congress have not deterred the industry from its campaign of concealment and disinformation. As recently as April 1994, the cigarette industry placed advertisements across the country denying that it "spikes" cigarettes with nicotine, denying that it believes cigarette smoking is addictive, and misleading the public about whether the cigarette companies deliberately control nicotine levels in their products.

235. An advertisement placed by Philip Morris in newspapers across the country in April 1994, denied that Philip Morris manipulates nicotine levels and stated that "nicotine level in the finished cigarette is lower than the nicotine level of the original, natural tobacco leaf."

236. RJR placed a similar advertisement in newspapers across the United States, including newspapers sold in Nevada, in 1994 mischaracterizing the "recent controversy" as focusing on RJR's various techniques that help us reduce the "tar" (and consequently the nicotine) yields of our products."

237. These advertisements deliberately create the false impression that the "recent controversy" they refer to is about whether reconstituted and reduced-tar tobacco have less nicotine than the original tobacco leaf. The tobacco companies can legitimately claim that

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their finished cigarettes have less nicotine. The real controversy, however, which these advertisements so carefully avoid, stems from the discrepancy between actual nicotine levels of the industry's tar-reduced and reconstituted tobacco and the claimed "essentially perfect" correlation between nicotine and tar levels. In fact, the nicotine levels have proven to be consistently higher than what the correlation would predict. The inaccuracy lies not in the correlation, but in the representations defendants have made to the public about how it manufactures cigarettes. Those representations have carefully and deliberately omitted the defendants' addition of nicotine in the form of an extract to these tobaccos to keep them at addictive levels.

M. Maintaining the Market Through Sales to Minors

1. The Increasing Addiction of Minors: A Predicate to Continuing Industry Profits

238. In addition to ensuring a captive market through the addiction of its customers, the defendants have maintained their sales and replaced the hundreds of thousands of smokers who die each year by intentionally targeting marketing and promotional efforts at children and adolescents.

239. Every day, more than 1,200 cigarette smokers die of disease caused by smoking. In order to prevent a precipitous decline in cigarette sales, the big cigarette companies must attract new smokers. Children and teenagers became the main target and as a result of the defendants' unfair and deceptive marketing programs and advertising, over 3,000 of them begin smoking every day.

240. The use of tobacco by minors continues to rise. The Centers for Disease Control and Prevention (CDC) announced on May 24, 1996, that a study of high school students showed a higher prevalence of tobacco use among high school students in 1995 than in 1993 and 1991, up 35 percent from 1993 and 28 percent from 1991. The prevalence of cigarette smoking in recent years among 8th and 10th grade students has risen significantly and provides cause for great concern. For example, among 8th grade students, 14.3 percent in 1991 and 18.6 percent in 1994 were current smokers; among 10th grade students, 20.8 percent

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in 1991 and 25.4 percent in 1994 were current smokers.

241. The 1994 Surgeon General's Report reviewed several different surveys and found that the estimated percentage of adolescents who have ever smoked cigarettes ranged up to approximately 42 percent (as reported by the 1991 Youth Risk Behavior Survey). The 1994 Surgeon General's Report also found that 28 percent of high school seniors were current smokers. The 1994 Surgeon General's Report states that seven to 13 percent of adolescents were frequent or heavy smokers, consuming at least a one-half pack daily or smoking 20 days or more of the 30 days in a survey period.

242. Approximately 3 million children under the age of 18 are daily smokers. One study found that children between the ages of 8 and 11 who are daily smokers consume an average of 4 cigarettes daily, and those who are between the ages of 12 and 17 average nearly 14 cigarettes daily. The study also estimated that adolescents consume an estimated 947 million packs of cigarettes and 26 million containers of smokeless tobacco annually and account for annual tobacco sales of $1.26 billion. Another study estimates that teenagers in 1991 smoked 516 million packs of cigarettes and spent $962 million purchasing them. As stated previously, these figures are especially significant given that all states prohibit the sale of tobacco to persons under the age of 18 (with some states prohibiting sales to persons under the age of 19 and one state, Pennsylvania, prohibiting cigarette sales to persons under the age of 21). Few states can successfully enforce their laws restricting tobacco sales to minors given the defendants' intense effort to lure minors into smoking.

243. Studies have also suggested that the age one begins smoking can greatly influence the amount of smoking one will engage in as an adult and will ultimately influence the smoker's risk of tobacco related morbidity and mortality. Those who started smoking by early adolescence were more likely to be heavy smokers than those who began smoking as adults. Another study found that high school students who smoked their first cigarette during childhood smoked more often and in greater amount than those who first tried smoking during adolescence.

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244. The escalating use of smokeless tobacco products by underage persons presents an additional and growing public health problem. Smokeless tobacco products include chewing tobacco and snuff and are also known as "spit tobacco" or "spitting tobacco." In 1970, the prevalence of snuff use among males was lowest in those 17 to 19 years of age and the highest use was by men aged 50 or more. By 1985, a dramatic shift had occurred, and males between 16 and 19 were twice as likely to use snuff as men aged 50 and over. An estimated 3 million users of smokeless tobacco products were under the age of 21 in 1986, when Congress enacted the Comprehensive Smokeless Tobacco Health Education Act (the "Smokeless Act") (15 U.S.C. 4401). The Smokeless Act required the Secretary of Health and Human Services (Secretary) to inform the public of the health dangers associated with smokeless tobacco use, required warning labels on packages, banned advertising on electronic media subject to the Federal Communications Commission's jurisdiction (such as television and radio), and encouraged states to make 18 years the minimum age for purchasing smokeless tobacco products. Despite the Smokeless Act and state laws prohibiting sales to minors, a high percentage of persons under the age of 18 use smokeless tobacco products. For example:

- 1991 school-based surveys estimated that 10.7 percent of U.S. high school seniors and 19.2 percent of male 9th to 12th grade students use smokeless tobacco.
- A 1992 national household-based survey of U.S. children found that 11.0 percent of males 12-17 years of age were using smokeless tobacco.
- Among high school seniors who had ever tried smokeless tobacco, 73 percent did so by the ninth grade.

245. In some parts of the United States the rates are especially high. According to the 1990-91 Youth Risk Behavior Survey, the smokeless tobacco product use rates among males in grades 9 through 12 were as high as 34 percent in Tennessee, 33 percent in Montana, 32 percent in Colorado, and 31 percent in Alabama and Wyoming.

246. The recent and very large increase in the use of smokeless tobacco products by young people and the addictive nature of these products has persuaded the Secretary that these

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products must be included in any regulatory approach that is designed to help prevent future generations of young people from becoming addicted to nicotine-containing tobacco products.

247. Despite the best efforts of parents, educators, and the medical profession, smoking among young people has increased since the 1970s. This is because cigarette company advertising is used to create a mental image associating smoking with healthy, glamorous, and athletic lifestyles, with success and sexual attractiveness. This increases demand for cigarettes among young people. Within a short period of time, the young smoker becomes physiologically and emotionally dependent, *i.e.*, addicted to tobacco. Later, as the maturing smoker begins to wish he or she could quit, advertising reinforces the addiction by attempting to minimize health concerns, create doubt and induce confusion. This masking by the industry of the true risks of smoking is relied upon by smokers as an excuse to avoid the pain and discomfort of attempting to break their addiction to nicotine. In this way, a vicious cycle supporting addiction is intentionally created by defendants.

248. The cigarette companies sell more than one billion packs of cigarettes per year to minors under the age of 18. In 1988, these sales accounted for about $1.25 billion. Approximately 3 percent of the total Tobacco Industry profits ($221 million in 1988) are derived directly from the sale of cigarettes to children under the age of 18, an activity that is illegal in 47 states. Marlboro and Camel cigarettes, produced by Philip Morris and Reynolds, respectively, dominate the teenage smoking market.

249. Sales to minors is no accident--it is the intended result of a carefully orchestrated scheme. For example, despite the fact it is illegal to sell to minors in Nevada, each of the tobacco companies studies how to attract minors and engages in conduct to accomplish that goal. Illustrative is RJR, which repeatedly has developed reports "relating to teenage smokers," including an analysis of RJR's share of teenage smokers, defined as "14-17." Indeed, as early as 1973, Claude Teague of RJR was writing internal memos stating that RJR should recognize that despite prohibitions on smoking, minors were smoking in increasing numbers, thus, "if this is to be so, there is certainly nothing immoral or unethical about our company attempting to attract smokers to our products." Teague went on to write that as RJR

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"is to survive and prosper . . . we must get our share of the youth market." Teague's view prevailed and RJR developed a scheme to attract minors that was highly successful. This theme was repeated in a 1976 research department memorandum, labeled "SECRET" which stated "Evidence is now available to indicate that the 14 to 18 year old group is an increasing segment of the smoking population. RJR must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term."

2. The Use of Appealing Images

250. Defendants have engaged in a course of conduct designed to promote cigarette smoking among young people and to particularly appeal to those with low self esteem and emotional insecurity. Once the young person has been predisposed toward smoking, a variety of factors can precipitate actual experimentation. For many young people, the precipitating factor is being given a free pack of cigarettes by a tobacco company representative, or purchasing cigarettes in order to obtain an attractive tee shirt, baseball cap, or other gimmick used to promote cigarette smoking.

