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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

Judicial Council Coordination Proceeding
Special Title (Rule 1550(b))

FIREARMS CASES

Coordinated actions:

THE PEOPLE OF THE STATE OF
CALIFORNIA, by and through
San Francisco City Attorney Louise H.
Renne, et al.

v.

ARCADIA MACHINE & TOOL, et al.,

THE PEOPLE OF THE STATE OF
CALIFORNIA, by and through JAMES K.
HAHN, City Attorney of the City of
Los Angeles, et al.

v.

ARCADIA MACHINE & TOOL, et al.,

--[caption continues on next page]--

J.C.C.P. No. 4095

Superior Court of California, City and County
of San Francisco No. 303753

Superior Court of California, County of
Los Angeles No. BC 210894

Superior Court of California, County of
Los Angeles No. BC 214794

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO ANDREWS' MOTION
FOR JUDGMENT ON THE PLEADINGS**

Date: To Be Determined
Time: 8:30 a.m.
Dept: 65
Judge: Hon. Vincent P. DiFiglia

1
2 THE PEOPLE OF THE STATE OF
3 CALIFORNIA, ex rel. the County of
Los Angeles, et al.

4 v.

5 ARCADIA MACHINE & TOOL, et al.,
6
7

8 Plaintiffs respectfully request that Judicial Notice be given to the following:

- 9 1) Record of Los Angeles Board of Supervisor Hearing directing County Counsel to
10 take legal action against gun industry; per Evidence Code section 452(b), attached
11 as Exhibit A;
- 12 2) Opinion of the Attorney General, Op. No. 49-48, 15 Ops. Ag. 231, per Evidence
13 Code sections 451(a) and 452(a), attached as Exhibit B;
- 14 3) Third Amended Complaint, *Davis, et al. v. R.J. Reynolds Tobacco Company, et*
15 *al.*, Case No. 00706458 (San Diego Superior Court), coordinated in *Tobacco*
16 *Cases I*, J.C.C.P. No. 4041, per Evidence Code section 452(d), attached as
17 Exhibit C;
- 18 4) Fifth Amended Complaint, *County of Los Angeles, et al. v. R.J. Reynolds Tobacco*
19 *Company, et al.*, No. 707651 (San Diego Superior Court), coordinated in *Tobacco*
20 *Cases I*, J.C.C.P. No. 4041, per Evidence Code section 452(d), attached as
21 Exhibit D; and

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- 1 5) Record of Consent of District Attorney to City of West Hollywood filing suit
2 against the gun industry pursuant to Business & Professions Code section 17204,
3 per Evidence Code section 452(b), attached as Exhibit E.

4
5 Respectfully submitted,

6
7 DATED: January 29, 2003

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

8 /s/ Robert J. Nelson

9 By: _____
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EXHIBIT A



14.0 MISCELLANEOUS

40.

Additions to the agenda requested by Board members and the Chief Administrative Officer, which were posted more than 72 hours in advance of the meeting, as indicated on the green supplemental agenda.

25 40-A.

Recommendation as submitted by Supervisor Antonovich: Declare June 14 through 18, 1999 as "Flag Week" throughout Los Angeles County. **APPROVED**

See Supporting Document

Absent: None

Vote: Unanimously carried

26 40-B.

Recommendation as submitted by Supervisor Molina: Authorize the filing of appropriate lawsuits against the firearms *industry*, including engaging in cooperative efforts with other jurisdictions who wish to proceed with such litigation; request the Sheriff to continue preparing his report on the County's ability to collect data to track the incidence and costs of firearm violence, so that damages in a firearms lawsuit could reasonably be estimated; and instruct the Director of Health Services and other involved County departments to cooperate with County Counsel in providing any data needed to pursue this litigation. **BY COMMON CONSENT, HELD FOR DISCUSSION IN CLOSED SESSION**

DURING CLOSED SESSION THE BOARD TOOK THE FOLLOWING ACTIONS:

- A. AUTHORIZED THE COUNTY COUNSEL TO INITIATE APPROPRIATE LAWSUITS AGAINST THE FIREARMS *INDUSTRY*, AND ONCE THE ACTIONS HAVE BEEN FORMALLY COMMENCED, THE ACTIONS, THE DEFENDANTS AND OTHER PARTICULARS WILL BE DISCLOSED TO ANY PERSON UPON INQUIRY, EXCEPT AS OTHERWISE PROVIDED BY GOVERNMENT CODE SECTION 54957.1;
- B. REQUESTED THE SHERIFF TO CONTINUE PREPARING HIS REPORT ON THE COUNTY'S ABILITY TO COLLECT DATA TO TRACK THE INCIDENCE AND COSTS OF FIREARM VIOLENCE, SO THAT DAMAGES IN A FIREARMS LAWSUIT COULD REASONABLY BE ESTIMATED; AND
- C. INSTRUCTED THE DIRECTOR OF HEALTH SERVICES AND OTHER INVOLVED COUNTY DEPARTMENTS TO COOPERATE WITH COUNTY COUNSEL IN PROVIDING ANY DATA NEEDED TO PURSUE THIS LITIGATION

Recommendation as submitted by Supervisor Molina: Authorize the filing of appropriate lawsuits against the firearms industry, including engaging in cooperative efforts with other jurisdictions who wish to proceed with such litigation; request the Sheriff to continue preparing his report on the County's ability to collect data to track the incidence and costs of firearm violence, so that damages in a firearms lawsuit could reasonably be estimated; and instruct the Director of Health Services and other involved County departments to cooperate with County Counsel in providing any data needed to pursue this litigation. BY COMMON CONSENT, HELD FOR DISCUSSION IN CLOSED SESSION

DURING CLOSED SESSION THE BOARD TOOK THE FOLLOWING ACTIONS:

- A. AUTHORIZED THE COUNTY COUNSEL TO INITIATE APPROPRIATE LAWSUITS AGAINST THE FIREARMS INDUSTRY, AND ONCE THE ACTIONS HAVE BEEN FORMALLY COMMENCED, THE ACTIONS, THE DEFENDANTS AND OTHER PARTICULARS WILL BE DISCLOSED TO ANY PERSON UPON INQUIRY, EXCEPT AS OTHERWISE PROVIDED BY GOVERNMENT CODE SECTION 54957.1;
- B. REQUESTED THE SHERIFF TO CONTINUE PREPARING HIS REPORT ON THE COUNTY'S ABILITY TO COLLECT DATA TO TRACK THE INCIDENCE AND COSTS OF FIREARM VIOLENCE, SO THAT DAMAGES IN A FIREARMS LAWSUIT COULD REASONABLY BE ESTIMATED; AND
- C. INSTRUCTED THE DIRECTOR OF HEALTH SERVICES AND OTHER INVOLVED COUNTY DEPARTMENTS TO COOPERATE WITH COUNTY COUNSEL IN PROVIDING ANY DATA NEEDED TO PURSUE THIS LITIGATION

See Supporting Document

Absent: None

Vote: Supervisors Antonovich and Knabe voted n

EXHIBIT B

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not alter the fact that the association has disposed of a part of its real estate. Viewing the matter in this light carries out the purposes of the Fair and Exposition Fund by which the ultimate residue is to be used for sites for agricultural fairs and for the permanent improvement thereof. Funds for the purpose of providing sites and for permanent improvement of fair grounds are not diverted to general fair purposes. To read into the transaction a constructive conversion of the building into personal property would run counter to the apparent plan for the disposition of the ultimate remainder of the Fair and Exposition Fund.

We therefore conclude that in the situation described in the letter of inquiry with the assumptions we have made in addition thereto, the proceeds of the sale should be disposed of as set forth in section 88 of the Agricultural Code.

Opinion No. 49-48—April 27, 1950

SUBJECT: COUNTY COUNSEL OF LOS ANGELES, under section 21 of charter has exclusive charge of all civil actions in which county is party or is concerned, including action to abate nuisance and other civil actions on behalf of the people.

Requested by: DISTRICT ATTORNEY, LOS ANGELES COUNTY.

Opinion by: FRED N. HOWSER, Attorney General.
Bayard Rhone, Deputy.

The District Attorney of Los Angeles County has submitted the following question:

As between the County Counsel and the District Attorney of Los Angeles County, which is the proper officer to handle civil actions to abate public nuisances and other civil actions on behalf of the people?

The answer is:

The office of County Counsel of Los Angeles County was created by charter, and the duties thereof are specified in the charter. The Los Angeles County Charter specifically provides that the County Counsel shall have exclusive control and jurisdiction over all civil actions; and, therefore, the County Counsel is the proper officer to handle the civil actions above mentioned.

ANALYSIS

Historically the District Attorney, until recent times, has handled all of the legal work of the county, including both criminal and civil proceedings. In view of the fact that we are concerned mostly in this opinion with the provisions of the Los Angeles County Charter setting forth the duties of the County Counsel it will be unnecessary to go into the statutory history of the duties of the District Attorney. The office of County Counsel in Los Angeles County was created in 1913, and the duties set forth therein have been provided for in section 21 of the charter, which reads as follows:

"Section 21. The County Counsel shall represent and advise the board of supervisors and all county, township and school district officers, in all matters and questions of law pertaining to their duties, and shall have exclusive charge and control of all civil actions and proceedings in which the county, or any officer thereof, is concerned or is a party. He shall also act as attorney for the public administrator in the matter of all estates in which such officer is executor, administrator with the will annexed, or administrator, and the County Counsel shall, in every such matter, collect the attorney's fees allowed therein by law and pay the same into the county treasury."

In view of the fact that the county charter is silent as to the duties of the District Attorney, but does contain specific provisions relative to the County Counsel, it would appear that the District Attorney of Los Angeles County has all the duties set forth in Chapter 1, Part 3 of the Government Code, except those duties specifically enumerated in section 21 of the charter, and as to such duties the County Counsel is solely responsible. It will be noted that the legislature, in enacting this portion of the Government Code, set out specifically in one portion the duties of the District Attorney as public prosecutor and in a second article listed the other duties of the District Attorney, and then specifically provided that in counties where there was a County Counsel appointed pursuant to the provisions of the Government Code that the County Counsel should handle all of the duties of the District Attorney except those of public prosecutor. This clarification by the legislature is of no assistance, however, as far as concerns Los Angeles County, where the office of County Counsel has been created and the duties established by charter, rather than general law.

Turning back to the wording of section 21 of the charter, it will be noticed that the County Counsel shall represent and advise the Board of Supervisors and all county officers, and "shall have exclusive charge and control of all civil actions and proceedings in which *the county, or any officer thereof, is concerned or is a party.*" (Italics added.) The question has been raised of whether a county "is concerned" or is a party in a civil proceeding to abate a public nuisance. This problem involves the basic functions and duties of the county and its relationship to the state.

In *County of Los Angeles v. Riley* (1936), 6 Cal. 2d 625, 627, the Supreme Court held:

"Counties are not municipal corporations, but are political subdivisions of the state for purposes of government. (*Hill v. Board of Supervisors*, 176 Cal. 84 (167 Pac. 514); *Reclamation District v. Superior Court*, 171 Cal. 672 (154 Pac. 845).) With certain exceptions, the powers and functions of the counties have a direct and exclusive reference to the general policy of the state and are, in fact, but a branch of the general administration of that policy. (*County of Sacramento v. Chambers*, supra; *Singh v. Superior Court*, 44 Cal. App. 64 (185 Pac. 985).) Counties are vested by the state with a variety of powers, which the state itself may assume or resume and directly exercise. (*Reclamation District v. Superior Court*, supra; *County of San Mateo v. Coburn*, 130 Cal. 631 (63 Pac. 78,

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621); see, generally, 7 Cal. Jur. 387, sec. 3 et seq.). Counties perform many functions which are state functions, as distinguished from purely local functions, and expend large sums of money in the performance of those functions. Just as in the case of the cities, the spheres of operation of the counties and state overlap, but to a much greater degree. If the legislature, in enacting section 9(c), had expressly placed a limitation in the statute to the effect that the moneys appropriated to the counties should be expended only for certain state purposes, there can be no doubt at all that the section would be valid, even though the enumerated purposes could have been carried out with county funds. The appropriation of various amounts to counties from various funds for highway purposes is a typical illustration. (See, also, *Golden Gate Bridge etc. Dist. v. Felt*, 214 Cal. 308 (5 Pac. 2d 585).)"

In *County of Tulare v. City of Dinuba* (1928), 205 Cal. 111, the Supreme Court reviewed the various provisions of the Political Code relating to the powers and duties and the exercise thereof by counties and their various officers. In speaking of the duties of the District Attorney, the court states (at page 116):

"... the district attorney is the public prosecutor and must attend the courts and conduct on behalf of the people all prosecutions for public offenses and when not engaged in criminal proceedings in the superior court or in civil cases on behalf of the people must attend upon the magistrates when requested by them and perform other specific duties." (Italics added.)

The Supreme Court, in paraphrasing section 4153 of the Political Code as it existed at that time, relating to the duties of the District Attorney, used the words "civil cases on behalf of the people." There was no attempt to draw a fine line between civil cases on behalf of the people and civil cases in which the county is concerned. The court went on to state that it had set out the provisions of the Political Code as illustrative of the complete system of state, county and township government under which the public business of the state is conducted. Counties are governmental agencies of the state and the property entrusted to their governmental management is public property. The statute casts upon boards of supervisors and district attorneys the duty of protecting the public interests and to the end that there may not be a failure of performance of such duty the law subjects their official acts and duties to review, inspection, and supervision by still higher powers.

The counties under the provisions of Article XI, Section 11, of the Constitution, and the provisions of the Political and Government Codes are vested with authority to exercise within their jurisdiction the entire police power of the state, subject only to the control of the general laws. *People v. Valarde* (1920), 45 Cal. App. 520; *Sawyer v. Napa County* (1930), 108 Cal. App. 446. The power to regulate or prohibit conferred on the Board of Supervisors extends not only in cases of nuisances, but also to everything expedient for the preservation of the public health. *In re Jones* (1943), 56 Cal. App. 2d 658, 663-664.

Criminal cases brought by the District Attorney are of course brought in the name of the People of the State of Calif. (Cal. Const. Art. VI, sec. 20.)

Injunction proceedings to abate a public nuisance are often brought in the name of the People of the State of California. However, the name style of the action certainly would not be an indication of the division line of authority between the County Counsel and the District Attorney. A county may maintain an action to abate a nuisance, and may do so in its own name. *County of Sierra v. Butler* (1902), 136 Cal. 547, 550-551; *County of Yuba v. Kate Hayer Mining Co.* (1903), 141 Cal. 360, 363.

Both the County Counsel and the District Attorney have been asked to submit points and authorities. The County Counsel has cited the two cases immediately above to show that the county may bring abatement proceedings when county-owned property is involved. However, in *Reclamation Dist. v. Superior Court* (1916), 171 Cal. 672, the Supreme Court concluded that each case merely determined that the county could maintain such an action. The court further pointed out that the county is a political agency of the state, and that it holds its property on behalf of the state for governmental purposes.

Keith v. Hammel (1915), 29 Cal. App. 131, is one of the few cases commenting on this charter provision. The court says, at page 133:

"... The general effect of these provisions of charter and statute seems to be, not only that the conduct of actions in which the county is a party is committed to the charge and control of public officers, but it further appears to be the intention (in harmony with long-established principles) that the county shall be a party to actions and proceedings wherein the county 'is concerned.' From the many decisions of the courts of this and other states dealing with this subject, we derive the principle that in the conduct of the ordinary business of a county or city, where the care and protection of the rights of the corporation have been committed to public officers, the primary right goes with the duty belonging to those officers to control the ordinary business of the corporation without the interference of private citizens, even though they be taxpayers."

The court merely states the familiar rule (entirely independent of any charter provision) that a taxpayer may not maintain an action to recover money or property for the county or other body politic unless the county or other public officer have first had an opportunity to act.

In *Averill v. Superior Court* (1937), 23 Cal. App. 2d 621, the District Attorney of Madera County brought an action to abate a nuisance. The Board of Supervisors consented to a continuance but the District Attorney and Superior Court refused to continue the matter. The court stated that Political Code, Section 4041.22 gave the Board of Supervisors power to control the prosecution of actions where the county is a party to the action. The court held that the county was not a party—that the People of the State of California are the plaintiffs.

The County Counsel asserts in effect that the county is not concerned unless it is named as a party to the proceedings. This result would have been attained if the charter only said "is a party" and did not include the words "is concerned." It must be assumed the words "is concerned" were intended to have some meaning. By general law (Government Code, Section 26529) in counties having the office

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of County Counsel appointed pursuant to the Government Code, the County Counsel shall perform all of the legal functions except to act as public prosecutor. The Government Code does not use the term "is concerned" but it necessarily follows from the specific duties and responsibilities enumerated that the county is concerned. The "concern" is neither greater nor less merely because the duties are performed by one officer rather than another county officer. The fact that some injunctions are designed as a matter of general state policy to "supplement and facilitate the enforcement of the criminal law" does not change the concern of the county. The county is an agent of the state created, among other things, to enforce laws. Hence as such agent it "is concerned" with the enforcement of the laws by civil as well as criminal process.

We conclude, therefore, that pursuant to the provisions of section 21 of the Charter of Los Angeles County which provides that the County Counsel "shall have exclusive charge and control of all civil actions and proceedings in which the county, or any officer thereof, is concerned or is a party," that the County Counsel shall have exclusive control and charge of *all* civil actions and proceedings and that the District Attorney, pursuant to the provisions of Article 1, Chapter 1 of Part 3 of the Government Code, shall have the duties of a public prosecutor as listed therein.

Opinion No. 50-23—April 27, 1950

SUBJECT: PRISON SENTENCES: Adult Authority must impose minimum term required by Penal C. 3024, even though longer than maximum sentence provided by law for offense of which prisoner has been convicted and is being sentenced.

Requested by: DIRECTOR OF CORRECTIONS.

Opinion by: FRED N. HOWSER, Attorney General.
Willard A. Shank, Deputy.

The Director of Corrections has asked the following question:

Shall the maximum term of sentence and imprisonment provided in section 3024 of the Penal Code be imposed even though it exceeds the maximum term of an imprisonment provided by law for the public offense of which a person is convicted?

The conclusion reached may be summarized as follows:

The provisions of section 3024 of the Penal Code are mandatory and the Adult Authority must impose the minimum term of imprisonment required therein, even though it exceeds the maximum term of imprisonment provided by law for the public offense of which a person is convicted.

ANALYSIS

The factual situation presented by the Director of Corrections involves a person who has been convicted of violating section 337(a) of the Penal Code and this section provides that the punishment for this offense shall be imprisonment in the County Jail or the State Prison for not less than thirty days nor exceeding one year.

EXHIBIT C

F KENNETH E. MAITONE
Clerk of the Court
JUL 30 1997

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 and
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 (see attached list)
 Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN DIEGO**

20	GRAY DAVIS and JAMES ELLIS, On Behalf of the General Public,)	CASE NO. 00706458
21	Plaintiffs,)	
22	vs.)	THIRD AMENDED COMPLAINT FOR INJUNCTIVE AND EQUITABLE RELIEF
23	R.J. REYNOLDS TOBACCO COMPANY; BROWN)	
24	& WILLIAMSON TOBACCO CORPORATION;)	
25	BATUS HOLDINGS, INC.; BATUS, INC.; BRITISH)	
26	AMERICAN TOBACCO COMPANY, LTD.;)	
27	LIGGETT & MYERS; THE AMERICAN)	
28	TOBACCO COMPANY; B.A.T. INDUSTRIES)	
	P.L.C.; PHILIP MORRIS, INC.; THE COUNCIL)	
	FOR TOBACCO RESEARCH - U.S.A., INC.;)	
	THE TOBACCO INSTITUTE, INC.; LORILLARD)	
	TOBACCO COMPANY and DOES 1 through 500,)	
	Inclusive,)	THE HONORABLE ROBERT MAY DEPT. 37

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2 Defendants.)
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4 Plaintiffs GRAY DAVIS and JAMES ELLIS, on behalf the general public, by their
5 attorneys, allege against Defendants on information and belief, except those allegations which
6 pertain to the named Plaintiffs or to their attorneys, which are alleged on personal knowledge,
7 as follows:

8 **NATURE OF THE CASE**

9 1. Through a fraudulent course of conduct that has spanned decades, Defendants
10 have manufactured, promoted, distributed or sold tobacco products to Plaintiffs and millions of
11 California consumers, citizens and residents knowing, but denying and concealing, that their
12 tobacco products contain a highly addictive drug, known as nicotine, and have, unbeknownst to
13 the public, controlled and manipulated the amount and bio-availability of nicotine in their
14 tobacco products for the purpose and with the intent of creating and sustaining addiction.
15 Plaintiffs GRAY DAVIS and JAMES ELLIS, on behalf of the general public, seek equitable
16 and injunctive relief based upon Unlawful, Deceptive and Unfair Business Practices in
17 Violation of California Business and Professions Code §§17200 Et Seq. and 17500 Et Seq.

18 **JURISDICTION AND VENUE**

19 2. The Court has jurisdiction over this action pursuant to California Business and
20 Professions Code §17203. Millions of California residents purchased and used the Defendants'
21 tobacco products which were advertised, marketed, promoted and distributed in the State of
22 California. Moreover, several Defendants are corporations incorporated under the laws of the
23 State of California, which have their principal places of business in California, including:
24 Wayco-Speedy Bar, Inc.; and Kennedy Wholesale Company. The Defendants are all doing
25 business in the State of California, have received and continue to receive substantial
26 compensation and profits from the sale of tobacco products in the County of San Diego in the
27 State of California, and have made material omissions and misrepresentations in the County of
28 San Diego, State of California. At all times relevant herein, acts and conduct in furtherance of

1 a conspiracy, which is the hub of the wrongful conduct alleged herein, occurred in the State of
2 California.

3 3. Venue in this case is based upon California Code of Civil Procedure §395, in
4 that conduct of Defendants which forms the basis of this action occurred in the County of San
5 Diego, and at least one of the Defendants has its principal place of business in the County of
6 San Diego. Plaintiff GRAY DAVIS resides in the County of Los Angeles. Plaintiff JAMES
7 ELLIS resides in the County of Orange.

8 **PARTIES**

9 **A. Plaintiffs**

10 4. Plaintiffs GRAY DAVIS and JAMES ELLIS, residents of the State of
11 California, bring this action pursuant to California Business and Professions Code §17204 as a
12 private attorney-general. Because of the nature of the causes of action asserted herein, while
13 Plaintiffs possess standing to assert claims on behalf of the general public under Business and
14 Professions Code §§17200, et seq., they are not suing in any individual capacity for individual
15 claims for relief, and are claiming no individual injury. This case is a related case to *Cordova*
16 *v. Liggett, et al.*, San Diego Superior Court Case No. 651824. As such, it has been filed in San
17 Diego Superior Court.

18 **B. Defendants**

19 5. Defendant **R.J. Reynolds Tobacco Company** (hereinafter "R. J. Reynolds") is a
20 New Jersey corporation having its principal place of business located at Fourth and Main
21 Streets, Winston-Salem, North Carolina. Defendant **R.J. Reynolds Tobacco Company**
22 manufactures, advertises and sells Camel, Vantage, Now, Doral, Winston, Sterling, Magna,
23 More, Century, Bright Rite and Salem cigarettes throughout the United States and in California.

24 6. Defendant **Brown & Williamson Tobacco Corporation** (hereinafter "Brown &
25 Williamson"), **Batus Holdings, Inc.** and **Batus, Inc.** are Kentucky corporations, having their
26 principal place of business at 1500 Brown & Williamson Tower, Louisville, Kentucky.
27 Defendant **Brown & Williamson Tobacco Corporation, Batus Holdings, Inc.** and **Batus,**
28 **Inc.** manufactures, advertises and sells Kool, Barclay, BelAir, Capri, Raleigh, Richland,

1 Laredo, Eli Cutter and Viceroy cigarettes throughout the United States and in California.

2 7. Defendant **B.A.T. Industries P.L.C.** (hereinafter "B.A.T. Industries") and
3 **British American Tobacco Company, L.T.D.** (hereinafter "BATCO") are British
4 corporations having their principal place of business at Windsor House, 50 Victoria St.,
5 London. Through a succession of intermediary corporations and holding companies, B.A.T.
6 **Industries P.L.C.** and **BATCO** are the sole shareholder of **Brown & Williamson Tobacco**
7 **Corporation.** Through **Brown & Williamson, B.A.T. Industries P.L.C.** and **BATCO** have
8 placed cigarettes into the stream of commerce with the expectation that substantial sales of
9 cigarettes would be made in the United States and in California. In addition, **B.A.T.**
10 **Industries P.L.C.** and **BATCO** have conducted, or through its agents and/or co-conspirators
11 conducted, critical research for **Brown & Williamson Tobacco Corporation** on the issue of
12 smoking and health. Further, **Brown & Williamson Tobacco Corporation** is believed to have
13 sent to England research conducted in the United States on the issue of smoking and health in
14 an attempt to remove sensitive and inculpatory documents from United States jurisdiction, and
15 these documents were subject to the control of **B.A.T. Industries P.L.C.** **B.A.T. Industries**
16 **P.L.C.** and **BATCO** have been involved in the conspiracy described herein and the actions of
17 **B.A.T. Industries P.L.C.** and **BATCO** have effected and caused harm in California.

18 8. Defendant **Liggett & Myers** (hereinafter "Liggett") is a Delaware corporation
19 having its principal place of business located at 700 West Main Street, Durham, North Carolina
20 27701. Defendant **Liggett & Myers** manufactures, advertises and sells Chesterfield, Decade,
21 L&M, Pyramid, Dorado, Eve, Stride, Generic and Lark cigarettes throughout the United States
22 and in California.

23 9. Defendant **The American Tobacco Company** (hereinafter "American
24 Tobacco") is a Delaware corporation having its principal place of business located at Six
25 Stamford Forum, Stamford, Connecticut 06904. Defendant **The American Tobacco**
26 **Company** manufactures, advertises and sells Lucky Strike, Pall Mall, Tareyton, Malibu,
27 American, Montclair, Newport, Misty, Barkeley, Iceberg, Silk Cut, Silva Thins, Sobrania, Bull
28 Durham and Carlton cigarettes throughout the United States and in California. On December

1 21, 1994, **The American Tobacco Company** was purchased by **B.A.T. Industries, P.L.C.**
2 which, on information and belief, has succeeded to the liabilities of **The American Tobacco**
3 **Company** by operation of law or as a matter of fact.

4 10. Defendant **Philip Morris Incorporated** (hereinafter "Philip Morris") is a
5 Virginia corporation having its principal place of business located at 120 Park Avenue, New
6 York, New York. Defendant **Philip Morris Incorporated** manufactures, advertises and sells
7 Philip Morris, Merit, Cambridge, Marlboro, Benson & Hedges, Virginia Slims, Alpine,
8 Dunhill, English Ovals, Galaxy, Players, Saratoga and Parliament cigarettes throughout the
9 United States and in California.

10 11. Defendant, **The Council for Tobacco Research - U.S.A., Inc.** (hereinafter
11 "CTR"), successor in interest to the Defendant Tobacco Industry Research Committee
12 ("TIRC"), is a nonprofit corporation organized under the laws of the State of New York having
13 its principal place of business at 900 3rd Avenue, New York, New York 10022.

14 12. Defendant **The Tobacco Institute, Inc.** (hereinafter "Tobacco Institute") is a
15 New York corporation, having its principal place of business located at 1875 "I" Street, N.W.,
16 Suite 800, Washington, D.C., Defendant **The Tobacco Institute, Inc.** has since its
17 incorporation in 1958, operated as the public relations and lobbying arm of the tobacco
18 companies.

19 13. Defendant **Lorillard Tobacco Company** (hereinafter "Lorillard") is a Delaware
20 corporation having its principal place of business located at One Park Avenue, New York, New
21 York 10016. Defendant **Lorillard Tobacco Company** manufactures, advertises and sells Old
22 Gold, Kent, Triumph, Satin, Max, Spring, Newport and True cigarettes throughout the United
23 States and in California.

24 14. Plaintiffs are informed and believe and based thereon allege that at all times
25 herein mentioned, the true names and capacities, whether individual, corporate, associate or
26 otherwise of Defendants DOES 1 through 500, inclusive, are unknown at this time to Plaintiffs
27 who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe
28 and thereon allege that each of the Defendants designated herein by such fictitious name were

1 involved in the distribution, manufacturing, promotion or sale of tobacco products, and/or were
2 in some way negligently or otherwise legally responsible for the events and happenings herein
3 referred to which were a legal cause and substantial factor in bringing about injuries and
4 damages to Plaintiffs as herein alleged.

5 15. Beginning as early as the 1950s, and continuing until the present day,
6 Defendants, and each of them, entered into an agreement with the intentional and unlawful
7 purpose and effect of restraining and suppressing research on the harmful effects of smoking;
8 restraining and suppressing the dissemination of information on the addictive effects of nicotine
9 and the harmful effects of smoking; and restraining and suppressing the research, development,
10 production, and making of a safer cigarette. In furtherance of Defendants' conspiracy,
11 Defendants lend encouragement, substantial assistance, and otherwise aided and abetted each
12 other with respect to these wrongful acts, and the other wrongful acts set forth herein. As a
13 result of the conspiracy, the Defendants are vicariously, and jointly and severally liable with
14 respect to each of the actions described herein.

15 16. At all times herein mentioned, Defendants, and each of them, were acting as an
16 agent of each of the other named and unnamed Defendants, and at all times herein mentioned
17 were acting within the scope, purpose and authority of that agency and with the full knowledge,
18 permission and consent of each of the other Defendants.

19 17. Each Defendant is sued individually as a primary violator and as a co-
20 conspirator and the liability of each arises from the fact that each Defendant entered into an
21 agreement with the other Defendants and third parties to pursue, and knowingly pursued, the
22 common course of conduct to commit or participate in the commission of all or part of the
23 unlawful acts, tortious acts, plans, schemes, transactions, and artifices to defraud alleged herein,
24 including but not limited to: the manipulation of nicotine content and the bio-availability of
25 nicotine in tobacco products and the misrepresentation, concealment and suppression of
26 information regarding the addictive properties of nicotine, and falsely advertising, marketing
27 and selling cigarettes as safe, non-addictive, and not containing levels of nicotine manipulated
28 by Defendants to cause addiction. All Defendants did and continue to do business in the

1 County of San Diego, made contracts to be performed in whole or in part in the County of San
2 Diego, manufactured, tested, sold, offered for sale, supplied, or placed in the stream of
3 commerce, cigarettes and tobacco products, or in the course of business, materially participated
4 with others in so doing, and performed such acts as were intended to, and did, result in the sale
5 and distribution in the County of San Diego of cigarettes and tobacco products from which
6 Defendants derived substantial revenue. All Defendants also caused tortious injury by acts or
7 omissions in the County of San Diego, or caused tortious injury in the County of San Diego by
8 acts or omissions outside the County of San Diego.

9 18. The liability of each Defendant arises from the fact that each committed and
10 engaged in a conspiracy to accomplish the commission of all or part of the unlawful and
11 tortious conduct alleged herein, and intentionally, knowingly, with evil motive, intent to injure,
12 ill will or fraud and without legal justification or excuse, engaged in the conduct herein alleged.

13 19. At all pertinent times, Defendants acted through their duly authorized agents,
14 servants, and employees who were then acting in the course and scope of their employment,
15 and in furtherance of the business of said Defendants, with the knowledge, gratification and
16 consent of their officers, directors and managing agents.

17 20. Defendants listed above and their predecessors and successors in interest did
18 business in the County of San Diego, made contracts to be performed in whole or in part in
19 California, and manufactured, tested, sold, offered for sale, supplied or placed in the stream of
20 commerce, or, in the course of business, materially participated with others in so doing, tobacco
21 products which the Defendants knew to be dangerous and hazardous and which the Defendants
22 knew would be substantially certain to cause injury to Plaintiffs and others similarly situated.
23 Defendants committed and continue to commit tortious and other unlawful acts in the County
24 of San Diego.

25 21. The Defendants, and their predecessors and successors in interest, performed
26 such acts as were intended to and did result in the sale and distribution of tobacco products in
27 the County of San Diego, and the consumption of tobacco products by citizens and residents of
28 the County of San Diego.

1 22. The term "addictive" used in this complaint is synonymous and interchangeable
2 with the term "dependence-producing." Both terms refer to the persistent and repetitive intake
3 of various substances despite evidence of harm and a desire to quit. Some scientific
4 organizations have replaced the term "addictive" with "dependence-producing" to shift the
5 focus to dependent patterns of behavior and away from the moral and social issues associated
6 with addiction. Both terms are equally relevant for understanding the drug effects of nicotine.

7
8 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

9 A. **The Industry Conspiracy On Smoking And Health: Deceiving The Public About**
10 **Disease And Death.**

11 23. The Tobacco companies reap enormous profits from their manufacture and sale
12 of cigarettes throughout the United States. The Tobacco companies' earnings for the last year
13 alone exceeded six billion dollars. The Tobacco companies make, advertise and sell cigarettes
14 despite their knowledge of the following facts: More than 10 million Americans have died as a
15 result of smoking cigarettes; more than 400,000 Americans die every year as a result of
16 smoking cigarettes; almost one death in every five is due to a smoking-related illness; the
17 leading cause of preventable death in the United States today is smoking cigarettes; smoking
18 causes cardiovascular disease and is responsible for approximately one third of all heart disease
19 deaths; smoking causes almost all lung and throat cancers and is responsible for approximately
20 one-tenth of all cancer deaths; smoking causes various pulmonary diseases, including
21 emphysema; smoking causes stillbirths and neonatal deaths among the babies of mothers who
22 smoke; and, cigarettes may contain any number of approximately 700 additives, including a
23 number of toxic and dangerous chemicals. Congressman Henry A. Waxman (D. Calif.),
24 Chairman, House Subcommittee on Health and the Environment, stated recently that "cigarettes
25 are the single most dangerous consumer product ever sold." Similarly, smokeless tobacco
26 products cause mouth cancer, gum recession and other oral health problems. More than 40% of
27 patients who develop mouth cancer die within five years of diagnosis. Despite the
28 overwhelming weight of scientific evidence that smoking cigarettes and using smokeless

1 tobacco pose serious health risks, and despite the gruesome statistical legacy left by the tobacco
2 industry, approximately 50 million Americans continue to smoke cigarettes, including 3,000
3 new teenage smokers daily, and millions more continue to use smokeless tobacco because they
4 are addicted to these products. More specifically, they are addicted to nicotine, the drug in
5 tobacco that causes an addiction similar to that suffered by users of heroine and cocaine.

6
7 **1. The Early Days—Claiming Cigarettes are Healthful**

8 24. Although tobacco in various forms has been consumed by Americans for many
9 centuries, it was not until the 19th century that an easily inhalable tobacco product, the
10 cigarette, became widely popular. With the introduction of the Bonsack mechanized cigarette-
11 rolling machine in 1884 by W. Duke and Sons, cigarettes were mass-produced and distributed
12 and sold nationwide.

13 25. In 1881, Duke's factory produced 9.8 million cigarettes, 1½ percent of the total
14 market. But five years later, W. Duke and Sons were able to manufacture 744 million
15 cigarettes—more than the national total in 1883. By 1890, Duke's competitors, who themselves
16 had now become mechanized, joined forces with him to establish the American Tobacco
17 Company. By the turn of the century, 9 out of every 10 cigarettes carried the Duke label.
18 Shortly after the American Tobacco Company was formed, the State of North Carolina started
19 an antitrust lawsuit against it — and other such litigation followed. In May, 1911, the
20 American Tobacco Company was dissolved by order of the Supreme Court, to be succeeded by
21 four large firms — Liggett and Myers, Reynolds, Lorillard, and American — plus many
22 smaller ones.

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

1 it produces. "

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

7 28. The health-claim advertising campaigns by the Tobacco companies were
8 patently false, misleading, deceptive and fraudulent. These campaigns were disseminated
9 nationally in popular magazines, press, radio and television and were calculated to induce non-
10 smokers to commence smoking and to induce smokers to continue in their addiction to their
11 harm and injury and to the damage of residents of the County of San Diego.

12 29. In the 1930s through the 1950s, in response to what industry spokesmen referred
13 to as "the health scare," the tobacco companies made express claims and warranties as to the
14 healthiness of their products with reckless disregard to the falsity of their claims and the
15 consequential adverse impact on consumers. Examples of these health warranties include the
16 following: Old Gold - "Not a cough in a Carload"; Camel - "Not a single case of throat
17 irritation due to smoking Camels"; Philip Morris - "The throat-tested cigarette. "

18 30. In 1942, Brown and Williamson claimed that Kools would keep the head clear
19 and give extra protection against colds.

20 31. In 1952, Liggett & Myers conducted a test for advertising purposes to
21 demonstrate the absence of harmful effects of smoking Chesterfields on the nose, throat, and
22 affected organs. The tests were conducted by Arthur D. Little, Inc. and were designed so as to
23 have no real scientific value. Nonetheless, its conclusion that smoking Chesterfields had no
24 harmful effect on the organs in question was widely publicized and the purported results used
25 to assure the general public that Chesterfields were harmless.

26 32. During the 1950s, Liggett & Myers sponsored the nationally popular Arthur
27 Godfrey radio and television show wherein health claims were made based on the alleged
28 scientific studies assuring, "Smoking Chesterfields would have no adverse effects on the throat,

1 sinuses or affected organs." Arthur Godfrey subsequently contracted lung cancer caused by
2 smoking cigarettes.

3 33. Earlier consumer-oriented ads from the 1930s and 1940s often carried wide-
4 ranging medical claims that placed cigarette-touting physicians in the company of endorsers
5 such as Santa Claus ("Luckys are easy on my throat"), movie stars, sports heroes, and steady-
6 nerved circus stars. Similar ads even appeared in medical journals, where ads were directed
7 solely at physicians. One, for example, touted the Camel cigarettes booth at the American
8 Medical Association's 1942 Annual Meeting.

9 34. In the New York State Journal of Medicine, Chesterfield ads began running in
10 1933. They often carried claims such as, "Just as pure as the water you drink and practically
11 untouched by human hands."

12 35. The Tobacco companies sponsored cigarette ads in the New England Journal of
13 Medicine, Journal of the American Medical Association ("JAMA") and The Lancet from the
14 1930s through the 1950s.

15 36. For 15 years, Philip Morris used various claims, including one it ran in the New
16 York State Medical Journal in 1935 touting studies that purportedly showed Philip Morris
17 cigarettes were less irritating. An ad by the company in a 1943 issue of the *National Medical*
18 *Journal* read: "Don't smoke' is advice hard for patients to swallow. May we suggest instead
19 'Smoke Philip Morris'? Tests showed three out of every four cases of smokers' cough cleared
20 on changing to Philip Morris. Why not observe the results for yourself?" An ad by the
21 company in JAMA in 1949 stated: "Why many leading nose and throat specialists suggest,
22 'Change to Philip Morris!' "

23 37. Other companies added different angles for physicians. Camel cigarettes paid
24 tribute to medical pioneers and concluded: "Experience is the best teacher . . . experience is the
25 best teacher in cigarettes, too." Old Gold reacted to early negative medical studies with the
26 slogan: "If pleasure's your aim, not medical claims..." Some companies hired attractive women
27 to deliver cigarette samples to physicians and the patients in their waiting rooms.

28 38. The appearance of landmark studies such as the 1952 JAMA article on smoking

1 and bronchial carcinoma, by Alton Ochsner, M.D., and others prompted JAMA's decision to
2 ban cigarette ads from their journal.

3 39. During the 1950s the Tobacco companies employed yet another method of
4 deception in manufacturing and advertising to boost sales to counter the "health scare" — "The
5 Filter Derby" and "Tar Wars." The Tobacco companies manufactured filtered cigarettes that
6 were advertised with explicit and implicit warranties of tar/nicotine content and health claims.
7 The Tobacco companies' health claims and claims as to the effectiveness of the filters in
8 removing tar and nicotine were knowingly deceptive when made, and were made with reckless
9 disregard for the health risks to the cigarette smokers.

10
11 2. The "Big Scare" and Creation of the Tobacco Industry Research Committee
12 ("TIRC")

13 40. The industry conspiracy began as early as the 1950s, when cigarette
14 manufacturers were confronted with the publication of several scientific studies which sounded
15 grave warnings on the health hazards of cigarettes. For example, in 1952 Dr. Richard Doll, a
16 British researcher, conducted a statistical analysis which demonstrated that lung cancer was
17 more common among people who smoked, and that the risk of lung cancer was directly
18 proportional to the number of cigarettes smoked.

19 41. A report published in December, 1953 by Dr. Ernst L. Wynder of the Sloan-
20 Kettering Institute disclosed to the scientific community and to the Tobacco companies, a
21 definitive link between smoking and cancer. In these tests, researchers painted condensed
22 cigarette smoke onto the backs of mice. Malignant tumors grew in 44% of the mice. While
23 previous statistical and epidemiologic studies indicated a relationship between smoking and
24 cancer, Dr. Wynder's study demonstrated a direct biological link between smoking and cancer.
25 (Although Defendants have sought to discredit the Wynder findings, recently disclosed
26 documents include a 1962 letter from Lorillard to Dr. Wynder regarding his work establishing
27 smoking to be a carcinogen and the principal cause of lung cancer, and stating that Lorillard
28 "considered [Dr. Wynder's] work above reproach as usual.")

1 42. The Doll and Wynder studies generated widespread public concern about the
2 health hazards of cigarettes. The widespread reporting of these studies caused what cigarette
3 company officials later called the "Big Scare."

4 43. Confronted with this evidence, the presidents of the leading tobacco companies
5 met at an extraordinary gathering in the Plaza Hotel in New York City on December 15, 1953.
6 Hill and Knowlton, a public relations agency, coordinated the meeting and later prepared a
7 memorandum summarizing the discussions of that day. According to the Hill and Knowlton
8 memorandum:

9 a. The companies had not met together since two previous antitrust decrees had
10 prohibited "many group activities." However, the companies viewed the current problem "as
11 being extremely serious and worthy of drastic action."

12 b. Another indication of the seriousness of the problem was "that salesmen in the
13 industry are frantically alarmed and that the decline in tobacco stocks on the stock exchange
14 market has caused grave concern.

15 c. The problem was viewed entirely in terms of a public relations problem, as
16 opposed to a public health concern. The industry leaders "feel that the problem is one of
17 promoting cigarettes and protecting them from these and other attacks that may be expected in
18 the future" and that the industry "should sponsor a public relations campaign which is positive
19 in nature and is entirely 'pro-cigarettes.' "

20 d. All of the leading manufacturers, except Liggett, agreed to "go along" with the
21 public relations strategy. Liggett decided not to participate at that time "because that company
22 feels that the proper procedure is to ignore the whole controversy." The group discussed
23 forming an association "specifically charged with the public relations function."

24 f. Hill and Knowlton was to play a central role in the industry association. "The
25 current plans are for Hill and Knowlton to serve as the operating agency of the companies,
26 hiring all the staff and disbursing all funds."

27 44. Thus, the Tobacco Industry Research Committee ("TIRC") was conceived and
28 born. Five of the Big Six cigarette manufacturers were original members. Liggett did not join

1 until 1964, the sanitar that the Surgeon General issued its report on smoking and health
2 and concluded that cigarette smoking was a cause of lung cancer. Also in 1964, TIRC changed
3 its name to the Council for Tobacco Research ("CTR").

4 45. Nine days after the December 15, 1953 meeting, Hill and Knowlton presented a
5 detailed recommendation to the cigarette manufacturers and others. The recommendation
6 recognized the importance of gaining the public trust, and avoiding the appearance of bias, if
7 the "pro-cigarette" industry strategy was to be successful. According to the memorandum:

8 a. "[The grave nature of a number of recently highly publicized research reports on
9 the effects of cigarette smoking . . . have confronted the industry with a serious problem of
10 public relations."

11 b. "It is important that the industry do nothing to appear in the light of being
12 callous to considerations of health or of belittling medical research which goes against
13 cigarettes."

14 c. "The situation is one of extreme delicacy. There is much at stake and the
15 industry group, in moving into the field of public relations, needs to exercise great care not to
16 add fuel to the flames."

17
18 3. The "Frank Statement to Cigarette Smokers"

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

25 RECENT REPORTS on experiments with mice have given wide publicity to a
26 theory that cigarette smoking is in some way linked to lung cancer in human
27 beings. Although conducted by doctors of professional standing, these
28 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 arch 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 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 those years, critics have held it responsible for practically every disease of the human body. One by one 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 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 group consisting initially of the undersigned. This group will be known as the 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.

47. In this advertisement, the participating Tobacco companies recognized their "special responsibility" to the public, and promised to learn the facts about smoking and health. The participating Tobacco companies promised to sponsor independent research on the subject, claiming they would make health a basic responsibility, paramount to any other consideration

1 in their business. The participating Tobacco companies also promised to cooperate closely with
2 public health officials. At the time these promises were made, the Tobacco companies had no
3 intent to honor their promises. In fact, these promises so publicly and dramatically made to the
4 public, the citizens of California and government regulators, have been breached over and over
5 again.

6 48. The defendants promised full public disclosure of relevant research through a
7 joint TOBACCO INSTITUTE, INC. and TIRC advertisement captioned "A Statement About
8 Tobacco and Health":

9 We recognize that we have a special responsibility to the public
10 — to help scientists determine the facts about tobacco and health,
11 and about certain diseases that have been associated with tobacco
12 use.

13 We accepted this responsibility in 1954 by establishing the
14 Tobacco Industry Research Committee, which provides research
15 grants to independent scientists. We pledge continued support of
16 this program of research until the facts are known. . . .

17 We shall continue all possible efforts to bring the facts to light.
18 In that spirit we are cooperating with the Public Health Service in
19 its plan to have a special study group review all presently
20 available research. . . .

21 49. The tobacco industry repeatedly emphasized their commitment to full public
22 disclosure of CTR-sponsored research as well as their own research: "We are cooperating in
23 efforts to learn and to make known all the facts." The tobacco industry, through their public
24 relations arm, and with the assistance of THE TOBACCO INSTITUTE, INC., and HILL
25 KNOWLTON, INC., often repeated its representation that it promoted the disclosure of all
26 relevant facts: "The Tobacco Institute believes that the American public is entitled to complete,
27 authenticated information about cigarette smoking and health."

28 50. For example, during an appearance on the June 7, 1955, CBS television program
"See It Now" with Edward R. Murrow on the subject "Cigarettes and Lung Cancer," the
following exchange took place between the TIRC's Scientific Director, Dr. Clarence Cook
Little and Arthur Morse:

Mr. Morse: Dr. Little, have any cancer-causing agents been identified in

1 cigarettes?

2 Dr. Little: No. None whatever, either in cigarettes or in any product of
3 smoking. . . .

4 Mr. Morse: Suppose the tremendous amount of research going on, including
5 that of the Tobacco Industry Research Committee, were to reveal
6 that there is a cancer-causing agent in cigarettes. What then?

7 Dr. Little: Well, if it was found by somebody working under a tobacco
8 industry research grant, it would be made public immediately and
9 just as broadly as we could make it, and then efforts would be
10 taken to remove that substance or substances.

11 The fact is, however, that when cancer-causing "agents" became known to the tobacco industry,
12 this information was not "made public immediately." Efforts were made to remove certain
13 carcinogenic substances, and while some efforts appeared to be somewhat successful, these
14 projects were concealed and terminated because the industry knew that once revealed, it could
15 no longer claim it had no knowledge of the dangers of smoking and it could no longer market
16 the "unsafe" cigarettes in a profitable manner, if at all, once the "debate" about smoking and
17 health ended.

18 51. At the same time, the tobacco industry widely touted the "independent" and
19 "objective" nature of the CTR, disclaiming any affiliation with or influence of the tobacco
20 industry in the workings of the CTR. These representations extended to claims of independent
21 decision-making regarding the origination and funding of research proposals.

22 52. The truth is simply quite different. "When CTR researchers found out that
23 cigarettes were bad and it was better not to smoke, we didn't publicize that" in press releases,
24 says Dorothea Cohen, who for 24 years until her retirement in 1989 wrote summaries of grantee
25 research for the CTR's annual report. "The CTR is just a lobbying thing. We were lobbying for
26 cigarettes."

27 53. During the 1970s, THE TOBACCO INSTITUTE, INC. promoted the supposed
28 independence of the CTR in its editorial-styled advertisement entitled "The question about
29 smoking and health is still a question":

{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.

1 And . . . industry has committed itself to this task in the most
2 objective and scientific way possible

3 Completely autonomous, CTR's research is directed by a board of
4 ten scientists and physicians This board has full authority
and responsibility for policy, development and direction of the
research effort.

5 54. The tobacco company defendants did the same. For Example, in 1984, R.J.
6 REYNOLDS TOBACCO CO, advertised in The New York Times: "Studies which conclude
7 that smoking causes disease have regularly ignored significant evidence to the contrary. These
8 scientific findings come from research completely independent of the tobacco industry."

9 55. In truth and in fact, the publicized efforts of the tobacco industry to fairly
10 research the issues and to fully and accurately report the results to the public, not only their
11 research but the CTR's research as well, were a public relations hoax. Any meaningful research
12 which was conducted and detrimental to the industry was concealed and/or terminated, and it
13 was never the tobacco industry's intention to discover or publish the truth about the health
14 hazards or addictive properties associated with smoking. In sharp contrast to the tobacco
15 industry's promotion of the CTR's "independence" and "objectivity," the tobacco industry
16 guided the CTR to sponsor research tending to prove that other causes existed for the illnesses
17 being attributed to smoking, both through its grant-in-aid program and special projects, all in an
18 effort to perpetuate doubts about links between smoking and disease rather than to uncover the
19 truth about the health hazards attributable to smoking, all resulting in an increase in, or a
20 decrease in the fall-off of, cigarette sales.

21 4. "Scientific" Research as a Public Relations Front: Control of TIRC by Hill and
22 Knowlton.

23 56. As had been proposed at the December 15, 1953 meeting, the tobacco
24 companies (except Liggett), through their agent Hill and Knowlton, operated and effectively
25 controlled TIRC.

26 57. TIRC was physically established in the Empire State Building, one floor below
27 the Hill and Knowlton offices. Internal documents confirm that Hill and Knowlton, and not
28 independent scientists, actually ran TIRC. A "highly confidential" internal memo reported:

1 "Since the [TIRC] had no headquarters and no staff, Hill and Knowlton,
2 Inc. was asked to provide a working staff and temporary office space. As
3 a first organizational step, public relations counsel assigned one of its
4 experienced executives, W.T. Hoyt, to serve as account executive and
5 handle as one of his functions the duties of executive secretary for the
6 TIRC."

7 58. In 1954, thirty-five staff members of Hill and Knowlton worked full or part time
8 for TIRC. In that year, TIRC spent \$477,955 on payments to Hill and Knowlton, over 50% of
9 TIRC's entire budget.

10 59. After lulling the public into a false sense of security concerning smoking and
11 health, the TIRC continued to act as a front for tobacco Industry interests. Despite the initial
12 public statements and posturing, and the repeated assertions that they were committed to full
13 disclosure and vitally concerned with public health, the TIRC failed to make the public health a
14 concern. Rather, the TIRC, at the direction of the Tobacco companies, acted to protect tobacco
15 industry profits and failed to protect the public health. A coordinated, industry-wide strategy
16 was designed to actively mislead and confuse the public about the true dangers associated with
17 smoking cigarettes. Rather than work for the good of the public health and sponsor
18 independent research, as it had promised, the Tobacco companies, acting through the
19 TIRC/CTR, concealed, undermined and distorted information coming from the scientific and
20 medical community.

21 60. By the spring of 1955, the self-defense strategy recommended by Hill and
22 Knowlton and implemented by the industry through the "Frank Statement" was largely
23 successful. Hill and Knowlton reported to TIRC:

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

28 **B. The Role Of Tobacco Lawyers And Tobacco Lobbyists**

61. The general counsel of the major cigarette manufacturers, through joint meetings

1 to review and direct proposals for scientific research for the cigarette industry, aided in the
2 conspiracy of the tobacco industry to defraud the public on the issue of tobacco and health.

3 62. The Defendants designed a litigation strategy over the years to conceal, delay,
4 and to run up consumers expenses in a war of attrition. For example, a memo written by J.
5 Michael Jordan, an attorney for Defendant R.J. Reynolds Tobacco Company, noted: "[The
6 aggressive posture we have taken regarding depositions and discovery in general continues to
7 make these cases extremely burdensome and expensive for Plaintiffs' lawyers, particularly sole
8 practitioners. To paraphrase General Patton, the way we won these cases was not by spending
9 all of Reynolds' money, but by making that other son of a bitch spend all his."

10 63. Additionally, corporate officials of the Tobacco companies and the Tobacco
11 Trade Associations have attempted wrongfully to create a privilege for various documents that
12 they wish to conceal by sending such documents through their legal departments and law firms
13 in order that they might claim the documents to be protected by the attorney-client or attorney
14 work-product privileges.

15 64. Through CTR, the cigarette manufacturers have used lawyers and the claim of
16 attorney/client privilege to insulate CTR-funded research projects from disclosure to the public
17 and to government officials. This conduct demonstrates the falsity of the industry
18 representations jointly to fund objective research and to report the results of that research to the
19 public.

20
21 **1. "Special Projects"**

22 65. Since 1966 (or perhaps even earlier), a series of research grants designated as
23 "special projects" were developed by the defendants in a manner so that culpable information
24 regarding the origination, true reasons for funding, and possibly the results of these projects
25 would allegedly receive the protection of the attorney-client privilege and/or attorney work
26 product doctrine. The "special projects" division was under the auspices of the CTR, although
27 the tobacco industry insisted at all relevant times that the "special projects" division was
28 managed entirely separately from the CTR. However, the CTR's Scientific Director, Executive

1 Officers, and staff involved in the approval and/or administering of special projects of the
2 CTR along with industry attorneys and employees, most of which were published with the
3 misleading imprimatur of the independent CTR. The claimed purpose of the "special projects"
4 division was to sponsor research relevant to refuting the links between smoking and disease
5 and/or finding alternate causes for those diseases associated with the use of tobacco products, as
6 well as addiction, in order to develop a field of expert witnesses for public relations and defense
7 purposes in tort suits against the tobacco industry. Consistent with this purpose, the tobacco
8 industry's counsel were substantially involved in strategic and specific decision-making within
9 the "special projects" division.

10 66. Although the tobacco industry represented to the public that the research
11 conducted under the auspices of the CTR would be both independent and made public, the
12 "special projects" research detrimental to the industry was not publicized, nor did the CTR
13 inform the public of the difference between its "special projects" and its Scientific Advisory
14 Board approved grant-in-aid program in releasing special project reports, nor was the existence
15 of the "special projects" division disclosed.¹ In addition to this association between the CTR
16 and the tobacco industry, the channeling of selective research proposals into either the CTR or
17 the "special projects" division, depending upon the subject matter of the study, and the shared
18 research between the two, belies the tobacco industry's public representations that the CTR was
19 an independent, objective body.

20 67. Evidence of the commingling and cooperation between the CTR and the "special
21 projects" division dates back until at least 1966. For example:

22 (a) According to a 1966 letter, a CTR research project was assigned to the
23 "special projects" division.

24 (b) Scientists working in conjunction with the tobacco industry's litigation
25

26 ¹ Most of the results of these lawyer-initiated and approved
27 "special projects" which were approved in conjunction with and
28 administered by the CTR, were distributed to the public as if they
were submitted by wholly independent outside investigators
receiving monies for research from an independent granting agency.

1 efforts were simultaneously touted as "independent" CTR-sponsored scientists.

2 (c) The testimony of Dr. F.G. Colby in Haines supports the conclusion that
3 the CTR's scientific efforts were commingled with the tobacco industry's legal concerns. Dr.
4 Colby characterized himself as a person wearing two hats. Number one, he was in charge of
5 R&D information for the CTR. Number two, he was responsive to the legal departments of the
6 tobacco industry.

7 68. The research performed by the CTR was selectively channeled and disclosed,
8 based upon a determination of usefulness to the tobacco industry's defensive litigation tactics
9 opposing claims against the tobacco industry, undercutting the tobacco industry's specific
10 representations that decisions on CTR project funding were made by completely independent
11 scientific advisors to the CTR without associations to the tobacco industry, as well as the
12 tobacco industry's promise to disclose all relevant information the CTR learned to the public
13 concerning the adverse health effects related to their tobacco products. Furthermore, that
14 epidemiological studies relevant to determining the links between smoking and disease were
15 undertaken by the individual company defendants or directed into the "special projects"
16 division and thereafter concealed, support the contention that the CTR research made available
17 to the public was not fully relevant to the issues which the CTR had promised to investigate,
18 nor was a full and fair disclosure of all CTR research or the individual company defendants'
19 research. In sum:

20 (a) All defendants recognized and knew of the serious health risks
21 attributable to cigarette smoking through their own internal research and/or research they had
22 sponsored;

23 (b) Despite the tobacco industry's knowledge to the contrary, defendants
24 mounted a major public relations effort to create doubt in the public's mind as to the hazards of
25 cigarette smoking; and

26 (c) The CTR "special projects" program as well as each of the individual
27 company defendants sponsored research supportive of the tobacco industry's defense litigation
28 strategies, concealed detrimental information and used other information in conjunction with

1 the tobacco industry's public relations campaign, thereby tainting the information released and
2 the advertised independence and objectivity of the CTR.

3 69. One mechanism that CTR used to suppress research results that implicated
4 smoking in disease was selectively to involve lawyers, and then invoke the attorney/client
5 privilege to prevent the disclosure of harmful information. CTR used the term "special
6 projects" to mean a project that carried a risk of a negative result that might have to be
7 suppressed. "Special projects" were selected and monitored by industry lawyers to prevent
8 disclosure. One Philip Morris official characterized CTR as a "front" for performing "special
9 projects."

10 70. Notes prepared at a 1981 meeting of the cigarette industry's Committee of
11 General Counsel state: "When we started the CTR Special Projects, the idea was that the
12 scientific director of CTR would review a project. If he liked it, it was a CTR special project.
13 If he did not like it, then it became a lawyers' special project. . . . We were afraid of discovery
14 for FTC and Aviado, we wanted to protect it under the lawyers. We did not want it out in the
15 open."

16 71. The sole purpose of the "Special Projects" division within CTR was to conceal
17 research that was harmful to the tobacco industry and to promote and develop research and
18 expert witnesses needed for the defense of tort litigation. Incriminating reports and documents
19 contained within this division were passed through attorneys and are now claimed by the
20 Defendants to be privileged.

21

22 **C. The Recently-Disclosed Incriminating Documents From The CTR**

23 72. Documentary evidence supports the contention that the CTR was not an
24 independent research body, but rather was (and remains) the tobacco industry's agent, and that
25 the CTR's research was (and is) guided by the tobacco industry in coordination with litigation
26 and public relations efforts. For example, the minutes of a December 17, 1965 meeting of the
27 Committee of Counsel, a Tobacco Institute committee of the chief counsels for the member
28 tobacco company defendants, describe the oversight role that lawyers played in the monitoring

1 of projects that were selected for funding:

2 It is understood that both CTR, in respect of its special projects,
3 and the Ad Hoc Committee (a committee of tobacco company
4 lawyers, scientific directors, and executives who monitored the
5 CTR special projects) will as occasion warrants, but upon no
6 fixed schedule, report the status of all projects as they proceed to
7 General Counsel.

8 The October 6, 1966 minutes of a September 30, 1966 CTR meeting transmitted via an October
9 11, 1966 letter from the law firm of Shook, Hardy & Bacon state:²

10 Progress reports on special projects by Ad Hoc committee. The
11 special projects identified at SP-103 and SP-104 assign the CTR
12 and the TI the responsibility of investigating: (1) "specific
13 refutation of misleading statements regarding cigarette smoking
14 commonly appearing in anti-smoking propaganda;" and (2)
15 "collection of 'predictions which have not come true.'"

16 This statement strongly indicates that "special projects" and the CTR coordinated and
17 commingled their efforts in a public relations campaign to create doubt about links between
18 smoking and disease. Further, this document demonstrates that the "special projects" of the
19 CTR were carried out by the CTR and the Tobacco Institute and were overseen in part by the
20 tobacco company defendants' Ad Hoc Legal Committee, a committee comprised of inside and
21 outside counsel for the tobacco company defendants.

22 73. An April 9, 1984 letter written by Shook, Hardy & Bacon attorney Patrick M.
23 Sirridge to the general counsel of the tobacco company defendants recommended hiring (and/or
24 renewing the contracts of) specific scientists to undertake research projects under the auspices
25 of and administered by the purportedly independent CTR:

26 Dr. Seltzer has requested renewal of his CTR Special Project for
27 the period July 1, 1984 through June 30, 1985 in the amount of
28 \$70,000 . . . We have discussed Dr. Seltzer's project with Dr.
Sommers at CTR and he favors its renewal. We also recommend
approval of the project. (emphasis added)

74. CTR manipulation through the siphoning of relevant projects is also evidenced
by the notes of the September 10, 1981 Committee of General Counsel:

2

Shook, Hardy & Bacon represent and have represented BROWN &
WILLIAMSON, LORILLARD and PHILIP MORRIS at various times.

1 STEVENS: "I need to know what the historical reasons were for
2 the difference between the criteria for lawyers' special projects
and CTR special project." ...

3 JACOB: "When we started the CTR Special Projects, the idea
4 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
5 it became a lawyers' special project."

6 STEVENS: "He took offense re scientific embarrassment to us,
but not to CTR."

7 JACOB: "With Spielberg, we were afraid of discovery for
8 FTC and Aviado, we wanted to protect it under the lawyers. We
did not want it out in the open."

9
10 75. No evidence could be more damning. These minutes and notes explicitly
11 acknowledge that the supposedly "independent" scientific director of the CTR channeled
12 research into "special projects" for the tobacco industry's public relations, legislative and
13 litigation efforts. Equally disturbing is the tobacco industry's announced practice of using the
14 "special projects" division in order to shield damaging research results from both the public and
15 the federal government and to hide a researcher's financial ties. Another document,
16 memorializing the same meeting captioned "Notes from the September 10, 1981 Meeting of
17 Company Counsel and Ad Hoc Committee members" is even more explicit. Page one of the
"Notes" states as follows:

18 E.J.: Difference between CTR and Special Four (lawyers'
19 projects). Director of CTR reviews special projects — if project
20 was problem for CTR, use Special Four. Also, if there are work-
product claims, need the lawyers' protection, e.g., CTR's past
21 director, Bill Gardiner, didn't think much of Rowe's work;
Special Four financed him and he is now published, e.g.,
22 motivational research that was done during the FTC investigation
was done through Special Four because of possibility that CTR
23 would be subpoenaed. E.g., Joe Janus' current study of cohort
effect (those born in 1890-1910) is a full CTR project — Special
24 Four gave interim support.

25 76. Further, during the 1960s, the CTR's Literature Retrieval Division was turned
26 over to the lawyers to use in defendants' public relations efforts, defending against litigation
27 and proposed regulation and so that the entire body of work could be designated as "protected"
28 under the attorney-client privilege and/or work product doctrine.

1 77. Other evidence has come to light regarding the individual company defendants,
2 interference and control of CTR. In 1968, the CTR contracted with Mason Research Institute
3 ("Mason") in Dorchester, Massachusetts to evaluate "smoking machines" for animal inhalation
4 studies and conduct toxicity tests on rodents. As the study drew to a close in 1972, Mason
5 researcher Miasnig Hagopian was astonished when scientists from the CTR and from R.J.
6 REYNOLDS began turning up weekly at his lab, where he says they sat for ours taking notes.
7 They made sure that only the most genetically vigorous (that is, cancer-resistant) rodents were
8 going to be used, he says, and dictated which cigarettes and how many puffs were administered
9 to them. "It got to the point where they were directing the course of the study," says Dr.
10 Hagopian. "It was nowhere near as objective as if it had been funded by' the government."

11 78. Internal documents also reveal the tobacco industry's influence and control over
12 the CTR. For example, a November 6, 1978 Memorandum from Shook, Hardy & Bacon
13 attorney Donald Hoel regarding an Industry Research Committee meeting of October 26, 1978,
14 in Lexington, Kentucky, states:

15 After some further discussion, Janet and Arnie Henson expressed
16 American Tobacco Company's view that CTR must be
17 maintained but needed new people. It must be more politically
18 oriented. They felt that CTR must look at what is happening and
19 what others are doing to see what questions can be raised, etc.
The approach must be steady, slow and conservative. They must
find skeptical scientists. . . . The staff at CTR also needed to be
more tobacco oriented with a skeptical view.

20 This document demonstrates that the defendants intentionally manipulated the CTR as a whole,
21 in addition to designating defensive and public relations research projects as CTR "special
22 projects." The defendants' "Frank Statement" did not promise the public the creation of a
23 politically oriented research body. As the above memo indicates, AMERICAN TOBACCO
24 attorney and CTR Director Janet C. Brown of the law firm of Chadbourne & Parke³ and
25 AMERICAN TOBACCO in-house counsel, Executive Vice-President and Chief Financial
26 Officer Arnold Henson acknowledged not only that the CTR was politically oriented, but also

27 3
28 Chadbourne & Parke represent AMERICAN TOBACCO in this
litigation.

1 that it needed to be even more politically oriented. In addition, the staff of the "independent"
2 CTR, who already advised attorneys for the defendants on CTR "special projects," according to
3 the AMERICAN TOBACCO needed to be "more tobacco oriented with a skeptical view."

4 79. A 1978 internal PHILIP MORRIS document, memorializing statements made by
5 Shook, Hardy & Bacon partner William Shinn, admits that the CTR was an industry "shield"
6 and "front." Shinn admits that the defendants created the CTR and continued to use the CTR
7 for its public relations value, its value in defense of litigation, legislation and regulation, as well
8 as for its overt value as a source and conduit for disinformation:

9 As a means of introduction, Bill Shinn described the history,
10 particularly in relation to the CTR. CTR began as an
11 organization called Tobacco Industry Research Council (TIRC) It
12 was set up as an industry "shield" in 1954. That was the year
13 statistical accusations relating smoking to diseases were leveled
14 at the industry; litigation began; and the Wynder/Graham reports
15 were issued. CTR has helped our legal counsel by giving advice
16 and technical information, which was needed at court trials. CTR
17 has provided spokesmen for the industry at Congressional
18 hearings. The monies spent on CTR provides a base for
19 introduction of witnesses.

20 Bill Shinn feels that "special projects" are the best way that
21 monies are spent. On these projects, CTR has acted as a "front";
22 however, there are times when CTR has been reluctant to serve in
23 that capacity....

24 Getting away from the historical story, Bill Shinn mentioned that
25 the "public relations" value of CTR must be considered and
26 continued.... A very interesting point, made by Bill Shinn, is the
27 opposition's, "the case is closed with regard to smoking and
28 disease." ... 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.... There is a "CTR basket"
which must be maintained for "PR" purposes.... It is interesting
that this proposal by Shinn is somewhat in line with the thinking
we had planned to present to the Committee later on in the day.

23 November 17, 1978 Memorandum from R.B. Seligman to the CTR file re: New York Meeting,
24 November 15, 1978 (emphasis added).

25 80. In 1972, Hugh Fudenberg, an immunologist, received a CTR special project
26 grant to determine whether some people are genetically predisposed to emphysema. Early
27 results indicated that as many as 10% might be. Dr. Fudenberg planned "to warn high-risk
28 people not to smoke," he says, but before he could his funding was discontinued without

1 explanation.

2 81. In addition to halting research of special project grant recipients when research
3 results were not to the defendants' liking, the defendants also terminated CTR contract research
4 when results could potentially harm the industry. The CTR in the 1960s began placing certain
5 researchers under contract rather than funding grants as it had since the inception of the TIRC.
6 Placing a researcher under contract as opposed to a grant gave the defendants the right to
7 control the design of the study, as well as the right to control the publication of the results. This
8 contrasts sharply with the TIRC's and CTR's public representation that it "exerts no influence
9 upon the grantees" and that they "may freely publish what they find as they choose."

10 82. For example, the defendants interfered with the CTR sponsored research of Dr.
11 Fredrick Homburger, founder of the BioResearch Institute in Cambridge, Massachusetts. Dr.
12 Homburger exposed Syrian hamsters to smoke twice a day for 59 to 80 weeks; 40% of those of
13 a cancer-susceptible strain and 4% of a resistant strain developed malignant tumors. Before
14 publishing the study in 1974, Dr. Homburger sent a manuscript to Dr. Robert C. Hockett, then
15 Scientific Director of the CTR. Dr. Homburger says he had to do so because halfway through
16 his study, the CTR had changed it from a grant to a contract "so they could control publication
17 — they were quite open about that."

18 83. Next, Dr. Hockett and the CTR's counsel, attorney Ed Jacob, of the law firm
19 Jacob Medinger Finnegan & Hart,⁴ went to Dr. Homburger and told him specifically how his
20 results should be published. "They didn't want us to call anything cancer. They wanted it to be
21 pseudo-epitheliomatous hyperplasia, and that is a euphemism for lesions preceding cancer.
22 And we said no, this isn't right. It is a cancer." Dr. Homburger added that Mr. Jacob told him
23 he would "never get a penny more" if the paper was published without making the changes.

24 84. Dr. Homburger compromised. At the last minute, he changed the final proofs to
25 read "micro-invasive" cancer, meaning a microscopic malignancy. Despite this, his lab was

26
27 ⁴ Jacob Medinger Finnegan & Hart have been and continue to be
28 at various time national counsel for U.S. TOBACCO and R.J.
REYNOLDS.

1 never funded by the CTR again. Later, Dr. Homburger regretted he had used the milder
2 wording, stating flatly: "It was cancer beyond any question, not only in our opinion but in the
3 view of the experts who looked at the slides."⁵

4
5
6
7 **2. "Deadwood"**

8 85. At least one cigarette company used similar tactics to suppress and avoid
9 disclosure of its internal research on smoking and disease. At a time when the company was
10 resisting discovery in a number of personal injury lawsuits, Brown & Williamson's general
11 counsel, J. Kendrick Wells, recommended in a memorandum dated January 17, 1985, that
12 much of the company's biological research be declared "deadwood" and shipped to England.
13 He recommended that no notes, memos or lists be made about these documents. Wells stated,
14 "I had marked certain of the document references with an X . . . which I suggested were
15 deadwood in the behavioral and biological studies area. I said that the 'B' series are 'Janus'
16 series studies and should also be considered as deadwood." ("Janus" was a name of a project
17 that attempted to isolate and remove the harmful elements of tobacco.) Wells further
18 recommended that the research, development and engineering department also should
19 undertake "to remove the deadwood from the files."

20
21 **3. The Best Insurance the Industry Can Buy**

22 ⁵
23 A confidential 1974 memo from the CTR's public relations
24 consultant Leonard Zahn details how he had surreptitiously
25 arranged the cancellation of a press conference at a scientific
26 convention in Atlantic City by Dr. Homburger: "Got press
27 conference killed without [Homburger] knowing why or how
28 He came into the press room . . . and nicely hastened out the
door. . . . P.S. I doubt if you or Tom will want to retain this
note." Dr. Homburger had planned "to tell the press that the
tobacco industry was attempting to suppress important scientific
information about the harmful effects of smoking."

1 86. In 1973, a former 24-year employee of CTR confirmed publicly that the joint
2 industry research efforts were not objective: "When CTR researchers found out that cigarettes
3 were bad and it was better not to smoke, we didn't publicize that. The CTR is just a lobbying
4 thing. We were lobbying for cigarettes."

5 87. The industry has congratulated itself on a brilliantly conceived and executed
6 strategy to create doubt about the charge that cigarette smoking is deleterious to health without
7 actually denying it. A 1962 memo stated that they had handled the emergency (of the Wynder
8 report) effectively, by treating the public health threat as a public relations problem that was
9 solved for the self-preservation of the industry's image and profit. One Defendant's executive
10 called the CTR the best, cheapest insurance the tobacco industry can buy, noting that without it
11 the Tobacco companies would have to invent CTR or would be dead.

12 88. CTR-sponsored research projects were directed away from research that might
13 add to the evidence against smoking. When CTR-sponsored research did produce unfavorable
14 results, however, the information was distorted or simply suppressed. For example, Dr. Freddy
15 Homburger, a researcher in Cambridge, Massachusetts, undertook a study of smoke exposure
16 on hamsters. According to Dr. Homburger, he received a grant from CTR which was changed
17 half-way through the study to a contract "so they could control publication — they were quite
18 open about that. " Dr. Homburger has testified that when the study was completed in 1974, the
19 Scientific Director of CTR and a CTR lawyer "didn't want us to call anything cancer" and that
20 they threatened Dr. Homburger with "never get[ting] a penny more" if his paper was published
21 without deleting the word cancer.

22 89. An internal CTR document describes how Dr. Homburger attempted to call a
23 press conference about the incident and how CTR stopped it: "He . . . was to tell the press that
24 the tobacco industry was attempting to suppress important scientific information about the
25 harmful effects of smoking. He was going to point specifically at CTR. I arranged later that
26 evening for it to be canceled. Homburger was given a cordial welcome and nicely hastened out
27 the door. P. S. I doubt if you or Tom will want to retain this note."

28 90. Not content with the holding strategy employed by the TIRC and the

1 CTR, the Tobacco companies advocated a more offensive role through their lobbying arm,
2 the Tobacco Institute. This tobacco industry-supported group actively seeks to increase doubt
3 about the negative health effects of smoking by suggesting that there are alternative
4 explanations to the data. One "theory" detailed how individual genetic makeups predisposed
5 individuals to illnesses. Another, the "multi-factorial hypothesis," asserted that multiple factors
6 should be blamed, i.e., food additives, viruses, occupational hazards, air pollution or stress, for
7 causing cancer. The tobacco industry financed, supported and encouraged the manufacture of
8 fraudulent science.

9
10 **D. Repeated False Promises To The Public**

11 91. The public disinformation strategy employed by the Tobacco companies and the
12 Tobacco Trade Associations was a strategy best described as "see no evil, hear no evil, and
13 speak no evil" concerning the health effects of cigarette smoking. A publication called
14 Tobacco and Health (later, Tobacco and Health Research) was created by the Tobacco
15 companies and the Tobacco Trade Associations and was used by them to disseminate false
16 information and create confusion over the causal connection between cigarette smoking and
17 disease. It was distributed to the press, doctors, and health officials. The "Criteria For
18 Selection" of articles for publication included an example of a report in which smoking-
19 associated diseases are questioned.

20 92. The January 15, 1968 issue of True Magazine contained an article written by
21 Stanley Frank called, "To Smoke or Not to Smoke —That is Still the Question." The article
22 dismissed the evidence against smoking as "inconclusive and inaccurate" and claimed that
23 "[s]tatistics alone link cigarettes with lung cancer . . . it is not accepted as scientific proof of the
24 cause and effect. " A few months later, a similar but shorter article appeared in the National
25 Enquirer entitled "Cigarette Cancer Link is Bunk" written by "Charles Golden" (a fictitious
26 name commonly used by the Enquirer.) The real author was Stanley Frank. Two million
27 reprints of the True Magazine article were distributed to physicians, scientists, journalists,
28 government officials, and other opinion leaders with a small card which stated, "As a leader in

1 your profession and community, you will be interested in reading this story from the January
2 issue of True Magazine about one of today's controversial issues." The cost for this was paid by
3 Brown and Williamson, Philip Morris and R.J. Reynolds. It was subsequently disclosed that
4 author Frank had been paid \$500 to write the article, by Joseph Field, a public relations
5 professor working for Brown and Williamson. Brown and Williamson reimbursed Field for
6 that amount.

7 93. Other public statements by the Defendants over the years have repeated the
8 misrepresentations that the Industry was dedicated to the pursuit and dissemination of the
9 scientific truth regarding smoking and health.

10 94. For example, the Tobacco Institute in 1970 ran an advertisement captioned "A
11 Statement About Tobacco and Health" which stated:

12 a. "We recognize that we have a special responsibility to the
13 public—to help scientists determine the facts about tobacco and
14 health, and about certain diseases that have been associated with
tobacco use. "

15 b. "We accepted this responsibility in 1954 by establishing
16 the Tobacco Industry Research Committee, which provides
research grants to independent scientists. We pledge continued
support of this program of research until all the facts are known. "

17 c. "Scientific advisors inform us that until much more is
18 known about such diseases as lung cancer, medical science
19 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."

20 d. "We shall continue all possible efforts to bring the facts to
21 light. "

22 95. Also, in 1970, the Tobacco Institute ran an advertisement captioned, "The
23 question about smoking and health is still a question. " In this advertisement, the Tobacco
24 Institute stated:

25 a. "[A] major portion of this scientific inquiry has been
26 financed by the people who know the most about cigarettes and
have a great desire to learn the truth ... the tobacco industry."

27 b. "[T]he industry has committed itself to this task in the
most objective and scientific way possible."

28 c. "In the interest of absolute objectivity, the tobacco

1 industry has supported totally independent research efforts with
2 completely nonrestrictive funding."

3 d. "Completely autonomous, CTR's research is directed by a
4 board of ten scientists and physicians ... This board has full
5 authority and responsibility for policy, development and direction
6 of the research effort."

7 e. "The findings are not secret."

8 f. "From the beginning, the tobacco industry has believed
9 that the American people deserve objective, scientific answers."

10 96. Again, in 1970, the Tobacco Institute stated, "The Tobacco Institute believes
11 that the American public is entitled to complete, authenticated information about cigarette
12 smoking and health. " The Tobacco Institute further stated that, "The tobacco industry
13 recognizes and accepts a responsibility to promote the progress of independent scientific
14 research in the field of tobacco and health."

15 97. In direct contrast to what the Tobacco companies and Tobacco Trade
16 Associations were telling the public, a memo from Tobacco Institute Vice President Fred
17 Panzer to President Horace Carnegie dated May 1, 1972, acknowledges that the industry had
18 employed a single strategy for nearly 20 years to defend itself on three major fronts: litigation,
19 politics, and public opinion. This strategy consisted of "creating doubt about the health charge
20 without actually denying it—advocating the public's right to smoke without actually urging
21 them to take up the practice—encouraging objective scientific research as the only way to
22 resolve the question of health hazard." Panzer said this strategy had been successful on the
23 litigation front and had "helped make possible an orderly retreat" on the political front. but that
24 the situation had deteriorated on the public-opinion front. To remedy the public-opinion
25 problem, he proposed that the industry supply the public with "ready-made credible
26 alternatives" to the prevalent view that smoking causes cancer, such as genetic and
27 environmental explanations for smoking-related diseases.

28 98. Internal TIRC, CTR and Tobacco Institute documents confirm the defendants'
fraud:

a. An April 9, 1962 internal TIRC memorandum from
Associate Scientific Director J. Morrison Brady to Scientific

1 Director Clarence Cook Little states: "Historically, it would seem
2 that the 1954 emergency was handled effectively. From this
3 experience there arose a realization by the tobacco industry of a
4 public relations problem that must be solved for the self-
5 preservation of the industry."