251. One of the best examples of this was the transformation of Marlboro Cigarettes from a red-tipped cigarette for women to the cigarette for the macho cowboy. By changing imagery, Philip Morris was able to tap into a wholly new and different market. In 1950, Reynolds was the king of the cigarette business. It sold more cigarettes than any other company. Philip Morris, though doing well on the basis of its fraudulent health-oriented advertising, was still far behind. In 1981, Philip Morris passed Reynolds in market share and each year has extended its lead by developing an effective marketing campaign for recruiting young new smokers to its brands. The wild spirit of the Marlboro man captured the adolescent imagination. Also, Philip Morris' representatives fanned out to colleges across the country, giving free cigarettes to incoming freshmen to get them hooked. The children and teenagers who started smoking Marlboro became tenaciously loyal customers. Soon, Marlboro became the gold standard of cigarettes among teenagers. Up until 1988, nearly three-fourths of teenage smokers used Marlboro.

252. At about the time it lost market leadership to Philip Morris, Reynolds dedicated

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itself to a ruthless campaign encouraging children and teenagers to smoke. One of the key elements of the R.J. Reynolds' strategy for attracting children was to reposition many of its cigarette brands to younger audiences.

253. Reynolds' Vantage cigarettes entered the 1980s as a brand targeted at the health conscious adult smoker. Advertisements were intended to assuage fears of lung cancer and other diseases, and give concerned smokers arguments for rationalizing their continuation of the addiction. Through multiple transmogrifications, Vantage cigarettes have been progressively repositioned to ever-younger audiences. During the mid-1980s this campaign featured young successful professionals (including architects, fashion designers, lawyers, etc.) with the slogan "The taste of success." These campaigns promoted the implication that smoking is helpful—if not essential—to social success or prominence. This is an image designed to appeal to underage smokers who dream of becoming successful professionals. In the late 1980s the theme for Vantage cigarettes began to feature professional caliber athletes like wind surfers, aerobic dancers, downhill ski-racers, and auto-racers. This theme depicts physical activity requiring strength or stamina beyond those of everyday activity, clearly suggesting that smoking is not harmful.

254. During the 1980s, as intended by the manufacturer, the theme for Salem cigarettes also became more youth oriented. Whereas the dominant theme for Salem cigarettes used to be clean fresh country air, during the 80s the theme conveyed through the use of Salem ads were populated by muscular surfers and beach bunnies, fun-loving party animals and other attractive adolescent role models. Another successful advertising campaign targeted at young people is the Lorillard Tobacco Company campaign promoting Newport cigarettes. The theme links Newport with men and women in sexually suggestive positions, always having fun, using the slogan "Alive with pleasure."

255. Another successful campaign has been the "You've come a long way baby" campaign promoting Virginia Slims cigarettes. One of the most important psychological needs of most adolescent girls is to become independent from their parents. By associating smoking with women's liberation, Philip Morris hopes to create in the minds of these teenage girls the

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vision of smoking as a symbol of autonomy and independence. The theme created for Virginia Slims and other "feminine" cigarettes prey upon the natural and almost universal insecurity and sense of inferiority experienced by adolescents by portraying the cigarette as a crutch and a symbol of superiority. Perhaps the most acute psychological need of adolescence is to fit in, to be accepted, to be popular.

256. A status symbol and secret desire of many teenage boys is a powerful motorcycle. It is for this reason that so many cigarette brands have used motorcycle imagery to encourage teenage boys to smoke. To target young boys the industry uses images of high risk activities like hang gliding, motorcycle racing, mountain climbing, etc. Cigarette makers do this deliberately to undermine awareness that smoking is dangerous. In its campaign to attract adolescent boys to become smokers, the R.J. Reynolds cigarette company has made extensive use of risk-taking and danger. By glorifying risk-taking, these ads have a more insidious purpose. How a person estimates the magnitude and likelihood of a risk can be significantly affected by what it is compared against. By portraying extremely dangerous activities like hang gliding, mountain climbing and stunt motorcycle riding, Reynolds minimizes the dangers of smoking in adolescent minds.

257. The greatest success that Reynolds had in its effort to gain on Philip Morris in the youth market is the "Joe Camel" cartoon character. This campaign was inaugurated in the United States in 1987 to commemorate the 75th anniversary of Camel cigarettes. In the first ads, the camel leered out over the pack saying, "75 years and still smoking." The implication is obvious. It soon became evident that "Joe Camel" would strike a responsive chord among children and teenagers, and has been used by Reynolds to target young persons—even children—to get them to start smoking at as early an age as possible. Reynolds has more than tripled its expenditures for Camel cigarettes after 1988, utilizing themes like "Joe Camel" guaranteed to be attractive to young people at high risk of becoming smokers.

3. Use of Youth Oriented Locations for Promotional and Advertising Materials

258. It is not just the themes within cigarette advertising that betray the real target, it is also the location of those themes. During the decade of the 1980s there was a steady

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migration of cigarette advertising into youth oriented publications. Magazines with sexually oriented themes, and those concerning entertainment and sporting activities, had the highest concentration of cigarette ads. For many of these magazines, teenagers comprise a quarter or more of the total readership. Cigarette ads in these youth oriented magazines were frequently multi-page, pop-up ads. News magazines like Time and Newsweek, which have older audiences, had few cigarette ads, and those tended to emphasize implicit health promises concerning tar and nicotine rather than glamorous images.

259. In tests all across the country, it has been demonstrated that children as young as 12 years old can buy cigarettes in three out of four retail outlets. A study by the Inspector General's Office of the Department of Health and Human Services concluded that, while there are laws prohibiting the sale of tobacco to minors, they are almost uniformly unenforced. The risk of a merchant being punished for selling cigarettes to minors is about one in 33 million. Cigarettes are available in unlimited quantities to children through vending machines as well.

260. A particularly successful element of the industry's campaign has been aimed at young girls. Nearly every issue of magazines for young girls like Teen and Young Miss includes a statement by Reynolds urging children not to smoke. But the reasons given for refraining are designed to continue to conceal, *i.e.* the reasons are not that smoking is addictive, that it can harm or kill the infants of pregnant women, or that it causes cancer and other awful diseases. Rather, the reason given is that it is an "adult custom."

261. This message, rather than discouraging children from smoking, plants in impressionable young girls' minds the notion that smoking is something to do to show one's independence, to act grown up. This notion is, of course, reinforced by the ubiquitous cigarette ads depicting glamorous young adult women smoking as a way of demonstrating their independence.

4. Reynolds: "Old Joe Camel"

262. The most notorious recent example of the industry targeting of minors is the "Joe Camel" advertising campaign conducted by Reynolds, in observance of the Camel brand's 75th anniversary. As part of the initiation of the promotion, Reynolds included singing birthday

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cards in Rolling Stone magazine, a publication particularly popular with young people, and offered premiums such as T-shirts, party mugs, and wall posters. When Reynolds began this cartoon campaign in 1988, Camel's share of the children's (under 18 years of age) market was only 0.5 percent. In just a few years, Camel's share of this illegal market has increased to 32.8 percent, representing sales estimated at $476 million per year. Another indication of the phenomenal success of this marketing campaign is the fact that in a recent survey of 6-year-olds, 91 percent of the children could correctly match "Old Joe" with a picture of a cigarette, and both the silhouette of Mickey Mouse and the face of Old Joe were nearly equally well recognized by almost all children.

263. All defendants are aware of the fact that tobacco use begins primarily among youth who are not yet 18 years of age. Among minors, the three most used brands of cigarettes are the most advertised. Reynolds studied the attributes of an advertising campaign which would most appeal to the group it carefully identified as "21 and under." Those attributes directly coincide with the "Joe Camel" campaign. Several years later, again addressing those attributes, this startling statement was made: "Young people will continue to become smokers at or above the present rates during the projection period. The brands which these beginning smokers accept and use will become the dominant brands in future years. Evidence is now available to indicate that the 14 to 18 year old group is an increasing segment of the smoking population. RJR must soon establish a successful new brand in the market if our position in the industry is to be maintained over the long term."

264. Reynolds continues to use the "Old Joe" character in conjunction with other offers attractive to minors. Recently, for example, it began an advertising campaign offering concert tickets in return for redemption of a number of Camel coupons, again in Rolling Stone magazine.

265. Reynolds has made other premiums available in exchange for coupons included in packages of Camel cigarettes. These premiums are deliberately designed to appeal primarily to minors.

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266. Reynolds has expressly encouraged minors to circumvent laws related to tobacco use by minors. For example, in one coupon offer for a free package of Camels, "Joe Camel" advised individuals that it would be a "smooth move" to have someone else redeem the coupon, thus suggesting the means to overcome prohibitions of sales to minors of tobacco products. Other Reynolds campaigns have targeted stores and advertising locations close to high schools and other areas frequented by minors, and Reynolds concentrates advertising in publications read by large numbers of minors.

5. U.S. Tobacco: "Old Enough to Chew"

267. U.S. Tobacco has engaged in an ongoing campaign to induce individuals to become users of smokeless tobacco, and its efforts find particular success among minors, as intended by the company.

268. U.S. Tobacco designs its products to introduce the "new user" to smokeless tobacco products, and as addiction grows, "graduate" users to higher nicotine content products: "Skoal Bandits [a mild, low-nicotine product, packaged in individual use "tea bags" is the introductory product, and then we look towards establishing a normal graduation process [to higher nicotine content products]." The introductory products are aimed at new users, mainly cigarette smokers, between ages 15 and 35.

269. A U.S. Tobacco employee, Bill Falk, who was apparently terminated for some other comments in the article, told a New York Post reporter: "A lot of young people are getting into it [smokeless tobacco use] . . . It's become a status thing. When a kid gets a new pair of jeans, he puts the snuff can in the back pocket and rubs it till the outline shows. It shows he's old enough to chew."

6. Philip Morris: Competing for the Minor Market

270. All defendants promote and market their products to minors. At least one company, Philip Morris, tracked hyperactive children in grade school to research whether they would become smokers. Philip Morris apparently conducted market research concerning minors who smoke or are apt to smoke. In a 1969 presentation to the Board of Directors by the Philip Morris Research Center, W.L. Dunn, Jr. and F.J. Ryan talked about the future of

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the "psychology department," noting that more attention was being paid to the reasons why people smoke; "there is general agreement on the answer to [why people begin to smoke]. The 16- to 20-year-old begins smoking for psychosocial reasons. The act of smoking is symbolic; it signifies adulthood, he smokes to enhance his image in the eyes of his peers." Philip Morris, having apparently studied the minor market for tobacco, has recently begun a program characterized as "Marlboro Unlimited," which is a program offering premiums for coupons from cigarette packages. This program is a direct response to Reynolds success in the minor market, is designed to appeal to minors, and is an effort by Philip Morris to maintain Marlboro's dominance of that illegal market.

271. Each tobacco company defendant engages in various advertising and promotional activities in an effort to develop a "minor" market. These activities include pervasive sponsorship of various sporting events, concerts and other events likely to attract extensive youth interest. Another means of appealing to youth used by the companies is paying for promotional appearances in movies which, because of the subject matter or the actors in the films, are most likely to appeal to youth. For example, Brown & Williamson agreed with the actor Sylvester Stallone that he would use the former's products in at least five feature films, in exchange for $500,000. Philip Morris paid for the promotion of Marlboro in "Superman II," "Risky Business," and "Crocodile Dundee" and for promotion of Lark in "License to Kill." It paid for or otherwise provided promotional material for 56 films in 1987 to 1988. Liggett paid for promotion of Eve [its brand designed especially to appeal to young women] in "Supergirl." American Tobacco promoted Lucky Strike in "Beverly Hills Cop." Reynolds paid for the promotion of Camel in "Who Framed Roger Rabbit," "Desperately Seeking Susan," and "Honey, I Shrunk the Kids."

7. Philip Morris' Admission that it has Targeted Minors

272. The Tobacco Cartel is currently under intense scrutiny from state and federal officials. In a blatant attempt to stave off FDA regulations, Philip Morris has proposed a series of changes to their marketing practices. In a recent letter to the Attorneys General of many states, Philip Morris informed the Attorneys General that it has announced a "blue print

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which directly addresses the issue of youth smoking." Among the proposals are the following:

- Ban tobacco ads near schools and playgrounds and in youth oriented publications;
- Prohibit tobacco brand names, logos and characters on promotional items like t-shirts and caps;
- Ban cigarette vending machines;
- Limit tobacco brand name sponsorship to events with primarily adult audiences;
- Ban tobacco advertising in video arcades and family oriented centers.

273. These proposals constitute an admission that the industry has attempted to attract minors, when it: (1) places tobacco ads near schools, playgrounds and in youth oriented publications; (2) uses logos and characters that are intended to appeal to minors; (3) sponsors events that have primarily youth audiences; (4) places ads in places likely to reach minors such as video and family oriented centers. These admissions are powerful evidence that the Tobacco Industry has knowingly and intentionally targeted minors.

N. Smokeless Tobacco Products: Addiction Through the "Graduation Process"

274. The Defendants Brown & Williamson and R.J. Reynolds also manufacture and distribute loose tobacco used in the "roll your own" process of cigarette-making.

275. Even though the medical evidence regarding the hazards of cigarette smoking and addiction have been known to the defendants for many years, the packages and containers of the "roll your own" tobacco conceal and/or misrepresent the hazards of using this product.

276. Despite their knowledge that the use of smokeless tobacco is, as a result of nicotine, extremely addictive, the defendants to this day wrongfully deny that smoking, "dipping," or "chewing" tobacco is addictive. Through their individual advertising and public relations campaigns, and collectively, through the Tobacco Institute, the Tobacco Companies have successfully promoted and sold tobacco products by concealing and misrepresenting the highly addictive nature of cigarettes and smokeless tobacco.

277. Defendant United States Tobacco Company makes approximately 90 percent of the oral snuff and chewing tobacco sold in the United States. As alleged above, smokeless

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tobacco delivers a similar amount of nicotine as cigarettes and is equally as addictive. Plaintiff is informed and believes that smokeless tobacco manufacturers intend to cause nicotine dependence among consumers through a strategy that involves promoting the user of lower nicotine brands with the intent of moving users up to higher, more addictive brands over time. The "graduation" strategy calls for three different brands of low, medium, and high nicotine content. The strategy is based on the premise that new users of smokeless tobacco are most likely to begin with products that are milder tasting, more flavored and lighter in nicotine content. After a period of time, there is a natural progression to products that are more full-bodied and have more concentrated tobacco taste, with more nicotine, than the entry brand. This graduation strategy is supported by the manufacturers' advertising practices which indicate the manufacturers' intent to have consumers experiment with low-nicotine brands and graduate to higher-nicotine brands over time. The FDA's 1995 investigation into nicotine and tobacco products found that with respect to smokeless products, "tobacco manufacturers control the delivery of nicotine" so that products that deliver lower doses of nicotine are provided to "new users" who are then encouraged by tobacco marketing to "graduate" to products that deliver "higher doses of nicotine."

O. The Human Toll of Cigarette Smoking

1. Health Effects of Cigarette Smoking

278. Over 400,000 Americans die each year from smoking-related illnesses. This equates to more than one of every five deaths in the United States. If an adolescent's tobacco use continues for a lifetime, there is a 50 percent chance that the person will die prematurely as a direct result of smoking. Moreover, the earlier a young person's smoking habit begins, the more likely he or she will become a heavy smoker and therefore suffer a greater risk of smoking related diseases. Smoking is responsible for about 90 percent of all lung cancer deaths, 87 percent of deaths from chronic obstructive pulmonary diseases (COPD), 21 percent of deaths from coronary heart disease, and 18 percent of deaths from stroke. A causal relationship exists between cigarette smoking and cancers of the larynx, mouth, esophagus, and bladder; and atherosclerotic peripheral vascular disease, cerebrovascular disease (stroke),

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and low-birth weight babies. Cigarette smoking is also a probable cause of infertility and peptic ulcer disease and contributes to, or is associated with, cancers of the pancreas, kidney, cervix, and stomach.

279. Epidemiologic studies provide overwhelming evidence that smoking causes lung cancer. The risk of getting lung cancer may be more than 20 times greater for heavy smokers than nonsmokers. The relationship between smoking and lung cancer is due to the numerous carcinogens in cigarette smoke. Cigarette smoking caused an estimated 117,000 deaths from lung cancer in 1990.

280. The risk of getting lung cancer increases with the number of cigarettes smoked and the duration of smoking, and decreases after cessation of smoking. Starting smoking at an earlier age increases the potential years of smoking and increases the risk of lung cancer. Lung cancer mortality is highest among adults who began smoking before the age of 15.

281. Cigarette smoking also causes cancer of the larynx, mouth, and esophagus. According to current estimates, 82 percent of laryngeal cancers are due to smoking and about 80 percent of the 10,200 deaths from esophageal cancer in 1993 can be attributed to smoking. The risk of oral cancer among current smokers ranges from 2.0 to 18.1 times the risk in people who have never smoked and can be reduced more than 50 percent after quitting. The risk of esophageal cancer among current smokers ranges from 1.7 to 6.4 times the risk in people who have never smoked and can also be reduced by about 50 percent after quitting.

282. Cigarette smoking contributes to the development of pancreatic cancer. The reason for this relationship is unclear, but may be due to carcinogens or metabolites present in the bile or blood. In 1985, the proportion of pancreatic cancer deaths in the United States attributable to smoking was estimated to be 29 percent in men and 34 percent in women.

283. Cigarette smoking accounts for an estimated 30 to 40 percent of all bladder cancers and is a contributing factor for kidney cancer. The increased risk of kidney and bladder cancer may be related to the number of cigarettes smoked per day; the risk decreases following smoking cessation.

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284. Smoking is a contributing factor for cancer of the cervix. The association between cigarette smoking and cervical cancer persists after control is made for risk factors, such as age at first intercourse and the number of sexual partners, that predispose a woman to developing sexually-transmitted diseases. The inclusion of these risk factors, however, may not completely rule out confounding by sexually-transmitted diseases. The findings that components of tobacco smoke can be found in the cervical mucus of smokers, and the mucus of smokers is mutagenic, and that former smokers have a lower risk of getting cervical cancer than current smokers are consistent with the hypothesis that smoking is a contributing cause of cervical cancer.

285. The 1982 Surgeon General's Report concluded that stomach cancer is associated with cigarette smoking.

286. Smoking is a leading cause of heart disease. The 1964 Surgeon General's Report noted that male cigarette smokers had higher death rates from coronary heart disease than nonsmokers. Subsequent reports have concluded that cigarette smoking contributes to the risk of heart attacks, chest pain, and even sudden death. Overall, smokers have a 70 percent greater death rate from coronary heart disease than nonsmokers.

287. Ischemic heart disease resulting from cigarette smoking claimed nearly 99,000 lives in 1990. One study estimates that smoking causes 30 to 40 percent of all deaths due to coronary heart disease. Smokers between the ages of 40 and 64, who smoked more than one pack a day, were shown to have a risk of coronary heart disease that is 3.2 times higher than people who do not smoke.

288. Smoking also increases a person's risk of atherosclerotic peripheral vascular disease, especially if the smoker is diabetic. Complications of this disease include decreased blood delivery to the peripheral tissues, gangrene, and ultimately loss of the affected limb. Smoking cessation is the most important intervention in the management of peripheral vascular diseases.