6 b. Another document states: "When the products of an
7 industry are accused of causing harm to users, certainly it is the
8 obligation of that industry to endeavor to determine whether such
9 accusations are true or false. Money spent for such purpose
10 should not be regarded as a charitable contribution but as a
11 business expense — an expense necessary to keep that industry
12 alive. In view of the billions of dollars of annual sales of our
13 industry our expenditures for health research has been of a
14 minimal order."

15 c. A May 1, 1972 internal TOBACCO INSTITUTE
16 memorandum from TOBACCO INSTITUTE Vice President of
17 Public Relations Frederick Panzer to TOBACCO INSTITUTE
18 President Horace Kornegay states: "For nearly twenty years, this
19 industry has employed a single strategy to defend itself on three
20 major fronts — litigation, politics, and public opinion. While the
21 strategy was brilliantly conceived and executed over the years
22 helping us win important battles, it is only fair to say that it is not
23 — nor was it intended to be — a vehicle for victory. On the
24 contrary, it has always been a holding strategy, consisting of . . .
25 creating doubt about the health charge without actually denying
26 it.... In the cigarette controversy, the public — especially those
27 who are present and potential supporters (e.g. tobacco state
28 congressmen and heavy smokers) — must perceive, understand,
and believe in evidence to sustain their opinions that smoking
may not be the causal factor."

99. Despite overwhelming scientific evidence, and the confirmation of this evidence
by their own internal research, the cigarette manufacturers and their trade associations continue
to this day to repeat — over and over, in a unified stance — that there is no causal connection
between cigarette smoking and any adverse effects and that cigarette smoking is not addictive.
These representations — which are fraudulent, misleading, deceptive, and untrue — rest at the
center of the industry's ongoing conspiracy and combination to market and profit from a
product it knows is deadly and addictive. As Addison Yeaman, a former BROWN &
WILLIAMSON general counsel and ex-chairman of the CTR, reaffirmed in a February 1993
article which appeared in the Wall Street Journal: "[T]he passage of time hasn't altered his
view expressed at a council meeting in 1975: 'The CTR is [the] best and cheapest insurance the
tobacco industry can buy, and without it, the industry would have to invent CTR or would be

1 dead."

2
3 100. These representations were made despite a substantial body of evidence,
4 including evidence developed by the cigarette manufacturers themselves, dating from as early
5 as 1962, indicating that nicotine is not only addictive, but is the reason why people smoke and
6 that smoking cigarettes causes adverse health effects.

7 101. The cigarette manufacturers continue to deny that nicotine is addictive and
8 instead use various misleading euphemisms to describe the role of nicotine, such as
9 "satisfaction," "impact," "strength," "rich aroma" and "pleasure." Nonetheless, there is
10 widespread agreement in the medical and scientific communities that the primary, if not sole,
11 function of nicotine is to provide a pharmacological effect on the smoker that leads to
12 addiction.

13 102. An advertisement placed by Philip Morris in newspapers across the country in
14 April 1994, affirmatively represented that Philip Morris does not "manipulate" nicotine levels
15 in its cigarettes, and that "Philip Morris does not believe that cigarette smoking is addictive."

16 103. R.J. Reynolds placed a similar advertisement in newspapers across the United
17 States in 1994 stating that "we do not increase the level of nicotine in any of our products in
18 order to addict smokers. Instead of increasing the nicotine levels in our products, we have in
19 fact worked hard to decrease tar and nicotine" R.J. Reynolds' advertisement then touted its
20 use of "various techniques that help us reduce the tar (and consequently the nicotine) yields of
21 our products."

22 104. These statements mislead the consuming public because, as alleged above,
23 Philip Morris and R.J. Reynolds use various sophisticated techniques to increase the nicotine
24 content in their cigarettes and the actual nicotine delivery to the smokers.

25 105. The recent disclosures of the sworn testimony of a former research chief for
26 Brown & Williamson Tobacco Corporation, Dr. Jeffrey S. Wigand, and former Philip Morris
27 scientists, Jerome Rivers, Dr. Ian L. Uydess and Dr. William Farone, directly contradicted the
28 industry's denial of nicotine manipulation.

1 **E. The Tobacco Company Defendants' Active Participation In The Fraud**

2 106. The fraudulent conduct at issue arose from a concentrated effort because of "a
3 general feeling that an industry approach as opposed to an individual company approach was
4 highly desirable." Thus, the companies entered into a "gentlemen's agreement" in the 1950s
5 referenced in a 1968 internal PHILIP MORRIS draft memorandum which stated:

6 We have reason to believe that in spite of gentlemen [sic]
7 agreement from the tobacco industry in previous years that at
8 least some of the major companies have been increasing
9 biological studies within their own facilities.

10 107. As indicated by this memo, the individual companies were performing certain
11 research on their own, in addition to the joint industry research. But the fundamental
12 understanding and agreement remained intact — that harmful information and activities would
13 be restrained, suppressed, and/or concealed. This included restraining, suppressing, and
14 concealing research on the health effects of smoking, including the addictive qualities of
15 cigarettes, and restraining, concealing, and suppressing the research and marketing of such
16 products as safer cigarettes because such a cigarette, if put on the market, "would seriously
17 indict them for having sold other types of cigarettes that didn't contain this [carcinogenic
18 activity] for example." Examples for each company follow:

19 **R.J. REYNOLDS TOBACCO COMPANY**

20 108. In the late 1960s, R.J. REYNOLDS had a state-of-the-art biological laboratory
21 in Winston-Salem nicknamed "the mouse house" where scientists began to uncover information
22 regarding the mechanism of smoke-related diseases. As the Company developed information
23 that some considered detrimental to the industry, a decision to shut down the project was made
24 by R.J. REYNOLDS. R.J. REYNOLDS never distributed the information uncovered. Other
25 R.J. REYNOLDS research determined that: (a) smoke was damaging the lungs of rabbits at the
26 most basic level, thus shedding light on how this damage was caused; (b) pulmonary surfactant
27 was being damaged by smoke and thus was damaging air sacs deep in the lungs; and (c) the
28 smoke appeared to trigger an increase in lysolecithin in the lung which appeared to damage the

1 lung by shooting holes in the lung membrane.

2 109. Despite this information, R.J. REYNOLDS subsequently took out
3 advertisements to keep the "debate" alive by arguing that there remains a controversy about
4 whether smoking causes disease. For example, in 1984 R.J. REYNOLDS began a multi-
5 million dollar advertising campaign with ads headed "Can We Have An Open Debate About
6 Smoking?" The advertisement concluded that: "Studies which conclude that smoking causes
7 disease have regularly ignored evidence to the contrary...." As recently as January of 1990 the
8 manager of public relations at R.J. REYNOLDS wrote the principal of a public school that:
9 "Long before the present criticism began the tobacco industry in a sincere attempt to determine
10 what harmful effects, if any, smoking might have on human health established the Council for
11 Tobacco Research U.S.A." The letter went on to note: "Despite all the research going on the
12 simple and unfortunate fact is that scientists do not know the cause or causes of the chronic
13 diseases reported to be associated with smoking." Finally the letter states: "We would
14 appreciate your passing this information along to your students."

15

16 PHILIP MORRIS U.S.A.

17 110. In 1956, PHILIP MORRIS realized that decreased irritation from smoking could
18 be a "partial elimination of a potential cancer hazard." In the 1970s, internal research
19 demonstrated that PHILIP MORRIS' executives knew of the powerfully addictive nature of
20 nicotine And cigarettes. In 1972 William L. Dunn, Jr., a senior research scientist at PHILIP
21 MORRIS, stated: "Without nicotine the argument goes there would be no smoking." Dunn
22 went on to note: "Think of a cigarette pack as a storage container for a day's supply of
23 nicotine.... Think of the cigarette as a dispenser for a dose unit of nicotine.... Think of the puff
24 of smoke as a vehicle of nicotine." In the 1970s PHILIP MORRIS had started an ambitious
25 research program to learn everything it could about nicotine and its effects on the body.
26 PHILIP MORRIS' researchers concluded that nicotine was addicting on a level comparable to
27 cocaine. However, this internal lab was shut down in the 1980s because "the lab was
28 generating information that the company did not want generated inside the company, that it was

1 information that would not be favorable to the company in litigation." PHILIP MORRIS'
2 executives told the researchers, "Why should we risk a billion dollar business for some rat
3 studies?"

4 111. In the 1970s and 1980s PHILIP MORRIS began research to enable it to remove
5 or reduce harmful ingredients released as a result of smoking. A company scientist identified
6 and developed methods to take out many of the harmful ingredients but the company killed
7 such projects in an attempt to enable the company to maintain plausible deniability of the
8 harmful impact of smoking on health.

9 112. As recently as April 15, 1994, PHILIP MORRIS took out a full page ad in The
10 Wall Street Journal and the New York Times stating: "Fact: Philip Morris does not believe
11 cigarette smoking is addictive."
12

13 UNITED STATES TOBACCO COMPANY

14 113. UNITED STATES TOBACCO COMPANY, primarily a manufacturer of
15 smokeless oral tobacco, has conducted research into the pharmacological effects of nicotine and
16 has had knowledge of its dependence-producing properties for decades. An internal UNITED
17 STATES TOBACCO COMPANY memo dated June 1981 from Per Erik Lindqvist recognized
18 "the fact that virtually all tobacco usage is based upon nicotine,[sic] 'the kick, satisfaction'." An
19 internal memo dealing with the link between disease and tobacco notes "our initial approach
20 was an attempt to discredit the claims." This remains true today as the company continues to
21 deny that its harmful products are addictive.
22

23 THE AMERICAN TOBACCO COMPANY

24 114. As early as the late 1940s-early 1950s, AMERICAN TOBACCO conducted
25 research and found that when nicotine was removed from cigarettes the subjects definitely
26 missed the nicotine, concluding that with certain individuals nicotine becomes a major factor in
27 the cigarette habit. Between 1940 through 1970 AMERICAN TOBACCO funded over 90
28 studies on the pharmacological and other effects of nicotine on the body. Smoking causes

1 coronary and peripheral vascular disease and nicotine appears to contribute both to the
2 arteriosclerotic process and to acute coronary events. Despite this, at least on one occasion, in
3 Seattle in 1969, AMERICAN TOBACCO released a nicotine enriched cigarette to be test-
4 marketed to the public knowing nicotine's addictive nature. To this day, however, the company
5 denies nicotine is addictive or intoxicating.

6
7 LIGGETT GROUP, INC.

8 115. By 1955 LIGGETT & MYERS researchers reported internally that they had
9 duplicated the results of Dr. Ernst Wynder demonstrating that the tar from cigarettes could
10 cause tumors when applied to the skin of mice. Another study the company sponsored
11 concluded, "Studies regarding the chemical components of tobacco and cigarette smoke, with
12 primarily the short-term effects on mouse skin as a guide lead one to the conclusion that the
13 materials responsible for carcinogenicity and promoting activity of cigarette smoke have been
14 produced in the smoking process that is, as the cigarette is burning." Another report from the
15 1960s entitled L&M: A Perspective Review, noted that there are biologically active materials
16 present in cigarette tobacco. These are: a) cancer causing, b) cancer promoting, c) poisonous,
17 d) stimulating, pleasurable and flavorful.

18 116. A 1963 memo index from the files of the Surgeon General's advisory committee
19 noted that LIGGETT & MYERS had not published a significant amount of material which was
20 scientifically worth publishing because of the possibility that some of this material could be
21 used in a lawsuit against them more persuasively if released under their own aegis.

22 117. In 1968 LIGGETT developed a safer cigarette under the project name "XA";
23 however, the project was killed and the scientists were "not permitted to publish the results of
24 [their] findings in the area of carcinogenicity or tumorigenicity or tumor-producing activity of
25 cigarette smoke." The reason the company chose not to manufacture a safer cigarette was
26 because "to market such a cigarette would in effect make the statement that all other cigarettes
27 are harmful to people's health."
28

1 BROWN & WILLIAMSON

2 118. BROWN & WILLIAMSON's internal research in the late 1950s and early 1960s
3 confirmed that cigarettes could cause lung cancer and cardiovascular disease. BROWN &
4 WILLIAMSON's general counsel Addison Yeaman dismissed the idea that the TIRC would
5 conduct or sponsor research necessary to discover just which chemicals were the cancer-
6 causing ones to enable the companies to neutralize them. According to Yeaman, who
7 subsequently became the Chairman of the CTR, the TIRC was conceived as a public relations
8 gesture, and it has functioned as a public relations operation.⁶

9 119. Subsequently, BROWN WILLIAMSON developed a high nicotine tobacco
10 plant called Y1 with a nicotine concentration of 6%, more than twice the usual amount found in
11 flue-cured tobacco. BROWN & WILLIAMSON has admitted that it has imported four million
12 pounds of Y1 into the United States and used the tobacco in cigarettes sold in the United States.

13 120. Recently Jeffrey S. Wigand, a former BROWN & WILLIAMSON senior
14 scientist, charged that BROWN & WILLIAMSON in-house lawyers repeatedly hid potentially
15

16 ⁶
17 Yeaman's statement clearly indicates that the defendants
18 conducted the most sensitive research on the subject of smoking
19 and health in-house or sponsored at outside research facilities.
20 In his memo, Yeaman also states that "We [Brown & Williamson
21 Tobacco] are, then, in the business of selling nicotine, an
22 addictive drug effective in the release of stress mechanisms."
23 Yeaman further adds that the research found that despite the
24 beneficial effects of nicotine, cigarettes "cause, or predispose
25 to, lung cancer." If the CTR existed and functioned as a public
26 relations vehicle, and as Yeaman indicated should not conduct such
27 sensitive research, the tobacco company defendants are thus the
28 primary source for smoking research that was not principally
oriented towards public relations. The CTR did not and does not
exist in a vacuum. The tobacco company defendants thus may have
modified their research efforts based upon the activities of the
CTR, and the CTR may have carried out an entirely different
research program due to the activities of the individual tobacco
company defendants. The motivation to subvert and manipulate the
proclaimed independence of the CTR, "a public relations
operation," may in fact lie in the research efforts of the
individual company defendants.

1 damaging scientific research, including altering minutes of scientific meetings. Other
2 information has come to light indicating that BROWN & WILLIAMSON has been sending
3 documents that are damaging to the company, e.g., documents such as those relating or
4 referring to the Janus project, which confirmed that tobacco smoke causes tumors in animals,
5 overseas to protect such documents from discovery in U.S. litigation.

6
7 LORILLARD TOBACCO CO.

8 121. Nearly fifty years ago, in July of 1946, LORILLARD was alerted that cigarettes
9 could be cancer causing. Harris B. Parmele, a LORILLARD company chemist, wrote a memo
10 to A. Riefner of the company's manufacturing committee naming the smoking byproduct —
11 benzpyrene — as a substance that many researchers would later label a cancer-causing agent in
12 tobacco smoke:

13 In other words, benzpyrene is presumed to be a combustion
14 product of burning tobacco and, by animal experiments, it has
been shown to possess definite carcinogenic properties.

15 122. A 1973 LORILLARD memorandum describing major research projects noted
16 that producing "a safe cigarette, defined as one showing little or no carcinogenic activity when
17 measured by mouse skin painting" (condensed cigarette smoke painted on the backs of research
18 mice produced tumors), should be possible to make "within a total time span of five years."

19 123. A June 24, 1974 LORILLARD internal memo from then Director of Research
20 Alexander W. Spears to CEO Curtis H. Hudge states:

21 Historically, the joint industry-funded smoking and health
22 research programs have not been selected against specific
23 scientific goals, but rather for various purposes such as public
24 relations, position for litigation, etc. Thus, it seems obvious that
25 reviews of such programs for scientific relevance and merit in the
smoking and health field are not likely to produce high ratings.
In general, these programs have provided some buffer to public
and political attack of the industry, as well as background for
litigious strategy.

26 124. On April 13, 1994, it was disclosed that a 1981 study by two LORILLARD
27 researchers discussing techniques for raising or lowering the amount of nicotine in cigarettes
28 had been concealed since 1981. Rep. Waxman said at a news conference that the study was

1 evidence that the tobacco companies had lied about whether they manipulated the amount of
2 nicotine in cigarettes. Spears was co-author with S. T. Jones of the 1981 paper. The paper
3 points out that low-tar cigarettes used special blends of tobacco to keep the level of nicotine up
4 while tar was reduced. "Higher nicotine levels can be achieved by decreasing Oriental, and the
5 stem and tobacco sheet, and increasing the Burley and upper stock positions of both the Flue-
6 cured and the Burley tobacco," the article said. As a result, the paper said, "current research is
7 directed toward increasing the nicotine levels while maintaining or marginally reducing the tar
8 deliveries."

9

10 THE CONSPIRACY CONTINUES TO THIS DAY

11 125. In sum, the above allegations demonstrate that the tobacco industry is the king
12 of fraud, deceit, concealment and disinformation, using, with the material assistance of HILL &
13 KNOWLTON, INC. and THE TOBACCO INSTITUTE, INC., CTR as its pawn. This
14 unlawful, unfair and fraudulent business practice must be fully disclosed and put to an end.

15 126. The true facts about the tobacco company defendants, the CTR and their
16 relationship to the "special projects" division, as well as the use of the "special projects"
17 division by the tobacco industry to shield incriminating evidence from public scrutiny, and to
18 promote other studies to keep the debate alive, have been fraudulently concealed from public
19 scrutiny by defendants for years.

20 127. The defendants' "Frank Statement" promised the public that the research
21 conducted through TIRC/CTR funding would be revealed in addition to the research that the
22 tobacco company defendants themselves individually sponsored. The defendants promised to
23 reveal their own studies because of their proclaimed "interest in people's health as a basic
24 responsibility, paramount to every other consideration in our business." The "Frank Statement"
25 made this clear in stating that the TIRC/CTR research was only part of the tobacco industry's
26 pledge to safeguard consumers' health: "This joint financial aid will of course be in addition to
27 what is already being contributed by the individual companies." This has not occurred as
28 defendants continue to deceive the public with false statements of material fact as well as

1 conceal other material facts.

2

3

4 **F. Industry Knowledge That Smoking Is Harmful**

5 128. Even before the sponsors of the "Frank Statement" represented that "there is no
6 proof that cigarette smoking is one of the causes of lung cancer, an industry researcher had
7 reported the contrary. As early as 1946, Lorillard chemist H.E. Parmele, who later became
8 Vice President of Research and a member of Lorillard's Board of Directors, wrote to his
9 company's manufacturing committee: "Certain scientists and medical authorities have claimed
10 for many years that the use of tobacco contributes to cancer development in susceptible people.
11 Just enough evidence has been presented to justify the possibility of such a presumption."

12 129. In the years following the 1954 "Frank Statement," and continuing to the
13 present, the Tobacco companies have repeatedly acted in breach of their assumed duty to report
14 objective facts on smoking and health. As evidence mounted, both through industry research
15 and truly independent studies, that cigarette smoking causes cancer and other diseases, the
16 Tobacco companies and their Tobacco Trade Associations continued publicly to represent that
17 nothing was proven against smoking. Internal documents show that the truth was very
18 different. The Tobacco companies knew and acknowledged internally the veracity of scientific
19 evidence of the health hazards of smoking, and at the same time suppressed such evidence
20 where they could, and attacked it when it did appear.

21 130. Internal cigarette industry documents reveal, for example:

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

27 b. A 1958 memorandum sent to the Vice President of Research at Philip
28 Morris who later became a member of its Board of Directors from a company researcher stated

1 "the evidence . . . is building up that heavy cigarette smoking contributes to lung cancer either
2 alone or in association with physical and physiological factors "

3 c. A 1961 document presented to the Philip Morris Research and
4 Development Committee by the company's Vice President of Research and Development
5 included a section entitled "Reduction of Carcinogens in Smoke." The document stated, in part:
6 "To achieve this objective will require a major research effort, because carcinogens are found in
7 practically every Class of compounds in smoke. This fact prohibits complete solution of the
8 problem by eliminating one or two Classes of compounds. The best we can hope for is to
9 reduce a particularly bad Class, i.e., the polynuclear hydrocarbons, or phenols . . . Flavor
10 substances and carcinogenic substances come from the same Classes, in many instances. "

11 d. A 1963 memorandum to Philip Morris, President and CEO, from the
12 company's Vice President of Research describes a number of Classes of compounds in cigarette
13 smoke which are "known carcinogens." The document goes on to describe the link between
14 smoking and bronchitis and emphysema. "Irritation problems are now receiving greater
15 attention because of the general medical belief that irritation leads to chronic bronchitis and
16 emphysema. These are serious diseases involving millions of people. Emphysema is often
17 fatal either directly or through other respiratory complications. A number of experts have
18 predicted that the cigarette Industry ultimately may be in greater trouble in this area than in the
19 lung cancer field."

20 e. Brown & Williamson and its parent company, BATCO, researched the
21 health effects of nicotine and were aware early on, as reported at a B.A.T. Group Research
22 Conference in November 1970, that "nicotine may be implicated in the etiology [cause] of
23 cardiovascular disease"

24 f. A 1961 "Confidential" memorandum from the consulting research firm
25 hired by Liggett to do research for the company states: "There are biologically active materials
26 present in cigarette tobacco. These are: a) cancer causing; b) cancer promoting; c) poisonous;
27 d) stimulating, pleasurable, and flavorful."

28 g. A 1963 memorandum from the Liggett consulting research firm

1 states: "Basically, I accept the inference of a causal relationship between the chemical
2 properties of ingested tobacco smoke and the development of carcinoma, which is suggested by
3 the statistical association shown in the studies of Doll and Hill, Horn, and Dorn with some
4 reservations and qualifications and even estimate by how much the incidence of cancer may
5 possibly be reduced if the carcinogenic matter can be diminished, by an appropriate filter, by a
6 given percentage."

7 131. These internal Liggett documents sharply contrast with the information Liggett
8 provided to the Surgeon General in 1963. Liggett withheld from the Surgeon General the views
9 of its researchers and consultants that the evidence showed cigarette smoking causes human
10 disease.

11 132. The report Liggett presented to the Surgeon General omitted all of these views.
12 Instead, it focused on alternative causes of disease, such as air pollution, coffee and alcohol
13 consumption, diet, lack of exercise, and genetics. Liggett criticized the known statistical
14 association between smoking and mortality and various diseases as "unreliably conducted" and
15 "inadequately analyzed." The Liggett report concluded that the association between smoking
16 and disease was inconclusive, and was in fact due to other factors coincidentally associated
17 with smoking.

18 133. Philip Morris also concealed from the public its actual views of the research
19 conducted outside the influence of the industry. In a 1971 memorandum, Dr. H. Wakeham,
20 then Vice President of Research and Development, referring to a recent study which found
21 cigarette smoke inhalation caused lung cancer in beagles: "1970 might very properly be called
22 the year of the beagle. Early in the year, the American Cancer Society announced that they had
23 finally demonstrated the formation of lung cancer in beagles by smoke inhalation in the now
24 infamous Auerbach and Hammond study." Although Dr. Wakeham criticized the mice cancer
25 studies, he conceded that "the beagle test was a critical one ... for the cigarette causation
26 hypothesis."

27 134. Dr. Wakeham's memorandum demonstrates Philip Morris' approval of the
28 industry's public dismissals of these independent studies: "The strong opposition of the industry

1 to the beagle test is indicative of a new, more aggressive stance on the part of the industry in the
2 smoking and health controversy. We have gone over from what I have called the vigorous
3 denial approach, the take it on the chin and keep quiet attitude, to the strongly voiced
4 opposition and criticism. I personally think this counter-propaganda is a better stance than the
5 former one. "

6 135. Similarly, BATCO's internal view of the validity of mouse skin painting
7 experiments differed markedly from the view expressed in public statements. Minutes from a
8 1969 BATCO research conference stated, "[H]istorically, bioassay experiments were
9 undertaken by the industry with the object of clarifying the role of smoke constituents in
10 pulmonary carcinogenesis. The most widely used of these methods [was] mouse-skin painting
11 ... (a) In the foreseeable future, say five years, mouse-skin painting would remain as the
12 ultimate court of appeal on carcinogenic effects." Two years later a Brown & Williamson
13 public relations document stated that "[m]uch of the experimental work involves mouse-
14 painting or animal smoke inhalation experiments [T]he results obtained on the skin of
15 mice should not be extrapolated to the lung tissue of the mouse, or to any other animal species.
16 Certainly such skin results should not be extrapolated to the human lung."

17
18 **G. Suppressing The Truth About Cigarettes And Nicotine**

19 136. The Tobacco companies, through the Tobacco Trade Associations, intentionally
20 breached their promises to the American public, to the citizens of California, and to residents of
21 the County of San Diego to study and report independently and honestly on the health effects of
22 smoking and the use of smokeless tobacco products. Defendants caused the cancellation of at
23 least one press conference where their scientist (Dr. Freddy Homburger) sought to inform the
24 public, actively and wrongfully suppressed the publishing of reports concerning the health
25 dangers presented by cigarette smoking, attacked research linking smoking to disease, and
26 threatened professionally the researchers themselves. Their scientists were not allowed to
27 "freely publish what they find as they choose" as a CTR director once claimed.
28

1 **1. The Gentleman's Agreement**

2 137. The tobacco industry entered into a "Gentlemen's agreements to suppress
3 independent research on smoking and health. This agreement was referenced in a 1968 internal
4 Philip Morris draft memo, which states, "We have reason to believe that in spite of gentlemen's
5 [sic] agreement from the tobacco industry in previous years that at least some of the major
6 companies have been increasing biological studies within their own facilities." This memo also
7 acknowledged that cigarettes are inextricably intertwined with the health field, stating, "Most
8 Philip Morris products both tobacco and non-tobacco are directly related to the health field."

9 138. The industry believed that individual companies were performing certain
10 research on their own in addition to the joint industry research. But the fundamental
11 understanding and agreement remained intact; any harmful information and activities would be
12 restrained, suppressed, and/or concealed. This secret agreement included restraining,
13 suppressing, and concealing research on the health effects of smoking, including the addictive
14 qualities of nicotine, and restraining, concealing, and suppressing the research and marketing of
15 safer cigarettes.

16
17 **2. The Mouse House Massacres**

18 139. In the 1960s, R.J. Reynolds established a facility in Winston-Salem, North
19 Carolina, to perform research on the health effects of smoking using mice. Nicknamed the
20 "Mouse House," R.J. Reynolds scientists conducted research in a number of specific areas,
21 including studies of the actual mechanism whereby smoking causes emphysema in the lungs.

22 140. The R.J. Reynolds lab made significant progress in understanding this
23 mechanism. Despite this progress, R.J. Reynolds disbanded the entire research division in one
24 day, and fired all 26 scientists without notice.

25 141. Several months before the 1970 closure and firings, R.J. Reynolds attorneys
26 collected dozens of research notebooks from the scientists. The notebooks have still not been
27 disclosed. One of the researchers later stated about R.J. Reynolds' executives and lawyers that
28 "they like to take the position that you can't prove harm because you don't know mechanism . . .

1 . And sitting right under their noses is evidence of mechanism. What are they going to do with
2 this stuff?" They decided to kill it.

3 142. Internally, an R.J. Reynolds-commissioned report favorably described the mouse
4 house work as "the more important of the smoking and health research effort because it comes
5 close to determining what was thought to be the underlying pathobiology of emphysema."
6 None of the work done at the "Mouse House" was disclosed to the public.

7 143. In a similar incident, Philip Morris hired Victor DeNoble in 1980 to study
8 nicotine's effects on the behavior of rats and to research and test potential nicotine analogues.
9 DeNoble, in turn, recruited Paul C. Mele, a behavioral pharmacologist.

10 144. DeNoble and Mele discovered that nicotine met two of the hallmarks of
11 potential addiction -- self-administration (rats would press levers to inject themselves with a
12 nicotine solution) and tolerance (a given dose of nicotine over time had a reduced effect).

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

16 146. DeNoble was later told by lawyers for the company that the data he and Mele
17 were generating could be dangerous. Philip Morris executives began talking of killing the
18 research or moving it outside of the company so Philip Morris would have more freedom to
19 disavow the results.

20 147. In April 1984, Philip Morris closed DeNoble's nicotine research lab. DeNoble
21 and Mele were forced abruptly to halt their studies, turn off all their instruments and turn in
22 their security badges by morning. Philip Morris executives threatened them with legal action if
23 they published or talked about their nicotine research. According to DeNoble, the lab literally
24 vanished overnight. The animals were killed, the equipment was removed and all traces of the
25 former lab were eliminated.

26 148. DeNoble has testified "senior research management in Richmond, Va., as well
27 as top officials at the Philip Morris Company in New York, continually reviewed our research
28 and approved our research." DeNoble also stated that these officials were officially told that

1 nicotine was a drug of abuse.

2 149. In August 1983, Philip Morris ordered DeNoble to withdraw from publication a
3 research paper on nicotine that had already been accepted for publication after full peer review
4 by the journal *Psychopharmacology*. According to DeNoble, the company changed its mind
5 because it did not want its own research showing nicotine was addictive or harmful to
6 compromise the company's defense in litigation recently filed against it. He said that Philip
7 Morris officials had rightly interpreted the suppressed nicotine studies as showing that, in terms
8 of addictiveness, "nicotine looked like heroin."

9
10 **3. Refusing to "Accept its Responsibility" to Disclose Information**

11 150. Liggett & Myers, while publicly refusing to acknowledge the validity of Dr.
12 Wynder's tests, hired the consulting firm of Arthur D. Little, Inc. to duplicate Dr. Wynder's
13 tests. Defendant Lorillard Corporation also duplicated Dr. Wynder's mouse tests. The results
14 of the duplicated tests were essentially the same as Dr. Wynder's, and both Liggett & Myers
15 and Arthur D. Little became aware by 1954 of the cancer causing propensity of cigarettes. A
16 Liggett & Myers researcher requested that the results of this testing be published, but Liggett &
17 Myers would not allow it.

18 151. Brown & Williamson undertook its potentially sensitive research on nicotine
19 through a contractor in Geneva, Switzerland, and through British affiliates at an English lab
20 called Harrogate.

21 152. In 1963, Brown & Williamson debated internally whether to disclose to the U.S.
22 Surgeon General, who was preparing his first official report on smoking and health, what the
23 company knew about the addictiveness of nicotine and the adverse effects of smoking on
24 health. Addison Yeaman, general counsel, advised Brown & Williamson to "accept its
25 responsibility" and disclose its findings to the Surgeon General. He said that such disclosure
26 would then allow the company openly to research and develop a safer cigarette.

27 153. Brown & Williamson rejected Yeaman's advice to make full disclosure to the
28 Surgeon General. A series of six letters and telexes exchanged by Yeaman and senior BATCO

1 official A. D. McCormick between June 28 and August 8, 1963, document the company's
2 decision not to disclose its research findings to the Surgeon General. That research, some of
3 which was later characterized in a report in the *Journal of the American Medical Association* as
4 "at the cutting edge of nicotine pharmacology," preceded the main published reports from the
5 general scientific community by several years.

6
7 **H. Suppression Of Safer Cigarettes**

8 154. The Tobacco companies could have designed and manufactured a safer cigarette,
9 but refused to do so. The need for a "safer" tobacco product results from the harmful chemical
10 compounds occurring in tobacco products and formed as a result of burning. These compounds
11 include carbon monoxide, nicotine, nickel carbon dioxide, benzene, hydrazine, formaldehyde,
12 Polonium-210, ammonia, nicotine sulfate, Freon II, hydrogen cyanide and certain liver toxins
13 known collectively as furans. More than forty (40) known carcinogens are found in cigarette
14 tobacco. The Tobacco companies artificially add chemicals and flavorings to their products
15 that increase toxicity and carcinogenicity.

16 155. The Tobacco companies have long understood that reducing or eliminating
17 nicotine from their products would hurt sales. As one company researcher wrote in a 1978
18 report to Philip Morris executives: "If the industry's introduction of acceptable low-nicotine
19 products does make it easier for dedicated smokers to quit, then the wisdom of the introduction
20 is open to debate."

21 156. Instead, the industry attempted to develop ostensibly safer ways of delivering
22 adequate doses of nicotine to create and sustain addiction in the smoker.

23 157. Some members of the industry studied artificial nicotine or nicotine analogues
24 that would have the addictive and psychopharmacological properties of nicotine without its
25 dangerous effects on the heart. Dr. Victor DeNoble was hired by Philip Morris, in part, to
26 research and develop a nicotine analogue.

27 158. Dr. DeNoble did discover such an analogue, but Philip Morris chose to halt its
28 effort to determine whether the nicotine analogue could be used to make a safer cigarette. On

1 information and belief, Philip Morris decided not to pursue nicotine analogues in order to
2 avoid the risk of adverse publicity and of compromising the industry's consistent position that
3 there was no alternative design for cigarettes.

4 159. Brown & Williamson also understood that nicotine was the essential ingredient
5 in maintaining tobacco sales. The company attempted to develop a "safer" cigarette which
6 internal documents described as "a nicotine delivery device."

7 160. By the end of the 1970s, however, Brown & Williamson, in a pattern that was
8 repeated throughout the industry, closed its research labs and halted all work on a safer
9 cigarette.

10 161. R. J. Reynolds' efforts to develop a safer cigarette also focused on delivering
11 nicotine to the consumer without the harmful constituents of tobacco smoke. In the late 1980s,
12 R. J. Reynolds developed and test marketed "Premier," a smokeless and virtually tobacco-free
13 cigarette which was, in essence, a nicotine delivery system.

14 162. At Liggett & Myers, Dr. James Mold conducted tests to divide the components
15 of cigarette smoke into separate entities and to interrupt the process that produces carcinogens
16 by using a catalyst. Liggett & Myers researchers were able to produce a so-called "safer"
17 cigarette, designated as the "XA Project," that eliminated the carcinogenic activity on mouse
18 skin. However, Liggett & Myers did not want to be identified publicly as the source of the
19 research behind this non-carcinogenic "safer" cigarette.

20 163. Dr. Mold has provided the following overview of the XA Project and its
21 abandonment:

22 a. Dr. Mold stated that the XA project produced a safer cigarette. He
23 stated, "We produced a cigarette which was, we felt, commercially acceptable as established by
24 some consumer tests, which eliminated carcinogenic activity. . . "

25 b. Dr. Mold stated that after 1975, all meetings on the project were attended
26 by lawyers. Lawyers collected notes after all meetings. All documents were directed to the law
27 department to cloak the documents with the attorney-client privilege. He stated, "Whenever
28 any problem came up on the project, the Legal Department would pounce upon that in an

1 attempt to kill the project, and this happened time and time again."

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

12 164. A memorandum authored by an attorney at the firm of Shook, Hardy & Bacon,
13 longtime lawyers for the cigarette industry, confirmed the industry-wide position regarding the
14 issue of a safer cigarette. The 1987 memorandum was written in the context of the marketing
15 by R.J. Reynolds of a smokeless cigarette, Premier, that heated rather than burned tobacco. The
16 Shook, Hardy attorney wrote that the smokeless cigarette could "have significant effects on the
17 tobacco industry's joint defense efforts" and "[t]he industry position has always been that there
18 is no alternative design for a cigarette as we know them." The attorney also noted that,
19 "Unfortunately, the Reynolds announcement . . . seriously undercuts this component of
20 industry's defense."

21 165. Liggett had also obtained a patent for the process it had discovered to produce its
22 safer cigarette. The patent application described the reduction in cancer in mouse studies,
23 prompting stories in the media that Liggett was the first cigarette company to admit that
24 smoking caused cancer. Liggett responded by issuing a press release it called a "Liggettgram"
25 which stated: "Liggett and the cigarette industry continue to deny, as they have consistently,
26 that any conclusions can be drawn relating such test results on mice in laboratories to cancer in
27 human beings. It has never been established that smoking is a cause of human cancer. The
28 laboratory experiments reported in the patent were conducted for Liggett by an independent

1 researcher, The Life Sciences Division of Arthur D. Little, Inc."

2 166. At the time Liggett made this statement, Dr. Mold estimates that Liggett had
3 spent a total of \$10 million on research involving mice, in part to develop the safer XA
4 cigarette. Liggett's internal reports on the benefit of the XA, and the absence of increased risk
5 of harm from the additives used, specifically used animal studies as reliable indicators of the
6 health effect of the product on humans.

7
8 **1. Light Cigarettes: A Marketing Hoax**

9 167. The cigarette industry's manipulation of nicotine is particularly deceptive in its
10 marketing of "light" or low-tar and low-nicotine cigarettes to retain the health conscious
11 segment of the smoking market. Recent studies demonstrate that cigarettes advertised as low
12 tar and low nicotine have higher concentrations of nicotine, by weight, than high yield
13 cigarettes. Nevertheless, the cigarette manufacturers have successfully identified "light"
14 cigarettes to consumers as a reduced tar and reduced nicotine product. The cigarette
15 manufacturers have accomplished this deception through several strategies.

16 168. First, cigarette manufacturers have designed their "light" products so that
17 advertised tar and nicotine levels, as measured by the FTC method, understate the amounts of
18 tar and nicotine actually ingested by human smokers. Such design features include a technique
19 called filter ventilation in which nearly invisible holes are drilled in the filter paper, or the filter
20 paper is made more porous. Predictably, many smokers of advertised low tar and nicotine
21 cigarettes block the tiny, laser-generated perforations in ventilated filters with their fingers or
22 lips, thereby resulting in greater tar and nicotine yields to those smokers than those measured
23 by the FTC smoking machine.

24 169. Cigarette manufacturers know that the ability to block ventilation holes allows
25 smokers to "compensate" for nicotine losses that would otherwise be caused by tar-reducing
26 modifications. The industry has studied smoker compensation in order to design cigarettes that
27 allow smokers to compensate for lower nicotine yields. One such design feature is known as
28 "elasticity." This refers to the ability of a cigarette, whatever its FTC measured nicotine yield,

1 to deliver enough smoke to permit a smoker to obtain the nicotine he needs. e.g., through more
2 or longer puffs, or by covering ventilation holes.

3 170. Industry studies show that smokers tend to obtain close to the same amount of
4 nicotine from each cigarette despite differences in yield as measured by the FTC smoking
5 machine. In a 1974 BATCO conference, researchers described the result of one such study:
6 "The Kippa study in Germany suggests that whatever the characteristics of cigarettes as
7 determined by smoking machines, the smoker adjusts his pattern to deliver his own nicotine
8 requirements (about 0.8 mg. per cigarette)." Smokers' compensation to obtain adequate
9 nicotine also results in the delivery of more tar than the FTC test measure.

10 171. Second, the FTC testing method does not distinguish between the slower acting
11 salt-bound nicotine and the more potent "free" nicotine that ammonia helps release. An
12 ammoniated cigarette that delivers more potent nicotine to smokers measures the same as a
13 cigarette with no such additives.

14 172. According to John Kreisher, a former associate scientific director for CTR,
15 "[a]mmonia helped the industry lower the tar and allowed smokers to get more bang with less
16 nicotine. It solved a couple of problems at the same time."

17 173. Third, the cigarette industry maintains that nicotine levels follow tar levels. In a
18 1981 study not intended for public release, he stated explicitly that low-tar cigarettes use
19 special blends of tobacco to keep the level of nicotine up while tar is reduced: "[T]he lowest tar
20 segment [of product categories] is composed of cigarettes utilizing a tobacco blend which is
21 significantly higher in nicotine."

22 174. R.J. Reynolds, Lorillard, the American Tobacco Company, and the Tobacco
23 Institute have similarly represented to the public and to the FDA that the nicotine levels in their
24 products are purely a function of setting the tar levels of such products.

25 175. Internal company documents reviewed by the Waxman Subcommittee show,
26 however, that the American Tobacco Company's experimentation with adding nicotine to its
27 tobacco was extensive— extensive enough for American Tobacco Company executive John T.
28 Ashworth to instruct employees in a confidential memorandum: "In the future, our use of

1 nicotine should be referred to as 'Compound W' in our experimental work, reports, and
2 memorandums, either for distribution within the Department or for outside distribution."