289. Smoking is a cause of stroke. Stroke is the third leading cause of death in the United States. The association of smoking with stroke is believed to be mediated by the

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mechanisms responsible for atherosclerosis (narrowing and hardening of the arteries), thrombosis, and decreased cerebral blood flow in smokers. Female smokers who use oral contraceptives are at an increased risk of having a stroke.

290. Cigarette smoking is the leading cause of chronic obstructive pulmonary disease (COPD) in the United States. Approximately 84 percent of the COPD deaths in men and 79 percent of the COPD deaths in women are attributable to cigarette smoking. The risk of death from COPD may depend on how many cigarettes a person smokes daily, how deeply the person inhales and the age when the person began smoking. The number of cigarettes smoked per day is a strong indicator for the presence of the principal symptoms of chronic respiratory illness, including chronic cough, phlegm production, wheezing and shortness of breath.

291. Smoking's detrimental effect on lung structure and function appear within a few years after cigarette smoking begins. Children who smoke are more likely to suffer from respiratory illnesses than children who do not smoke. Adolescents who smoke may experience inflammatory changes in the lung, reduced lung growth, and may not achieve normal lung function as an adult.

292. Cigarette smoking is a probable cause of peptic ulcer disease. Peptic ulcer disease is more likely to occur in smokers than in nonsmokers, and the disease is less likely to heal, and more likely to cause death in smokers than nonsmokers. Quitting smoking reduces the chances of getting peptic ulcer disease and is an important component of effective peptic ulcer treatment.

293. Studies also show that women who smoke have reduced fertility. One study showed that smokers were 3.4 times more likely than nonsmokers to take more than 1 year to conceive.

294. Smoking's severe detrimental effects during pregnancy are well documented. Women who smoke are twice as likely to have low birth weight infants as women who do not smoke. Smoking also causes intrauterine growth retardation of the fetus. Mothers who smoke also have increased rates of premature delivery.

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295. Smoking may lead to premature infant death. Babies of mothers who smoke are more likely to die than babies born to nonsmoking mothers. A recent meta-analysis reported that use of tobacco products by pregnant women results in 19,000 to 141,000 miscarriages per year, and 3,100 to 7,000 infant deaths per year. In addition, the meta-analysis attributed approximately two-thirds of deaths from sudden infant death syndrome to maternal smoking during pregnancy. By another estimate, if all pregnant women stopped smoking, there would be 4,000 fewer infant deaths per year in the United States.

2. Health Effects of Smokeless Tobacco Products

296. Smokeless tobacco use can cause oral cancer. The risk of oral cancer increases with increased exposure to smokeless tobacco products, particularly in those areas of the mouth where smokeless tobacco products are used. The risk of cheek and gum cancers is nearly 50 times greater in long-term snuff users than in nonusers. Snuff and chewing tobacco contain potent carcinogens, including nitrosamines, polynuclear aromatic hydrocarbons and radioactive polonium.

297. Smokeless tobacco use can cause oral leukoplakia, a precancerous lesion of the soft tissue that consists of a white patch or plaque that cannot be scraped off. One study of 117 high school students who were smokeless tobacco users revealed that nearly 50 percent of these students had oral tissue alterations. There is a 5 percent chance that oral leukoplakias will transform into malignancies in 5 years. The leukoplakia appears to decrease or resolve upon cessation of smokeless tobacco use.

298. Smokeless tobacco use causes oral cancer and oral leukoplakia and may be associated with an increased risk of cancer of the esophagus. Smokeless tobacco use has been implicated in cancers of the gum, mouth, pharynx and larynx. Snuff use also causes gum recession and is associated with discoloration of teeth and fillings, dental cavities and abrasion of the teeth.

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P. The Injury to the State of Nevada as a Direct and Foreseeable Consequence of Defendants' Unlawful Conduct

299. In addition to the human toll, the economic cost of tobacco use, and health care expenditures from tobacco-attributable diseases, amount to an unacceptable burden on society and the State of Nevada.

300. The State spends millions of dollars each year to provide or pay for health care and other necessary facilities and services on behalf of state employees, the needy, indigents and other eligible residents. Increased health care costs for those individuals are directly caused by tobacco induced cardiovascular disease, lung cancer, emphysema, respiratory and other diseases.

301. In fulfilling its statutory duties, the State of Nevada has expended and will expend substantial sums of money due to the increased cost of providing health care services for treatment of tobacco-caused diseases. These increased expenditures have been caused by the unlawful actions of the defendants.

302. Nevada expends funds in several areas, which include significantly increased charges attributable to tobacco usage and exposure. These include but are not limited to:

> a. Medical payments: Pursuant to NRS 422.237 *et seq.*, Nevada makes payments for medical care services provided to recipients of public assistance. The amount paid for Medicaid is higher than it would be otherwise due to payment for tobacco-related illnesses;
>
> b. Health Care: Nevada purchases health care insurance for public employees and dependents. The premiums paid for all employees and dependents are higher than they would be otherwise due to the potential of payments for tobacco-related illnesses for some employees and dependents.

303. The Centers for Disease Control have developed information on smoking-attributable deaths and diseases and the economic impact of smoking. Their study demonstrates that there is a direct and substantial cost to Nevada taxpayers of increased health care attributable to use of tobacco. Nationwide, the CDC data shows that the estimated health care costs for smoking-attributable diseases are $50 billion. These costs have been increasing at a precipitous rate, more than doubling in the period from 1987 to 1993. The present value of Nevada's Medicaid expenses attributable to smoking for the period 1992 to 1994 by itself

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exceeds $35 million. This figure does not include other damages suffered by the State, such as increased health care premiums.

Q. Fraudulent Concealment

304. Defendants fraudulently concealed their illegal combination and course of conduct.

305. Plaintiff is not aware of the methods used by defendants to conceal their activities, but believes that the methods used by defendants in furtherance of their combination and conspiracy were by nature self-concealing and not of a type which could have reasonably been apparent to plaintiff.

306. For example, in 1985 a Brown & Williamson attorney recommended that much of its medical research be declared "deadwood" and shipped to England. The attorney stated that, "I have marked with an X documents which I suggested were deadwood in the behavioral and biological studies area. I said that the B series are Janus series studies and should also be considered deadwood." The attorney further suggested that the research, development, and engineering department also "should undertake to remove the deadwood from its files."

307. Brown & Williamson attempted to control other documents such that it could later claim an attorney-client privilege or work product protection for documents which its attorneys thought might later cause difficulties in product liability actions. Such documents included scientific reports which the company sought to protect from discovery: "[Scientific] material should come to you [corporate counsel] under a policy statement between you and Southampton [BAT] which describes the purpose of developing the documents for B & W and sending them to you as use for defense of potential litigation. It is possible that a system can be devised which would exempt the Engineering reports because it might be difficult to maintain a privilege for covering such reports under the potential litigation theory. [C]ontinued Law Department control is essential for the best argument for privilege. At the same time, control should be exercised with flexibility to allow access of the R & D staff to the documents."

308. The Brown & Williamson assertions of privilege are false and in bad faith. Other defendants have used similar tactics to conceal the activities of the conspiracy. The joint

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actions of the conspiracy through the CTR and Tobacco Institute have been similarly shielded from scrutiny. Part of the document review undertaken by Brown & Williamson was an effort to conceal documents showing the true nature of the associations: "[In conducting document review] pay special attention to documents suggesting that TI [Tobacco Institute] was used as a vehicle for the industry's alleged conspiracy to promote cigarettes through the "open controversy" PR program . . . ."

309. The CTR had a number of categories of research projects. "Special Projects" were reviewed and selected for funding by the general counsel of the member companies. Upon information and belief, lawyers controlled this research so as to protect it from discovery and also to further the ends of the conspiracy.

310. Plaintiff's claim of CTR manipulation through the siphoning of relevant projects is further supported by the notes of the September 10, 1981 Committee of General Counsel, transmitted via a September 18, 1981, letter from Webster & Sheffield, which states:

> Stevens: "I need to know what the historical reasons were for the difference between the criteria for lawyers' special projects and CTR special projects."
>
> Jacob: "When we started the CTR Special Projects, the idea was that the scientific director of CTR would review a project. If he liked it, it was a CTR special project. If he did not like it, then it became a lawyers' special project."
>
> Stevens: "He took offense re scientific embarrassment to us, but not to CTR."
>
> Jacob: "With Spielberger, we were afraid of discovery for FTC and Aviado, we wanted to protect it under the lawyers. We did not want it out in the open."

These minutes explicitly acknowledge that the supposedly "independent" scientific director of CTR channeled research into Special Projects for defendants' litigation efforts. But even more disturbing is defendants' announced practice of using the Special Projects division in order to shield damaging research results from the public *and* the FTC. A document captioned "Notes from the September 10, 1981 Meeting of Company Counsel and Ad Hoc Committee Members" is even more explicit. Page one of the "Notes" states as follows: "skeptical scientists. . . . The staff at CTR also needed to be more tobacco oriented with a skeptical

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view." This document pertains not only to the Special Projects division but also to defendants' intentional manipulation of the CTR as a whole.

311. Defendants' conspiracy is ongoing and continues to this day. The defendants continue to deny that (i) nicotine is addictive; (ii) smoking causes cancer and other health problems; (iii) that they are illegally targeting minors; and (iv) that they manipulate the level of nicotine in tobacco products to increase addiction.

VI. CLAIMS FOR RELIEF

COUNT 1

(Violation of NRS 598.0903 *Et Seq.* and NRS 201.110)

MARKETING AND TARGETING MINORS AND CONTRIBUTING TO THE DELINQUENCY OF CHILDREN

312. The State of Nevada repeats and realleges paragraphs 1 through 311 as though fully set forth here.

313. The Nevada State Legislature has declared that it is the public policy of this State to prohibit minors' access to tobacco products. Pursuant to NRS 202.2493, it is unlawful to give or sell tobacco products to minors. Pursuant to NRS 202.2494(1), it is unlawful to place cigarette vending machines in places to which minors have access.

314. Defendants have engaged in a course of conduct and have suppressed information with the intent that others rely on such suppression in an effort to deceptively, unfairly and unlawfully encourage minors to use tobacco in violation of the declared public policy of the State of Nevada.

315. More specifically, and as set forth above, defendants have caused their products to be sold to minors, in part, by (i) concealing that their marketing is designed to encourage minors to use tobacco in violation of State law; (ii) concealing that their products are addictive and harmful and suppressing and omitting information on these subjects; (iii) designing their marketing campaigns with the intent that minors rely on the tobacco companies' advertisements and buy their products, and (iv) engaging in their course of conduct with the purpose of causing the sale of tobacco to minors in violation of state law. This conduct is wrongful,

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unfair, and deceptive. Defendants' conduct is made even more deceptive by virtue of the fact they have publicly proclaimed that they are against encouraging minors to smoke while secretly they have launched a course of conduct designed to encourage minors to smoke or chew their products.

316. Defendants' course of conduct and marketing efforts wrongfully and unfairly encourage minors to use tobacco in violation of the declared public policy of the State of Nevada.

317. The Nevada Legislature has enacted NRS 201.110 which provides that "any person who, by any act or omission, or by . . . persuasion, induces or endeavors to induce any person under the age of 18 to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause any such person to become or to remain a person who is a . . . 'delinquent child' as defined in NRS 201.090 to 201.110, inclusive, shall be guilty of . . . contributory delinquency." NRS 201.090(9) defines a "delinquent child" as any person less than 18 years of age: "Who habitually uses intoxicating liquors or who uses opium, cocaine, morphine, or similar drug without the direction of a competent physician." This statute, in effect, defines drug dependency. Nicotine is a drug similar in addictive characteristics to opium, cocaine or morphine. The defendants have engaged in a course of conduct to create and sustain nicotine dependency in Nevada's children. The defendants have contributed and continue to contribute to the delinquency of minor children in the State of Nevada.

318. Tobacco sales to minors and/or use by minors have increased in Nevada as a direct, foreseeable and intended result of the defendants' practices.

319. Defendants' course of conduct and the targeting of minors as described in the Complaint violates the expressed public policy of the State of Nevada, causes great and/or irreparable harm to the State of Nevada, and has been achieved through defendants' deceptive conduct as set forth above in violation of NRS 598.0923(2), 598.0915(5), and 598.0925(1)(a).

320. Defendants acted wilfully, knowingly, and with the intent that others rely upon the concealment, suppression, and omissions of information set forth above.

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321. Defendants' deceptive trade practices occurred in the course of their business or occupation.

322. Defendants' violations of the Deceptive Trade Practices Act were committed with the wrongful intent to mislead and defraud.

WHEREFORE, the State of Nevada prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court adjudge and decree that such conduct is unlawful and in violation of NRS 201.110, NRS 598.0923(2), 598.0915(5), and 598.0925(1)(a).

C. That the Court enjoin and restrain defendants and their officers, agents, servants, and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect.

D. That the Court enjoin defendants and order defendants to publicly disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the issue of smoking and health.

E. That the Court order defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party.

F. That the Court enjoin the defendants and order the defendants to take reasonable and necessary steps to prevent the distribution and sale of cigarettes to minors under the age of 18.

G. That the Court order defendants to fund clinical smoking cessation programs in the State of Nevada.

H. That the Court order defendants to disgorge all unjust profits from tobacco sales to minors, and from all other tobacco sales in the State of Nevada which defendants should not be allowed to retain.

I. That, pursuant to NRS 598.0999, the Court assess civil penalties of $2,500 from each defendant for each wilful violation of NRS 598.0903 to 598.0997 complained of herein.

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J. That the Court award damages to Plaintiff in excess of $10,000.00.

K. That the State of Nevada recover from defendants the costs of this action, including reasonable attorneys' fee.

L. That the Court order defendants to pay Plaintiff's attorney fees and costs and order such other and further relief as the Court deems just, necessary, and appropriate.

COUNT 2

(Violation of NRS 598.0903 Et Seq.)

DECEPTIVE TRADE PRACTICES

323. The State of Nevada repeats and realleges paragraphs 1 through 322 as if fully set forth here.

324. In the regular course of business, defendants engaged in wrongful misrepresentations and/or omissions of material facts, including but not limited to representing:

a. That the defendants would lead an effort to discover and disclose to the public the truth about the health effects of tobacco products use;

b. That the use of tobacco products is not harmful and has not been proven to cause and exacerbate diseases;

c. That nicotine contained in tobacco products is not addictive;

d. That the defendants do not exploit or manipulate the nicotine in tobacco products;

e. That the defendants do not target, direct or seek to focus their tobacco products marketing efforts on children and adolescents and, in fact, actively discourage sale of those products to children and adolescents.

325. The conduct described above and in this Complaint constitutes deceptive acts or practices in violation of NRS 598.0923(2), 598.0915(5), and 598.0925(1)(a) in that:

a. The defendants have not been truthful in disclosing the information developed by or otherwise known to them concerning the health hazards of tobacco product use, including the addictive nature of nicotine. They have systematically suppressed and concealed material information developed by or otherwise known to them concerning the adverse health effects of tobacco product use, including the addictive nature of nicotine, and have engaged in a misinformation and disinformation campaign to conceal the truth. The defendants have further systematically sought falsely to discredit or cast doubt upon scientific studies and reports which concluded that use

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of tobacco products caused adverse health effects, including the addictive nature of nicotine;

b. Tobacco products are harmful when used for their intended purpose. Tobacco product use causes a large variety of diseases, including debilitating diseases and diseases that result in death. In furtherance of their deceptive representations about the health effects of tobacco product use, the defendants have suppressed the development and commercial production of safer tobacco products;

c. The nicotine contained in tobacco products is addictive;

d. The tobacco companies rely upon the addictive nature of nicotine in designing, marketing and selling tobacco products and manipulate nicotine levels, availability and delivery in order to achieve their design, marketing and sales strategies;

e. The defendants market, distribute and sell tobacco products in a manner that targets children and adolescents and intentionally attracts them to begin or continue to use tobacco products.

326. Defendants acted wilfully, knowingly, and with the intent that others rely upon the concealment, suppression, and omissions of information set forth above.

327. Defendants' deceptive trade practices occurred in the course of their business or occupation and have caused great and/or irreparable harm to the State of Nevada.

328. Defendants' violations of the Deceptive Trade Practices Act were committed with the intent to mislead and defraud.

WHEREFORE, the State of Nevada prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court adjudge and decree that such conduct is unlawful and in violation of NRS 598.0923(2), 598.0915(5), and 598.0925(1)(a).

C. That the Court enjoin and restrain defendants and their officers, agents, servants, and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect.

D. That the Court enjoin defendants and order defendants to publicly disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees, and all persons

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acting in concert with them, that relates to the issue of smoking and health.

E. That the Court order defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party.

F. That the Court enjoin defendants and order the defendants to take reasonable and necessary steps to prevent the distribution and sale of cigarettes to minors under the age of 18.

G. That the Court order defendants to fund clinical smoking cessation programs in the State of Nevada.

H. That the Court order defendants to disgorge all unjust profits from tobacco sales to minors, and from all other tobacco sales in the State of Nevada which defendants should not be allowed to retain.

I. That, pursuant to NRS 598.0999, the Court assess civil penalties of $2,500 from each defendant for each willful violation of NRS 598.0903 to 598.0997 complained of herein.

J. That the court award damages to Plaintiff in excess of $10,000.00.

K. That the State of Nevada recover from defendants the costs of this action, including reasonable attorneys' fee.

L. That, pursuant to NRS 598.0993, the Court order defendants to pay restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

M. That the Court order defendants to pay Plaintiff's attorney fees and costs and order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 3

(Violation of NRS 598A.010 *Et Seq.*)

ILLEGAL AGREEMENT TO RESTRICT PRODUCTION AND CONSPIRACY IN RESTRAINT OF TRADE

329. The State of Nevada repeats and realleges paragraphs 1 through 328 as though fully set forth here.

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330. As described above, beginning at least as early as 1953 and continuing until the present date, the defendants entered into a contract, combination, or conspiracy to eliminate and suppress competition in the market for tobacco products.

331. Pursuant to such contract, combination or conspiracy, the defendants engaged in the following underlying activity, all as set forth in considerably more detail above:

(a) They restrained and suppressed research on the health consequences of smoking.

(b) They restrained and suppressed the dissemination of truthful information on the health consequences of smoking in Nevada, including information as to the addictive properties of nicotine.

(c) They knowingly disseminated false information in Nevada about the health consequences of smoking and about their commitment to make public scientific information regarding such consequences.

(d) They restrained, controlled, limited and suppressed research in and the development, manufacture and marketing of a "safer" cigarette and other tobacco products that would have resulted in reduced health costs for the State of Nevada.

(e) In general, they declined to compete in Nevada in any manner relating to the health claims of cigarettes.