3 176. Recent tests conducted at the direction of the FDA show that the low-tar brands
4 actually have more nicotine by weight than the non-"light" brands. The high level of nicotine
5 found in lower tar cigarettes seriously misleads consumers and renders the industry's claim of
6 an "essentially perfect" correlation between reduced tar and nicotine levels false. According to
7 the FDA, this has been accomplished by a combination of the methods described above for
8 boosting nicotine delivery to compensate for nicotine losses from the application of tar-
9 reducing design modifications. The cigarette industry thereby maintains a continuing market
10 for a product that consumers are misled to believe contains less of all of the harmful ingredients
11 in regular cigarettes.

12
13 **2. Fraudulent Advertising of Tar and Nicotine Content**

14 177. The campaign of deception in advertising, by the Defendants regarding filters
15 and tar and nicotine content that began in the 1950s, has continued unabated through the
16 present. Although an "FTC Method" has been developed that measures the amount of tar and
17 nicotine in a cigarette with a "smoking machine" (measurements the Tobacco companies
18 advertise for their brands), the FTC method is not a valid or reliable method to measure tar and
19 nicotine intake by "human smokers." In fact, the Tobacco companies have specifically
20 designed their products to deceive the public into thinking they are getting a low tar and
21 nicotine cigarette when, in fact, they are getting significantly higher deliveries of tar and
22 nicotine in their smoke.

23 178. In 1982, *The New York Times* noted that Brown and Williamson had
24 complained to the FTC that American Brands, Inc., Philip Morris U.S.A., and R.J. Reynolds
25 were engaging in deceptive advertising. While promoting very low-tar cigarettes packaged in
26 flip-top boxes, the three were also marketing cigarettes containing 10 to 100 times more tar—in
27 look-alike soft packages. *The Times* also reported that Brown and Williamson's much
28 publicized low-tar Barclay was designed to fool the FTC's smoking machines. The machines

1 preserve Barclay filters—but the human lips probably destroy it, giving smokers heavy doses of
2 just what they were trying to avoid. In January 1993, *Consumer Reports* noted that while the
3 Barclay ads claimed "1 mg. of tar," smokers actually got 3 to 7 times as much.

4 179. In the 1980s and 1990s, the Tobacco companies have continued the "tar and
5 nicotine reduction" deception by increasing bio-availability of nicotine through pH
6 manipulation and use of additives, such as acetaldehyde and ammonia to boost the reinforcer
7 pharmacological impact of nicotine, while still publishing "FTC Method" measurements and
8 advertising their products as "Light" or "Ultra-light."

9
10 **I. Knowledge That Nicotine Causes Addiction**

11 180. The fact that nicotine delivered by tobacco products is highly addictive was
12 carefully and comprehensibly documented in the 1988 Surgeon Generals Report, "The Health
13 Consequences of Smoking: Nicotine Addiction." The major conclusions contained in this report
14 are (a) "Cigarettes and other forms of tobacco are addicting"; (b) "Nicotine is the drug in
15 tobacco that causes addiction"; and (c) "The pharmacologic and behavioral processes that
16 determine tobacco addiction are similar to those that determine addiction to drugs such as
17 heroin and cocaine." Likewise, in a 1988 report addressing the health effects of smokeless
18 tobacco, the World Health Organization concluded: "[T]here is ample evidence that the blood
19 nicotine levels of smokeless tobacco users were as high as or even higher than those found in
20 many cigarette smokers. Its continued use, therefore, does cause addiction and dependence in
21 humans. "

22 181. Nicotine in cigarettes and smokeless tobacco is now recognized as an addictive
23 substance by such major medical organizations as the Office of U.S. Surgeon General, the
24 World Health Organization, the American Medical Association, the American Psychiatric
25 Association, the American Psychological Association, the American Society of Addiction
26 Medicine, the American Public Health Association, and the Medical Research Counsel in the
27 United Kingdom. The National Institute on Drug Abuse has called cigarette smoking the most
28 common example of drug dependence in the United States.

182. Despite their knowledge that cigarette smoking and the use of smokeless tobacco is, as a result of nicotine, extremely addictive, the Tobacco companies to this day 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 addictive nature of cigarettes and smokeless tobacco.

1. The Tobacco Companies' Understanding of Nicotine Addiction

183. The Defendants know of the difficulties smokers experience in quitting smoking and of the tendency of addicted individuals to focus on any rationalization to justify their continued smoking. The Defendants exploit this weakness and capitalize upon the known addictive nature of nicotine, which guarantees a market for cigarettes.

184. Cigarette manufacturers have known since at least the early 1960s of the addictive properties of the nicotine contained in the cigarettes they manufacture and sell.

Industry documents are replete with evidence of such knowledge:

a. In 1962, Sir Charles Ellis, scientific advisor to the board of directors of British American Tobacco Company ("BATCO"), Brown & Williamson's parent company, stated at a meeting of BATCO's worldwide subsidiaries, 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...." He subsequently described Brown & Williamson as being "in the nicotine rather than the tobacco industry."

b. A research report from 1963 commissioned by Brown & Williamson states that when a chronic smoker is denied nicotine: "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." No information from that research has ever been voluntarily disclosed to the public; in particular, it was not shared with the Committee that was preparing the first Surgeon General report and hence was not reflected in that report.

1 c. Addison Yeaman, General Counsel at Brown & Williamson,
2 summarized his view about nicotine in an internal memorandum also in 1963: "Moreover,
3 nicotine is addictive. We are, then, in the business of selling nicotine, an addictive drug,
4 effective in the release of stress mechanisms."

5 d. Internal reports prepared by Philip Morris in 1972 and the Philip Morris
6 U.S.A. Research Center in March 1978 demonstrate Philip Morris' understanding of the role of
7 nicotine in tobacco use: "We think that most smokers can be considered nicotine seekers, for
8 the pharmacological effect of nicotine is one of the rewards that come from smoking. When the
9 smoker quits, he forgoes his accustomed nicotine. The change is very noticeable, he misses the
10 reward, and so he returns to smoking."

11 e. From 1940-1970, the American Tobacco Company conducted its own
12 nicotine research, funding over 90 studies on the pharmacological and other effects of nicotine
13 on the body. This research constitutes 80% of all biological studies funded by the company
14 over this period. In 1969, the American Tobacco Company even test marketed a nicotine-
15 enriched cigarette in Seattle, Washington.

16 f. In a 1972 document entitled "RJR Confidential Research Planning
17 Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine
18 Therein," an R.J. Reynolds executive wrote: "In a sense, the tobacco industry may be thought of
19 as being a specialized, highly ritualized, and stylized segment of the pharmaceutical industry.
20 Tobacco products uniquely contain and deliver nicotine, a potent drug with a variety of
21 physiological effects."

22 185. The industry's recognition of the extent to which nicotine—and not
23 tobacco—defines its product is illustrated in a 1972 Philip Morris report on a CTR conference,
24 which states:

25 a. "As with eating and copulating, so it is with smoking. The physiological
26 effect serves as the primary incentive, all other incentives are secondary. The majority of the
27 conferees would go even further and accept the proposition that nicotine is the active
28 constituent of cigarette smoke. Without nicotine, the argument goes, there would be no

1 smoking."

2 b. "Why then is there not a market for nicotine per se, eaten, sucked, drunk,
3 injected, inserted or inhaled as a pure aerosol? The answer, and I feel quite strongly about this,
4 is that the cigarette is in fact among the most awe-inspiring examples of the ingenuity of man.
5 Let me explain my conviction. The cigarette should be conceived not as a product but as a
6 package. The product is nicotine."

7 c. "Think of the cigarette pack as a storage container for a day's supply of
8 nicotine. . . Think of the cigarette as a dispenser for a dose unit of nicotine."

9 186. Documents from a BATCO study called Project Hippo, uncovered only in May
10 1994, show that as far back as 1961, this cigarette company was actively studying the
11 physiological and pharmacological effects of nicotine. Project Hippo reports were circulated to
12 other U.S. cigarette manufacturers and to TIRC, demonstrating that at least some of the
13 industry's nicotine research was shared. BATCO sent the reports to officials at Brown &-
14 Williamson and R.J. Reynolds, and circulated a copy to TIRC with a request that TIRC
15 "consider whether it would help the U.S. industry for these reports to be passed on to the
16 Surgeon General's Committee."

17 187. Similarly, an RJR-MacDonald Marketing Summary Report from 1983
18 concluded that the primary reason people smoke "is probably the physiological satisfaction
19 provided by the nicotine level of the product."

20 188. To this day, the cigarette manufacturers have concealed from the public and
21 public health officials their extensive knowledge of the addictive properties of nicotine and its
22 critical role in smoking and continue to contend that nicotine is not addictive and that cigarettes
23 are not harmful to health.

24 189. As recently as December 1995, the *Wall Street Journal* reported on an internal
25 Philip Morris draft document analyzing the competitive market for nicotine products for the
26 years 1990-1992. The report describes the importance of nicotine: "Different people smoke for
27 different reasons. But the primary reason is to deliver nicotine into their bodies." It is a
28 physiologically active, nitrogen containing substance. Similar organic chemicals include

1 nicotine, quinine, cocaine, atropine and morphine. While each of these substances can be used
2 to affect human physiology, nicotine has a particularly broad range of influence. During the
3 smoking act, nicotine is inhaled into the lungs in smoke, enters the bloodstream and travels to
4 the brain in about eight to ten seconds."

5 190. Recently disclosed handwritten notes dated 1965 from Ronald A. Tamol, who
6 until 1993 was Philip Morris' Director of Research and Brand Development, refer to "minimum
7 nicotine . . . to keep the normal smoker hooked."

8 191. The cigarette manufacturers have affirmatively misrepresented to consumers the
9 role of nicotine in tobacco use. Even today, Brown & Williamson, R.J. Reynolds and the
10 Tobacco Institute continue to claim that nicotine is important in cigarettes for taste and "mouth-
11 feel." However, tobacco industry patents specifically distinguish nicotine from flavorants and a
12 R.J. Reynolds book on flavoring tobacco, while listing approximately a thousand flavorants,
13 fails to include nicotine as a flavoring agent. The cigarette industry has actually concentrated
14 on developing technologies to mask the acrid flavor of increased levels of nicotine in cigarettes.

15

16 **2. The Waxman Hearings**

17 192. On February 25, 1994, David A. Kessler, M.D., Commissioner of the FDA,
18 sent a letter to Scott D. Bailin, Esq., Chairman of the Coalition on Smoking and Health,
19 asserting: "Evidence brought to our attention is accumulating that suggests that cigarette
20 manufacturers may intend that their products contain nicotine to satisfy an addiction on the part
21 of some of their customers. The possible inference that cigarette vendors intend cigarettes to
22 achieve drug effects in some smokers is based on mounting evidence we have received that: (1)
23 the nicotine ingredient in cigarettes is a powerfully addictive agent and (2) cigarette vendors
24 control the levels of nicotine that satisfy this addiction."

25 193. In response to Kessler's letter, on March 15, 1994, in a letter to *The New York*
26 *Times*, James W. Johnston, Chairman and Chief Executive Officer of R.J. Reynolds,, continued
27 to assert that nicotine was not addictive. Johnston based his assertion upon the success rate of
28 American adults who had quit smoking.

1 194. On March 25, 1994, David Kessler testified before the Waxman Subcommittee
2 that "the cigarette industry has attempted to frame the debate on smoking as the right of each
3 American to choose. The question we must ask is whether smokers really have that choice."
4 Dr. Kessler stated:

5 a. "Accumulating evidence suggests that cigarette manufacturers may
6 intend this result—that they may be controlling the levels of nicotine in their products in a
7 manner that creates and sustains an addiction in the vast majority of smokers."

8 b. "We have information strongly suggesting that the amount of nicotine in
9 a cigarette is there by design."

10 c. "[T]he public thinks of cigarettes as simply blended tobacco rolled in
11 paper. But they are much more than that. Some of today's cigarettes may, in fact, qualify as
12 high technology nicotine delivery systems that deliver nicotine in precisely calculated
13 quantities—quantities that are more than sufficient to create and to sustain addiction in the vast
14 majority of individuals who smoke regularly."

15 d. "[T]he history of the tobacco industry is a story of how a product that
16 may at one time have been a simple agricultural commodity appears to have become a nicotine
17 delivery system."

18 e. "[T]he cigarette industry has developed enormously sophisticated
19 methods for manipulating nicotine levels in cigarettes."

20 f. "In many cigarettes today, the amount of nicotine present is a result of
21 choice, not chance. [S]ince the technology apparently exists to reduce nicotine in cigarettes to
22 insignificant levels, why, one is led to ask, does the industry keep nicotine in cigarettes at all?"

23 195. On June 21, 1994, Dr. Kessler told the Waxman Subcommittee that FDA
24 investigators had discovered that Brown & Williamson had developed a high nicotine tobacco
25 plant, which the company called Y-1. This discovery followed Brown & Williamson's flat
26 denial to the FDA on May 2, 1994, that it had engaged in "any breeding of tobacco for high or
27 low nicotine levels."

28 196. When four FDA investigators visited the Brown & Williamson plant in Macon,

1 Georgia on May 3, 1994, Brown & Williamson officials denied that the company was involved
2 in breeding tobacco for specific nicotine levels.

3 197. In fact, in a decade-long project, Brown & Williamson secretly developed a
4 genetically engineered tobacco plant with a nicotine content more than twice the average found
5 naturally in flue-cured tobacco. Brown & Williamson took out a Brazilian patent for the new
6 plant, which was printed in Portuguese. Brown & Williamson and a Brazilian sister company,
7 Souza Cruz Overseas, grew Y-1 in Brazil and shipped it to the United States where it was used
8 in five Brown & Williamson cigarette brands sold in the County of San Diego, including three
9 labeled "light." When the company's deception was uncovered, company officials stated that
10 close to four million pounds of Y-1 were stored in company warehouse in the United States.

11 198. As part of its cover-up, Brown & Williamson even went so far as to instruct the
12 DNA Plant Technology Corporation of Oakland, California, which had developed Y- 1, to tell
13 FDA investigators that Y- I had "never [been] commercialized." Only after the FDA discovered
14 two United States Customs Service invoices indicating that "more than a million pounds" of Y-
15 1 tobacco had been shipped to Brown & Williamson on September 21, 1992, did the company
16 admit that it had developed the high-nicotine tobacco.

17
18 **3. Manipulation of Nicotine**

19 199. The nicotine content of the raw tobacco is not the only variable manipulated by
20 the cigarette manufacturers to deliver a pharmacologically active dose of nicotine to the
21 smoker. Cigarettes are not simply cut tobacco rolled into a paper tube. Modern cigarettes as
22 sold in the County of San Diego are painstakingly designed and manufactured to control
23 nicotine delivery to the smoker.

24 200. For example, cigarette manufacturers add several ammonia compounds during
25 the manufacturing process which increase the delivery of nicotine and almost double the
26 nicotine transfer efficiency of cigarettes.

27 201. Brown & Williamson publicly denies that the use of ammonia in the processing
28 of tobacco increases the amount of nicotine absorbed by the smoker. Nevertheless, the

1 company's own internal documents reveal that it and its rivals use ammonia compounds to
2 increase nicotine delivery. A 1991 Brown & Williamson confidential blending manual states:
3 "Ammonia, when added to a tobacco blend, reacts with the indigenous nicotine salts and
4 liberates free nicotine As the result of such change the ratio of extractable nicotine to
5 bound nicotine in the smoke may be altered in favor of extractable nicotine. As we know,
6 extractable nicotine contributes to impact in cigarette smoke and this is how ammonia can act
7 as an impact booster." According to the Brown & Williamson manual, all American cigarette
8 manufacturers except Liggett use ammonia technology in their cigarettes.

9 202. Tobacco industry patents also show that the cigarette industry has developed the
10 capability to manipulate nicotine levels in cigarettes to an exacting degree. For example:

11 a. A Philip Morris patent application discusses an invention that "permits
12 the release . . . in controlled amounts, and when desired, of nicotine into tobacco smoke."

13 b. Another Philip Morris patent application explains that the proposed
14 invention "is particularly useful for the maintenance of the proper amount of nicotine in tobacco
15 smoke," and notes that "previous efforts have been made to add nicotine to Tobacco products
16 when the nicotine level in the tobacco was undesirably low."

17 c. A 1991 R. J. Reynolds patent application states that "processed tobaccos
18 can be manufactured under conditions suitable to provide products having various nicotine
19 levels."

20 203. The Tobacco companies' manipulation and control of nicotine levels is further
21 evidenced by the emergence of companies that specialize in manipulating nicotine and that are
22 now offering their services to tobacco manufacturers.

23 204. An advertisement in tobacco industry trade publications for the Kimberly-Clark
24 tobacco reconstitution process states: "Nicotine levels are becoming a growing concern to the
25 designers of modern cigarettes, particularly those with lower tar deliveries. The Kimberly-
26 Clark tobacco reconstitution process used by LTR Industries permits adjustments of nicotine to
27 your exact requirements we can help you control your tobacco."

28 205. 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.

206. Reconstituted tobacco is made from stalks and stems and other waste that cigarette manufacturers formerly discarded and now use to make cigarettes more cheaply. In the reconstitution process, pieces of tobacco material undergo treatment that results in the extraction of some soluble components, including nicotine. The pieces are then physically formed into a sheet of tobacco material, to which the extracted nicotine is readded. Although denied by tobacco executives, it is publicly reported that this process adjusts nicotine levels in the products, and that one manufacturer "readily admits to selling levels of nicotine . . . for the tobacco sheet."

207. 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."

4. The FDA Response

208. After an extensive investigation, in August 1995, the FDA published its report and proposed regulations of cigarettes and nicotine. The results of that inquiry and analysis supported a finding that nicotine in cigarettes and smokeless tobacco is a drug, and that these tobacco products are drug delivery devices within the meaning of the Federal Food, Drug, and Cosmetic Act.

J. Targeting Children And Minorities

209. Across the nation, the overwhelming majority of cigarette use and addiction begins when users are children or teenagers. Eighty-two (82%) percent of daily smokers had their first cigarette before age 18, sixty-two (62%) percent before the age of 16, thirty-eight

1 (38%) percent before the age of 14. Thus, a person who does not begin smoking in childhood
2 or adolescence is unlikely ever to begin. The younger a person begins to smoke, the more
3 likely he or she is to become a heavy smoker. Sixty-seven (67%) percent of children who start
4 smoking in the sixth grade become regular adult smokers and forty-six (46%) percent of
5 teenagers who start smoking in the eleventh grade become regular adult smokers.

6 210. Smoking at an earlier age increases the risk of lung cancer and other diseases.
7 Studies have shown that lung cancer mortality is highest among adults who began smoking
8 before the age of 15.

9 211. Although young people frequently believe they will not become addicted to
10 nicotine or become long-term users of tobacco products, they often find themselves unable to
11 quit smoking. Among smokers age 12 to 17 years, a 1992 Gallup survey found that 70% said if
12 they had to do it over again, they would not start smoking, and 66% said that they want to quit.
13 Fifty-one percent of the teen smokers surveyed had made a serious effort to stop smoking—but
14 had failed.

15 212. Cigarette smoking among children and teens is on the rise. A 1995 National
16 Institute of Drug Abuse study found that between 1991 and 1994, the proportional increase in
17 smoking rates was greatest among eighth graders, rising by 30%.

18 213. Cigarettes are among the most promoted consumer products in the United
19 States. The Federal Trade Commission reported to Congress that domestic cigarette advertising
20 and promotional expenditures rose from close to \$4 billion in 1990 to more than \$6 billion in
21 1993. Tobacco product brand names, logos, and advertising messages are all-pervasive,
22 appearing on billboards, buses, trains, in magazines, on clothing and other goods. The effect is
23 to convey the message to young people that tobacco use is desirable, socially acceptable, safe,
24 healthy, and prevalent in society. Additionally, young people buy the most heavily advertised
25 cigarette brands, whereas many adults buy more generic or value-based cigarette brands which
26 have little or no image-based advertising. Cigarette manufacturers, knowing that their
27 advertising appeals to young people, continue to use these same marketing techniques to sell
28 their products.

1 214. A July 1995 report by the California Department of Health Services surveyed
2 tobacco advertisements in or around stores. In looking at almost 6,000 stores, it was found that
3 the total average tobacco advertisements and promotions per store was 25.26. Marlboro was
4 the most frequently advertised and promoted cigarette brand with an average of 10.15
5 advertisements and promotions per store. Camel was the second most frequently advertised
6 and promoted cigarette brand and had an average of 4.84 advertisements and promotions per
7 store. These two brands were the most frequently advertised and promoted cigarette brands.
8 Not surprisingly, Marlboro, Camel, and Newport, the most heavily advertised brands, are the
9 leading brands smoked by children.

10 215. This same report also found that stores within 1,000 feet of a school had
11 significantly more tobacco advertising and promotions than stores that were not near schools.
12 Stores near schools were also more likely to have at least one tobacco advertisement placed
13 next to candy or displayed at three feet or below. A significantly higher average number of
14 tobacco advertisements also were found on the exterior of stores located in young
15 neighborhoods— communities in which at least one-third of the population in that zip code
16 were 17 years of age or less.

17 216. R. J. Reynolds has even identified the stores in proximity to the youth market.
18 R.J. Reynolds' Division Manager for Sales wrote to all R.J. Reynolds sales representatives in
19 1990 regarding the "Young Adult Market" and asked them to identify what stores were in
20 proximity to colleges or high schools. A follow-up letter by the sales division calls for a
21 resubmitted list of Y.A.S. (Young Adult Smoker) accounts using new criteria, focusing on all
22 accounts located across from, adjacent to, or in the general vicinity of high schools or college
23 campuses.

24 217. Despite these disturbing statistics, each of the cigarette manufacturers maintains
25 that the effect of its pervasive advertising and promotion of cigarettes is limited to maintaining
26 brand loyalty and that it has no role in encouraging adolescents to experiment with smoking.

27 218. The cigarette manufacturers know that they attract underage consumers to their
28 products. For example, since 1988, R.J. Reynolds has used a cartoon character called Joe

1 Camel in its advertising campaign. It has massively disseminated products such as
2 matchbooks, signs, clothing, mugs, and drink can holders advertising Camel cigarettes. The
3 advertising has been effective in attracting adolescents, and R.J. Reynolds has knowledge of
4 this fact but still continues the Joe Camel advertising campaign. As a result of the campaign,
5 the number of teenage smokers who smoke Camel cigarettes has risen dramatically. One study
6 found that Joe Camel is almost as familiar to six-year-old children as Mickey Mouse, enticing
7 thousands of teens to smoke that brand, and has caused Camel's popularity with 12-17 year olds
8 to surge dramatically. R.J. Reynolds knew or willfully disregarded the fact that cartoon
9 characters attract children.

10 219. The model who portrayed the "Winston Man" for R.J. Reynolds Winston brand
11 cigarettes testified before Congress: "I was clearly told that young people were the market that
12 we were going after." He further testified, "It was made clear to us that this image was
13 important because kids like to role play, and we were to provide the attractive role models for
14 them to follow I was told I was a live version of the GI Joe...."

15 220. An R.J. Reynolds affiliate studied in detail the motivations of young smokers. A
16 "Youth Target" study was the first of a planned series of research studies into the lifestyles and
17 value systems of young men and women in the 15-24 age range, the stated purpose of which
18 was to "provide marketers and policy makers with an enriched understanding of the mores and
19 motives of this important emerging adult segment which can be applied to better decision
20 making in regard to products and programs directed at youth." The study focused on the
21 "primary elements of lifestyles and values among the youth of today" in learning how to market
22 products to children and teens.

23 221. For many years, the Defendants have engaged in a vast and misleading
24 promotional, public relations, and sham lobbying blitz that had as its goal (1) increasing the
25 numbers of people addicted to nicotine in cigarettes and/or smokeless tobacco products and
26 (2) decreasing the number of people who attempt or succeed in quitting. Their efforts have
27 been and continue to be directed toward children. They have done so and continue to do so in
28 contravention of their duty not to make false statements of material fact and their duty not to

1 conceal such true facts from the public. At the cost of countless lives, the Defendants spend
2 billions of dollars every year misleading the public and promoting the myth that smoking
3 cigarettes and using smokeless tobacco products does not cause cardiovascular disease, lung
4 and other cancers, emphysema and other diseases and that smokers live healthy and vital lives.
5 The Defendants have at all pertinent times presented and promoted smoking as an attractive,
6 glamorous, youthful, and relaxing pastime, associating it with movie stars, athletes and
7 successful professionals.

8 222. Despite the best efforts of parents, educators and the medical profession,
9 smoking among young people has remained alarmingly constant since the late 1970s. Tobacco
10 companies use advertising to create a mental image associating smoking with health, glamorous
11 and athletic lifestyles, and with success and sexual attractiveness. Their advertising and
12 marketing campaigns increase demand for tobacco products among young people. The ease
13 with which children and teenagers have been able to obtain cigarettes from vending machines,
14 has assured that there is a ready supply to meet this demand. It has been shown repeatedly that
15 cigarette vending machines (even those located in bars and other supposedly adult locations)
16 are readily available to children and teenagers. Within a short period of time, the young smoker
17 becomes physiologically and emotionally dependent, i.e., addicted to tobacco. Later, as the
18 maturing smoker begins to wish he or she could quit, advertising reinforces the practice and
19 seeks to minimize health concerns and creates doubt and confusion, which is used by smokers
20 as an excuse to avoid the pain and discomfort of attempting to break their addiction to nicotine.

21 223. One of the best examples of this was the transformation of Marlboro cigarettes,
22 from a red-tipped cigarette for women to the cigarette for the "macho cowboy." By changing
23 advertising imagery, Philip Morris was able to tap into a wholly new and different market. In
24 1950, R.J. Reynolds was the king of the cigarette business. It sold more cigarettes than any
25 other company. Philip Morris, though doing well on the basis of its fraudulent health oriented
26 advertising, was still far behind. In 1981, Philip Morris overtook R.J. Reynolds, and each year
27 has extended its lead, by developing an effective marketing campaign for recruiting young new
28 smokers to its brands. The image created by the Marlboro man captured the adolescent

1 imagination, leading to experimentation with that particular cigarette and eventual addiction
2 due to the manipulation by Philip Morris of the nicotine and other ingredients in the cigarette.
3 The children and teenagers who started smoking Marlboro became tenaciously loyal customers.
4 Soon, Marlboro became the "gold standard" of cigarettes among teenagers. Through the year
5 1988, nearly three-fourths of teenage smokers used Marlboro.

6 224. At about the time it lost market leadership to Philip Morris, R.J. Reynolds
7 dedicated itself to a ruthless advertising campaign encouraging children and teenagers to
8 smoke. One of the key elements of the R.J. Reynolds' strategy for attracting children was to
9 reposition many of its cigarette brands to younger audiences. Just as Marlboro was
10 repositioned from the women's market to the macho male market by a new advertising
11 campaign, R.J. Reynolds has positioned its cigarette advertising campaigns to younger and
12 younger audiences using a succession of advertising images of men engaged in extraordinary
13 feats of physical and athletic achievements.

14 225. R.J. Reynolds' Vantage cigarettes entered the 1980s as a brand targeted at the
15 health conscious adult smoker. Advertisements were intended to assuage fears of lung cancer
16 and other diseases and give the concerned smoker arguments for rationalizing their continuation
17 of the addiction. Through multiple-advertising transmogrifications, Vantage cigarettes have
18 been progressively repositioned to ever-younger audiences. During the mid-1980s, this
19 advertising campaign featured young, successful professionals including architects, fashion
20 designers, lawyers, etc., with the slogan "The Taste of Success." These ads promoted the
21 implication that smoking is helpful—if not essential—to success or prominence. In the late
22 1980s, the advertising theme for Vantage cigarettes began to feature professional-caliber
23 athletes and auto racers. These advertisements depict physical activity requiring strength or
24 stamina beyond that of everyday activity. The obvious implication is that smoking does not
25 harm you.

26 226. During the 1980s, advertising for Salem cigarettes also became more youth-
27 oriented. Whereas the dominant advertising theme for Salem cigarettes used to be clean, fresh
28 country air, during the 1980s Salem ads were populated by muscular surfers and bikini clad

1 women, fun-loving party animals, and other attractive adolescent role models. Another
2 successful advertising campaign targeted at young people is the Lorillard Tobacco Company
3 campaign promoting Newport cigarettes. Newport ads frequently show men and women in
4 sexually suggestive positions always having fun, using the slogan "Alive With Pleasure."

5 227. Another successful advertising campaign has been the "You've Come A Long
6 Way Baby" campaign, promoting Virginia Slims cigarettes. One of the most important
7 psychological needs of most adolescent girls is to become independent from their parents. By
8 associating smoking with women's liberation, Philip Morris intended to create in the minds of
9 teenage girls the vision of smoking as a symbol of autonomy and independence. Ads for
10 Virginia Slims and other "feminine" cigarettes prey upon the natural and common insecurity
11 and sense of inferiority experienced by adolescents, by portraying the cigarette as a crutch and a
12 symbol of superiority. Perhaps the most acute psychological need of adolescence is to fit in, to
13 be accepted, to be popular. Ads for Philip Morris' Benson & Hedges cigarettes developed an
14 image of smoking as a happy pleasure to be shared in the company of others and the easy road
15 to instant acceptance within a group.

16 228. In today's culture, many teenage girls perceive that a prerequisite to popularity is
17 to be thin. Philip Morris and other cigarette companies capitalize upon this perception by
18 presenting cigarette smoking as a suitable alternative to a diet for being thin. Virtually every
19 "feminine" cigarette includes words like slim, light, super slim, ultra light, etc. The
20 photographic imagery in cigarette advertising that targets young females universally portrays
21 attractive young women in glamorous outfits. Smoking is thus associated with being sexy and
22 beautiful. In cigarette ads, the air is fresh and clear; magical things happen. The reality is that
23 cigarette smoking causes addiction, disease and death.

24 229. Many teenage boys fantasize about owning a powerful motorcycle. For this
25 reason many cigarette brands have used motorcycle imagery to encourage teenage boys to
26 smoke. Many cigarette ads that target young boys glamorize high risk activities like hang
27 gliding, motorcycle racing, mountain climbing, etc. Cigarette makers do this deliberately to
28 undermine awareness that smoking is dangerous. In its campaign to attract adolescent boys to

1 become smokers, the R.J. Reynolds Tobacco Company has made extensive use of risktaking
2 and danger in its advertising. By glorifying risk-taking, these ads have a more insidious
3 purpose. How a person estimates the magnitude and likelihood of a risk can be significantly
4 affected by what it is compared against. By portraying dangerous activities like hang-gliding,
5 mountain climbing, and stunt motorcycle riding in tobacco advertising, R.J. Reynolds
6 minimizes the dangers of smoking in adolescent minds.

7 230. The great success that R.J. Reynolds had in its effort to overtake Philip Morris in
8 the youth market is the "Joe Camel" cartoon character. This campaign was inaugurated in the
9 United States in 1987 to commemorate the 75th anniversary of Camel cigarettes. In the first
10 ads, the camel leered out over the ad saying, "75 Years And Still Smoking." The implication is
11 obvious. It soon became evident that "Joe Camel" would strike a responsive chord among
12 children and teenagers and has been used by R.J. Reynolds to target children to get them to start
13 smoking, as early as possible, so they can become addicted to nicotine at the earliest age
14 possible. R.J. Reynolds has more than tripled its advertising expenditures for Camel cigarettes
15 since 1988, utilizing themes like "Joe Camel" guaranteed to be attractive to young people at
16 high risk of becoming smokers.

17 231. When R.J. Reynolds began the Joe Camel cartoon campaign, Camel's share of
18 the children's market was only 0.5 %. In just a few years, Camel's share of this illegal market
19 has increased to 32.8%, representing sales estimated at \$476 million per year. Another
20 indication of the phenomenal success of this marketing campaign is the fact that in a recent
21 survey of six-year-olds, 91% of the children could correctly match Joe Camel with a picture of
22 a cigarette. Both the silhouette of Mickey Mouse and the face of Joe Camel were nearly
23 equally well-recognized by almost all children surveyed.

24 232. The themes within cigarette advertising are not the only feature of tobacco
25 marketing that betray the real target. The location and placement of those ads further reveal
26 that children are the intended target. During the decade of the 1980s, there was a steady
27 migration of cigarette advertising into youth-oriented publications. Magazines with sexually-
28 oriented themes and those concerning entertainment and sporting activities had the highest

1 concentration of cigarette ads. For many of these magazines, teenagers comprise a quarter or
2 more of the total readership. Cigarette ads in these youth-oriented magazines were frequently
3 multi-page, pop-up ads which are significantly more costly, but also more attention-grabbing
4 than conventional ads. News magazines, like *Time* and *Newsweek*, which have older audiences,
5 had few cigarette ads, and those tended to emphasize health promises concerning tar and
6 nicotine rather than glamorous images.

7 233. In 1988, the tobacco industry reaped \$221 million in profits from \$1.25 billion
8 in sales to children under the age of 18. Marlboro and Camel cigarettes dominate the teenage
9 smoking market.

10 234. In late 1990, the Tobacco Institute, on behalf of the industry, inaugurated a
11 public relations campaign designed to convince the public that the cigarette companies wished
12 to discourage young people from smoking. Several tobacco companies began their own
13 campaigns at the same time. In fact, these programs are just a continuation of the Defendants'
14 ongoing fraud and conspiracy. While these programs call for age 18 as the national standard
15 for tobacco sales to children, and for requiring "adult supervision" of cigarette vending
16 machines, in fact, the Tobacco Institute and Tobacco companies hope to freeze the status quo
17 with regard to children's access to tobacco as most states already have a minimum age of 18 or
18 older. Brochures, like "Tobacco: Helping Youth Say No," are being distributed by the Tobacco
19 Institute and tobacco industry. In reality, this is a pro-smoking subterfuge. The brochure
20 presents smoking as a permissible "adult" decision and smoking as something an "adult" can
21 safely do. The only reason given children for not smoking is that—like getting married or
22 driving a car—smoking is for grown-ups. Of course, that message really makes the smoking
23 more desirable to kids. An R.J. Reynolds' brochure even tells parents to tell their children that
24 the parents smoke "because they enjoy it." None of these brochures disclose that smoking is
25 highly addictive and harmful to human life.

26 235. Perhaps the most vicious element of this advertising campaign has been
27 advertising aimed at young girls. Nearly every issue of magazines for young girls, like *Teen*
28 and *Young Miss*, includes an advertisement by R.J. Reynolds urging children not to smoke. But

1 the reasons given for refraining are not that smoking is addictive, that it can harm or kill the
2 infants of pregnant woman, or that it causes cancer and other lethal diseases; rather, the reason
3 given is that it is an "adult decision."

4 236. The likely effect of these ads is that, rather than discouraging children from
5 smoking, they plant the notion that smoking is something to do to show one's independence, to
6 act grown-up. This notion is, of course, reinforced by the ubiquitous cigarette ads depicting
7 glamorous young adult woman smoking as a way of demonstrating their independence.

8 237. This despicable conduct has gone on for 40 years and continues into this decade.
9 In January 1990, the Manager of Public Relations of R.J. Reynolds wrote the principal of a
10 public school that: "The tobacco industry is also concerned about the charges being made that
11 smoking is responsible for so many serious diseases. Long before the present criticism began,
12 the tobacco industry in a sincere attempt to determine the harmful effects, if any, smoking
13 might have on human health, established the Council for Tobacco Research-USA. The industry
14 has also supported research grants by the American Medical Association. Over the years the
15 tobacco industry has given in excess of \$162 million to independent research on the
16 controversies surrounding smoking—more than all voluntary health associations combined.
17 Despite all the research going on, the simple and unfortunate fact is that scientists do not know
18 the cause or causes of the chronic diseases reported to be associated with smoking. The
19 answers to many unanswered controversies surrounding smoking—and the fundamental causes
20 of the diseases often statistically associated with smoking—we do believe can only be
21 determined through much more scientific research. Our company intends, therefore, to
22 continue to support such research in a continuing search for answers. We would appreciate
23 your passing this information along to your students."

24 238. The targeting of children, while unquestionably wanton, reckless, and unethical,
25 and cynically denied by the industry, was and continues to be vitally important to the tobacco
26 industry. Children enticed into smoking provide a guaranteed future market for a product that
27 each year kills the industry's best customers by the hundreds of thousands.

28 239. Defendants have for many years also targeted inner city African-American

1 communities with billboard and other advertising so as to lure African-American citizens into
2 smoking, to introduce them at an early age into the use of cigarettes, and, by the manipulation
3 of nicotine levels, to keep them addicted to such usage. This has been achieved by a cleverly
4 contrived, targeted advertising campaign designed to depict smoking as an especially attractive
5 and appealing lifestyle. This advertising has been the result of a contemptuous disregard of the
6 health concerns of African-Americans and has been carried out with callous disregard of the
7 rights of the citizens.

8 240. African-American-owned and -oriented magazines receive proportionately more
9 revenues from cigarette advertising than other consumer magazines. In addition, stronger,
10 mentholated brands are more commonly advertised in African-American-oriented magazines
11 than in other magazines. In fact, cigarettes advertised in African-American media have higher
12 levels of tar and nicotine than those advertised elsewhere.

13 241. Cigarette billboard advertising is placed in predominately African-American
14 communities four to five times more often than in predominately white communities. A
15 Baltimore federal judge has observed that tobacco companies "focus [billboard advertising] on
16 depressed inner-city areas. Billboards are conspicuously absent from more affluent
17 communities."

18 242. Defendants also target African-Americans in product development. For
19 example, in the early 1990s, R.J. Reynolds developed Uptown, a "designer cigarette" for
20 African-Americans. R.J. Reynolds planned to begin test marketing Uptown on the first day of
21 Black History Month in 1990, with a promotional campaign featuring African-Americans
22 enjoying urban nightlife and the slogan: "Uptown. The Place. The Taste." According to Lynn
23 Beasley, R.J. Reynolds Vice President for Strategic Marketing, the company expected "Uptown
24 to appeal most strongly to Black smokers." R.J. Reynolds expected Uptown to challenge
25 Lorillard's Newport and Brown & Williamson's Kool brands for the African-American smoker
26 market.

27 243. As a result of this targeting, African-American men are 30% more likely than
28 white men to die from smoking related diseases.

1 244. The reckless disregard by the Defendants for the health risks for the youth and
2 minorities of America is reflected in the response of an R. J. Reynolds executive to the question
3 of a former "Winston Man," David Goerlitz, when he asked why the R.J. Reynolds executives
4 did not smoke: "We don't smoke the shit, we just sell it. We reserve that for the young, the
5 black, the poor and the stupid."

6
7 **K. Other Tobacco Products**

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

10 246. The "roll your own" tobacco products distributed in the County of San Diego by
11 these Defendants are unreasonably dangerous to the consumer.

12 247. Even though the medical evidence regarding the hazards of cigarette smoking
13 and addiction have been known to these Defendants for many years, the packages and
14 containers of the "roll your own" tobacco bear no warning regarding such hazards.

15 248. Defendants UST Inc. and United States Tobacco Company makes approximately
16 90 percent of the oral snuff and chewing tobacco sold in the United States. Smokeless tobacco
17 delivers a similar amount of nicotine as cigarettes and is equally as addictive. Plaintiffs are
18 informed and believe that smokeless tobacco manufacturers intend to cause nicotine
19 dependence among consumers through a strategy that involves promoting the use of lower
20 nicotine brands with the intent of moving users up to higher, more addictive brands over time.
21 The "graduation" strategy calls for three different brands of low, medium and high nicotine
22 content. The strategy is based on the premise that new users of smokeless tobacco are most
23 likely to begin with products that are milder tasting, more flavored, and lighter in nicotine
24 content. After a period of time, there is a natural progression, switching to brands that are more
25 full-bodied and have more concentrated tobacco taste, with more nicotine, than the entry brand.
26 This graduation strategy is supported by the manufacturers' advertising practices which indicate
27 the manufacturers' intent to have consumers experiment with low-nicotine brands and graduate
28 to higher-nicotine brands over time.