(f) Apart from maintaining the demand for their tobacco products, the defendants knew that their conduct would cause smoking-related diseases in Nevada as well as cause the State of Nevada to incur substantial health care costs in treating such diseases.

332. As a direct result of the defendants' conduct, the State of Nevada incurred substantial health care costs arising from smoking-related diseases and injuries. The defendants' conduct is thus inextricably intertwined with the State's increased health care costs.

333. The defendants' conduct has had a direct and foreseeable effect on the State's health care costs. The defendants continue to reap enormous profits by virtue of their wrongful conduct at the expense of the State, and have thus effectively shifted the health care costs of smoking-related diseases to the State of Nevada.

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334. The defendants have caused great and/or irreparable harm to the State of Nevada. The defendants' conduct constitutes an illegal trust, a conspiracy against trade, and an agreement to restrict the volume of production of "safer" tobacco products. The defendants have thus violated NRS 598A.030 and NRS 598A.060(1)(n), which violations are continuing and likely to continue unless restrained, the State's remedy at law being inadequate.

335. By virtue of such violation, the State of Nevada, through the Attorney General, is authorized to bring suit and seek injunctive relief, civil penalties, damages to the general economy and three times its damages to its business or property pursuant to NRS 598A.070, 598A.160(1)(b) and 598A.200.

WHEREFORE, the State of Nevada prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court adjudge and decree that such conduct is unlawful and in violation of NRS 598A.030 and 598A.060(1)(n).

C. That the Court enjoin and restrain defendants and their officers, agents, servants and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect.

D. That the Court enjoin defendants and order defendants to publicly disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the issue of smoking and health.

E. That the Court order defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party.

F. That the Court order defendants to fund clinical smoking cessation programs in the State of Nevada.

G. That, pursuant to NRS 598A.200, the Court award treble damages to the State, resulting from the actions described above, and that the Court award the cost of this action,

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including a reasonable attorney's fee.

H. That, pursuant to NRS 598A.170, the Court assess penalties in the amount of 5 percent of the gross income from all the defendants' tobacco sales in the state of Nevada for each year in which the prohibited activities occurred.

I. That, pursuant to NRS 598A.160(1)(b), the State of Nevada recover from defendants the aggregate damages to the general economy of the State and its subdivisions that are attributable to defendants' conduct complained of herein.

J. That the Court order defendants to pay Plaintiff's attorney fees and costs and order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 4

INTENTIONAL/NEGLIGENT BREACH OF SPECIAL AND GENERAL DUTY

336. The State of Nevada repeats and realleges paragraphs 1 through 335 as if fully set forth here.

337. Beginning as early as 1954 with the publication of "A Frank Statement to Cigarette Smokers" and continuing to the present date, the defendants assumed a special and general duty to protect the public health and a duty to those who advance the public health, including the State of Nevada and its political subdivisions.

338. Defendants publicly represented that they were undertaking to act on behalf of the public's health, to aid and assist the research effort into all phases of tobacco use and health, to cooperate closely with those who safeguard the public health, to continue research and all possible efforts until all the facts were known, and to provide complete and authenticated information about cigarette smoking and health (¶¶ 84-97).

339. Defendants ostensibly undertook performance of their assumed duty, and awarded highly-publicized grants to supposedly "independent researchers." Throughout the years and continuing to the present date, defendants' spokespersons have repeatedly announced that research was underway, but the results are always "inconclusive" and the health questions "unresolved." These actions are part of defendants' elaborate disinformation campaign designed to obscure the overwhelming and conclusive evidence that smoking causes lung

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cancer, heart disease and a host of other health problems.

340. Defendants did not make these representations gratuitously. Rather, they were made to combat emerging concerns about smoking, to protect the defendants' enormous profits and to avoid government regulation. The "Frank Statement" and subsequent statements proclaiming the industries' "responsibility" were intended to affect the State of Nevada: defendants directly pledged to cooperate with "those responsible for public health." (¶ 84).

341. Defendants further pledged to support research by independent scientists and to share results (¶ 84).

342. Defendants also stated that public health was their preeminent concern, of greater concern than their own profits (¶ 84).

343. Each of these undertakings was designed, among other purposes, to cause Nevada governmental officials, among others, to believe that immediate action on their part to curb tobacco use was not needed. As the evidence of the hazards of tobacco use mounted, governmental entities considered and/or began to legislate various controls on tobacco use smoking and advertising. Defendants resisted these efforts and the "Frank Statement" and its progeny were designed to lull the State of Nevada, among others, into avoiding the implementation and/or passage of such regulations.

344. In making the commitments set forth above in paragraphs 84-97, defendants assumed duties to both the State and to the public. As to the State, defendants specifically pledged to "cooperate closely with those whose task it is to safeguard the public health and to report fully and truthfully on tobacco and health." As to the public, defendants specifically undertook a "special responsibility to the public and accept[ed] an interest in people's health as paramount to every other consideration in [their] business." In accepting these responsibilities, defendants undertook three specific duties. First, by committing themselves to making health their preeminent responsibility, the tobacco companies agreed that they would not sell or continue to sell products which they knew to cause death and disease when used as intended. The violation of this duty is the direct cause of the costs incurred by the State in treating the illness that resulted from defendants' sales of tobacco products.

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345. Second, defendants pledged to cooperate with public health and they did the opposite, thereby directly allowing continued and unfettered tobacco sales, which in turn directly injured the State.

346. Third, having undertaken to tell the truth about tobacco use and health, they were legally bound to speak the whole truth. Defendants breached this duty and such breach also damaged the State of Nevada.

347. Defendants reasonably could have foreseen the risk of harm to the State of Nevada. Physical injury to tobacco users was not only foreseeable, it was contemplated as the inevitable consequence of defendants' undertakings. Defendants knew or should have known of the State's obligation to care for indigent people or Medicaid recipients, who have suffered the ill effects of smoking, physical injury due to tobacco use.

348. The defendants' breach of duty not only served to forestall increased government regulation but contributed to the State's increased health care costs because the breach caused smokers in the State of Nevada to take up or continue smoking. Had the defendants disclosed what they knew, had they not suppressed information about addiction and nicotine manipulation, had they not targeted minors, and had they, in fact, reported the truth, the amount of tobacco use in the State of Nevada would have been far less, which in turn would have reduced the State's Medicaid costs attributable to smoking related diseases. The very purpose of defendants' assumption of a duty was to promote the use of tobacco products and thus directly increase the risk of harm to the State of Nevada.

349. Defendant's breach of duty also influenced the State's course of conduct. Had defendants not breached their assumed and general duty, they would have fully disclosed (1) that the companies' own studies showed links between tobacco use and adverse health effects, (2) that nicotine is highly addictive, (3) that the tobacco companies manipulate nicotine levels in tobacco products in order to increase and maintain addiction, and (4) that the tobacco companies were trying to induce minors to use tobacco to increase their long-term profits by replacing tobacco users who die. For years these facts have been concealed and many of the facts still remain concealed. Had those facts been disclosed earlier, the State would have

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taken action to restrain the companies' activities. Once the State learned, through partial disclosures, of the true nature of defendants' activities, this action was commenced.

350. As a direct, foreseeable, intended and proximate cause of defendants' breach, plaintiff suffered and will continue to suffer substantial injuries and damages and great and/or irreparable harm.

351. The conduct described constitutes an intentional and/or negligent breach of a voluntarily assumed special and/or general duty for which defendants are liable.

352. Defendants' unlawful conduct will continue unless the relief prayed for in this Complaint is granted.

WHEREFORE, the State of Nevada prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court adjudge and decree that such conduct is an unlawful breach of duty.

C. That the Court enjoin and restrain defendants and their officers, agents, servants and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect.

D. That the Court enjoin defendants and order defendants to publicly disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the issue of smoking and health.

E. That the Court award damages to the State resulting from the actions described above.

F. That the Court order defendants to pay Plaintiff's attorney fees and costs and order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 5

PERFORMANCE OF ANOTHER'S DUTY TO THE PUBLIC

353. The State of Nevada realleges and incorporates paragraphs 1 through 352 as if fully set forth here.

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354. As a direct and proximate result of their wrongful conduct alleged above, defendants have unreasonably injured and endangered the comfort, repose, health and safety of the residents of the State of Nevada by selling tobacco products which are dangerous to human life and health and cause injury, disease and sickness. Defendants' acts have caused damage to the public, the public safety and the general welfare of citizens of Nevada and have caused great and/or irreparable harm to the State of Nevada.

355. Defendants' conduct has created a health crisis which has required the State of Nevada to assume the financial burden of smoking related medical costs, a burden which should have been borne by the defendants. The State has thus borne the defendants duty to the public, which arises in part from defendants' assumed and general duty, and their duty to not sell products through the use of the unlawful acts outlined in Counts 1-6.

356. In assuming this burden belonging to defendants, the State was responding to a clear need to relieve the distress of those who were inflicted with smoking related illnesses and to prevent their condition from worsening. Since the defendants have eschewed any intention of accepting responsibility for their creation of this crisis, the State's actions cannot be termed "officious." Nor did the State intend to confer a gratuitous benefit upon defendants. Rather, the State's expenditures were aimed at averting a public health crisis.

357. As a result of defendants' conduct, the State of Nevada has suffered and will continue to suffer substantial damages for which it is entitled to both monetary and injunctive relief.

WHEREFORE, the State of Nevada prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court adjudge and decree that such conduct is an unlawful and required defendants to perform the State's duty to the public.

C. That the Court enjoin and restrain defendants and their officers, agents, servants and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect.

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D. That the Court enjoin defendants and order defendants to publicly disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the issue of smoking and health.

E. That the Court order defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party.

F. That the Court order defendants to fund clinical smoking cessation programs in the State of Nevada.

G. That the Court order defendants to pay restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

H. That the Court award damages to the State resulting from the actions described above and order defendants to pay the Plaintiff's costs and attorney fees.

I. That the Court order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 6

PUBLIC NUISANCE

358. The State of Nevada realleges and incorporates paragraphs 1 through 357 as if set forth fully above.

359. As a direct and proximate result of their wrongful conduct as alleged above, defendants have unreasonably injured and endangered the comfort, repose, health and safety of the residents of the State of Nevada in violation of NRS 202.450 by selling their tobacco products in an unlawful manner as outlined in Counts 1-5 above. Defendants' acts have caused damage to the public, the public safety and the general welfare of the residents of the State of Nevada, and constitute a public nuisance.

360. Defendants' conduct has wrongfully caused the State of Nevada to expend millions of dollars in support of the public health and welfare.

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361. As a result of defendants' conduct, the State of Nevada has suffered and will continue to suffer substantial injuries, great and/or irreparable harm, and damages for which it is entitled to relief.

WHEREFORE, the State of Nevada prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court adjudge and decree that such conduct is an unlawful public nuisance.

C. That the Court enjoin and restrain defendants and their officers, agents, servants, and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect.

D. That the Court enjoin defendants and order defendants to publicly disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the issue of smoking and health.

E. That the Court order defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party.

F. That the Court order defendants to fund clinical smoking cessation programs in the State of Nevada.

G. That the Court order defendants to pay restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

H. That the Court award damages to the State resulting from the actions described above and order defendants to pay the plaintiff's costs and attorney fees.

I. That the Court order such other and further relief as the Court deems just, necessary and appropriate.

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COUNT 7

CONSPIRACY

362. The State of Nevada realleges and incorporates paragraphs 1 through 361 as if fully set forth here.

363. Defendants entered into a conspiracy to violate the statutes set forth above in Counts 1-3 and the common law as set forth in Counts 4-6, and agreed as part of the conspiracy to: (1) suppress information concerning the adverse effects of smoking and the addictive qualities of nicotine; (2) create doubt about the scientific studies linking smoking to adverse health consequences and/or the addictive nature of nicotine; (3) conceal their manipulation of the level of nicotine in tobacco products; (4) avoid competition based on a safer cigarette, and (5) wrongfully target minors and induce them to use tobacco products.

364. Defendants knowingly and voluntarily combined and acted in concert, with the intent to accomplish these unlawful acts for the purposes set forth above and to assure that individuals, even minors, would use their tobacco products and would become addicted to their products, to avoid any liability for the injuries, illness, and disease caused by their products, and to cause others, such as plaintiff, to pay the costs of health services and care for those individuals who were injured through the use of tobacco products.

365. A part of this conspiracy was a plan to cause governmental officials to believe that immediate action on their part to curb smoking was not needed. As the evidence mounted about the hazards of smoking, governmental entities considered and/or began to legislate various controls on smoking and advertising. Defendants resisted these efforts and the "Frank Statement" and its progeny, an integral part of the conspiracy, were designed to lull the State of Nevada, among others, into avoiding the implementation and/or passage of such regulations.

366. The defendants' conspiracy not only served to forestall government regulation but also contributed to the State's increased health care costs because the conspiracy caused smokers in the State of Nevada to take up or continue smoking. Had the defendants not engaged in the conspiracy and disclosed what they knew, had they not suppressed information

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about addiction and nicotine manipulation, had they not targeted minors, and had they in fact reported the truth, the amount of tobacco use in the State of Nevada would be far less, which in turn would have reduced the State's Medicaid costs attributable to smoking related illnesses. The very purpose of defendants' conspiracy was to promote and increase the use of cigarettes and tobacco products and thus directly increase the risk of harm to the State of Nevada.

367. Defendants' conspiracy was designed to and did influence the State's course of conduct. Had defendants not engaged in the conspiracy, they would have fully disclosed (1) that the companies' own studies showed links between tobacco use and adverse health effects, (2) that nicotine is highly addictive, (3) that the tobacco companies manipulate nicotine levels in tobacco products in order to increase and maintain addiction, and (4) that the tobacco companies were trying to induce minors to use tobacco products despite the dangers outlined above and despite their representations that they were not trying to encourage minors to use tobacco products. For years these facts have been concealed and many of the facts still remain concealed. Had the conspiracy not occurred, and had those facts been disclosed earlier, the State would have taken action to restrain the companies' activities. Once the State learned, in a partial fashion, of the true nature of defendants' activities, this action was commenced.

368. Defendants, knowingly, willingly and wantonly, combined and agreed with one another for the purposes of deceiving the state regulators and the public about the carcinogenic, pathologic and addictive properties of cigarettes and accomplishing the unlawful ends complained of and/or for the purposes of unlawfully accomplishing the lawful ends complained of, namely, the ability to legally continue to sell and profit from cigarettes, in spite of the significant carcinogenic, pathologic and addictive properties of cigarettes.

369. All defendants joined in the conspiracy at least by 1954 through the formation of the TIRC, or, in the case of defendant Liggett, by its actual and/or tacit agreement with the other defendants to withhold from government regulators and the public their knowledge about the true carcinogenic, pathologic and addictive properties of their cigarettes.

370. Defendants' overt acts in furtherance of these purposes, include, without limitation:

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a. the formation and control of the TIRC and later the CTR;

b. engaging in deceptive acts and practices in the course of business in violation of the Nevada law;

c. fraudulently misrepresenting and omitting material information regarding the human health dangers of smoking;

d. restraining and suppressing research and information concerning the adverse effects of tobacco product use and the addictive effect of nicotine;

e. creating doubt about the scientific studies linking tobacco product use to adverse health consequences and/or the addictive nature of nicotine;

f. affirmatively misrepresenting the addictive effects of nicotine and the harmful effects of tobacco product use;

g. concealing their manipulation of the level of nicotine in tobacco products;

h. restraining the development, production, and marketing of a safer cigarette;

i. avoiding competition based on health claims and safer cigarettes;

j. passing on health care costs associated with tobacco products to others;

k. designing, testing, manufacturing, marketing, supplying and selling defective cigarettes;

l. targeting minors for the marketing, supply, sale and use of tobacco products; and

m. suppressing the design, test, manufacture, marketing and/or sale of non- or less-addictive, -carcinogenic and -pathologic cigarettes.

371. The effect of this conspiracy was to violate State law as set forth above. The conspiracy is ongoing and will not stop unless injunctive relief is granted.

372. The defendant co-conspirators performed tortious acts in furtherance of the conspiracy, thereby proximately causing injury to the State of Nevada.

373. As a direct, actual and proximate result of defendants' conduct, the State of Nevada has suffered and will continue to suffer substantial injuries, great and/or irreparable harm, and damages for which the State of Nevada is entitled to relief.

WHEREFORE, the State of Nevada prays as follows:

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A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court adjudge and decree that such conduct is an unlawful conspiracy.

C. That the Court enjoin and restrain defendants and their officers, agents, servants and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect.

D. That the Court order defendants to publicly disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the issue of smoking and health.

E. That the Court order defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party.

F. That the Court order defendants to fund clinical smoking cessation programs in the State of Nevada.

G. That the Court order defendants to pay restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

H. That the Court award damages to the State resulting from the actions described above and order defendants to pay the plaintiff's costs and attorney fees.

I. That the Court order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 8

UNJUST ENRICHMENT/RESTITUTION

374. The State of Nevada realleges and incorporates paragraphs 1 through 373 as if fully set forth here.

375. Use of defendants' cigarettes and other tobacco products as intended causes disease.

376. Many of the State of Nevada's residents who are afflicted with tobacco-related diseases are poor, uneducated, and unable to provide for their own medical care. These

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residents rely upon the State of Nevada to provide their medical care, and the State is legally obligated to provide and pay for such medical services, pursuant to NRS 422.237 *et seq.* and the provisions of 42 U.S.C. § 1396, *et seq.* The provision of and payment for such medical care results in an extreme burden on the taxpayers and the financial resources of this State. The State of Nevada has expended millions of dollars in caring for residents who have suffered from and continue to suffer from lung cancer, cardiovascular disease, emphysema, chronic obstructive pulmonary disease, and a variety of other cancers and diseases that were and are caused by defendants' cigarettes. The State of Nevada has also expended millions in providing health care for its employees, the cost of which has been increased as a result of defendants' conduct.

377. Defendants have knowledge of the benefit conferred on them by the State's payment of health care costs for diseases resulting from the use of tobacco products sold in the State of Nevada by the defendants, which payments were foreseeable, given the defendants' knowledge of the health risks of their cigarettes and other tobacco products.

378. Defendants had a duty to the State and to the residents of the state: (1) to disclose all material facts about their products, (2) to refrain from any agreement that would restrain the development of a safer product, and (3) to refrain from targeting minors in order to induce their use of tobacco products in violation of State law. As set forth above, defendants intentionally breached these duties. As a result of this breach of duty and the suppression of evidence, defendants have successfully avoided the medical costs associated with use of their products and have passed those costs off to the State of Nevada.

379. Defendants have knowledge of the benefit conferred on them by the State's payment of health care costs for diseases resulting from use of tobacco products sold in the State of Nevada, which payments were foreseeable, given the defendants' knowledge of the health risks of their tobacco products.

380. While the State of Nevada pays the health care costs that result from the use of tobacco products as intended, defendants continue to reap billions of dollars in profits from the sale of their cigarettes and other tobacco products.