1
2 **L. Fraudulent Concealment**

3 249. Defendants have fraudulently concealed the existence of the causes of action
4 alleged below. The Plaintiffs have exercised due diligence to learn of their legal rights, and
5 despite such diligence, failed to uncover the existence of the violations alleged below until very
6 recently. Defendants affirmatively concealed the existence of the causes of action alleged
7 below through the following actions, among others:

8 a. Providing false explanations to customers and to governmental entities
9 regarding the health hazards of tobacco and the addictive qualities of nicotine.

10 b. Conducting activities in furtherance of the conspiracy in secret, including
11 clandestine meetings, using tobacco company attorneys to secure documents that might reveal
12 the dangers of cigarettes and the addictive nature of nicotine, closing down research projects
13 and moving research and information facilities outside the United States.

14 c. Requiring employees to keep secret all information about the dangers of
15 cigarette smoking and the addictive nature of nicotine under threats of severe legal
16 consequences.

17
18 **M. Tolling Of Applicable Statutes Of Limitation**

19 250. Any applicable statutes of limitation have been tolled by Defendants' affirmative
20 and intentional acts of fraudulent concealment, suppression, and denial of the facts as alleged
21 above. On information and belief, Plaintiffs allege that such acts of fraudulent concealment
22 included intentionally covering up and refusing to disclose internal documents, suppressing and
23 subverting medical and scientific research, and failing to disclose and suppressing information
24 concerning the addictive properties of nicotine, and Defendants' manipulation of the levels of
25 nicotine in their Tobacco products to addict consumers. Through such acts of fraudulent
26 concealment, Defendants have successfully concealed from the public and Plaintiffs the truth
27 about the addictive nature of tobacco, and their manipulation of nicotine levels in their Tobacco
28 products, thereby tolling the running of any applicable statutes of limitation. Plaintiffs could

1 not reasonably have discovered the true facts until very recently, the truth having been
2 fraudulently and knowingly concealed by Defendants for years.

3 251. In the alternative, Defendants are estopped from relying on any statutes of
4 limitation because of their fraudulent concealment of the addictive nature of nicotine and their
5 manipulation of nicotine levels and bio-availability of nicotine in their Tobacco products.
6 Defendants were under a duty to disclose their manipulation of nicotine levels and bio-
7 availability of nicotine in their Tobacco products because this is nonpublic information over
8 which Defendants had exclusive control, because Defendants knew that this information was
9 not available to Plaintiffs .

10 252. Until shortly before the filing of the Complaint in this action, Plaintiffs had no
11 knowledge that Defendants were engaged in the wrongdoing alleged herein. Because of the
12 fraudulent and active concealment of the wrongdoing by Defendants, including deliberate
13 efforts—which continue to this day—to give Plaintiffs materially false impression that nicotine
14 is not addictive and that Defendants are not manipulating the nicotine levels of their Tobacco
15 products, Plaintiffs could not reasonably have discovered the wrongdoing at any time prior to
16 this time. Defendants have attempted and are continuing their attempts to keep such internal
17 information from reaching the public. Indeed, Defendants still refuse to admit that nicotine is
18 addictive and that they have manipulated the levels of nicotine in their tobacco products.

19
20 **FIRST CAUSE OF ACTION**

21 **BY PLAINTIFFS GRAY DAVIS and JAMES ELLIS.**

22 **ON BEHALF OF THE GENERAL PUBLIC**

23 **UNDER BUSINESS AND PROFESSIONS CODE §17204**

24 **[UNLAWFUL BUSINESS PRACTICES]**

25
26 253. Gray Davis and James Ellis hereby incorporate by reference the allegations
27 contained in paragraphs 1 through 252 of this complaint, as though fully set forth herein.

28 254. Beginning at an exact date unknown to plaintiffs but at least since 1954

1 defendants have committed acts of unfair competition, as defined by Business and Professions
2 Code §17200, by engaging in unlawful practices including but not limited to the following:

3 a. The acts and practices described in Paragraphs 1 through 252 above constitute
4 violations of California Business and Professions Code §17500: The acts alleged in Paragraphs
5 1 through 252 show a pattern of untruthful statements, false representations, concealment,
6 intent to mislead, and a conspiracy to defraud that were all part of a scheme to mislead
7 customers and that each of the misrepresentations to the customers conforms to that scheme.
8 These misrepresentations set out in Paragraphs 1 through 252 include but are not limited to:
9 The tobacco companies misled the customer concerning the addictive nature of nicotine, the
10 tobacco companies manipulated the levels of nicotine in their product, the industry deceived the
11 public about disease and death, the tobacco companies' issuance of their misleading "Frank
12 Statement To Cigarette Smokers", in 1954, the tobacco companies' formation of the CTR which
13 was nothing more than a sham developed by the tobacco industry to redeem potential losses in
14 sales by providing misleading and inaccurate information regarding the health risks of
15 tobacco. The tobacco companies' formation of the CTR which was nothing more than a sham
16 developed by the tobacco industry to redeem potential losses in sales by providing misleading
17 and inaccurate information regarding the health risks of tobacco. The tobacco companies use
18 of the CTR to promote the sale of cigarettes by providing inaccurate research. The CTR
19 actually discovering the health risks through its own research and not revealing it to the public
20 as the tobacco industry had originally pledged, and the tobacco defendants and CTR breach of
21 their own statements to the public regarding the CTR. The deceitful manner in which the
22 manufacturers targeted minors. The individual companies' concealment of their own research
23 and their own scheme to mislead the customer as set out in Paragraphs 1 through 252.

24 255. Such acts and omissions constitute a violation of Business and Professions Code
25 §§17200 et seq. Plaintiffs reserve the right to identify additional violations by defendants of
26 law as established through discovery.

27 256. As a result of their unlawful and fraudulent conduct described above, defendants
28 have been and will be unjustly enriched. Specifically, defendants have been unjustly enriched

1 by the receipt of hundreds of millions of dollars in ill-gotten gains from sales of millions of
2 packs and cartons of cigarettes in California, sold in large part as a result of the unlawful acts
3 and omissions described herein.

4 257. Plaintiffs, pursuant to California Business and Professions Code §17203, seek an
5 order of this Court compelling defendants to:

- 6 (a) Provide restitution to the public for all funds unlawfully, unfairly or fraudulently
7 obtained by defendants as a result of their violation of Business and Professions
8 Code §§17200 et seq.; and
9 (b) Disgorge all revenues and profits acquired as a result of the unlawful business
10 practice.

11
12 **SECOND CAUSE OF ACTION**

13 **BY PLAINTIFFS GRAY DAVIS and JAMES ELLIS,**

14 **ON BEHALF OF THE GENERAL PUBLIC**

15 **UNDER BUSINESS AND PROFESSIONS CODE §17200**

16 **[UNFAIR AND FRAUDULENT BUSINESS PRACTICES]**
17

18 258. Gray Davis and James Ellis hereby incorporate by reference the allegations
19 contained in paragraphs 1 through 257 of this complaint, as though fully set forth herein.

20 259. California Business and Professions Code § 17200 provides that unfair
21 competition shall mean and include "all unlawful, unfair or fraudulent business practices and
22 unfair, deceptive, untrue or misleading advertising."

23 260. The acts of untrue and misleading advertising set forth above in Paragraphs 1
24 through 252, are incorporated herein by reference and are, by definition, violations of Business
25 and Professions Code §17200.

26 261. The unlawful, unfair and fraudulent business practices of defendants described
27 above present a continuing threat to members of the public in that the defendants continue to
28 engage in the conduct described therein. This conduct includes but is not limited to: Deceiving

1 the public about disease and health, the misleading Frank Statement, the creation of the CTR as
2 nothing more than a sham developed by the tobacco industry to redeem potential losses and
3 sales by providing misleading and inaccurate information regarding the health risks of tobacco,
4 the tobacco companies using the CTR to promote the sale of cigarettes by providing inaccurate
5 research, the CTR actually discovering health risks through its own research and not revealing
6 them to the public as the tobacco industry originally pledged, the tobacco companies' breach of
7 their own statements to the public regarding the CTR, the control of the TIRC by Hill and
8 Knowlton and using the term "scientific" research as a public relations front, the role of tobacco
9 lawyers and tobacco lobbyists in deceiving the public and their involvement in "special
10 projects", the recently disclosed incriminating documents from the CTR, the defendants' tactics
11 to suppress and avoid disclosure of its internal research on smoking and disease, the repeated
12 false promises to the public commencing in 1954 and including the statement on January 15,
13 1968 and the Tobacco Institutes advertisements in 1970 and the memo of May 1, 1972, the
14 deceit concerning whether nicotine is addictive, the manipulation of nicotine levels, the recited
15 tobacco companies' active participation in the fraud disclosed in Paragraphs 106 through 127,
16 as well as the industry's concealment of its knowledge that smoking is harmful to the customer
17 as set out in Paragraphs 128 through 135, the tobacco companies' suppressing the truth about
18 nicotine as set out in Paragraph 136, the gentlemen's agreement, the mouse house massacres,
19 the manufacturers refusing to accept its responsibility to disclose information as set out in
20 Paragraphs 137 to 153, the suppression of safer cigarettes in Paragraphs 154 through 166, the
21 marketing hoax regarding "light cigarettes" as set out in Paragraphs 167 through 176, the
22 fraudulent advertising of tar and nicotine content as set out in Paragraphs 177 through 179, the
23 fraud concerning nicotine addiction as set out in Paragraphs 180 through 198, as well as the
24 other unfair business practices set out in the allegations of Paragraphs 1 through 252. In
25 addition Plaintiffs would reserve the right to amend the complaint to add additional unfair
26 business practices as these are discovered in this litigation.

27 262. As a result of their conduct described above, defendants have been and will be
28 unjustly enriched. Specifically, Defendants have been unjustly enriched by receipt of hundreds

1 of millions of dollars in ill-gotten gains from sales of millions of packs and cartons of cigarettes
2 in California, sold in large part as a result of the acts and omissions described herein.

3 263. Because of the fraudulent misrepresentations made by defendants as detailed
4 above, and the inherently unfair practice of committing a fraud against the public and the state
5 and the federal government agencies by intentionally misrepresenting and concealing evidence
6 from the public and the government by the acts alleged above, by which all defendants
7 disseminated biased and flawed studies, and fraudulently concealed and shielded from public
8 scrutiny those studies which supported the conclusions of the substantial link between
9 numerous health hazards and cigarette smoking, the acts of defendants described herein
10 constitute unfair and/or fraudulent business practices.

11 264. Plaintiffs, pursuant to California Business and Professions Code §17203, seek an
12 order of this Court compelling the defendants to provide the following:

- 13 (a) Provide restitution to the public for all funds unlawfully, unfairly or fraudulently
14 obtained by defendants as a result of their violation of Business and Professions
15 Code §§17200 et seq.; and
16 (b) Disgorge all revenues and profits acquired as a result of the unfair and/or
17 fraudulent business practices.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for relief and judgment against the Defendants, jointly
20 and severally, as follows:

- 21 I. For injunctive and declaratory relief:
22 A. Declaring that Defendants have violated the provisions of California
23 Business and Professions Code §17200, and California Business and
24 Professions Code §17500;
25 B. Enjoining Defendants and their respective successors, agents, servants,
26 officers, directors, employees and all persons acting in concert with
27 them, directly or indirectly, from engaging in conduct violative of
28 California Business and Professions Code §17200, and California

Business and Professions Code §17500;

- C. Requiring Defendants to 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 and addiction;
- D. Requiring Defendants to cease targeting minors in their advertising campaigns;
- E. Requiring Defendants to fund smoking cessation programs including the provision of nicotine replacement therapy for dependent smokers;
- F. Requiring Defendants to disclose the nicotine yields of their products based on machine tests and human confirmation studies for each brand;
- G. Requiring Defendants to disgorge all profits acquired by means of any act or practice by this Court to be an unlawful, unfair or deceptive business practice; and
- H. Awarding Plaintiffs reasonable attorneys fees and costs.

2. For costs of suit incurred herein.

3. For prejudgment interest as provided by law.

4. Such other and further relief as this Court deems equitable, just and proper.

Dated: July 24, 1997

ROBINSON, PHILLIPS & CALCAGNIE
and
DOUGHERTY & HILDRE

By: Mark P. Robinson, Jr.
MARK P. ROBINSON, JR.
Attorneys for Plaintiffs

The foregoing instrument is a full, true and correct copy of the original on file in this office.

Attest: MAR 12 1998

KENNETH E. MARTONE
Clerk of the Superior Court of the State of California,
in and for the County of San Diego.

82

By: Erlyn M. Lopez Deputy
ERLYN M. LOPEZ

EXHIBIT D

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GOVERNMENT WAIVER

24 SUPERIOR COURT OF THE STATE OF CALIFORNIA

25 FOR THE COUNTY OF SAN DIEGO

26 COUNTY OF LOS ANGELES; and ZEV)
27 YAROSLAVSKY, in his official capacity)
28 as a member of the Board of Supervisors of)
the County of Los Angeles, on Behalf of)
the General Public)

29 Plaintiffs,

30 vs.

31 R.J. REYNOLDS TOBACCO COMPANY;)
32 BROWN & WILLIAMSON TOBACCO)
33 CORPORATION; BATUS HOLDINGS,)
34 INC.; BATUS, INC.; B.A.T. INDUSTRIES)
35 P.L.C.; BRITISH AMERICAN TOBACCO)
36 COMPANY; LTD.; LIGGETT & MYERS,)
37 INC.; THE AMERICAN TOBACCO)
38 COMPANY; PHILIP MORRIS, INC.; THE)
COUNCIL FOR TOBACCO RESEARCH-)
U.S.A., INC.; THE TOBACCO INSTITUTE,)
INC.; LORILLARD CORPORATION;)
and DOES 1 through 500, Inclusive)

39 Defendants.

Case No. 707651

FIFTH AMENDED COMPLAINT
FOR DAMAGES AND EQUITABLE
RELIEF

1 Plaintiffs County of Los Angeles and Zev Yaroslavsky, in his official capacity as a
2 member of the Board of Supervisors of the County of Los Angeles, on behalf the general public.
3 by their attorneys, allege against Defendants on information and belief, except those allegations
4 which pertain to the named Plaintiffs or to their attorneys, which are alleged on personal
5 knowledge, as follows:

6 **NATURE OF THE CASE**

7 1. Through a fraudulent course of conduct that has spanned decades, Defendants have
8 manufactured, promoted, distributed or sold tobacco products to thousands of residents of the
9 County of Los Angeles knowing, but denying and concealing, that their tobacco products contain a
10 highly addictive drug, known as nicotine, and have, unbeknownst to the public, controlled and
11 manipulated the amount and bio-availability of nicotine in their tobacco products for the purpose
12 and with the intent of creating and sustaining addiction. Each year, residents of the County of Los
13 Angeles die from smoking the Defendants' product, and each year the County of Los Angeles must
14 spend millions of dollars to purchase or provide medical and related services for residents of the
15 County of Los Angeles suffering from diseases caused by cigarette smoking and the use of
16 tobacco products. Each year, the Defendants reap huge profits from the sale of cigarettes in the
17 County of Los Angeles, and each year the Defendants spend millions of dollars of advertising in
18 the County of Los Angeles which has enormous appeal to young people, causing more and more
19 children and teenagers in the County of Los Angeles to begin smoking. The County of Los
20 Angeles seeks both economic damages and injunctive relief for the conduct alleged in this
21 complaint. Among other things, the County of Los Angeles seeks damages and restitution for
22 monies expended for the health care of the affected individuals, and an injunction to prohibit
23 Defendants from engaging in conduct violative of California Business and Professions Code
24 Section 17500. Zev Yaroslavsky, in his official capacity as a member of the Board of Supervisors
25 of the County of Los Angeles, on behalf of the general, seeks injunctive and declaratory relief
26 under Business and Professions Code Sections 17200 et seq.

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1 **Brown & Williamson Tobacco Corporation, Batus Holdings, Inc. and Batus, Inc.**

2 manufactures, advertises and sells Kool, Barclay, BelAir, Capri, Raleigh, Richland, Laredo, Eli
3 Cutter and Viceroy cigarettes throughout the United States and in California.

4 6. Defendant **B.A.T. Industries P.L.C.** (hereinafter "B.A.T. Industries") and **British**
5 **American Tobacco Company, L.T.D.** (hereinafter "BATCO") are British corporations having
6 their principal place of business at Windsor House, 50 Victoria St., London. Through a succession
7 of intermediary corporations and holding companies, **B.A.T. Industries P.L.C.** and **BATCO** are
8 the sole shareholder of **Brown & Williamson Tobacco Corporation**. Through **Brown &**
9 **Williamson, B.A.T. Industries P.L.C.** and **BATCO** have placed cigarettes into the stream of
10 commerce with the expectation that substantial sales of cigarettes would be made in the United
11 States and in California. In addition, **B.A.T. Industries P.L.C.** and **BATCO** have conducted, or
12 through its agents and/or co-conspirators conducted, critical research for **Brown & Williamson**
13 **Tobacco Corporation** on the issue of smoking and health. Further, **Brown & Williamson**
14 **Tobacco Corporation** is believed to have sent to England research conducted in the United States
15 on the issue of smoking and health in an attempt to remove sensitive and inculpatory documents
16 from United States jurisdiction, and these documents were subject to the control of **B.A.T.**
17 **Industries P.L.C.** **B.A.T. Industries P.L.C.** and **BATCO** have been involved in the conspiracy
18 described herein and the actions of **B.A.T. Industries P.L.C.** and **BATCO** have effected and
19 caused harm in California. **Brown & Williamson** is a subsidiary operation company of **B.A.T.**
20 **Industries**, and there is such a unity of interest and ownership that the separate personalities of the
21 two no longer exists. **Brown & Williamson** is so organized and controlled by **B.A.T. Industries**,
22 and its affairs are so conducted, as to make it merely an instrumentality, agency, conduit and
23 adjunct of **B.A.T. Industries**. Moreover, if the acts of **Brown & Williamson** are treated as those
24 of **Brown & Williamson** alone, an inequitable result will follow, in that **Brown & Williamson** is
25 so undercapitalized that the corporation cannot satisfy its existing creditors and prospective
26 liabilities, and **Brown & Williamson** is so controlled by **B.A.T. Industries** that it has been left
27 without means to satisfy its existing and potential creditors. The foregoing allegations are based
28 upon the following:

- 1 A. The Defendant **B.A.T. Industries** was formed in 1976 as the result of a reverse
2 takeover. The takeover was nothing more than a paper shuffle and name change.
3 the Board of Director and Officers of the previous companies simply went on the
4 payroll of the new **B.A.T.** entity. The policies and operations did not change.
- 5 B. The Board of Directors of **B.A.T. Industries** maintains a rigid control on the
6 operations of its subsidiaries and takes an active role in the financial matters,
7 marketing, worldwide policies on smoking and health and directs the research and
8 development programs of its subsidiaries on an unified basis.
- 9 C. The **B.A.T. Industries** Board operates under what it refers to as "Delegated
10 Authority" which succinctly sets forth the so-called "autonomy" of its operating
11 divisions. The fact is that very little decision-making is left to the divisions; **B.A.T.**
12 **Industries** has reserved to itself the decision-making authority on all but the most
13 minor corporate matters. For example **B.A.T. Industries** retains the authority for
14 the "objectives and strategies of the operating companies," the overall allocation of
15 resources, the determination of the business parameters of each division and the
16 establishment of the annual budgets.
- 17 D. The **B.A.T. Industries** Board maintains its control through the use of a series of
18 "committees" whose members are appointed by the Board and are mostly drawn
19 from the Board. The Committees that exercise control over **Brown & Williamson**
20 are the "Tobacco Division Board," the "Tobacco Executive Committee," and the
21 "Chairman's Policy Committee."
- 22 E. The **B.A.T. Industries** Board issues mandatory "Guidelines" which are "designed
23 to indicate the contribution" **B.A.T. Industries** requires from its operation division,
24 "both in financial terms and in supporting **B.A.T. Industries** policies and
25 strategies." Guidelines for **Brown & Williamson** include, *inter alia* the direction
26 of **Brown & Williamson's** marketing strategy, the direction of of **Brown &**
27 **Williamson's** legal and technical defense efforts, the requirement that **Brown &**
28 **Williamson** participate with the "Tobacco Strategy Review Team."

- 1 F. The function of the "Tobacco Strategy Review Team" established *circa* 1983, is to
2 "formulate overall strategic objectives" for the entire **B.A.T. Group** relating to
3 tobacco issues. Membership on this elite Team of policy-makers was, initially,
4 confined to a very tight circle of **B.A.T. Industries** Board members. Membership
5 on this "Team" has in recent years been expended to include the CEO's of the four
6 tobacco operating companies.
- 7 G. At the same time that the Tobacco Strategy Review Team was initiated, the **B.A.T.**
8 **Industries** Board initiated the "BAT Research Organization." Central to the BAT
9 Research Organization was the Research Policy Group whose job it is to assist in
10 developing research plans and the implementation of strategic objectives from the
11 Tobacco Strategy Review Team.
- 12 H. The BAT Group has had a consistent smoking and health policy since the early
13 1960's. **B.A.T. Industries** requires all of its tobacco operating companies to take
14 the stance mandated by the **B.A.T. Industries** Board. The policy was established
15 at a 1962 Southampton Research Conference and consists of 3 integral parts (1)
16 denial of causation at all times; (2) systematic rejection of any research which does
17 not support the company line and (3) the relegation of biological research to an
18 independent organization for the purpose of disavowing knowledge that tobacco is
19 biologically active.
- 20 I. Despite its public pronouncements, **B.A.T. Industries** has secretly been involved in
21 not only biological research, but also research into the pharmacology of nicotine,
22 the behavior of smokers, and the effect that nicotine has on the body.
- 23 J. That the **B.A.T. Industries** Board has actively and aggressively solicited United
24 States funding for the purchase of its stock and of its commercial paper and in
25 recent years purchased both Farmers Insurance and the American Tobacco
26 Company.
- 27 K. **B.A.T. Industries**, not **Brown & Williamson**, was obligated by mandate from the
28 Federal Trade Commission, because of its purchase of the American Tobacco

1 Company, to operate a cigarette manufacturing business in North Carolina for two
2 years.

3 L. Because of certain financial dealings by the Board of Directors of **B.A.T.**
4 **Industries**, including the purchase and debt structuring for the purchase of Farmers
5 Insurance, **B.A.T. Industries** operating subsidiary **Brown & Williamson** is
6 insolvent.

7 7. Defendant **Liggett & Myers** (hereinafter "Liggett") is a Delaware corporation
8 having its principal place of business located at 700 West Main Street, Durham, North Carolina
9 27701. Defendant **Liggett & Myers** manufactures, advertises and sells Chesterfield, Decade,
10 L&M, Pyramid, Dorado, Evè, Stride, Generic and Lark cigarettes throughout the United States and
11 in California.

12 8. Defendant **The American Tobacco Company** (hereinafter "American Tobacco")
13 is a Delaware corporation having its principal place of business located at Six Stamford Forum,
14 Stamford, Connecticut 06904. Defendant **The American Tobacco Company** manufactures,
15 advertises and sells Lucky Strike, Pall Mall, Tareyton, Malibu, American, Montclair, Newport,
16 Misty, Barkeley, Iceberg, Silk Cut, Silva Thins, Sobrania, Bull Durham and Carlton cigarettes
17 throughout the United States and in California. On December 21, 1994, **The American Tobacco**
18 **Company** was purchased by **B.A.T. Industries, P.L.C.** which, on information and belief, has
19 succeeded to the liabilities of **The American Tobacco Company** by operation of law or as a
20 matter of fact.

21 9. Defendant **Philip Morris Incorporated** (hereinafter "Philip Morris") is a Virginia
22 corporation having its principal place of business located at 120 Park Avenue, New York, New
23 York. Defendant **Philip Morris Incorporated** manufactures, advertises and sells Philip Morris,
24 Merit, Cambridge, Marlboro, Benson & Hedges, Virginia Slims, Alpine, Dunhill, English Ovals,
25 Galaxy, Players, Saratoga and Parliament cigarettes throughout the United States and in
26 California.

27 10. Defendant, **The Council for Tobacco Research - U.S.A., Inc.** (hereinafter
28 "CTR"), successor in interest to the Defendant Tobacco Industry Research Committee ("TIRC"), is

1 a nonprofit corporation organized under the laws of the State of New York having its principal
2 place of business at 900 3rd Avenue, New York, New York 10022.

3 11. Defendant **The Tobacco Institute, Inc.** (hereinafter "Tobacco Institute") is a New
4 York corporation, having its principal place of business located at 1875 "I" Street, N.W., Suite
5 800, Washington, D.C.. Defendant **The Tobacco Institute, Inc.** has since its incorporation in
6 1958, operated as the public relations and lobbying arm of the tobacco companies.

7 12. Defendant **Lorillard Corporation** (hereinafter "Lorillard") is a Delaware
8 corporation having its principal place of business located at One Park Avenue, New York, New
9 York 10016. Defendant **Lorillard Corporation** manufactures, advertises and sells Old Gold,
10 Kent, Triumph, Satin, Max, Spring, Newport and True cigarettes throughout the United States and
11 in California.

12 13. Plaintiffs are informed and believe and based thereon allege that at all times herein
13 mentioned, the true names and capacities, whether individual, corporate, associate or otherwise of
14 Defendants DOES 2 through 500, inclusive, are unknown at this time to Plaintiffs who therefore
15 sue said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon
16 allege that each of the Defendants designated herein by such fictitious name were involved in the
17 distribution, manufacturing, promotion or sale of tobacco products, and/or were in some way
18 negligently or otherwise legally responsible for the events and happenings herein referred to which
19 were a legal cause and substantial factor in bringing about injuries and damages to Plaintiffs as
20 herein alleged. Upon filing of the Complaint herein Plaintiffs were ignorant of the true name of a
21 Defendant designated as Doe 1. Having discovered the true name of said Defendant to be Wayco
22 Bar Systems/Eagle Industries a dba of Wayco-Speedy Bar, Inc., Plaintiffs amended their
23 Complaint pursuant to Code of Civil Procedure §474 to insert said Defendant's true name.

24 14. Beginning as early as the 1950s, and continuing until the present day, Defendants,
25 and each of them, entered into an agreement with the intentional and unlawful purpose and effect
26 of restraining and suppressing research on the harmful effects of smoking; restraining and
27 suppressing the dissemination of information on the addictive effects of nicotine and the harmful
28 effects of smoking; and restraining and suppressing the research, development, production, and

1 making of a safer cigarette. In furtherance of Defendants' conspiracy, Defendants lend
2 encouragement, substantial assistance, and otherwise aided and abetted each other with respect to
3 these wrongful acts, and the other wrongful acts set forth herein. As a result of the conspiracy, the
4 Defendants are vicariously, and jointly and severally liable with respect to each of the actions
5 described herein.

6 15. At all times herein mentioned, Defendants, and each of them, were acting as an
7 agent of each of the other named and unnamed Defendants, and at all times herein mentioned were
8 acting within the scope, purpose and authority of that agency and with the full knowledge,
9 permission and consent of each of the other Defendants.

10 16. Each Defendant is sued individually as a primary violator and as a co-conspirator
11 and the liability of each arises from the fact that each Defendant entered into an agreement with
12 the other Defendants and third parties to pursue, and knowingly pursued, the common course of
13 conduct to commit or participate in the commission of all or part of the unlawful acts, tortious acts,
14 plans, schemes, transactions, and artifices to defraud alleged herein, including but not limited to:
15 the manipulation of nicotine content and the bio-availability of nicotine in tobacco products and
16 the misrepresentation, concealment and suppression of information regarding the addictive
17 properties of nicotine, and falsely advertising, marketing and selling cigarettes as safe, non-
18 addictive, and not containing levels of nicotine manipulated by Defendants to cause addiction. All
19 Defendants did and continue to do business in the County of Los Angeles, made contracts to be
20 performed in whole or in part in the County of Los Angeles, manufactured, tested, sold, offered for
21 sale, supplied, or placed in the stream of commerce, cigarettes and tobacco products, or in the
22 course of business, materially participated with others in so doing, and performed such acts as
23 were intended to, and did, result in the sale and distribution in the County of Los Angeles of
24 cigarettes and tobacco products from which Defendants derived substantial revenue. All
25 Defendants also caused tortious injury by acts or omissions in the County of Los Angeles, or
26 caused tortious injury in the County of Los Angeles by acts or omissions outside the County of
27 Los Angeles.

28 17. The liability of each Defendant arises from the fact that each committed and

1 engaged in a conspiracy to accomplish the commission of all or part of the unlawful and tortious
2 conduct alleged herein, and intentionally, knowingly, with evil motive, intent to injure, ill will or
3 fraud and without legal justification or excuse, engaged in the conduct herein alleged.

4 18. At all pertinent times, Defendants acted through their duly authorized agents,
5 servants, and employees who were then acting in the course and scope of their employment, and in
6 furtherance of the business of said Defendants, with the knowledge, gratification and consent of
7 their officers, directors and managing agents.

8 19. Defendants listed above and their predecessors and successors in interest did
9 business in the County of Los Angeles, made contracts to be performed in whole or in part in
10 California, and manufactured, tested, sold, offered for sale, supplied or placed in the stream of
11 commerce, or, in the course of business, materially participated with others in so doing, tobacco
12 products which the Defendants knew to be dangerous and hazardous and which the Defendants
13 knew would be substantially certain to cause injury to Plaintiffs and others similarly situated.
14 Defendants committed and continue to commit tortious and other unlawful acts in the County of
15 Los Angeles.

16 20. The Defendants, and their predecessors and successors in interest, performed such
17 acts as were intended to and did result in the sale and distribution of tobacco products in the
18 County of Los Angeles, and the consumption of tobacco products by citizens and residents of the
19 County of Los Angeles.

20 21. The term "addictive" used in this complaint is synonymous and interchangeable
21 with the term "dependence-producing." Both terms refer to the persistent and repetitive intake of
22 various substances despite evidence of harm and a desire to quit. Some scientific organizations
23 have replaced the term "addictive" with "dependence-producing" to shift the focus to dependent
24 patterns of behavior and away from the moral and social issues associated with addiction. Both
25 terms are equally relevant for understanding the drug effects of nicotine.

26

27 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

28 A. **The Industry Conspiracy On Smoking And Health: Deceiving The Public About**

1 **Disease And Death.**

2 22. The Tobacco companies reap enormous profits from their manufacture and sale of
3 cigarettes throughout the United States. The Tobacco companies' earnings for the last year alone
4 exceeded six billion dollars. The Tobacco companies make, advertise and sell cigarettes despite
5 their knowledge of the following facts: More than 10 million Americans have died as a result of
6 smoking cigarettes; more than 400,000 Americans die every year as a result of smoking cigarettes;
7 almost one death in every five is due to a smoking-related illness; the leading cause of preventable
8 death in the United States today is smoking cigarettes; smoking causes cardiovascular disease and
9 is responsible for approximately one third of all heart disease deaths; smoking causes almost all
10 lung and throat cancers and is responsible for approximately one-tenth of all cancer deaths;
11 smoking causes various pulmonary diseases, including emphysema; smoking causes stillbirths and
12 neonatal deaths among the babies of mothers who smoke; and, cigarettes may contain any number
13 of approximately 700 additives, including a number of toxic and dangerous chemicals.
14 Congressman Henry A. Waxman (D. Calif.), Chairman, House Subcommittee on Health and the
15 Environment, stated recently that "cigarettes are the single most dangerous consumer product ever
16 sold." Similarly, smokeless tobacco products cause mouth cancer, gum recession and other oral
17 health problems. More than 40% of patients who develop mouth cancer die within five years of
18 diagnosis. Despite the overwhelming weight of scientific evidence that smoking cigarettes and
19 using smokeless tobacco pose serious health risks, and despite the gruesome statistical legacy left
20 by the tobacco industry, approximately 50 million Americans continue to smoke cigarettes,
21 including 3,000 new teenage smokers daily, and millions more continue to use smokeless tobacco
22 because they are addicted to these products. More specifically, they are addicted to nicotine, the
23 drug in tobacco that causes an addiction similar to that suffered by users of heroine and cocaine.

24
25 1. **The Early Days—Claiming Cigarettes are Healthful**

26 23. Although tobacco in various forms has been consumed by Americans for many
27 centuries, it was not until the 19th century that an easily inhalable tobacco product, the cigarette,
28 became widely popular. With the introduction of the Bonsack mechanized cigarette-rolling

1 machine in 1884 by W. Duke and Sons, cigarettes were mass-produced and distributed and sold
2 nationwide.

3 24. In 1881, Duke's factory produced 9.8 million cigarettes, 1½ percent of the total
4 market. But five years later, W. Duke and Sons were able to manufacture 744 million
5 cigarettes—more than the national total in 1883. By 1890, Duke's competitors, who themselves
6 had now become mechanized, joined forces with him to establish the American Tobacco
7 Company. By the turn of the century, 9 out of every 10 cigarettes carried the Duke label. Shortly
8 after the American Tobacco Company was formed, the State of North Carolina started an antitrust
9 lawsuit against it — and other such litigation followed. In May, 1911, the American Tobacco
10 Company was dissolved by order of the Supreme Court, to be succeeded by four large firms —
11 Liggett and Myers, Reynolds, Lorillard, and American — plus many smaller ones.

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

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

23 27. The health-claim advertising campaigns by the Tobacco companies were patently
24 false, misleading, deceptive and fraudulent. These campaigns were disseminated nationally in
25 popular magazines, press, radio and television and were calculated to induce non-smokers to
26 commence smoking and to induce smokers to continue in their addiction to their harm and injury
27 and to the damage of residents of the County of Los Angeles.

28 28. In the 1930s through the 1950s, in response to what industry spokesmen referred to

1 as "the health scare," the tobacco companies made express claims and warranties as to the
2 healthiness of their products with reckless disregard to the falsity of their claims and the
3 consequential adverse impact on consumers. Examples of these health warranties include the
4 following: Old Gold - "Not a cough in a Carload"; Camel - "Not a single case of throat irritation
5 due to smoking Camels"; Philip Morris - "The throat-tested cigarette. "

6 29. In 1942, Brown and Williamson claimed that Kools would keep the head clear and
7 give extra protection against colds.

8 30. In 1952, Liggett & Myers conducted a test for advertising purposes to demonstrate
9 the absence of harmful effects of smoking Chesterfields on the nose, throat, and affected organs.
10 The tests were conducted by Arthur D. Little, Inc. and were designed so as to have no real
11 scientific value. Nonetheless, its conclusion that smoking Chesterfields had no harmful effect on
12 the organs in question was widely publicized and the purported results used to assure the general
13 public that Chesterfields were harmless.

14 31. During the 1950s, Liggett & Myers sponsored the nationally popular Arthur
15 Godfrey radio and television show wherein health claims were made based on the alleged
16 scientific studies assuring, "Smoking Chesterfields would have no adverse effects on the throat,
17 sinuses or affected organs." Arthur Godfrey subsequently contracted lung cancer caused by
18 smoking cigarettes.

19 32. Earlier consumer-oriented ads from the 1930s and 1940s often carried wide-ranging
20 medical claims that placed cigarette-touting physicians in the company of endorsers such as Santa
21 Claus ("Luckys are easy on my throat"), movie stars, sports heroes, and steady-nerved circus stars.
22 Similar ads even appeared in medical journals, where ads were directed solely at physicians. One,
23 for example, touted the Camel cigarettes booth at the American Medical Association's 1942
24 Annual Meeting.

25 33. In the New York State Journal of Medicine, Chesterfield ads began running in
26 1933. They often carried claims such as, "Just as pure as the water you drink and practically
27 untouched by human hands."

28 34. The Tobacco companies sponsored cigarette ads in the New England Journal of

1 Medicine. Journal of the American Medical Association ("JAMA") and The Lancet from the
2 1930s through the 1950s.

3 35. For 15 years, Philip Morris used various claims, including one it ran in the New
4 York State Medical Journal in 1935 touting studies that purportedly showed Philip Morris
5 cigarettes were less irritating. An ad by the company in a 1943 issue of the *National Medical*
6 *Journal* read: " 'Don't smoke' is advice hard for patients to swallow. May we suggest instead
7 'Smoke Philip Morris'? Tests showed three out of every four cases of smokers' cough cleared on
8 changing to Philip Morris. Why not observe the results for yourself?" An ad by the company in
9 JAMA in 1949 stated: "Why many leading nose and throat specialists suggest, 'Change to Philip
10 Morris!' "

11 36. Other companies added different angles for physicians. Camel cigarettes paid
12 tribute to medical pioneers and concluded: "Experience is the best teacher . . . experience is the
13 best teacher in cigarettes, too." Old Gold reacted to early negative medical studies with the slogan:
14 "If pleasure's your aim, not medical claims..." Some companies hired attractive women to deliver
15 cigarette samples to physicians and the patients in their waiting rooms.

16 37. The appearance of landmark studies such as the 1952 JAMA article on smoking
17 and bronchial carcinoma, by Alton Ochsner, M.D., and others prompted JAMA's decision to ban
18 cigarette ads from their journal.

19 38. During the 1950s the Tobacco companies employed yet another method of
20 deception in manufacturing and advertising to boost sales to counter the "health scare" —"The
21 Filter Derby" and "Tar Wars." The Tobacco companies manufactured filtered cigarettes that were
22 advertised with explicit and implicit warranties of tar/nicotine content and health claims. The
23 Tobacco companies' health claims and claims as to the effectiveness of the filters in removing tar
24 and nicotine were knowingly deceptive when made, and were made with reckless disregard for the
25 health risks to the cigarette smokers.

26
27 2. The "Big Scare" and Creation of the Tobacco Industry Research Committee
28 ("TIRC")

1 39. The industry conspiracy began as early as the 1950s, when cigarette manufacturers
2 were confronted with the publication of several scientific studies which sounded grave warnings
3 on the health hazards of cigarettes. For example, in 1952 Dr. Richard Doll, a British researcher,
4 conducted a statistical analysis which demonstrated that lung cancer was more common among
5 people who smoked, and that the risk of lung cancer was directly proportional to the number of
6 cigarettes smoked.

7 40. A report published in December, 1953 by Dr. Ernst L. Wynder of the Sloan-
8 Kettering Institute disclosed to the scientific community and to the Tobacco companies, a
9 definitive link between smoking and cancer. In these tests, researchers painted condensed
10 cigarette smoke onto the backs of mice. Malignant tumors grew in 44% of the mice. While
11 previous statistical and epidemiologic studies indicated a relationship between smoking and
12 cancer, Dr. Wynder's study demonstrated a direct biological link between smoking and cancer.
13 (Although Defendants have sought to discredit the Wynder findings, recently disclosed documents
14 include a 1962 letter from Lorillard to Dr. Wynder regarding his work establishing smoking to be
15 a carcinogen and the principal cause of lung cancer, and stating that Lorillard "considered [Dr.
16 Wynder's] work above reproach as usual.")

17 41. The Doll and Wynder studies generated widespread public concern about the health
18 hazards of cigarettes. The widespread reporting of these studies caused what cigarette company
19 officials later called the "Big Scare."