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381. Defendants have avoided regulations and the costs of disease, injuries, and deaths resulting from the normal use of their products. Defendants have been and are able legally to promote the sale of cigarettes and other tobacco products to the residents of the State of Nevada by continuing to misinform the federal and state authorities about the true carcinogenic, pathologic, and addictive qualities of their cigarettes and other tobacco products.

382. In direct contradiction to and in spite of the State of Nevada's specific statutory prohibitions, defendants have spent millions of dollars on programs designed to encourage minors to purchase and use their cigarettes and other tobacco products.

383. In equity and fairness, the defendants and their agents, aiders and abettors and co-conspirators, not the State of Nevada, should bear the costs of tobacco-related diseases. By avoiding their own duties to stand financially responsible for the harm done by their cigarettes and other tobacco products, defendants wrongfully have forced the State of Nevada to perform such duties and to pay the health care costs of tobacco-related disease. As a result, defendants have been unjustly enriched to the extent that taxpayers of the State of Nevada have had to pay these costs, which rightfully should be borne by defendants.

384. As a result of defendants' conduct, the State of Nevada has suffered and will continue to suffer substantial injuries, great and/or irreparable harm, and damages for which it is entitled to relief.

WHEREFORE, the State of Nevada prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court enjoin and restrain defendants and their officers, agents, servants and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect.

C. That the Court order defendants to publicly disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the issue of smoking and health.

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D. That the Court order defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party.

E. That the Court order defendants to fund clinical smoking cessation programs in the State of Nevada.

F. That the Court order defendants to pay restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

G. That the Court order defendants to disgorge all unjust profits from tobacco sales to minors, and from all other tobacco sales in the State of Nevada which defendants should not be allowed to retain.

H. That the Court order defendants to pay Plaintiff's costs and attorney fees and order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 9

INDEMNITY

385. The State of Nevada realleges and incorporates paragraphs 1 through 384 as if fully set forth here.

386. As a direct and proximate result of the breaches of duty and omissions of the defendants as alleged above, the State of Nevada was obligated to pay and has paid millions of dollars in the past for the provision of necessary medical care, facilities and services for certain of those aforementioned Nevada residents injured by the defendants' tobacco products and unable to afford and otherwise obtain such necessary medical care, facilities and services.

387. The State of Nevada was legally obligated to pay the aforementioned sums and did not conduct itself in any wrongful manner in being so obligated to pay and in paying the aforementioned sums.

388. The defendants have been unjustly enriched as a result.

389. In all fairness and justice, the defendants should indemnify the plaintiff for the provisions of necessary medical care, facilities and services for those aforementioned residents injured by the defendants' tobacco products.

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WHEREFORE, the State of Nevada prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court order defendants to indemnify the State of Nevada by paying restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

C. That the Court order defendants to pay Plaintiff's costs and attorney fees and order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 10

NEGLIGENCE

390. The State of Nevada realleges and incorporates paragraphs 1 through 389 as if fully set forth here.

391. The defendants had a duty to exercise reasonable care in the manufacture, sale and/or distribution of defendants' tobacco products.

392. The defendants breached that duty by the conduct alleged above.

393. As a result of defendants' breach, cigarettes and tobacco products were manufactured, sold and distributed in the State of Nevada and Medicaid recipients contracted diseases as a proximate result of the intended and foreseeable use of defendants' cigarettes and tobacco products. The State suffered damages as it was required to provide medical assistance to these Medicaid recipients.

WHEREFORE, the State of Nevada prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court order defendants to pay damages in an amount which is sufficient to repay the State of Nevada for the sums the State has expended because of the defendants' wrongful conduct and to provide restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

. . .

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C. That the Court order defendants to pay damages in restitution for the sums of money currently being paid by the State of Nevada for medical services and care to Medicaid recipients damaged by defendants' wrongful conduct and which will be paid in the future.

D. That the Court order defendants to pay Plaintiff's costs and attorney fees and order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 11

NEGLIGENCE PER SE

394. The State of Nevada realleges and incorporates paragraphs 1 through 393 as if set forth fully above.

395. Defendants' violations of NRS §§ 598.0903 *et seq.* and 201.110 in count I constitute negligence *per se*.

396. As a direct result of defendants' wrongful conduct, the State of Nevada has suffered and will continue to suffer substantial injuries and damages for which it is entitled to relief. Defendants' conduct proximately caused the State of Nevada's injuries and damages.

WHEREFORE, the State of Nevada prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court adjudge and decree that such conduct is unlawful negligence *per se*.

C. That the Court enjoin and restrain defendants and their officers, agents,servants and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect.

D. That the Court order defendants to publicly disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the issue of smoking and health.

E. That the Court order defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party.

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F. That the Court order defendants to fund clinical smoking cessation programs in the State of Nevada.

G. That the Court order defendants to pay restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

H. That the Court order defendants to disgorge all unjust profits from tobacco sales to minors, and from all other tobacco sales in the State of Nevada which defendants should not be allowed to retain.

I. That the Court order defendants to pay Plaintiff's costs and attorney fees and order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 12

STRICT LIABILITY FOR DEFECTIVE AND UNREASONABLY DANGEROUS PRODUCTS

397. The State of Nevada realleges and incorporates paragraphs 1 through 396 as if fully set forth here.

398. The residents of the State of Nevada have, for many years, consumed and used the defendants' cigarettes and tobacco products in the manner in which they were intended to be used, without any substantive alteration or change in the products.

399. The defendants' cigarettes and tobacco products were delivered to the residents of the State of Nevada in a condition that was unreasonably dangerous to the users. The defendants expected and intended for their products to be used by the residents of Nevada without substantial change to their inherently dangerous condition.

400. The defendants' cigarettes and tobacco products were unreasonably dangerous due to their design in that:

a. The products, particularly cigarettes, failed to perform as safely as an ordinary consumer would expect when used as intended; and

b. The risk of danger in the design of the products, particularly cigarettes, outweighed any benefits associated with their use.

401. In breaching their duties to the plaintiff, as described above, the defendants acted

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intentionally, recklessly, maliciously, and wantonly in that each defendant knew or should have known that their aforesaid breach of duty would be substantially certain to result in the injuries complained of herein.

WHEREFORE, the State of Nevada prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court order defendants to pay damages in an amount which is sufficient to repay the State of Nevada for the sums the State has expended because of the defendants' wrongful conduct and to provide restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

C. That the Court order defendants to pay damages in restitution for the sums of money currently being paid by the State of Nevada for medical services and care to Medicaid recipients damaged by defendants' wrongful conduct and which will be paid in the future.

D. That the Court order defendants to pay Plaintiff's costs and attorney fees and order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 13

BREACH OF EXPRESS AND/OR IMPLIED WARRANTIES

402. The State of Nevada realleges and incorporates paragraphs 1 through 401 as if fully set forth here.

403. The defendants made affirmations or promises through extensive advertising and promotion relating to their products regarding the health effect of their products to the public. The defendants affirmed or promised through their "Frank Statement" in 1954 to study the health effects of their products and to fully disclose the results of this research to the residents of the State of Nevada.

404. The aforementioned affirmations, as well as the extensive advertising of the defendants, became the basis of the bargain for many individuals, both in the beginning of their use of cigarettes and tobacco products, and their decision to continue their use. The residents of Nevada, including Medicaid recipients, relied on these continuing affirmations in

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buying and using the Tobacco Companies' products. The residents of Nevada relied on the defendants' skill or judgment in manufacturing a product fit for human consumption.

405. The defendants have breached both the express and implied warranties, of merchantability and fitness for intended use and should be held accountable for the damages inflicted as a result.

406. As a direct result of the defendants' breach of express and implied warranties, the plaintiffs have been damaged because they have been forced to incur medical expenses under the Medicaid program in the treatment of sickness, disease or injury caused by the defendants' conduct and have been forced to incur increased expenses for insurance premiums and medical costs for treatment for its employees and the employees of its political subdivisions.

WHEREFORE, the State of Nevada prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court order defendants to pay damages in an amount which is sufficient to repay the State of Nevada for the sums the State has expended because of the defendants' wrongful conduct and to provide restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

C. That the Court order defendants to pay damages in restitution for the sums of money currently being paid by the State of Nevada for medical services and care to Medicaid recipients damaged by defendants' wrongful conduct and which will be paid in the future.

D. That the Court order defendants to pay Plaintiff's costs and attorney fees and order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 14

PUNITIVE DAMAGES

407. The State of Nevada realleges and incorporates paragraphs 1 through 406 as though fully set forth here.

408. The defendants' conduct as described in this complaint was oppressive, fraudulent, and malicious and plaintiff is entitled, therefore, to an award of punitive damages against the

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defendants for the sake of example and by way of punishing the defendants.

Wherefore, the State of Nevada prays as follows:

A. That the defendants be ordered to pay punitive damages to the plaintiff according to proof in an amount sufficient to punish the defendants and to make an example of them in excess of $10,000.00.

B. That the Court order the defendants to pay the plaintiff's attorney fees and costs.

C. That the Court order such other and further relief as the Court deems just, necessary, and appropriate.

COUNT 15

PRAYER FOR FURTHER RELIEF AS TO ALL COUNTS

409. The State of Nevada realleges and incorporates paragraphs 1 through 408 as though fully set forth here.

410. As to all Counts the State of Nevada prays for prejudgment interest, as well as the plaintiffs' reasonable attorneys' fees, expert witness fees, and other costs of this action.

DATED: May 21, 1997.

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