20 42. Confronted with this evidence, the presidents of the leading tobacco companies met
21 at an extraordinary gathering in the Plaza Hotel in New York City on December 15, 1953. Hill
22 and Knowlton, a public relations agency, coordinated the meeting and later prepared a
23 memorandum summarizing the discussions of that day. According to the Hill and Knowlton
24 memorandum:

25 a. The companies had not met together since two previous antitrust decrees had
26 prohibited "many group activities." However, the companies viewed the current problem "as being
27 extremely serious and worthy of drastic action."

28 b. Another indication of the seriousness of the problem was "that salesmen in the

1 industry are frantically alarmed and that the decline in tobacco stocks on the stock exchange
2 market has caused grave concern.

3 c. The problem was viewed entirely in terms of a public relations problem, as opposed
4 to a public health concern. The industry leaders "feel that the problem is one of promoting
5 cigarettes and protecting them from these and other attacks that may be expected in the future" and
6 that the industry "should sponsor a public relations campaign which is positive in nature and is
7 entirely 'pro-cigarettes.' "

8 d. All of the leading manufacturers, except Liggett, agreed to "go along" with the
9 public relations strategy. Liggett decided not to participate at that time "because that company
10 feels that the proper procedure is to ignore the whole controversy." The group discussed forming
11 an association "specifically charged with the public relations function."

12 f. Hill and Knowlton was to play a central role in the industry association. "The
13 current plans are for Hill and Knowlton to serve as the operating agency of the companies, hiring
14 all the staff and disbursing all funds."

15 43. Thus, the Tobacco Industry Research Committee ("TIRC") was conceived and
16 born. Five of the Big Six cigarette manufacturers were original members. Liggett did not join
17 until 1964, the same year that the Surgeon General issued its first report on smoking and health
18 and concluded that cigarette smoking was a cause of lung cancer. Also in 1964, TIRC changed its
19 name to the Council for Tobacco Research ("CTR").

20 44. Nine days after the December 15, 1953 meeting, Hill and Knowlton presented a
21 detailed recommendation to the cigarette manufacturers and others. The recommendation
22 recognized the importance of gaining the public trust, and avoiding the appearance of bias, if the
23 "pro-cigarette" industry strategy was to be successful. According to the memorandum:

24 a. "[The grave nature of a number of recently highly publicized research reports on
25 the effects of cigarette smoking . . . have confronted the industry with a serious problem of public
26 relations."

27 b. "It is important that the industry do nothing to appear in the light of being callous to
28 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."

3. The "Frank Statement to Cigarette Smokers"

45. The cigarette industry announced the formation of TIRC on January 4, 1954, with newspaper advertisements placed in virtually every city with a population of 50,000 or more, including Los Angeles, 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 TIRC with, inter alia, five of the Big Six manufacturers listed by name. The advertisement stated, in part, as follows:

RECENT REPORTS on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked to 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 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 those years, critics have held it responsible for practically every disease of the human body. One by one 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 serious disease is a matter of deep concern to us. Many people have asked us what we are doing to

1 meet the public's concern aroused by the recent reports. Here is the
2 answer:

- 3 1. We are pledging aid and assistance to the research effort into all
4 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.
- 5 2. For this purpose we are establishing a joint group consisting initially of the
6 undersigned. This group will be known as the TOBACCO INDUSTRY
RESEARCH COMMITTEE.
- 7 3. In charge of the research activities of the Committee will be a scientist of
8 unimpeachable integrity and national repute. In addition there will be an Advisory
9 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.
10 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.

11 46. In this advertisement, the participating Tobacco companies recognized their
12 "special responsibility" to the public, and promised to learn the facts about smoking and health.
13 The participating Tobacco companies promised to sponsor independent research on the subject,
14 claiming they would make health a basic responsibility, paramount to any other consideration in
15 their business. The participating Tobacco companies also promised to cooperate closely with
16 public health officials. At the time these promises were made, the Tobacco companies had no
17 intent to honor their promises. In fact, these promises so publicly and dramatically made to the
18 public, the citizens of California and government regulators, have been breached over and over
19 again.

20 47. The defendants promised full public disclosure of relevant research through a joint
21 TOBACCO INSTITUTE, INC. and TIRC advertisement captioned "A Statement About Tobacco
22 and Health":

23 We recognize that we have a special responsibility to the public —
24 to help scientists determine the facts about tobacco and health, and
about certain diseases that have been associated with tobacco use.

25 We accepted this responsibility in 1954 by establishing the Tobacco
26 Industry Research Committee, which provides research grants to
independent scientists. We pledge continued support of this
27 program of research until the facts are known. . . .

28 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

1 plan to have a special study group review all presently available
2 research. . . .

3 48. The tobacco industry repeatedly emphasized their commitment to full public
4 disclosure of CTR-sponsored research as well as their own research: "We are cooperating in
5 efforts to learn and to make known all the facts." The tobacco industry, through their public
6 relations arm, and with the assistance of THE TOBACCO INSTITUTE, INC., and HILL
7 KNOWLTON, INC., often repeated its representation that it promoted the disclosure of all
8 relevant facts: "The Tobacco Institute believes that the American public is entitled to complete,
9 authenticated information about cigarette smoking and health."

10 49. For example, during an appearance on the June 7, 1955, CBS television program
11 "See It Now" with Edward R. Murrow on the subject "Cigarettes and Lung Cancer," the following
12 exchange took place between the TIRC's Scientific Director, Dr. Clarence Cook Little and Arthur
13 Morse:

14 Mr. Morse: Dr. Little, have any cancer-causing agents been identified in
15 cigarettes?

16 Dr. Little: No. None whatever, either in cigarettes or in any product of
17 smoking. . . .

18 Mr. Morse: Suppose the tremendous amount of research going on, including that
19 of the Tobacco Industry Research Committee, were to reveal that
20 there is a cancer-causing agent in cigarettes. What then?

21 Dr. Little: Well, if it was found by somebody working under a tobacco industry
22 research grant, it would be made public immediately and just as
23 broadly as we could make it, and then efforts would be taken to
24 remove that substance or substances.

25 The fact is, however, that when cancer-causing "agents" became known to the tobacco industry,
26 this information was not "made public immediately." Efforts were made to remove certain
27 carcinogenic substances, and while some efforts appeared to be somewhat successful, these
28 projects were concealed and terminated because the industry knew that once revealed, it could no
longer claim it had no knowledge of the dangers of smoking and it could no longer market the
"unsafe" cigarettes in a profitable manner, if at all, once the "debate" about smoking and health
ended.

1 50. At the same time, the tobacco industry widely touted the "independent" and
2 "objective" nature of the CTR, disclaiming any affiliation with or influence of the tobacco industry
3 in the workings of the CTR. These representations extended to claims of independent decision-
4 making regarding the origination and funding of research proposals.

5 51. The truth is simply quite different. "When CTR researchers found out that
6 cigarettes were bad and it was better not to smoke, we didn't publicize that" in press releases, says
7 Dorothea Cohen, who for 24 years until her retirement in 1989 wrote summaries of grantee
8 research for the CTR's annual report. "The CTR is just a lobbying thing. We were lobbying for
9 cigarettes."

10 52. During the 1970s, THE TOBACCO INSTITUTE, INC. promoted the supposed
11 independence of the CTR in its editorial-styled advertisement entitled "The question about
12 smoking and health is still a question":

13 {A} major portion of this scientific inquiry has been financed by the
14 people who know the most about cigarettes and have a great desire
to learn the truth . . . the tobacco industry.

15 And the industry has committed itself to this task in the most
16 objective and scientific way possible

17 Completely autonomous, CTR's research is directed by a board of
18 ten scientists and physicians This board has full authority and
responsibility for policy, development and direction of the research
effort.

19 53. The tobacco company defendants did the same. For Example, in 1984, R.J.
20 REYNOLDS TOBACCO CO. advertised in The New York Times: "Studies which conclude that
21 smoking causes disease have regularly ignored significant evidence to the contrary. These
22 scientific findings come from research completely independent of the tobacco industry."

23 54. In truth and in fact, the publicized efforts of the tobacco industry to fairly research
24 the issues and to fully and accurately report the results to the public, not only their research but the
25 CTR's research as well, were a public relations hoax. Any meaningful research which was
26 conducted and detrimental to the industry was concealed and/or terminated, and it was never the
27 tobacco industry's intention to discover or publish the truth about the health hazards or addictive
28 properties associated with smoking. In sharp contrast to the tobacco industry's promotion of the

1 CTR's "independence" and "objectivity," the tobacco industry guided the CTR to sponsor research
2 tending to prove that other causes existed for the illnesses being attributed to smoking, both
3 through its grant-in-aid program and special projects, all in an effort to perpetuate doubts about
4 links between smoking and disease rather than to uncover the truth about the health hazards
5 attributable to smoking, all resulting in an increase in, or a decrease in the fall-off of, cigarette
6 sales.

7
8
9
10 4. **"Scientific" Research as a Public Relations Front: Control of TIRC by Hill and**
11 **Knowlton.**

12 55. As had been proposed at the December 15, 1953 meeting, the tobacco companies
13 (except Liggett), through their agent Hill and Knowlton, operated and effectively controlled TIRC.

14 56. TIRC was physically established in the Empire State Building, one floor below the
15 Hill and Knowlton offices. Internal documents confirm that Hill and Knowlton, and not
16 independent scientists, actually ran TIRC. A "highly confidential" internal memo reported:

17 "Since the [TIRC] had no headquarters and no staff, Hill and Knowlton,
18 Inc. was asked to provide a working staff and temporary office space. As a
19 first organizational step, public relations counsel assigned one of its
20 experienced executives, W.T. Hoyt, to serve as account executive and
21 handle as one of his functions the duties of executive secretary for the
22 TIRC."

23 57. In 1954, thirty-five staff members of Hill and Knowlton worked full or part time for
24 TIRC. In that year, TIRC spent \$477,955 on payments to Hill and Knowlton, over 50% of
25 TIRC's entire budget.

26 58. After lulling the public into a false sense of security concerning smoking and
27 health, the TIRC continued to act as a front for tobacco Industry interests. Despite the initial
28 public statements and posturing, and the repeated assertions that they were committed to full
disclosure and vitally concerned with public health, the TIRC failed to make the public health a
concern. Rather, the TIRC, at the direction of the Tobacco companies, acted to protect tobacco

1 industry profits and failed to protect the public health. A coordinated, industry-wide strategy was
2 designed to actively mislead and confuse the public about the true dangers associated with
3 smoking cigarettes. Rather than work for the good of the public health and sponsor independent
4 research, as it had promised, the Tobacco companies, acting through the TIRC/CTR, concealed,
5 undermined and distorted information coming from the scientific and medical community.

6 59. By the spring of 1955, the self-defense strategy recommended by Hill and
7 Knowlton and implemented by the industry through the "Frank Statement" was largely successful.
8 Hill and Knowlton reported to TIRC:

- 9 a. "The first big scare continues on the wane. Progress has been made."
10 b. "The research program of the [TIRC] has won wide acceptance in the
11 scientific world as a sincere, valuable and scientific effort."
12 c. "Positive stories are on the ascendancy."
13

14 **B. The Role Of Tobacco Lawyers And Tobacco Lobbyists**

15 60. The general counsel of the major cigarette manufacturers, through joint meetings to
16 review and direct proposals for scientific research for the entire industry, aided in the conspiracy
17 of the tobacco industry to defraud the public on the issue of tobacco and health.

18 61. The Defendants designed a litigation strategy over the years to conceal, delay, and
19 to run up consumers expenses in a war of attrition. For example, a memo written by J. Michael
20 Jordan, an attorney for Defendant R.J. Reynolds Tobacco Company, noted: "[The aggressive
21 posture we have taken regarding depositions and discovery in general continues to make these
22 cases extremely burdensome and expensive for Plaintiff's lawyers, particularly sole practitioners.
23 To paraphrase General Patton, the way we won these cases was not by spending all of Reynolds'
24 money, but by making that other son of a bitch spend all his."

25 62. Additionally, corporate officials of the Tobacco companies and the Tobacco Trade
26 Associations have attempted wrongfully to create a privilege for various documents that they wish
27 to conceal by sending such documents through their legal departments and law firms in order that
28 they might claim the documents to be protected by the attorney-client or attorney work-product

1 privileges.

2 63. Through CTR, the cigarette manufacturers have used lawyers and the claim of
3 attorney/client privilege to insulate CTR-funded research projects from disclosure to the public
4 and to government officials. This conduct demonstrates the falsity of the industry representations
5 jointly to fund objective research and to report the results of that research to the public.

6
7 1. "Special Projects"

8 64. Since 1966 (or perhaps even earlier), a series of research grants designated as
9 "special projects" were developed by the defendants in a manner so that culpable information
10 regarding the origination, true reasons for funding, and possibly the results of these projects would
11 allegedly receive the protection of the attorney-client privilege and/or attorney work product
12 doctrine. The "special projects" division was under the auspices of the CTR, although the tobacco
13 industry insisted at all relevant times that the "special projects" division was managed entirely
14 separately from the CTR. However, the CTR's Scientific Director, Executive Officers, and staff
15 were involved in the approval and/or administering of special projects of the CTR along with
16 industry attorneys and employees, most of which were published with the misleading imprimatur
17 of the independent CTR. The claimed purpose of the "special projects" division was to sponsor
18 research relevant to refuting the links between smoking and disease and/or finding alternate causes
19 for those diseases associated with the use of tobacco products, as well as addiction, in order to
20 develop a field of expert witnesses for public relations and defense purposes in tort suits against
21 the tobacco industry. Consistent with this purpose, the tobacco industry's counsel were
22 substantially involved in strategic and specific decision-making within the "special projects"
23 division.

24 65. Although the tobacco industry represented to the public that the research conducted
25 under the auspices of the CTR would be both independent and made public, the "special projects"
26 research detrimental to the industry was not publicized, nor did the CTR inform the public of the
27 difference between its "special projects" and its Scientific Advisory Board approved grant-in-aid
28 program in releasing special project reports, nor was the existence of the "special projects"

1 division disclosed.¹ In addition to this association between the CTR and the tobacco industry, the
2 channelling of selective research proposals into either the CTR or the "special projects" division,
3 depending upon the subject matter of the study, and the shared research between the two, belies
4 the tobacco industry's public representations that the CTR was an independent, objective body.

5 66. Evidence of the commingling and cooperation between the CTR and the "special
6 projects" division dates back until at least 1966. For example:

7 (a) According to a 1966 letter, a CTR research project was assigned to the
8 "special projects" division.

9 (b) Scientists working in conjunction with the tobacco industry's litigation
10 efforts were simultaneously touted as "independent" CTR-sponsored scientists.

11 (c) The testimony of Dr. F.G. Colby in Haines supports the conclusion that the
12 CTR's scientific efforts were commingled with the tobacco industry's legal concerns. Dr. Colby
13 characterized himself as a person wearing two hats. Number one, he was in charge of R&D
14 information for the CTR. Number two, he was responsive to the legal departments of the tobacco
15 industry.

16 67. The research performed by the CTR was selectively channeled and disclosed, based
17 upon a determination of usefulness to the tobacco industry's defensive litigation tactics opposing
18 claims against the tobacco industry, undercutting the tobacco industry's specific representations
19 that decisions on CTR project funding were made by completely independent scientific advisors to
20 the CTR without associations to the tobacco industry, as well as the tobacco industry's promise to
21 disclose all relevant information the CTR learned to the public concerning the adverse health
22 effects related to their tobacco products. Furthermore, that epidemiological studies relevant to
23 determining the links between smoking and disease were undertaken by the individual company
24 defendants or directed into the "special projects" division and thereafter concealed, support the

25 ¹
26 Most of the results of these lawyer-initiated and approved
27 "special projects" which were approved in conjunction with and
28 administered by the CTR, were distributed to the public as if they
were submitted by wholly independent outside investigators
receiving monies for research from an independent granting agency.

1 contention that the CTR research made available to the public was not fully relevant to the issues
2 which the CTR had promised to investigate, nor was a full and fair disclosure of all CTR research
3 or the individual company defendants' research. In sum:

4 (a) All defendants recognized and knew of the serious health risks attributable
5 to cigarette smoking through their own internal research and/or research they had sponsored;

6 (b) Despite the tobacco industry's knowledge to the contrary, defendants
7 mounted a major public relations effort to create doubt in the public's mind as to the hazards of
8 cigarette smoking; and

9 (c) The CTR "special projects" program as well as each of the individual
10 company defendants sponsored research supportive of the tobacco industry's defense litigation
11 strategies, concealed detrimental information and used other information in conjunction with the
12 tobacco industry's public relations campaign, thereby tainting the information released and the
13 advertised independence and objectivity of the CTR.

14 68. One mechanism that CTR used to suppress research results that implicated smoking
15 in disease was selectively to involve lawyers, and then invoke the attorney/client privilege to
16 prevent the disclosure of harmful information. CTR used the term "special projects" to mean a
17 project that carried a risk of a negative result that might have to be suppressed. "Special projects"
18 were selected and monitored by industry lawyers to prevent disclosure. One Philip Morris official
19 characterized CTR as a "front" for performing "special projects."

20 69. Notes prepared at a 1981 meeting of the cigarette Industry's Committee of General
21 Counsel state: "When we started the CTR Special Projects, the idea was that the scientific director
22 of CTR would review a project. If he liked it, it was a CTR special project. If he did not like it,
23 then it became a lawyers' special project. . . . We were afraid of discovery for FTC and Aviado, we
24 wanted to protect it under the lawyers. We did not want it out in the open."

25 70. The sole purpose of the "Special Projects" division within CTR was to conceal
26 research that was harmful to the tobacco industry and to promote and develop research and expert
27 witnesses needed for the defense of tort litigation. Incriminating reports and documents contained
28 within this division were passed through attorneys and are now claimed by the Defendants to be

1 privileged.

2
3 **C. The Recently-Disclosed Incriminating Documents From The CTR**

4 71. Documentary evidence supports the contention that the CTR was not an
5 independent research body, but rather was (and remains) the tobacco industry's agent, and that the
6 CTR's research was (and is) guided by the tobacco industry in coordination with litigation and
7 public relations efforts. For example, the minutes of a December 17, 1965 meeting of the
8 Committee of Counsel, a Tobacco Institute committee of the chief counsels for the member
9 tobacco company defendants, describe the oversight role that lawyers played in the monitoring of
10 projects that were selected for funding:

11 It is understood that both CTR, in respect of its special projects, and
12 the Ad Hoc Committee (a committee of tobacco company lawyers,
13 scientific directors, and executives who monitored the CTR special
projects) will as occasion warrants, but upon no fixed schedule,
report the status of all projects as they proceed to General Counsel.

14 The October 6, 1966 minutes of a September 30, 1966 CTR meeting transmitted via an October
15 11, 1966 letter from the law firm of Shook, Hardy & Bacon state:²

16 Progress reports on special projects by Ad Hoc committee. The
17 special projects identified at SP-103 and SP-104 assign the CTR and
18 the TI the responsibility of investigating: (1) "specific refutation of
19 misleading statements regarding cigarette smoking commonly
appearing in anti-smoking propaganda;" and (2) "collection of
'predictions which have not come true.'"

20 This statement strongly indicates that "special projects" and the CTR coordinated and commingled
21 their efforts in a public relations campaign to create doubt about links between smoking and
22 disease. Further, this document demonstrates that the "special projects" of the CTR were carried
23 out by the CTR and the Tobacco Institute and were overseen in part by the tobacco company
24 defendants' Ad Hoc Legal Committee, a committee comprised of inside and outside counsel for
the tobacco company defendants.

25 72. An April 9, 1984 letter written by Shook, Hardy & Bacon attorney Patrick M.
26

27 ²

28 Shook, Hardy & Bacon represent and have represented BROWN &
WILLIAMSON, LORILLARD and PHILIP MORRIS at various times.

1 Sirridge to the general counsel of the tobacco company defendants recommended hiring (and/or
2 renewing the contracts of) specific scientists to undertake research projects under the auspices of
3 and administered by the purportedly independent CTR:

4 Dr. Seltzer has requested renewal of his CTR Special Project for the
5 period July 1, 1984 through June 30, 1985 in the amount of \$70,000
6 ... We have discussed Dr. Seltzer's project with Dr. Sommers at
7 CTR and he favors its renewal. We also recommend approval of the
8 project. (emphasis added)

7 73. CTR manipulation through the siphoning of relevant projects is also evidenced by
8 the notes of the September 10, 1981 Committee of General Counsel:

9 STEVENS: "I need to know what the historical reasons were for
10 the difference between the criteria for lawyers' special projects and
11 CTR special project." ...

12 JACOB: "When we started the CTR Special Projects, the idea
13 was that the scientific director of CTR would review a project. If he
14 liked it, it was a CTR special project. If he did not like it, then it
15 became a lawyers' special project."

16 STEVENS: "He took offense re scientific embarrassment to us,
17 but not to CTR."

18 JACOB: "With Spielberger, we were afraid of discovery for
19 FTC and Aviado, we wanted to protect it under the lawyers. We did
20 not want it out in the open."

21 74. No evidence could be more damning. These minutes and notes explicitly
22 acknowledge that the supposedly "independent" scientific director of the CTR channeled research
23 into "special projects" for the tobacco industry's public relations, legislative and litigation efforts.
24 Equally disturbing is the tobacco industry's announced practice of using the "special projects"
25 division in order to shield damaging research results from both the public and the federal
26 government and to hide a researcher's financial ties. Another document, memorializing the same
27 meeting captioned "Notes from the September 10, 1981 Meeting of Company Counsel and Ad
28 Hoc Committee members" is even more explicit. Page one of the "Notes" states as follows:

29 E.J.: Difference between CTR and Special Four (lawyers'
30 projects). Director of CTR reviews special projects — if project was
31 problem for CTR, use Special Four. Also, if there are work-product
32 claims, need the lawyers' protection, e.g., CTR's past director, Bill
33 Gardiner, didn't think much of Rowe's work; Special Four financed
34 him and he is now published, e.g., motivational research that was

1 done during the FTC investigation was done through Special Four
2 because of possibility that CTR would be subpoenaed. E.g., Joe
3 Janus' current study of cohort effect (those born in 1890-1910) is a
4 full CTR project — Special Four gave interim support.

5 75. Further, during the 1960s, the CTR's Literature Retrieval Division was turned over
6 to the lawyers to use in defendants' public relations efforts, defending against litigation and
7 proposed regulation and so that the entire body of work could be designated as "protected" under
8 the attorney-client privilege and/or work product doctrine.

9 76. Other evidence has come to light regarding the individual company defendants,
10 interference and control of CTR. In 1968, the CTR contracted with Mason Research Institute
11 ("Mason") in Dorchester, Massachusetts to evaluate "smoking machines" for animal inhalation
12 studies and conduct toxicity tests on rodents. As the study drew to a close in 1972, Mason
13 researcher Miasnig Hagopian was astonished when scientists from the CTR and from R.J.
14 REYNOLDS began turning up weekly at his lab, where he says they sat for ours taking notes.
15 They made sure that only the most genetically vigorous (that is, cancer-resistant) rodents were
16 going to be used, he says, and dictated which cigarettes and how many puffs were administered to
17 them. "It got to the point where they were directing the course of the study," says Dr. Hagopian.
18 "It was nowhere near as objective as if it had been funded by' the government."

19 77. Internal documents also reveal the tobacco industry's influence and control over the
20 CTR. For example, a November 6, 1978 Memorandum from Shook, Hardy & Bacon attorney
21 Donald Hoel regarding an Industry Research Committee meeting of October 26, 1978, in
22 Lexington, Kentucky, states:

23 After some further discussion, Janet and Arnie Henson expressed
24 American Tobacco Company's view that CTR must be maintained
25 but needed new people. It must be more politically oriented. They
26 felt that CTR must look at what is happening and what others are
27 doing to see what questions can be raised, etc. The approach must
28 be steady, slow and conservative. They must find skeptical
29 scientists. . . . The staff at CTR also needed to be more tobacco
30 oriented with a skeptical view.

31 This document demonstrates that the defendants intentionally manipulated the CTR as a whole, in
32 addition to designating defensive and public relations research projects as CTR "special projects."
33 The defendants' "Frank Statement" did not promise the public the creation of a politically oriented

1 research body. As the above memo indicates, AMERICAN TOBACCO attorney and CTR
2 Director Janet C. Brown of the law firm of Chadbourne & Parke³ and AMERICAN TOBACCO
3 in-house counsel, Executive Vice-President and Chief Financial Officer Arnold Henson
4 acknowledged not only that the CTR was politically oriented, but also that it needed to be even
5 more politically oriented. In addition, the staff of the "independent" CTR, who already advised
6 attorneys for the defendants on CTR "special projects," according to the AMERICAN TOBACCO
7 needed to be "more tobacco oriented with a skeptical view."

8 78. A 1978 internal PHILIP MORRIS document, memorializing statements made by
9 Shook, Hardy & Bacon partner William Shinn, admits that the CTR was an industry "shield" and
10 "front." Shinn admits that the defendants created the CTR and continued to use the CTR for its
11 public relations value, its value in defense of litigation, legislation and regulation, as well as for its
12 overt value as a source and conduit for disinformation:

13 As a means of introduction, Bill Shinn described the history,
14 particularly in relation to the CTR. CTR began as an organization
15 called Tobacco Industry Research Council (TIRC) It was set up as
16 an industry "shield" in 1954. That was the year statistical
17 accusations relating smoking to diseases were leveled at the
18 industry; litigation began; and the Wynder/Graham reports were
19 issued. CTR has helped our legal counsel by giving advice and
20 technical information, which was needed at court trials. CTR has
21 provided spokesmen for the industry at Congressional hearings. The
22 monies spent on CTR provides a base for introduction of witnesses.

23 Bill Shinn feels that "special projects" are the best way that monies
24 are spent. On these projects, CTR has acted as a "front"; however,
25 there are times when CTR has been reluctant to serve in that
26 capacity....

27 Getting away from the historical story, Bill Shinn mentioned that the
28 "public relations" value of CTR must be considered and continued....
A very interesting point, made by Bill Shinn, is the opposition's, "the
case is closed with regard to smoking and disease." ... It is
29 extremely important that the industry continue to spend their dollars
30 on research to show that we don't agree that the case against
31 smoking is closed.... There is a "CTR basket" which must be
32 maintained for "PR" purposes.... It is interesting that this proposal
by Shinn is somewhat in line with the thinking we had planned to
present to the Committee later on in the day.

3
33 Chadbourne & Parke represent AMERICAN TOBACCO in this
34 litigation.

1 November 17, 1978 Memorandum from R.B. Seligman to the CTR file re: New York Meeting.
2 November 15, 1978 (emphasis added).

3 79. In 1972, Hugh Fudenberg, an immunologist, received a CTR special project grant
4 to determine whether some people are genetically predisposed to emphysema. Early results
5 indicated that as many as 10% might be. Dr. Fudenberg planned "to warn high-risk people not to
6 smoke," he says, but before he could his funding was discontinued without explanation.

7 80. In addition to halting research of special project grant recipients when research
8 results were not to the defendants' liking, the defendants also terminated CTR contract research
9 when results could potentially harm the industry. The CTR in the 1960s began placing certain
10 researchers under contract rather than funding grants as it had since the inception of the TIRC.
11 Placing a researcher under contract as opposed to a grant gave the defendants the right to control
12 the design of the study, as well as the right to control the publication of the results. This contrasts
13 sharply with the TIRC's and CTR's public representation that it "exerts no influence upon the
14 grantees" and that they "may freely publish what they find as they choose."

15 81. For example, the defendants interfered with the CTR sponsored research of Dr.
16 Fredrick Homburger, founder of the BioResearch Institute in Cambridge, Massachusetts. Dr.
17 Homburger exposed Syrian hamsters to smoke twice a day for 59 to 80 weeks; 40% of those of a
18 cancer-susceptible strain and 4% of a resistant strain developed malignant tumors. Before
19 publishing the study in 1974, Dr. Homburger sent a manuscript to Dr. Robert C. Hockett, then
20 Scientific Director of the CTR. Dr. Homburger says he had to do so because halfway through his
21 study, the CTR had changed it from a grant to a contract "so they could control publication — they
22 were quite open about that."

23 82. Next, Dr. Hockett and the CTR's counsel, attorney Ed Jacob, of the law firm Jacob
24 Medinger Finnegan & Hart,⁴ went to Dr. Homburger and told him specifically how his results
25 should be published. "They didn't want us to call anything cancer. They wanted it to be pseudo-

26
27 ⁴ Jacob Medinger Finnegan & Hart have been and continue to be
28 at various time national counsel for U.S. TOBACCO and R.J. REYNOLDS.

1 epitheliomatous hyperplasia, and that is a euphemism for lesions preceding cancer. And we said
2 no, this isn't right. It is a cancer." Dr. Homburger added that Mr. Jacob told him he would "never
3 get a penny more" if the paper was published without making the changes.

4 83. Dr. Homburger compromised. At the last minute, he changed the final proofs to
5 read "micro-invasive" cancer, meaning a microscopic malignancy. Despite this, his lab was never
6 funded by the CTR again. Later, Dr. Homburger regretted he had used the milder wording, stating
7 flatly: "It was cancer beyond any question, not only in our opinion but in the view of the experts
8 who looked at the slides."⁵

9

10

11

12 2. "Deadwood"

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

22

5

23 A confidential 1974 memo from the CTR's public relations
24 consultant Leonard Zahn details how he had surreptitiously
25 arranged the cancellation of a press conference at a scientific
26 convention in Atlantic City by Dr. Homburger: "Got press
27 conference killed without [Homburger] knowing why or how
28 He came into the press room . . . and nicely hastened out the
door. . . . P.S. I doubt if you or Tom will want to retain this
note." Dr. Homburger had planned "to tell the press that the
tobacco industry was attempting to suppress important scientific
information about the harmful effects of smoking."

1 the harmful elements of tobacco.) Wells further recommended that the research, development and
2 engineering department also should undertake "to remove the deadwood from the files."

3
4 **3. The Best Insurance the Industry Can Buy**

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

9 86. The industry has congratulated itself on a brilliantly conceived and executed
10 strategy to create doubt about the charge that cigarette smoking is deleterious to health without
11 actually denying it. A 1962 memo stated that they had handled the emergency (of the Wynder
12 report) effectively, by treating the public health threat as a public relations problem that was
13 solved for the self-preservation of the industry's image and profit. One Defendant's executive
14 called the CTR the best, cheapest insurance the tobacco industry can buy, noting that without it the
15 Tobacco companies would have to invent CTR or would be dead.

16 87. CTR-sponsored research projects were directed away from research that might add
17 to the evidence against smoking. When CTR-sponsored research did produce unfavorable results,
18 however, the information was distorted or simply suppressed. For example, Dr. Freddy
19 Homburger, a researcher in Cambridge, Massachusetts, undertook a study of smoke exposure on
20 hamsters. According to Dr. Homburger, he received a grant from CTR which was changed half-
21 way through the study to a contract "so they could control publication — they were quite open
22 about that. " Dr. Homburger has testified that when the study was completed in 1974, the
23 Scientific Director of CTR and a CTR lawyer "didn't want us to call anything cancer" and that they
24 threatened Dr. Homburger with "never get[ting] a penny more" if his paper was published without
25 deleting the word cancer.

26 88. An internal CTR document describes how Dr. Homburger attempted to call a press
27 conference about the incident and how CTR stopped it: "He . . . was to tell the press that the
28 tobacco industry was attempting to suppress important scientific information about the harmful

1 effects of smoking. He was going to point specifically at CTR. I arranged later that evening for
2 it to be canceled. Homburger was given a cordial welcome and nicely hastened out the door. P. S.
3 I doubt if you or Tom will want to retain this note."

4 89. Not content with the holding strategy employed by the TIRC and the
5 CTR, the Tobacco companies advocated a more offensive role through their lobbying arm,
6 the Tobacco Institute. This tobacco industry-supported group actively seeks to increase doubt
7 about the negative health effects of smoking by suggesting that there are alternative explanations
8 to the data. One "theory" detailed how individual genetic makeups predisposed individuals to
9 illnesses. Another, the "multi-factorial hypothesis," asserted that multiple factors should be
10 blamed, i.e., food additives, viruses, occupational hazards, air pollution or stress, for causing
11 cancer. The tobacco industry financed, supported and encouraged the manufacture of fraudulent
12 science.

13
14 **C. Repeated False Promises To The Public**

15 90. The public disinformation strategy employed by the Tobacco companies and the
16 Tobacco Trade Associations was a strategy best described as "see no evil, hear no evil, and speak
17 no evil" concerning the health effects of cigarette smoking. A publication called Tobacco and
18 Health (later, Tobacco and Health Research) was created by the Tobacco companies and the
19 Tobacco Trade Associations and was used by them to disseminate false information and create
20 confusion over the causal connection between cigarette smoking and disease. It was distributed to
21 the press, doctors, and health officials. The "Criteria For Selection" of articles for publication
22 included an example of a report in which smoking-associated diseases are questioned.

23 91. The January 15, 1968 issue of True Magazine contained an article written by
24 Stanley Frank called, "To Smoke or Not to Smoke —That is Still the Question." The article
25 dismissed the evidence against smoking as "inconclusive and inaccurate" and claimed that
26 "[s]tatistics alone link cigarettes with lung cancer . . . it is not accepted as scientific proof of the
27 cause and effect. " A few months later, a similar but shorter article appeared in the National
28 Enquirer entitled "Cigarette Cancer Link is Bunk" written by "Charles Golden" (a fictitious name

1 commonly used by the Enquirer.) The real author was Stanley Frank. Two million reprints of the
2 True Magazine article were distributed to physicians, scientists, journalists, government officials,
3 and other opinion leaders with a small card which stated, "As a leader in your profession and
4 community, you will be interested in reading this story from the January issue of True Magazine
5 about one of today's controversial issues." The cost for this was paid by Brown and Williamson,
6 Philip Morris and R.J. Reynolds. It was subsequently disclosed that author Frank had been paid
7 \$500 to write the article, by Joseph Field, a public relations professor working for Brown and
8 Williamson. Brown and Williamson reimbursed Field for that amount.

9 92. Other public statements by the Defendants over the years have repeated the
10 misrepresentations that the Industry was dedicated to the pursuit and dissemination of the scientific
11 truth regarding smoking and health.

12 93. For example, the Tobacco Institute in 1970 ran an advertisement captioned "A
13 Statement About Tobacco and Health" which stated:

14 a. "We recognize that we have a special responsibility to the
15 public—to help scientists determine the facts about tobacco and
16 health, and about certain diseases that have been associated with
tobacco use. "

17 b. "We accepted this responsibility in 1954 by establishing the
18 Tobacco Industry Research Committee, which provides research
grants to independent scientists. We pledge continued support of
this program of research until all the facts are known. "

19 c. "Scientific advisors inform us that until much more is known
20 about such diseases as lung cancer, medical science probably will
21 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."

22 d. "We shall continue all possible efforts to bring the facts to
23 light. "

24 94. Also, in 1970, the Tobacco Institute ran an advertisement captioned, "The question
25 about smoking and health is still a question. " In this advertisement, the Tobacco Institute stated:

26 a. "[A] major portion of this scientific inquiry has been
27 financed by the people who know the most about cigarettes and have
a great desire to learn the truth ... the tobacco industry."

28 b. "[T]he industry has committed itself to this task in the most
objective and scientific way possible."

c. "In the interest of absolute objectivity, the tobacco industry has supported totally independent research efforts with completely nonrestrictive funding."

d. "Completely autonomous, CTR's research is directed by a board of ten scientists and physicians ... This board has full authority and responsibility for policy, development and direction of the research effort."

e. "The findings are not secret."

f. "From the beginning, the tobacco industry has believed that the American people deserve objective, scientific answers."

95. Again, in 1970, the Tobacco Institute stated, "The Tobacco Institute believes that the American public is entitled to complete, authenticated information about cigarette smoking and health." The Tobacco Institute further stated that, "The tobacco industry recognizes and accepts a responsibility to promote the progress of independent scientific research in the field of tobacco and health."

96. In direct contrast to what the Tobacco companies and Tobacco Trade Associations were telling the public, a memo from Tobacco Institute Vice President Fred Panzer to President Horace Carnegie dated May 1, 1972, acknowledges that the industry had employed a single strategy for nearly 20 years to defend itself on three major fronts: litigation, politics, and public opinion. This strategy consisted 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 health hazard." Panzer said this strategy had been successful on the litigation front and had "helped make possible an orderly retreat" on the political front. but that the situation had deteriorated on the public-opinion front. To remedy the public-opinion problem, he proposed that the industry supply the public with "ready-made credible alternatives" to the prevalent view that smoking causes cancer, such as genetic and environmental explanations for smoking-related diseases.

97. Internal TIRC, CTR and Tobacco Institute documents confirm the defendants' fraud:

a. An April 9, 1962 internal TIRC memorandum from

1 Associate Scientific Director J. Morrison Brady to Scientific
2 Director Clarence Cook Little states: "Historically, it would seem
3 that the 1954 emergency was handled effectively. From this
4 experience there arose a realization by the tobacco industry of a
5 public relations problem that must be solved for the self-preservation
6 of the industry."

7 b. Another document states: "When the products of an industry
8 are accused of causing harm to users, certainly it is the obligation of
9 that industry to endeavor to determine whether such accusations are
10 true or false. Money spent for such purpose should not be regarded
11 as a charitable contribution but as a business expense — an expense
12 necessary to keep that industry alive. In view of the billions of
13 dollars of annual sales of our industry our expenditures for health
14 research has been of a minimal order."

15 c. A May 1, 1972 internal TOBACCO INSTITUTE
16 memorandum from TOBACCO INSTITUTE Vice President of
17 Public Relations Frederick Panzer to TOBACCO INSTITUTE
18 President Horace Kornegay states: "For nearly twenty years, this
19 industry has employed a single strategy to defend itself on three
20 major fronts — litigation, politics, and public opinion. While the
21 strategy was brilliantly conceived and executed over the years
22 helping us win important battles, it is only fair to say that it is not —
23 nor was it intended to be — a vehicle for victory. On the contrary,
24 it has always been a holding strategy, consisting of . . . creating
25 doubt about the health charge without actually denying it.... In the
26 cigarette controversy, the public — especially those who are present
27 and potential supporters (e.g. tobacco state congressmen and heavy
28 smokers) — must perceive, understand, and believe in evidence to
sustain their opinions that smoking may not be the causal factor."

98. Despite overwhelming scientific evidence, and the confirmation of this evidence by
their own internal research, the cigarette manufacturers and their trade associations continue to this
day to repeat — over and over, in a unified stance — that there is no causal connection between
cigarette smoking and any adverse effects and that cigarette smoking is not addictive. These
representations — which are fraudulent, misleading, deceptive, and untrue — rest at the center of
the industry's ongoing conspiracy and combination to market and profit from a product it knows is
deadly and addictive. As Addison Yeaman, a former BROWN & WILLIAMSON general counsel
and ex-chairman of the CTR, reaffirmed in a February 1993 article which appeared in the Wall
Street Journal: "[T]he passage of time hasn't altered his view expressed at a council meeting in
1975: 'The CTR is [the] best and cheapest insurance the tobacco industry can buy, and without it,
the industry would have to invent CTR or would be dead.'"

99. These representations were made despite a substantial body of evidence, including

1 evidence developed by the cigarette manufacturers themselves, dating from as early as 1962.
2 indicating that nicotine is not only addictive, but is the reason why people smoke and that smoking
3 cigarettes causes adverse health effects.

4 100. The cigarette manufacturers continue to deny that nicotine is addictive and instead
5 use various misleading euphemisms to describe the role of nicotine, such as "satisfaction,"
6 "impact," "strength," "rich aroma" and "pleasure." Nonetheless, there is widespread agreement in
7 the medical and scientific communities that the primary, if not sole, function of nicotine is to
8 provide a pharmacological effect on the smoker that leads to addiction.

9 101. An advertisement placed by Philip Morris in newspapers across the country in
10 April 1994, affirmatively represented that Philip Morris does not "manipulate" nicotine levels in
11 its cigarettes, and that "Philip Morris does not believe that cigarette smoking is addictive."

12 102. R.J. Reynolds placed a similar advertisement in newspapers across the United
13 States in 1994 stating that "we do not increase the level of nicotine in any of our products in order
14 to addict smokers. Instead of increasing the nicotine levels in our products, we have in fact
15 worked hard to decrease tar and nicotine" R.J. Reynolds' advertisement then touted its use of
16 "various techniques that help us reduce the tar (and consequently the nicotine) yields of our
17 products."

18 103. These statements mislead the consuming public because, as alleged above, Philip
19 Morris and R.J. Reynolds use various sophisticated techniques to increase the nicotine content in
20 their cigarettes and the actual nicotine delivery to the smokers.

21 104. The recent disclosures of the sworn testimony of a former research chief for Brown
22 & Williamson Tobacco Corporation, Dr. Jeffrey S. Wigand, and former Philip Morris scientists,
23 Jerome Rivers, Dr. Ian L. Uydess and Dr. William Farone, directly contradict the industry's
24 denial of nicotine manipulation.

25
26 **E. The Tobacco Company Defendants, Active Participation In The Fraud**

27 105. The fraudulent conduct at issue arose from a concentrated effort because of "a
28 general feeling that an industry approach as opposed to an individual company approach was

1 highly desirable." Thus, the companies entered into a "gentlemen's agreement" in the 1950s
2 referenced in a 1968 internal PHILIP MORRIS draft memorandum which stated:

3 We have reason to believe that in spite of gentlemen's [sic]
4 agreement from the tobacco industry in previous years that at least
5 some of the major companies have been increasing biological
6 studies within their own facilities.

7 106. As indicated by this memo, the individual companies were performing certain
8 research on their own, in addition to the joint industry research. But the fundamental
9 understanding and agreement remained intact — that harmful information and activities would be
10 restrained, suppressed, and/or concealed. This included restraining, suppressing, and concealing
11 research on the health effects of smoking, including the addictive qualities of cigarettes, and
12 restraining, concealing, and suppressing the research and marketing of such products as safer
13 cigarettes because such a cigarette, if put on the market, "would seriously indict them for having
14 sold other types of cigarettes that didn't contain this [carcinogenic activity] for example."
15 Examples for each company follow:

16 R.J. REYNOLDS TOBACCO COMPANY

17 107. In the late 1960s, R.J. REYNOLDS had a state-of-the-art biological laboratory in
18 Winston-Salem nicknamed "the mouse house" where scientists began to uncover information
19 regarding the mechanism of smoke-related diseases. As the Company developed information that
20 some considered detrimental to the industry, a decision to shut down the project was made by R.J.
21 REYNOLDS. R.J. REYNOLDS never distributed the information uncovered. Other R.J.
22 REYNOLDS research determined that: (a) smoke was damaging the lungs of rabbits at the most
23 basic level, thus shedding light on how this damage was caused; (b) pulmonary surfactant was
24 being damaged by smoke and thus was damaging air sacs deep in the lungs; and (c) the smoke
25 appeared to trigger an increase in lysolecithin in the lung which appeared to damage the lung by
26 shooting holes in the lung membrane.

27 108. Despite this information, R.J. REYNOLDS subsequently took out advertisements
28 to keep the "debate" alive by arguing that there remains a controversy about whether smoking

1 causes disease. For example, in 1984 R.J. REYNOLDS began a multi-million dollar advertising
2 campaign with ads headed "Can We Have An Open Debate About Smoking?" The advertisement
3 concluded that: "Studies which conclude that smoking causes disease have regularly ignored
4 evidence to the contrary...." As recently as January of 1990 the manager of public relations at R.J.
5 REYNOLDS wrote the principal of a public school that: "Long before the present criticism began
6 the tobacco industry in a sincere attempt to determine what harmful effects, if any, smoking might
7 have on human health established the Council for Tobacco Research U.S.A." The letter went on to
8 note: "Despite all the research going on the simple and unfortunate fact is that scientists do not
9 know the cause or causes of the chronic diseases reported to be associated with smoking." Finally
10 the letter states: "We would appreciate your passing this information along to your students."

11
12 PHILIP MORRIS U.S.A.

13 109. In 1956, PHILIP MORRIS realized that decreased irritation from smoking could be
14 a "partial elimination of a potential cancer hazard." In the 1970s, internal research demonstrated
15 that PHILIP MORRIS' executives knew of the powerfully addictive nature of nicotine And
16 cigarettes. In 1972 William L. Dunn, Jr., a senior research scientist at PHILIP MORRIS, stated:
17 "Without nicotine the argument goes there would be no smoking." Dunn went on to note: "Think
18 of a cigarette pack as a storage container for a day's supply of nicotine.... Think of the cigarette as
19 a dispenser for a dose unit of nicotine.... Think of the puff of smoke as a vehicle of nicotine." In
20 the 1970s PHILIP MORRIS had started an ambitious research program to learn everything it could
21 about nicotine and its effects on the body. PHILIP MORRIS' researchers concluded that nicotine
22 was addicting on a level comparable to cocaine. However, this internal lab was shut down in the
23 1980s because "the lab was generating information that the company did not want generated inside
24 the company, that it was information that would not be favorable to the company in litigation."
25 PHILIP MORRIS' executives told the researchers, "Why should we risk a billion dollar business
26 for some rat studies?"

27 110. In the 1970s and 1980s PHILIP MORRIS began research to enable it to remove or
28 reduce harmful ingredients released as a result of smoking. A company scientist identified and

1 developed methods to take out many of the harmful ingredients but the company killed such
2 projects in an attempt to enable the company to maintain plausible deniability of the harmful
3 impact of smoking on health.

4 111. As recently as April 15, 1994, PHILIP MORRIS took out a full page ad in The
5 Wall Street Journal and the New York Times stating: "Fact: Philip Morris does not believe
6 cigarette smoking is addictive."

7
8 UNITED STATES TOBACCO COMPANY

9 112. UNITED STATES TOBACCO COMPANY, primarily a manufacturer of
10 smokeless oral tobacco, has conducted research into the pharmacological effects of nicotine and has
11 had knowledge of its dependence-producing properties for decades. An internal UNITED
12 STATES TOBACCO COMPANY memo dated June 1981 from Per Erik Lindqvist recognized
13 "the fact that virtually all tobacco usage is based upon nicotine,[sic] 'the kick, satisfaction'." An
14 internal memo dealing with the link between disease and tobacco notes "our initial approach was
15 an attempt to discredit the claims." This remains true today as the company continues to deny that
16 its harmful products are addictive.

17
18 THE AMERICAN TOBACCO COMPANY

19 113. As early as the late 1940s-early 1950s, AMERICAN TOBACCO conducted
20 research and found that when nicotine was removed from cigarettes the subjects definitely missed
21 the nicotine, concluding that with certain individuals nicotine becomes a major factor in the
22 cigarette habit. Between 1940 through 1970 AMERICAN TOBACCO funded over 90 studies on
23 the pharmacological and other effects of nicotine on the body. Smoking causes coronary and
24 peripheral vascular disease and nicotine appears to contribute both to the arteriosclerotic process
25 and to acute coronary events. Despite this, at least on one occasion, in Seattle in 1969,
26 AMERICAN TOBACCO released a nicotine enriched cigarette to be test-marketed to the public
27 knowing nicotine's addictive nature. To this day, however, the company denies nicotine is
28 addictive or intoxicating.

1 LIGGETT GROUP, INC.

2 114. By 1955 LIGGETT & MYERS researchers reported internally that they had
3 duplicated the results of Dr. Ernst Wynder demonstrating that the tar from cigarettes could cause
4 tumors when applied to the skin of mice. Another study the company sponsored concluded,
5 "'Studies regarding the chemical components of tobacco and cigarette smoke, with primarily the
6 short-term effects on mouse skin as a guide lead one to the conclusion that the materials
7 responsible for carcinogenicity and promoting activity of cigarette smoke have been produced in
8 the smoking process that is,' as the cigarette is burning." Another report from the 1960s entitled
9 L&M: A Perspective Review, noted that there are biologically active materials present in cigarette
10 tobacco. These are: a) cancer causing, b) cancer promoting, c) poisonous, d) stimulating,
11 pleasurable and flavorful.

12 115. A 1963 memo index from the files of the Surgeon General's advisory committee
13 noted that LIGGETT & MYERS had not published a significant amount of material which was
14 scientifically worth publishing because of the possibility that some of this material could be used
15 in a lawsuit against them more persuasively if released under their own aegis.

16 116. In 1968 LIGGETT developed a safer cigarette under the project name "XA";
17 however, the project was killed and the scientists were "not permitted to publish the results of
18 [their] findings in the area of carcinogenicity or tumorigenicity or tumor-producing activity of
19 cigarette smoke." The reason the company chose not to manufacture a safer cigarette was because
20 "to market such a cigarette would in effect make the statement that all other cigarettes are harmful
21 to people's health."
22

23 BROWN & WILLIAMSON

24 117. BROWN & WILLIAMSON's internal research in the late 1950s and early 1960s
25 confirmed that cigarettes could cause lung cancer and cardiovascular disease. BROWN &
26 WILLIAMSON's general counsel Addison Yeaman dismissed the idea that the TIRC would
27 conduct or sponsor research necessary to discover just which chemicals were the cancer-causing
28 ones to enable the companies to neutralize them. According to Yeaman, who subsequently

1 became the Chairman of the CTR, the TIRC was conceived as a public relations gesture, and it has
2 functioned as a public relations operation.⁶

3 118. Subsequently, BROWN WILLIAMSON developed a high nicotine tobacco plant
4 called Y1 with a nicotine concentration of 6%, more than twice the usual amount found in flue-
5 cured tobacco. BROWN & WILLIAMSON has admitted that it has imported four million pounds
6 of Y1 into the United States and used the tobacco in cigarettes sold in the United States.

7 119. Recently Jeffrey S. Wigand, a former BROWN & WILLIAMSON senior scientist,
8 charged that BROWN & WILLIAMSON in-house lawyers repeatedly hid potentially damaging
9 scientific research, including altering minutes of scientific meetings. Other information has come
10 to light indicating that BROWN & WILLIAMSON has been sending documents that are damaging
11 to the company, e.g., documents such as those relating or referring to the Janus project, which
12 confirmed that tobacco smoke causes tumors in animals, overseas to protect such documents from
13 discovery in U.S. litigation.

14
15
16 ⁶
17 Yeaman's statement clearly indicates that the defendants
18 conducted the most sensitive research on the subject of smoking
19 and health in-house or sponsored at outside research facilities.
20 In his memo, Yeaman also states that "We [Brown & Williamson
21 Tobacco] are, then, in the business of selling nicotine, an
22 addictive drug effective in the release of stress mechanisms."
23 Yeaman further adds that the research found that despite the
24 beneficial effects of nicotine, cigarettes "cause, or predispose
25 to, lung cancer." If the CTR existed and functioned as a public
26 relations vehicle, and as Yeaman indicated should not conduct such
27 sensitive research, the tobacco company defendants are thus the
28 primary source for smoking research that was not principally
oriented towards public relations. The CTR did not and does not
exist in a vacuum. The tobacco company defendants thus may have
modified their research efforts based upon the activities of the
CTR, and the CTR may have carried out an entirely different
research program due to the activities of the individual tobacco
company defendants. The motivation to subvert and manipulate the
proclaimed independence of the CTR, "a public relations
operation," may in fact lie in the research efforts of the
individual company defendants.

1 LORILLARD TOBACCO CO.

2 120. Nearly fifty years ago, in July of 1946, LORILLARD was alerted that cigarettes
3 could be cancer causing. Harris B. Parmele, a LORILLARD company chemist, wrote a memo to
4 A. Riefner of the company's manufacturing committee naming the smoking byproduct —
5 benzpyrene — as a substance that many researchers would later label a cancer-causing agent in
6 tobacco smoke:

7 In other words, benzpyrene is presumed to be a combustion product
8 of burning tobacco and, by animal experiments, it has been shown to
 possess definite carcinogenic properties.

9 121. A 1973 LORILLARD memorandum describing major research projects noted that
10 producing "a safe cigarette, defined as one showing little or no carcinogenic activity when
11 measured by mouse skin painting" (condensed cigarette smoke painted on the backs of research
12 mice produced tumors), should be possible to make "within a total time span of five years."

13 122. A June 24, 1974 LORILLARD internal memo from then Director of Research
14 Alexander W. Spears to CEO Curtis H. Hudge states:

15 Historically, the joint industry-funded smoking and health research
16 programs have not been selected against specific scientific goals, but
17 rather for various purposes such as public relations, position for
18 litigation, etc. Thus, it seems obvious that reviews of such programs
19 for scientific relevance and merit in the smoking and health field are
 not likely to produce high ratings. In general, these programs have
 provided some buffer to public and political attack of the industry,
 as well as background for litigious strategy.

20 123. On April 13, 1994, it was disclosed that a 1981 study by two LORILLARD
21 researchers discussing techniques for raising or lowering the amount of nicotine in cigarettes had
22 been concealed since 1981. Rep. Waxman said at a news conference that the study was evidence
23 that the tobacco companies had lied about whether they manipulated the amount of nicotine in
24 cigarettes. Spears was co-author with S. T. Jones of the 1981 paper. The paper points out that
25 low-tar cigarettes used special blends of tobacco to keep the level of nicotine up while tar was
26 reduced. "Higher nicotine levels can be achieved by decreasing Oriental, and the stem and
27 tobacco sheet, and increasing the Burley and upper stock positions of both the Flue-cured and the
28 Burley tobacco," the article said. As a result, the paper said, "current research is directed toward

1 increasing the nicotine levels while maintaining or marginally reducing the tar deliveries."

2

3 THE CONSPIRACY CONTINUES TO THIS DAY

4 124. In sum, the above allegations demonstrate that the tobacco industry is the
5 king of fraud, deceit, concealment and disinformation, using, with the material assistance of HILL
6 & KNOWLTON, INC. and THE TOBACCO INSTITUTE, INC., CTR as its pawn. This
7 unlawful, unfair and fraudulent business practice must be fully disclosed and put to an end.

8 125. The true facts about the tobacco company defendants, the CTR and their
9 relationship to the "special projects" division, as well as the use of the "special projects" division
10 by the tobacco industry to shield incriminating evidence from public scrutiny, and to promote
11 other studies to keep the debate alive, have been fraudulently concealed from public scrutiny by
12 defendants for years.

13 126. The defendants' "Frank Statement" promised the public that the research conducted
14 through TIRC/CTR funding would be revealed in addition to the research that the tobacco
15 company defendants themselves individually sponsored. The defendants promised to reveal their
16 own studies because of their proclaimed "interest in people's health as a basic responsibility,
17 paramount to every other consideration in our business." The "Frank Statement" made this clear
18 in stating that the TIRC/CTR research was only part of the tobacco industry's pledge to safeguard
19 consumers' health: "This joint financial aid will of course be in addition to what is already being
20 contributed by the individual companies." This has not occurred as defendants continue to deceive
21 the public with false statements of material fact as well as conceal other material facts.

22

23

24 **D. Industry Knowledge That Smoking Is Harmful**

25 127. Even before the sponsors of the "Frank Statement" represented that "there is no
26 proof that cigarette smoking is one of the causes of lung cancer, an industry researcher had
27 reported the contrary. As early as 1946, Lorillard chemist H.E. Parmele, who later became Vice
28 President of Research and a member of Lorillard's Board of Directors, wrote to his company's

1 manufacturing committee: "Certain scientists and medical authorities have claimed for many years
2 that the use of tobacco contributes to cancer development in susceptible people. Just enough
3 evidence has been presented to justify the possibility of such a presumption."

4 128. In the years following the 1954 "Frank Statement," and continuing to the present,
5 the Tobacco companies have repeatedly acted in breach of their assumed duty to report objective
6 facts on smoking and health. As evidence mounted, both through industry research and truly
7 independent studies, that cigarette smoking causes cancer and other diseases, the Tobacco
8 companies and their Tobacco Trade Associations continued publicly to represent that nothing was
9 proven against smoking. Internal documents show that the truth was very different. The Tobacco
10 companies knew and acknowledged internally the veracity of scientific evidence of the health
11 hazards of smoking, and at the same time suppressed such evidence where they could, and
12 attacked it when it did appear.

13 129. Internal cigarette industry documents reveal, for example:

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

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

23 c. A 1961 document presented to the Philip Morris Research and Development
24 Committee by the company's Vice President of Research and Development included a section
25 entitled "Reduction of Carcinogens in Smoke." The document stated, in part: "To achieve this
26 objective will require a major research effort, because carcinogens are found in practically every
27 Class of compounds in smoke. This fact prohibits complete solution of the problem by
28 eliminating one or two Classes of compounds. The best we can hope for is to reduce a particularly

1 bad Class, i.e., the polynuclear hydrocarbons, or phenols . . . Flavor substances and carcinogenic
2 substances come from the same Classes, in many instances. "

3 d. A 1963 memorandum to Philip Morris, President and CEO, from the
4 company's Vice President of Research describes a number of Classes of compounds in cigarette
5 smoke which are "known carcinogens." The document goes on to describe the link between
6 smoking and bronchitis and emphysema. "Irritation problems are now receiving greater attention
7 because of the general medical belief that irritation leads to chronic bronchitis and emphysema.
8 These are serious diseases involving millions of people. Emphysema is often fatal either directly
9 or through other respiratory complications. A number of experts have predicted that the cigarette
10 Industry ultimately may be in greater trouble in this area than in the lung cancer field."

11 e. Brown & Williamson and its parent company, BATCO, researched the
12 health effects of nicotine and were aware early on, as reported at a B.A.T. Group Research
13 Conference in November 1970, that "nicotine may be implicated in the etiology [cause] of
14 cardiovascular disease . . ."

15 f. A 1961 "Confidential" memorandum from the consulting research firm
16 hired by Liggett to do research for the company states: "There are biologically active materials
17 present in cigarette tobacco. These are: a) cancer causing; b) cancer promoting; c) poisonous; d)
18 stimulating, pleasurable, and flavorful."

19 g. A 1963 memorandum from the Liggett consulting research firm
20 states: "Basically, we accept the inference of a causal relationship between the chemical
21 properties of ingested tobacco smoke and the development of carcinoma, which is suggested by
22 the statistical association shown in the studies of Doll and Hill, Horn, and Dorn with some
23 reservations and qualifications and even estimate by how much the incidence of cancer may
24 possibly be reduced if the carcinogenic matter can be diminished, by an appropriate filter, by a
25 given percentage."

26 130. These internal Liggett documents sharply contrast with the information Liggett
27 provided to the Surgeon General in 1963. Liggett withheld from the Surgeon General the views of
28 its researchers and consultants that the evidence showed cigarette smoking causes human disease.

1 131. The report Liggett presented to the Surgeon General omitted all of these views.
2 Instead, it focused on alternative causes of disease, such as air pollution, coffee and alcohol
3 consumption, diet, lack of exercise, and genetics. Liggett criticized the known statistical
4 association between smoking and mortality and various diseases as "unreliably conducted" and
5 "inadequately analyzed." The Liggett report concluded that the association between smoking and
6 disease was inconclusive, and was in fact due to other factors coincidentally associated with
7 smoking.

8 132. Philip Morris also concealed from the public its actual views of the research
9 conducted outside the influence of the industry. In a 1971 memorandum, Dr. H. Wakeham, then
10 Vice President of Research and Development, referring to a recent study which found cigarette
11 smoke inhalation caused lung cancer in beagles: "1970 might very properly be called the year of
12 the beagle. Early in the year, the American Cancer Society announced that they had finally
13 demonstrated the formation of lung cancer in beagles by smoke inhalation in the now infamous
14 Auerbach and Hammond study." Although Dr. Wakeham criticized the mice cancer studies, he
15 conceded that "the beagle test was a critical one ... for the cigarette causation hypothesis."

16 133. Dr. Wakeham's memorandum demonstrates Philip Morris' approval of the
17 industry's public dismissals of these independent studies: "The strong opposition of the industry to
18 the beagle test is indicative of a new, more aggressive stance on the part of the industry in the
19 smoking and health controversy. We have gone over from what I have called the vigorous denial
20 approach, the take it on the chin and keep quiet attitude, to the strongly voiced opposition and
21 criticism. I personally think this counter-propaganda is a better stance than the former one. "

22 134. Similarly, BATCO's internal view of the validity of mouse skin painting
23 experiments differed markedly from the view expressed in public statements. Minutes from a
24 1969 BATCO research conference stated, "[H]istorically, bioassay experiments were undertaken
25 by the industry with the object of clarifying the role of smoke constituents in pulmonary
26 carcinogenesis. The most widely used of these methods [was] mouse-skin painting ... (a) In the
27 foreseeable future, say five years, mouse-skin painting would remain as the ultimate court of
28 appeal on carcinogenic effects." Two years later a Brown & Williamson public relations document

1 stated that "[m]uch of the experimental work involves mouse-painting or animal smoke inhalation
2 experiments [T]he results obtained on the skin of mice should not be extrapolated to the lung
3 tissue of the mouse, or to any other animal species. Certainly such skin results should not be
4 extrapolated to the human lung."

5
6 **E. Suppressing The Truth About Cigarettes And Nicotine**

7 135. The Tobacco companies, through the Tobacco Trade Associations, intentionally
8 breached their promises to the American public, to the citizens of California, and to residents of
9 the County of Los Angeles to study and report independently and honestly on the health effects of
10 smoking and the use of smokeless tobacco products. Defendants caused the cancellation of at least
11 one press conference where their scientist (Dr. Freddy Homburger) sought to inform the public,
12 actively and wrongfully suppressed the publishing of reports concerning the health dangers
13 presented by cigarette smoking, attacked research linking smoking to disease, and threatened
14 professionally the researchers themselves. Their scientists were not allowed to "freely publish
15 what they find as they choose" as a CTR director once claimed.

16
17 **1. The Gentleman's Agreement**

18 136. The tobacco industry entered into a "Gentlemen's agreements to suppress
19 independent research on smoking and health. This agreement was referenced in a 1968 internal
20 Philip Morris draft memo, which states, "We have reason to believe that in spite of gentlemen's
21 [sic] agreement from the tobacco industry in previous years that at least some of the major
22 companies have been increasing biological studies within their own facilities." This memo also
23 acknowledged that cigarettes are inextricably intertwined with the health field, stating, "Most
24 Philip Morris products both tobacco and non-tobacco are directly related to the health field."

25 137. The industry believed that individual companies were performing certain research
26 on their own in addition to the joint industry research. But the fundamental understanding and
27 agreement remained intact; any harmful information and activities would be restrained,
28 suppressed, and/or concealed. This secret agreement included restraining, suppressing, and

1 concealing research on the health effects of smoking, including the addictive qualities of nicotine.
2 and restraining, concealing, and suppressing the research and marketing of safer cigarettes.
3

4 **2. The Mouse House Massacres**

5 138. In the 1960s, R.J. Reynolds established a facility in Winston-Salem, North
6 Carolina, to perform research on the health effects of smoking using mice. Nicknamed the
7 "Mouse House," R.J. Reynolds scientists conducted research in a number of specific areas,
8 including studies of the actual mechanism whereby smoking causes emphysema in the lungs.

9 139. The R.J. Reynolds lab made significant progress in understanding this mechanism.
10 Despite this progress, R.J. Reynolds disbanded the entire research division in one day, and fired all
11 26 scientists without notice.

12 140. Several months before the 1970 closure and firings, R.J. Reynolds attorneys
13 collected dozens of research notebooks from the scientists. The notebooks have still not been
14 disclosed. One of the researchers later stated about R.J. Reynolds' executives and lawyers that
15 "they like to take the position that you can't prove harm because you don't know mechanism
16 And sitting right under their noses is evidence of mechanism. What are they going to do with this
17 stuff?" They decided to kill it.

18 141. Internally, an R.J. Reynolds-commissioned report favorably described the mouse
19 house work as "the more important of the smoking and health research effort because it comes
20 close to determining what was thought to be the underlying pathobiology of emphysema." None
21 of the work done at the "Mouse House" was disclosed to the public.

22 142. In a similar incident, Philip Morris hired Victor DeNoble in 1980 to study
23 nicotine's effects on the behavior of rats and to research and test potential nicotine analogues.
24 DeNoble, in turn, recruited Paul C. Mele, a behavioral pharmacologist.

25 143. DeNoble and Mele discovered that nicotine met two of the hallmarks of potential
26 addiction -- self-administration (rats would press levers to inject themselves with a nicotine
27 solution) and tolerance (a given dose of nicotine over time had a reduced effect).

28 144. However, Philip Morris instructed DeNoble and Mele to keep their work secret,

1 even from fellow Philip Morris scientists. Test animals were delivered at dawn and brought from
2 the loading dock to the laboratory under cover.

3 145. DeNoble was later told by lawyers for the company that the data he and Mele were
4 generating could be dangerous. Philip Morris executives began talking of killing the research or
5 moving it outside of the company so Philip Morris would have more freedom to disavow the
6 results.

7 146. In April 1984, Philip Morris closed DeNoble's nicotine research lab. DeNoble and
8 Mele were forced abruptly to halt their studies, turn off all their instruments and turn in their
9 security badges by morning. Philip Morris executives threatened them with legal action if they
10 published or talked about their nicotine research. According to DeNoble, the lab literally vanished
11 overnight. The animals were killed, the equipment was removed and all traces of the former lab
12 were eliminated.

13 147. DeNoble has testified "senior research management in Richmond, Va., as well as
14 top officials at the Philip Morris Company in New York, continually reviewed our research and
15 approved our research." DeNoble also stated that these officials were officially told that nicotine
16 was a drug of abuse.

17 148. In August 1983, Philip Morris ordered DeNoble to withdraw from publication a
18 research paper on nicotine that had already been accepted for publication after full peer review by
19 the journal *Psychopharmacology*. According to DeNoble, the company changed its mind because
20 it did not want its own research showing nicotine was addictive or harmful to compromise the
21 company's defense in litigation recently filed against it. He said that Philip Morris officials had
22 rightly interpreted the suppressed nicotine studies as showing that, in terms of addictiveness,
23 "nicotine looked like heroin."

24

25 3. **Refusing to "Accept its Responsibility" to Disclose Information**

26 149. Liggett & Myers, while publicly refusing to acknowledge the validity of Dr.
27 Wynder's tests, hired the consulting firm of Arthur D. Little, Inc. to duplicate Dr. Wynder's tests.
28 Defendant Lorillard Corporation also duplicated Dr. Wynder's mouse tests. The results of the

1 duplicated tests were essentially the same as Dr. Wynder's, and both Liggett & Myers and Arthur
2 D. Little became aware by 1954 of the cancer causing propensity of cigarettes. A Liggett & Myers
3 researcher requested that the results of this testing be published, but Liggett & Myers would not
4 allow it.

5 150. Brown & Williamson undertook its potentially sensitive research on nicotine
6 through a contractor in Geneva, Switzerland, and through British affiliates at an English lab called
7 Harrogate.

8 151. In 1963, Brown & Williamson debated internally whether to disclose to the U.S.
9 Surgeon General, who was preparing his first official report on smoking and health, what the
10 company knew about the addictiveness of nicotine and the adverse effects of smoking on health.
11 Addison Yeaman, general counsel, advised Brown & Williamson to "accept its responsibility" and
12 disclose its findings to the Surgeon General. He said that such disclosure would then allow the
13 company openly to research and develop a safer cigarette.

14 152. Brown & Williamson rejected Yeaman's advice to make full disclosure to the
15 Surgeon General. A series of six letters and telexes exchanged by Yeaman and senior BATCO
16 official A. D. McCormick between June 28 and August 8, 1963, document the company's decision
17 not to disclose its research findings to the Surgeon General. That research, some of which was
18 later characterized in a report in the *Journal of the American Medical Association* as "at the cutting
19 edge of nicotine pharmacology," preceded the main published reports from the general scientific
20 community by several years.

21

22 F. Suppression Of Safer Cigarettes

23 153. The Tobacco companies could have designed and manufactured a safer cigarette,
24 but refused to do so. The need for a "safer" tobacco product results from the harmful chemical
25 compounds occurring in tobacco products and formed as a result of burning. These compounds
26 include carbon monoxide, nicotine, nickel carbon dioxide, benzene, hydrazine, formaldehyde,
27 Polonium-210, ammonia, nicotine sulfate, Freon II, hydrogen cyanide and certain liver toxins
28 known collectively as furans. More than forty (40) known carcinogens are found in cigarette

1 tobacco. The Tobacco companies artificially add chemicals and flavorings to their products that
2 increase toxicity and carcinogenicity.

3 154. The Tobacco companies have long understood that reducing or eliminating nicotine
4 from their products would hurt sales. As one company researcher wrote in a 1978 report to Philip
5 Morris executives: "If the industry's introduction of acceptable low-nicotine products does make it
6 easier for dedicated smokers to quit, then the wisdom of the introduction is open to debate."

7 155. Instead, the industry attempted to develop ostensibly safer ways of delivering
8 adequate doses of nicotine to create and sustain addiction in the smoker.

9 156. Some members of the industry studied artificial nicotine or nicotine analogues that
10 would have the addictive and psychopharmacological properties of nicotine without its dangerous
11 effects on the heart. Dr. Victor DeNoble was hired by Philip Morris, in part, to research and
12 develop a nicotine analogue.

13 157. Dr. DeNoble did discover such an analogue, but Philip Morris chose to halt its
14 effort to determine whether the nicotine analogue could be used to make a safer cigarette. On
15 information and belief, Philip Morris decided not to pursue nicotine analogues in order to avoid
16 the risk of adverse publicity and of compromising the industry's consistent position that there was
17 no alternative design for cigarettes.

18 158. Brown & Williamson also understood that nicotine was the essential ingredient in
19 maintaining tobacco sales. The company attempted to develop a "safer" cigarette which internal
20 documents described as "a nicotine delivery device."

21 159. By the end of the 1970s, however, Brown & Williamson, in a pattern that was
22 repeated throughout the industry, closed its research labs and halted all work on a safer cigarette.

23 160. R. J. Reynolds' efforts to develop a safer cigarette also focused on delivering
24 nicotine to the consumer without the harmful constituents of tobacco smoke. In the late 1980s, R.
25 J. Reynolds developed and test marketed "Premier," a smokeless and virtually tobacco-free
26 cigarette which was, in essence, a nicotine delivery system.

27 161. At Liggett & Myers, Dr. James Mold conducted tests to divide the components of
28 cigarette smoke into separate entities and to interrupt the process that produces carcinogens by

1 using a catalyst. Liggett & Myers researchers were able to produce a so-called "safer" cigarette.
2 designated as the "XA Project," that eliminated the carcinogenic activity on mouse skin.
3 However, Liggett & Myers did not want to be identified publicly as the source of the research
4 behind this non-carcinogenic "safer" cigarette.

5 162. Dr. Mold has provided the following overview of the XA Project and its
6 abandonment:

7 a. Dr. Mold stated that the XA project produced a safer cigarette. He stated,
8 "We produced a cigarette which was, we felt, commercially acceptable as established by some
9 consumer tests, which eliminated carcinogenic activity. . . "

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

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

24 163. A memorandum authored by an attorney at the firm of Shook, Hardy & Bacon,
25 longtime lawyers for the cigarette industry, confirmed the industry-wide position regarding the
26 issue of a safer cigarette. The 1987 memorandum was written in the context of the marketing by
27 R.J. Reynolds of a smokeless cigarette, Premier, that heated rather than burned tobacco. The
28 Shook, Hardy attorney wrote that the smokeless cigarette could "have significant effects on the

1 tobacco industry's joint defense efforts" and "[t]he industry position has always been that there is
2 no alternative design for a cigarette as we know them." The attorney also noted that,
3 "Unfortunately, the Reynolds announcement . . . seriously undercuts this component of industry's
4 defense."

5 164. Liggett had also obtained a patent for the process it had discovered to produce its
6 safer cigarette. The patent application described the reduction in cancer in mouse studies,
7 prompting stories in the media that Liggett was the first cigarette company to admit that smoking
8 caused cancer. Liggett responded by issuing a press release it called a "Liggettgram" which stated:
9 "Liggett and the cigarette industry continue to deny, as they have consistently, that any
10 conclusions can be drawn relating such test results on mice in laboratories to cancer in human
11 beings. It has never been established that smoking is a cause of human cancer. The laboratory
12 experiments reported in the patent were conducted for Liggett by an independent researcher, The
13 Life Sciences Division of Arthur D. Little, Inc."

14 165. At the time Liggett made this statement, Dr. Mold estimates that Liggett had spent
15 a total of \$10 million on research involving mice, in part to develop the safer XA cigarette.
16 Liggett's internal reports on the benefit of the XA, and the absence of increased risk of harm from
17 the additives used, specifically used animal studies as reliable indicators of the health effect of the
18 product on humans.

19

20 **1. Light Cigarettes: A Marketing Hoax**

21 166. The cigarette industry's manipulation of nicotine is particularly deceptive in its
22 marketing of "light" or low-tar and low-nicotine cigarettes to retain the health conscious segment
23 of the smoking market. Recent studies demonstrate that cigarettes advertised as low tar and low
24 nicotine have higher concentrations of nicotine, by weight, than high yield cigarettes.
25 Nevertheless, the cigarette manufacturers have successfully identified "light" cigarettes to
26 consumers as a reduced tar and reduced nicotine product. The cigarette manufacturers have
27 accomplished this deception through several strategies.

28 167. First, cigarette manufacturers have designed their "light" products so that advertised

1 tar and nicotine levels, as measured by the FTC method, understate the amounts of tar and nicotine
2 actually ingested by human smokers. Such design features include a technique called filter
3 ventilation in which nearly invisible holes are drilled in the filter paper, or the filter paper is made
4 more porous. Predictably, many smokers of advertised low tar and nicotine cigarettes block the
5 tiny, laser-generated perforations in ventilated filters with their fingers or lips, thereby resulting in
6 greater tar and nicotine yields to those smokers than those measured by the FTC smoking
7 machine.

8 168. Cigarette manufacturers know that the ability to block ventilation holes allows
9 smokers to "compensate" for nicotine losses that would otherwise be caused by tar-reducing
10 modifications. The industry has studied smoker compensation in order to design cigarettes that
11 allow smokers to compensate for lower nicotine yields. One such design feature is known as
12 "elasticity." This refers to the ability of a cigarette, whatever its FTC measured nicotine yield, to
13 deliver enough smoke to permit a smoker to obtain the nicotine he needs. e.g., through more or
14 longer puffs, or by covering ventilation holes.

15 169. Industry studies show that smokers tend to obtain close to the same amount of
16 nicotine from each cigarette despite differences in yield as measured by the FTC smoking
17 machine. In a 1974 BATCO conference, researchers described the result of one such study: "The
18 Kippa study in Germany suggests that whatever the characteristics of cigarettes as determined by
19 smoking machines, the smoker adjusts his pattern to deliver his own nicotine requirements (about
20 0.8 mg. per cigarette)." Smokers' compensation to obtain adequate nicotine also results in the
21 delivery of more tar than the FTC test measure.

22 170. Second, the FTC testing method does not distinguish between the slower acting
23 salt-bound nicotine and the more potent "free" nicotine that ammonia helps release. An
24 ammoniated cigarette that delivers more potent nicotine to smokers measures the same as a
25 cigarette with no such additives.

26 171. According to John Kreisher, a former associate scientific director for CTR,
27 "[a]mmonia helped the industry lower the tar and allowed smokers to get more bang with less
28 nicotine. It solved a couple of problems at the same time."

1 172. Third, the cigarette industry maintains that nicotine levels follow tar levels. In a
2 1981 study not intended for public release, Dr. Spears stated explicitly that low-tar cigarettes use
3 special blends of tobacco to keep the level of nicotine up while tar is reduced: "[T]he lowest tar
4 segment [of product categories] is composed of cigarettes utilizing a tobacco blend which is
5 significantly higher in nicotine."

6 173. R.J. Reynolds, Lorillard, the American Tobacco Company, and the Tobacco
7 Institute have similarly represented to the public and to the FDA that the nicotine levels in their
8 products are purely a function of setting the tar levels of such products.

9 174. Internal company documents reviewed by the Waxman Subcommittee show,
10 however, that the American Tobacco Company's experimentation with adding nicotine to its
11 tobacco was extensive— extensive enough for American Tobacco Company executive John T.
12 Ashworth to instruct employees in a confidential memorandum: "In the future, our use of nicotine
13 should be referred to as 'Compound W' in our experimental work, reports, and memorandums,
14 either for distribution within the Department or for outside distribution."

15 175. Recent tests conducted at the direction of the FDA show that the low-tar brands
16 actually have more nicotine by weight than the non-"light" brands. The high level of nicotine
17 found in lower tar cigarettes seriously misleads consumers and renders the industry's claim of an
18 "essentially perfect" correlation between reduced tar and nicotine levels false. According to the
19 FDA, this has been accomplished by a combination of the methods described above for boosting
20 nicotine delivery to compensate for nicotine losses from the application of tar-reducing design
21 modifications. The cigarette industry thereby maintains a continuing market for a product that
22 consumers are misled to believe contains less of all of the harmful ingredients in regular cigarettes.

23

24 **2. Fraudulent Advertising of Tar and Nicotine Content**

25 176. The campaign of deception in advertising, by the Defendants regarding filters and
26 tar and nicotine content that began in the 1950s, has continued unabated through the present.
27 Although an "FTC Method" has been developed that measures the amount of tar and nicotine in a
28 cigarette with a "smoking machine" (measurements the Tobacco companies advertise for their

1 brands), the FTC method is not a valid or reliable method to measure tar and nicotine intake by
2 "human smokers." In fact, the Tobacco companies have specifically designed their products to
3 deceive the public into thinking they are getting a low tar and nicotine cigarette when, in fact, they
4 are getting significantly higher deliveries of tar and nicotine in their smoke.

5 177. In 1982, *The New York Times* noted that Brown and Williamson had complained to
6 the FTC that American Brands, Inc., Philip Morris U.S.A., and R.J. Reynolds were engaging in
7 deceptive advertising. While promoting very low-tar cigarettes packaged in flip-top boxes, the
8 three were also marketing cigarettes containing 10 to 100 times more tar—in look-alike soft
9 packages. *The Times* also reported that Brown and Williamson's much publicized low-tar Barclay
10 was designed to fool the FTC's smoking machines. The machines preserve Barclay filters—but
11 the human lips probably destroy it, giving smokers heavy doses of just what they were trying to
12 avoid. In January 1993, *Consumer Reports* noted that while the Barclay ads claimed "1 mg. of
13 tar," smokers actually got 3 to 7 times as much.

14 178. In the 1980s and 1990s, the Tobacco companies have continued the "tar and
15 nicotine reduction" deception by increasing bio-availability of nicotine through pH manipulation
16 and use of additives, such as acetaldehyde and ammonia to boost the reinforcer pharmacological
17 impact of nicotine, while still publishing "FTC Method" measurements and advertising their
18 products as "Light" or "Ultra-light."

19

20 **G. Knowledge That Nicotine Causes Addiction**

21 179. The fact that nicotine delivered by tobacco products is highly addictive was
22 carefully and comprehensibly documented in the 1988 Surgeon Generals Report, "The Health
23 Consequences of Smoking: Nicotine Addiction." The major conclusions contained in this report
24 are (a) "Cigarettes and other forms of tobacco are addicting"; (b) "Nicotine is the drug in tobacco
25 that causes addiction"; and (c) "The pharmacologic and behavioral processes that determine
26 tobacco addiction are similar to those that determine addiction to drugs such as heroin and
27 cocaine." Likewise, in a 1988 report addressing the health effects of smokeless tobacco, the World
28 Health Organization concluded: "[T]here is ample evidence that the blood nicotine levels of

1 smokeless tobacco users were as high as or even higher than those found in many cigarette
2 smokers. Its continued use, therefore, does cause addiction and dependence in humans. "

3 180. Nicotine in cigarettes and smokeless tobacco is now recognized as an addictive
4 substance by such major medical organizations as the Office of U.S. Surgeon General, the World
5 Health Organization, the American Medical Association, the American Psychiatric Association,
6 the American Psychological Association, the American Society of Addiction Medicine, the
7 American Public Health Association, and the Medical Research Counsel in the United Kingdom.
8 The National Institute on Drug Abuse has called cigarette smoking the most common example of
9 drug dependence in the United States.

10 181. Despite their knowledge that cigarette smoking and the use of smokeless tobacco is,
11 as a result of nicotine, extremely addictive, the Tobacco companies to this day deny that smoking,
12 "dipping" or "chewing" tobacco is addictive. Through their individual advertising and public
13 relations campaigns, and collectively through the Tobacco Institute, the Tobacco companies have
14 successfully promoted and sold tobacco products by concealing and misrepresenting the addictive
15 nature of cigarettes and smokeless tobacco.

16

17 **1. The Tobacco companies' Understanding of Nicotine Addiction**

18 182. The Defendants know of the difficulties smokers experience in quitting smoking
19 and of the tendency of addicted individuals to focus on any rationalization to justify their
20 continued smoking. The Defendants exploit this weakness and capitalize upon the known
21 addictive nature of nicotine, which guarantees a market for cigarettes.

22 183. Cigarette manufacturers have known since at least the early 1960s of the addictive
23 properties of the nicotine contained in the cigarettes they manufacture and sell. Industry
24 documents are replete with evidence of such knowledge:

25 a. In 1962, Sir Charles Ellis, scientific advisor to the board of directors of
26 British American Tobacco Company ("BATCO"), Brown & Williamson's parent company, stated
27 at a meeting of BATCO's worldwide subsidiaries, that "smoking is a habit of addiction" and that
28 "[n]icotine is not only a very fine drug, but the technique of administration by smoking has

1 considerable psychological advantages...." He subsequently described Brown & Williamson as
2 being "in the nicotine rather than the tobacco industry."

3 b. A research report from 1963 commissioned by Brown & Williamson states
4 that when a chronic smoker is denied nicotine: "A body left in this unbalanced state craves for
5 renewed drug intake in order to restore the physiological equilibrium. This unconscious desire
6 explains the addiction of the individual to nicotine." No information from that research has ever
7 been voluntarily disclosed to the public; in particular, it was not shared with the Committee that
8 was preparing the first Surgeon General report and hence was not reflected in that report.

9 c. Addison Yeaman, General Counsel at Brown & Williamson, summarized
10 his view about nicotine in an internal memorandum also in 1963: "Moreover, nicotine is addictive.
11 We are, then, in the business of selling nicotine, an addictive drug, effective in the release of stress
12 mechanisms."

13 d. Internal reports prepared by Philip Morris in 1972 and the Philip Morris
14 U.S.A. Research Center in March 1978 demonstrate Philip Morris' understanding of the role of
15 nicotine in tobacco use: "We think that most smokers can be considered nicotine seekers, for the
16 pharmacological effect of nicotine is one of the rewards that come from smoking. When the
17 smoker quits, he forgoes his accustomed nicotine. The change is very noticeable, he misses the
18 reward, and so he returns to smoking."

19 e. From 1940-1970, the American Tobacco Company conducted its own
20 nicotine research, funding over 90 studies on the pharmacological and other effects of nicotine on
21 the body. This research constitutes 80% of all biological studies funded by the company over this
22 period. In 1969, the American Tobacco Company even test marketed a nicotine-enriched cigarette
23 in Seattle, Washington.

24 f. In a 1972 document entitled "RJR Confidential Research Planning
25 Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein,"
26 an R.J. Reynolds executive wrote: "In a sense, the tobacco industry may be thought of as being a
27 specialized, highly ritualized, and stylized segment of the pharmaceutical industry. Tobacco
28 products uniquely contain and deliver nicotine, a potent drug with a variety of physiological

1 effects."

2 184. The industry's recognition of the extent to which nicotine—and not
3 tobacco—defines its product is illustrated in a 1972 Philip Morris report on a CTR conference,
4 which states:

5 a. "As with eating and copulating, so it is with smoking. The physiological
6 effect serves as the primary incentive, all other incentives are secondary. The majority of the
7 conferees would go even further and accept the proposition that nicotine is the active constituent
8 of cigarette smoke. Without nicotine, the argument goes, there would be no smoking."

9 b. "Why then is there not a market for nicotine per se, eaten, sucked, drunk,
10 injected, inserted or inhaled as a pure aerosol? The answer, and I feel quite strongly about this, is
11 that the cigarette is in fact among the most awe-inspiring examples of the ingenuity of man. Let
12 me explain my conviction. The cigarette should be conceived not as a product but as a package.
13 The product is nicotine."

14 c. "Think of the cigarette pack as a storage container for a day's supply of
15 nicotine. . . Think of the cigarette as a dispenser for a dose unit of nicotine."

16 185. Documents from a BATCO study called Project Hippo, uncovered only in May
17 1994, show that as far back as 1961, this cigarette company was actively studying the
18 physiological and pharmacological effects of nicotine. Project Hippo reports were circulated to
19 other U.S. cigarette manufacturers and to TIRC, demonstrating that at least some of the industry's
20 nicotine research was shared. BATCO sent the reports to officials at Brown & Williamson and
21 R.J. Reynolds, and circulated a copy to TIRC with a request that TIRC "consider whether it would
22 help the U.S. industry for these reports to be passed on to the Surgeon General's Committee."

23 186. Similarly, an RJR-MacDonald Marketing Summary Report from 1983 concluded
24 that the primary reason people smoke "is probably the physiological satisfaction provided by the
25 nicotine level of the product."

26 187. To this day, the cigarette manufacturers have concealed from the public and public
27 health officials their extensive knowledge of the addictive properties of nicotine and its critical
28 role in smoking and continue to contend that nicotine is not addictive and that cigarettes are not

1 harmful to health.

2 188. As recently as December 1995, the *Wall Street Journal* reported on an internal
3 Philip Morris draft document analyzing the competitive market for nicotine products for the years
4 1990-1992. The report describes the importance of nicotine: "Different people smoke for different
5 reasons. But the primary reason is to deliver nicotine into their bodies." It is a physiologically
6 active, nitrogen containing substance. Similar organic chemicals include nicotine, quinine,
7 cocaine, atropine and morphine. While each of these substances can be used to affect human
8 physiology, nicotine has a particularly broad range of influence. During the smoking act, nicotine
9 is inhaled into the lungs in smoke, enters the bloodstream and travels to the brain in about eight to
10 ten seconds."

11 189. Recently disclosed handwritten notes dated 1965 from Ronald A. Tamol, who until
12 1993 was Philip Morris' Director of Research and Brand Development, refer to "minimum nicotine
13 . . . to keep the normal smoker hooked."

14 190. The cigarette manufacturers have affirmatively misrepresented to consumers the
15 role of nicotine in tobacco use. Even today, Brown & Williamson, R.J. Reynolds and the
16 Tobacco Institute continue to claim that nicotine is important in cigarettes for taste and "mouth-
17 feel." However, tobacco industry patents specifically distinguish nicotine from flavorants and a
18 R.J. Reynolds book on flavoring tobacco, while listing approximately a thousand flavorants, fails
19 to include nicotine as a flavoring agent. The cigarette industry has actually concentrated on
20 developing technologies to mask the acrid flavor of increased levels of nicotine in cigarettes.

21
22 **2. The Waxman Hearings**

23 191. On February 25, 1994, David A. Kessler, M.D., Commissioner of the FDA, sent a
24 letter to Scott D. Bailin, Esq., Chairman of the Coalition on Smoking and Health, asserting:
25 "Evidence brought to our attention is accumulating that suggests that cigarette manufacturers may
26 intend that their products contain nicotine to satisfy an addiction on the part of some of their
27 customers. The possible inference that cigarette vendors intend cigarettes to achieve drug effects
28 in some smokers is based on mounting evidence we have received that: (1) the nicotine ingredient

1 in cigarettes is a powerfully addictive agent and (2) cigarette vendors control the levels of nicotine
2 that satisfy this addiction."

3 192. In response to Kessler's letter, on March 15, 1994, in a letter to *The New York*
4 *Times*, James W. Johnston, Chairman and Chief Executive Officer of R.J. Reynolds, continued to
5 assert that nicotine was not addictive. Johnston based his assertion upon the success rate of
6 American adults who had quit smoking.

7 193. On March 25, 1994, David Kessler testified before the Waxman Subcommittee that
8 "the cigarette industry has attempted to frame the debate on smoking as the right of each American
9 to choose. The question we must ask is whether smokers really have that choice." Dr. Kessler
10 stated:

11 a. "Accumulating evidence suggests that cigarette manufacturers may intend
12 this result—that they may be controlling the levels of nicotine in their products in a manner that
13 creates and sustains an addiction in the vast majority of smokers."

14 b. "We have information strongly suggesting that the amount of nicotine in a
15 cigarette is there by design."

16 c. "[T]he public thinks of cigarettes as simply blended tobacco rolled in paper.
17 But they are much more than that. Some of today's cigarettes may, in fact, qualify as high
18 technology nicotine delivery systems that deliver nicotine in precisely calculated
19 quantities—quantities that are more than sufficient to create and to sustain addiction in the vast
20 majority of individuals who smoke regularly."

21 d. "[T]he history of the tobacco industry is a story of how a product that may
22 at one time have been a simple agricultural commodity appears to have become a nicotine delivery
23 system."

24 e. "[T]he cigarette industry has developed enormously sophisticated methods
25 for manipulating nicotine levels in cigarettes."

26 f. "In many cigarettes today, the amount of nicotine present is a result of
27 choice, not chance. [S]ince the technology apparently exists to reduce nicotine in cigarettes to
28 insignificant levels, why, one is led to ask, does the industry keep nicotine in cigarettes at all?"

1 194. On June 21, 1994, Dr. Kessler told the Waxman Subcommittee that FDA
2 investigators had discovered that Brown & Williamson had developed a high nicotine tobacco
3 plant, which the company called Y-1. This discovery followed Brown & Williamson's flat denial
4 to the FDA on May 2, 1994, that it had engaged in "any breeding of tobacco for high or low
5 nicotine levels."

6 195. When four FDA investigators visited the Brown & Williamson plant in Macon,
7 Georgia on May 3, 1994, Brown & Williamson officials denied that the company was involved in
8 breeding tobacco for specific nicotine levels.

9 196. In fact, in a decade-long project, Brown & Williamson secretly developed a
10 genetically engineered tobacco plant with a nicotine content more than twice the average found
11 naturally in flue-cured tobacco. Brown & Williamson took out a Brazilian patent for the new
12 plant, which was printed in Portuguese. Brown & Williamson and a Brazilian sister company,
13 Souza Cruz Overseas, grew Y-1 in Brazil and shipped it to the United States where it was used in
14 five Brown & Williamson cigarette brands sold in the County of Los Angeles, including three
15 labeled "light." When the company's deception was uncovered, company officials stated that close
16 to four million pounds of Y-1 were stored in company warehouse in the United States.

17 197. As part of its cover-up, Brown & Williamson even went so far as to instruct the
18 DNA Plant Technology Corporation of Oakland, California, which had developed Y- 1, to tell
19 FDA investigators that Y- I had "never [been] commercialized." Only after the FDA discovered
20 two United States Customs Service invoices indicating that "more than a million pounds" of Y-1
21 tobacco had been shipped to Brown & Williamson on September 21, 1992, did the company admit
22 that it had developed the high-nicotine tobacco.

23
24 **3. Manipulation of Nicotine**

25 198. The nicotine content of the raw tobacco is not the only variable manipulated by the
26 cigarette manufacturers to deliver a pharmacologically active dose of nicotine to the smoker.
27 Cigarettes are not simply cut tobacco rolled into a paper tube. Modern cigarettes as sold in the
28 County of Los Angeles are painstakingly designed and manufactured to control nicotine delivery

1 to the smoker.

2 199. For example, cigarette manufacturers add several ammonia compounds during the
3 manufacturing process which increase the delivery of nicotine and almost double the nicotine
4 transfer efficiency of cigarettes.

5 200. Brown & Williamson publicly denies that the use of ammonia in the processing of
6 tobacco increases the amount of nicotine absorbed by the smoker. Nevertheless, the company's
7 own internal documents reveal that it and its rivals use ammonia compounds to increase nicotine
8 delivery. A 1991 Brown & Williamson confidential blending manual states: "Ammonia, when
9 added to a tobacco blend, reacts with the indigenous nicotine salts and liberates free nicotine . . .
10 As the result of such change the ratio of extractable nicotine to bound nicotine in the smoke may
11 be altered in favor of extractable nicotine. As we know, extractable nicotine contributes to impact
12 in cigarette smoke and this is how ammonia can act as an impact booster." According to the
13 Brown & Williamson manual, all American cigarette manufacturers except Liggett use ammonia
14 technology in their cigarettes.

15 201. Tobacco industry patents also show that the cigarette industry has developed the
16 capability to manipulate nicotine levels in cigarettes to an exacting degree. For example:

17 a. A Philip Morris patent application discusses an invention that "permits the
18 release . . . in controlled amounts, and when desired, of nicotine into tobacco smoke."

19 b. Another Philip Morris patent application explains that the proposed
20 invention "is particularly useful for the maintenance of the proper amount of nicotine in tobacco
21 smoke," and notes that "previous efforts have been made to add nicotine to Tobacco products
22 when the nicotine level in the tobacco was undesirably low."

23 c. A 1991 R. J. Reynolds patent application states that "processed tobaccos
24 can be manufactured under conditions suitable to provide products having various nicotine levels."

25 202. The Tobacco companies' manipulation and control of nicotine levels is further
26 evidenced by the emergence of companies that specialize in manipulating nicotine and that are
27 now offering their services to tobacco manufacturers.

28 203. An advertisement in tobacco industry trade publications for the Kimberly-Clark

1 tobacco reconstitution process states: "Nicotine levels are becoming a growing concern to the
2 designers of modern cigarettes, particularly those with lower tar deliveries. The Kimberly-Clark
3 tobacco reconstitution process used by LTR Industries permits adjustments of nicotine to your
4 exact requirements . . . we can help you control your tobacco."

5 204. The tobacco industry's own trade literature explains that the Kimberly-Clark
6 process enables manufacturers to triple or even quadruple the nicotine content of reconstituted
7 tobacco, thereby increasing the nicotine content of the final manufactured product.

8 205. Reconstituted tobacco is made from stalks and stems and other waste that cigarette
9 manufacturers formerly discarded and now use to make cigarettes more cheaply. In the
10 reconstitution process, pieces of tobacco material undergo treatment that results in the extraction
11 of some soluble components, including nicotine. The pieces are then physically formed into a
12 sheet of tobacco material, to which the extracted nicotine is readded. Although denied by tobacco
13 executives, it is publicly reported that this process adjusts nicotine levels in the products, and that
14 one manufacturer "readily admits to selling levels of nicotine . . . for the tobacco sheet."

15 206. Another enterprise quite explicitly specializes in the manipulation of nicotine and
16 its use as an additive. This company does business under the name "The Tobacco companies of
17 the Contraf Group." An advertisement run by the Contraf Group in the international trade press
18 states: "Don't Do Everything Yourself! Let us do it More Efficiently!" Calling itself, "The Niche
19 Market Specialists," Contraf lists among its areas of specialization "Pure Nicotine and Other
20 Special Additives."

21
22 **4. The FDA Response**

23 207. After an extensive investigation, in August 1995, the FDA published its report and
24 proposed regulations of cigarettes and nicotine. The results of that inquiry and analysis supported
25 a finding that nicotine in cigarettes and smokeless tobacco is a drug, and that these tobacco
26 products are drug delivery devices within the meaning of the Federal Food, Drug, and Cosmetic
27 Act.
28

1 **H. Targeting Children And Minorities**

2 208. Across the nation, the overwhelming majority of cigarette use and addiction begins
3 when users are children or teenagers. Eighty-two (82%) percent of daily smokers had their first
4 cigarette before age 18, sixty-two (62%) percent before the age of 16, thirty-eight (38%) percent
5 before the age of 14. Thus, a person who does not begin smoking in childhood or adolescence is
6 unlikely ever to begin. The younger a person begins to smoke, the more likely he or she is to
7 become a heavy smoker. Sixty-seven (67%) percent of children who start smoking in the sixth
8 grade become regular adult smokers and forty-six (46%) percent of teenagers who start smoking in
9 the eleventh grade become regular adult smokers.

10 209. Smoking at an earlier age increases the risk of lung cancer and other diseases.
11 Studies have shown that lung cancer mortality is highest among adults who began smoking before
12 the age of 15.

13 210. Although young people frequently believe they will not become addicted to
14 nicotine or become long-term users of tobacco products, they often find themselves unable to quit
15 smoking. Among smokers age 12 to 17 years, a 1992 Gallup survey found that 70% said if they
16 had to do it over again, they would not start smoking, and 66% said that they want to quit. Fifty-
17 one percent of the teen smokers surveyed had made a serious effort to stop smoking—but had
18 failed.

19 211. Cigarette smoking among children and teens is on the rise. A 1995 National
20 Institute of Drug Abuse study found that between 1991 and 1994, the proportional increase in
21 smoking rates was greatest among eighth graders, rising by 30%.

22 212. Cigarettes are among the most promoted consumer products in the United States.
23 The Federal Trade Commission reported to Congress that domestic cigarette advertising and
24 promotional expenditures rose from close to \$4 billion in 1990 to more than \$6 billion in 1993.
25 Tobacco product brand names, logos, and advertising messages are all-pervasive, appearing on
26 billboards, buses, trains, in magazines, on clothing and other goods. The effect is to convey the
27 message to young people that tobacco use is desirable, socially acceptable, safe, healthy, and
28 prevalent in society. Additionally, young people buy the most heavily advertised cigarette brands,

1 whereas many adults buy more generic or value-based cigarette brands which have little or no
2 image-based advertising. Cigarette manufacturers, knowing that their advertising appeals to
3 young people, continue to use these same marketing techniques to sell their products.

4 213. A July 1995 report by the California Department of Health Services surveyed
5 tobacco advertisements in or around stores. In looking at almost 6,000 stores, it was found that the
6 total average tobacco advertisements and promotions per store was 25.26. Marlboro was the most
7 frequently advertised and promoted cigarette brand with an average of 10.15 advertisements and
8 promotions per store. Camel was the second most frequently advertised and promoted cigarette
9 brand and had an average of 4.84 advertisements and promotions per store. These two brands
10 were the most frequently advertised and promoted cigarette brands. Not surprisingly, Marlboro,
11 Camel, and Newport, the most heavily advertised brands, are the leading brands smoked by
12 children.

13 214. This same report also found that stores within 1,000 feet of a school had
14 significantly more tobacco advertising and promotions than stores that were not near schools.
15 Stores near schools were also more likely to have at least one tobacco advertisement placed next to
16 candy or displayed at three feet or below. A significantly higher average number of tobacco
17 advertisements also were found on the exterior of stores located in young neighborhoods—
18 communities in which at least one-third of the population in that zip code were 17 years of age or
19 less.

20 215. R. J. Reynolds has even identified the stores in proximity to the youth market. R.J.
21 Reynolds' Division Manager for Sales wrote to all R.J. Reynolds sales representatives in 1990
22 regarding the "Young Adult Market" and asked them to identify what stores were in proximity to
23 colleges or high schools. A follow-up letter by the sales division calls for a resubmitted list of
24 Y.A.S. (Young Adult Smoker) accounts using new criteria, focusing on all accounts located across
25 from, adjacent to, or in the general vicinity of high schools or college campuses.

26 216. Despite these disturbing statistics, each of the cigarette manufacturers maintains
27 that the effect of its pervasive advertising and promotion of cigarettes is limited to maintaining
28 brand loyalty and that it has no role in encouraging adolescents to experiment with smoking.

1 217. The cigarette manufacturers know that they attract underage consumers to their
2 products. For example, since 1988, R.J. Reynolds has used a cartoon character called Joe Camel
3 in its advertising campaign. It has massively disseminated products such as matchbooks, signs,
4 clothing, mugs, and drink can holders advertising Camel cigarettes. The advertising has been
5 effective in attracting adolescents, and R.J. Reynolds has knowledge of this fact but still continues
6 the Joe Camel advertising campaign. As a result of the campaign, the number of teenage smokers
7 who smoke Camel cigarettes has risen dramatically. One study found that Joe Camel is almost as
8 familiar to six-year-old children as Mickey Mouse, enticing thousands of teens to smoke that
9 brand, and has caused Camel's popularity with 12-17 year olds to surge dramatically. R.J.
10 Reynolds knew or willfully disregarded the fact that cartoon characters attract children.

11 218. The model who portrayed the "Winston Man" for R.J. Reynolds Winston brand
12 cigarettes testified before Congress: "I was clearly told that young people were the market that we
13 were going after." He further testified, "It was made clear to us that this image was important
14 because kids like to role play, and we were to provide the attractive role models for them to follow
15 I was told I was a live version of the GI Joe...."

16 219. An R.J. Reynolds affiliate studied in detail the motivations of young smokers. A
17 "Youth Target" study was the first of a planned series of research studies into the lifestyles and
18 value systems of young men and women in the 15-24 age range, the stated purpose of which was
19 to "provide marketers and policy makers with an enriched understanding of the mores and motives
20 of this important emerging adult segment which can be applied to better decision making in regard
21 to products and programs directed at youth." The study focused on the "primary elements of
22 lifestyles and values among the youth of today" in learning how to market products to children and
23 teens.

24 220. For many years, the Defendants have engaged in a vast and misleading
25 promotional, public relations, and sham lobbying blitz that had as its goal (1) increasing the
26 numbers of people addicted to nicotine in cigarettes and/or smokeless tobacco products and
27 (2) decreasing the number of people who attempt or succeed in quitting. Their efforts have been
28 and continue to be directed toward children. They have done so and continue to do so in

1 contravention of their duty not to make false statements of material fact and their duty not to
2 conceal such true facts from the public. At the cost of countless lives, the Defendants spend
3 billions of dollars every year misleading the public and promoting the myth that smoking
4 cigarettes and using smokeless tobacco products does not cause cardiovascular disease, lung and
5 other cancers, emphysema and other diseases and that smokers live healthy and vital lives. The
6 Defendants have at all pertinent times presented and promoted smoking as an attractive,
7 glamorous, youthful, and relaxing pastime, associating it with movie stars, athletes and successful
8 professionals.

9 221. Despite the best efforts of parents, educators and the medical profession, smoking
10 among young people has remained alarmingly constant since the late 1970s. Tobacco companies
11 use advertising to create a mental image associating smoking with health, glamorous and athletic
12 lifestyles, and with success and sexual attractiveness. Their advertising and marketing campaigns
13 increase demand for tobacco products among young people. The ease with which children and
14 teenagers have been able to obtain cigarettes from vending machines, has assured that there is a
15 ready supply to meet this demand. It has been shown repeatedly that cigarette vending machines
16 (even those located in bars and other supposedly adult locations) are readily available to children
17 and teenagers. Within a short period of time, the young smoker becomes physiologically and
18 emotionally dependent, i.e., addicted to tobacco. Later, as the maturing smoker begins to wish he
19 or she could quit, advertising reinforces the practice and seeks to minimize health concerns and
20 creates doubt and confusion, which is used by smokers as an excuse to avoid the pain and
21 discomfort of attempting to break their addiction to nicotine.

22 222. One of the best examples of this was the transformation of Marlboro cigarettes,
23 from a red-tipped cigarette for women to the cigarette for the "macho cowboy." By changing
24 advertising imagery, Philip Morris was able to tap into a wholly new and different market. In
25 1950, R.J. Reynolds was the king of the cigarette business. It sold more cigarettes than any other
26 company. Philip Morris, though doing well on the basis of its fraudulent health oriented
27 advertising, was still far behind. In 1981, Philip Morris overtook R.J. Reynolds, and each year has
28 extended its lead, by developing an effective marketing campaign for recruiting young new

1 smokers to its brands. The image created by the Marlboro man captured the adolescent
2 imagination, leading to experimentation with that particular cigarette and eventual addiction due to
3 the manipulation by Philip Morris of the nicotine and other ingredients in the cigarette. The
4 children and teenagers who started smoking Marlboro became tenaciously loyal customers. Soon,
5 Marlboro became the "gold standard" of cigarettes among teenagers. Through the year 1988,
6 nearly three-fourths of teenage smokers used Marlboro.

7 223. At about the time it lost market leadership to Philip Morris, R.J. Reynolds
8 dedicated itself to a ruthless advertising campaign encouraging children and teenagers to smoke.
9 One of the key elements of the R.J. Reynolds' strategy for attracting children was to reposition
10 many of its cigarette brands to younger audiences. Just as Marlboro was repositioned from the
11 women's market to the macho male market by a new advertising campaign, R.J. Reynolds has
12 positioned its cigarette advertising campaigns to younger and younger audiences using a
13 succession of advertising images of men engaged in extraordinary feats of physical and athletic
14 achievements.

15 224. R.J. Reynolds' Vantage cigarettes entered the 1980s as a brand targeted at the health
16 conscious adult smoker. Advertisements were intended to assuage fears of lung cancer and other
17 diseases and give the concerned smoker arguments for rationalizing their continuation of the
18 addiction. Through multiple-advertising transmogrifications, Vantage cigarettes have been
19 progressively repositioned to ever-younger audiences. During the mid-1980s, this advertising
20 campaign featured young, successful professionals including architects, fashion designers,
21 lawyers, etc., with the slogan "The Taste of Success." These ads promoted the implication that
22 smoking is helpful—if not essential—to success or prominence. In the late 1980s, the advertising
23 theme for Vantage cigarettes began to feature professional-caliber athletes and auto racers. These
24 advertisements depict physical activity requiring strength or stamina beyond that of everyday
25 activity. The obvious implication is that smoking does not harm you.

26 225. During the 1980s, advertising for Salem cigarettes also became more youth-
27 oriented. Whereas the dominant advertising theme for Salem cigarettes used to be clean, fresh
28 country air, during the 1980s Salem ads were populated by muscular surfers and bikini clad

1 women, fun-loving party animals, and other attractive adolescent role models. Another successful
2 advertising campaign targeted at young people is the Lorillard Tobacco Company campaign
3 promoting Newport cigarettes. Newport ads frequently show men and women in sexually
4 suggestive positions always having fun, using the slogan "Alive With Pleasure."

5 226. Another successful advertising campaign has been the "You've Come A Long Way
6 Baby" campaign, promoting Virginia Slims cigarettes. One of the most important psychological
7 needs of most adolescent girls is to become independent from their parents. By associating
8 smoking with women's liberation, Philip Morris intended to create in the minds of teenage girls the
9 vision of smoking as a symbol of autonomy and independence. Ads for Virginia Slims and other
10 "feminine" cigarettes prey upon the natural and common insecurity and sense of inferiority
11 experienced by adolescents, by portraying the cigarette as a crutch and a symbol of superiority.
12 Perhaps the most acute psychological need of adolescence is to fit in, to be accepted, to be popular.
13 Ads for Philip Morris' Benson & Hedges cigarettes developed an image of smoking as a happy
14 pleasure to be shared in the company of others and the easy road to instant acceptance within a
15 group.

16 227. In today's culture, many teenage girls perceive that a prerequisite to popularity is to
17 be thin. Philip Morris and other cigarette companies capitalize upon this perception by presenting
18 cigarette smoking as a suitable alternative to a diet for being thin. Virtually every "feminine"
19 cigarette includes words like slim, light, super slim, ultra light, etc. The photographic imagery in
20 cigarette advertising that targets young females universally portrays attractive young women in
21 glamorous outfits. Smoking is thus associated with being sexy and beautiful. In cigarette ads, the
22 air is fresh and clear; magical things happen. The reality is that cigarette smoking causes
23 addiction, disease and death.

24 228. Many teenage boys fantasize about owning a powerful motorcycle. For this reason
25 many cigarette brands have used motorcycle imagery to encourage teenage boys to smoke. Many
26 cigarette ads that target young boys glamorize high risk activities like hang gliding, motorcycle
27 racing, mountain climbing, etc. Cigarette makers do this deliberately to undermine awareness that
28 smoking is dangerous. In its campaign to attract adolescent boys to become smokers, the R.J.

1 Reynolds Tobacco Company has made extensive use of risktaking and danger in its advertising.
2 By glorifying risk-taking, these ads have a more insidious purpose. How a person estimates the
3 magnitude and likelihood of a risk can be significantly affected by what it is compared against.
4 By portraying dangerous activities like hang-gliding, mountain climbing, and stunt motorcycle
5 riding in tobacco advertising, R.J. Reynolds minimizes the dangers of smoking in adolescent
6 minds.

7 229. The great success that R.J. Reynolds had in its effort to overtake Philip Morris in
8 the youth market is the "Joe Camel" cartoon character. This campaign was inaugurated in the
9 United States in 1987 to commemorate the 75th anniversary of Camel cigarettes. In the first ads,
10 the camel leered out over the ad saying, "75 Years And Still Smoking." The implication is
11 obvious. It soon became evident that "Joe Camel" would strike a responsive chord among children
12 and teenagers and has been used by R.J. Reynolds to target children to get them to start smoking,
13 as early as possible, so they can become addicted to nicotine at the earliest age possible. R.J.
14 Reynolds has more than tripled its advertising expenditures for Camel cigarettes since 1988,
15 utilizing themes like "Joe Camel" guaranteed to be attractive to young people at high risk of
16 becoming smokers.

17 230. When R.J. Reynolds began the Joe Camel cartoon campaign, Camel's share of the
18 children's market was only 0.5 %. In just a few years, Camel's share of this illegal market has
19 increased to 32.8%, representing sales estimated at \$476 million per year. Another indication of
20 the phenomenal success of this marketing campaign is the fact that in a recent survey of six-year-
21 olds, 91% of the children could correctly match Joe Camel with a picture of a cigarette. Both the
22 silhouette of Mickey Mouse and the face of Joe Camel were nearly equally well-recognized by
23 almost all children surveyed.

24 231. The themes within cigarette advertising are not the only feature of tobacco
25 marketing that betray the real target. The location and placement of those ads further reveal that
26 children are the intended target. During the decade of the 1980s, there was a steady migration of
27 cigarette advertising into youth-oriented publications. Magazines with sexually-oriented themes
28 and those concerning entertainment and sporting activities had the highest concentration of

1 cigarette ads. For many of these magazines, teenagers comprise a quarter or more of the total
2 readership. Cigarette ads in these youth-oriented magazines were frequently multi-page, pop-up
3 ads which are significantly more costly, but also more attention-grabbing than conventional ads.
4 News magazines, like *Time* and *Newsweek*, which have older audiences, had few cigarette ads, and
5 those tended to emphasize health promises concerning tar and nicotine rather than glamorous
6 images.

7 232. In 1988, the tobacco industry reaped \$221 million in profits from \$1.25 billion in
8 sales to children under the age of 18. Marlboro and Camel cigarettes dominate the teenage
9 smoking market.

10 233. In late 1990, the Tobacco Institute, on behalf of the industry, inaugurated a public
11 relations campaign designed to convince the public that the cigarette companies wished to
12 discourage young people from smoking. Several tobacco companies began their own campaigns
13 at the same time. In fact, these programs are just a continuation of the Defendants' ongoing fraud
14 and conspiracy. While these programs call for age 18 as the national standard for tobacco sales to
15 children, and for requiring "adult supervision" of cigarette vending machines, in fact, the Tobacco
16 Institute and Tobacco companies hope to freeze the status quo with regard to children's access to
17 tobacco as most states already have a minimum age of 18 or older. Brochures, like "Tobacco:
18 Helping Youth Say No," are being distributed by the Tobacco Institute and tobacco industry. In
19 reality, this is a pro-smoking subterfuge. The brochure presents smoking as a permissible "adult"
20 decision and smoking as something an "adult" can safely do. The only reason given children for
21 not smoking is that—like getting married or driving a car—smoking is for grown-ups. Of course,
22 that message really makes the smoking more desirable to kids. An R.J. Reynolds' brochure even
23 tells parents to tell their children that the parents smoke "because they enjoy it." None of these
24 brochures disclose that smoking is highly addictive and harmful to human life.

25 234. Perhaps the most vicious element of this advertising campaign has been advertising
26 aimed at young girls. Nearly every issue of magazines for young girls, like *Teen* and *Young Miss*,
27 includes an advertisement by R.J. Reynolds urging children not to smoke. But the reasons given
28 for refraining are not that smoking is addictive, that it can harm or kill the infants of pregnant

1 woman. or that it causes cancer and other lethal diseases; rather, the reason given is that it is an
2 "adult decision."

3 235. The likely effect of these ads is that, rather than discouraging children from
4 smoking, they plant the notion that smoking is something to do to show one's independence, to act
5 grown-up. This notion is, of course, reinforced by the ubiquitous cigarette ads depicting
6 glamorous young adult woman smoking as a way of demonstrating their independence.

7 236. This despicable conduct has gone on for 40 years and continues into this decade. In
8 January 1990, the Manager of Public Relations of R.J. Reynolds wrote the principal of a public
9 school that: "The tobacco industry is also concerned about the charges being made that smoking is
10 responsible for so many serious diseases. Long before the present criticism began, the tobacco
11 industry in a sincere attempt to determine the harmful effects, if any, smoking might have on
12 human health, established the Council for Tobacco Research-USA. The industry has also
13 supported research grants by the American Medical Association. Over the years the tobacco
14 industry has given in excess of \$162 million to independent research on the controversies
15 surrounding smoking—more than all voluntary health associations combined. Despite all the
16 research going on, the simple and unfortunate fact is that scientists do not know the cause or
17 causes of the chronic diseases reported to be associated with smoking. The answers to many
18 unanswered controversies surrounding smoking—and the fundamental causes of the diseases often
19 statistically associated with smoking—we do believe can only be determined through much more
20 scientific research. Our company intends, therefore, to continue to support such research in a
21 continuing search for answers. We would appreciate your passing this information along to your
22 students."

23 237. The targeting of children, while unquestionably wanton, reckless, and unethical,
24 and cynically denied by the industry, was and continues to be vitally important to the tobacco
25 industry. Children enticed into smoking provide a guaranteed future market for a product that
26 each year kills the industry's best customers by the hundreds of thousands.

27 238. Defendants have for many years also targeted inner city African-American
28 communities with billboard and other advertising so as to lure African-American citizens into

1 smoking. to introduce them at an early age into the use of cigarettes, and, by the manipulation of
2 nicotine levels, to keep them addicted to such usage. This has been achieved by a cleverly
3 contrived, targeted advertising campaign designed to depict smoking as an especially attractive
4 and appealing lifestyle. This advertising has been the result of a contemptuous disregard of the
5 health concerns of African-Americans and has been carried out with callous disregard of the rights
6 of the citizens.

7 239. African-American-owned and -oriented magazines receive proportionately more
8 revenues from cigarette advertising than other consumer magazines. In addition, stronger,
9 mentholated brands are more commonly advertised in African-American-oriented magazines than
10 in other magazines. In fact, cigarettes advertised in African-American media have higher levels of
11 tar and nicotine than those advertised elsewhere.

12 240. Cigarette billboard advertising is placed in predominately African-American
13 communities four to five times more often than in predominately white communities. A Baltimore
14 federal judge has observed that tobacco companies "focus [billboard advertising] on depressed
15 inner-city areas. Billboards are conspicuously absent from more affluent communities."

16 241. Defendants also target African-Americans in product development. For example,
17 in the early 1990s, R.J. Reynolds developed Uptown, a "designer cigarette" for African-
18 Americans. R.J. Reynolds planned to begin test marketing Uptown on the first day of Black
19 History Month in 1990, with a promotional campaign featuring African-Americans enjoying urban
20 nightlife and the slogan: "Uptown. The Place. The Taste." According to Lynn Beasley, R.J.
21 Reynolds Vice President for Strategic Marketing, the company expected "Uptown to appeal most
22 strongly to Black smokers." R.J. Reynolds expected Uptown to challenge Lorillard's Newport and
23 Brown & Williamson's Kool brands for the African-American smoker market.

24 242. As a result of this targeting, African-American men are 30% more likely than white
25 men to die from smoking related diseases.

26 243. The reckless disregard by the Defendants for the health risks for the youth and
27 minorities of America is reflected in the response of an R. J. Reynolds executive to the question of
28 a former "Winston Man," David Goerlitz, when he asked why the R.J. Reynolds executives did not

1 smoke: "We don't smoke the shit, we just sell it. We reserve that for the young, the black, the poor
2 and the stupid."

3
4 **I. Other Tobacco Products**

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

7 245. The "roll your own" tobacco products distributed in the County of Los Angeles by
8 these Defendants are unreasonably dangerous to the consumer.

9 246. Even though the medical evidence regarding the hazards of cigarette smoking and
10 addiction have been known to these Defendants for many years, the packages and containers of the
11 "roll your own" tobacco bear no warning regarding such hazards.

12 247. Defendants UST Inc. and United States Tobacco Company makes approximately
13 90 percent of the oral snuff and chewing tobacco sold in the United States. Smokeless tobacco
14 delivers a similar amount of nicotine as cigarettes and is equally as addictive. Plaintiffs are
15 informed and believe that smokeless tobacco manufacturers intend to cause nicotine dependence
16 among consumers through a strategy that involves promoting the use of lower nicotine brands with
17 the intent of moving users up to higher, more addictive brands over time. The "graduation"
18 strategy calls for three different brands of low, medium and high nicotine content. The strategy is
19 based on the premise that new users of smokeless tobacco are most likely to begin with products
20 that are milder tasting, more flavored, and lighter in nicotine content. After a period of time, there
21 is a natural progression, switching to brands that are more full-bodied and have more concentrated
22 tobacco taste, with more nicotine, than the entry brand. This graduation strategy is supported by
23 the manufacturers' advertising practices which indicate the manufacturers' intent to have
24 consumers experiment with low-nicotine brands and graduate to higher-nicotine brands over time.

25
26 **J. Fraudulent Concealment**

27 248. Defendants have fraudulently concealed the existence of the causes of action
28 alleged below. The Plaintiffs have exercised due diligence to learn of their legal rights, and

1 despite such diligence. failed to uncover the existence of the violations alleged below until very
2 recently. Defendants affirmatively concealed the existence of the causes of action alleged below
3 through the following actions. among others:

4 a. Providing false explanations to customers and to governmental entities
5 regarding the health hazards of tobacco and the addictive qualities of nicotine.

6 b. Conducting activities in furtherance of the conspiracy in secret, including
7 clandestine meetings, using tobacco company attorneys to secure documents that might reveal the
8 dangers of cigarettes and the addictive nature of nicotine, closing down research projects and
9 moving research and information facilities outside the United States.

10 c. Requiring employees to keep secret all information about the dangers of
11 cigarette smoking and the addictive nature of nicotine under threats of severe legal consequences.

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13 **K. Tolling Of Applicable Statutes Of Limitation**

14 249. Any applicable statutes of limitation have been tolled by Defendants' affirmative
15 and intentional acts of fraudulent concealment, suppression, and denial of the facts as alleged
16 above. On information and belief, the County of Los Angeles alleges that such acts of fraudulent
17 concealment included intentionally covering up and refusing to disclose internal documents,
18 suppressing and subverting medical and scientific research, and failing to disclose and suppressing
19 information concerning the addictive properties of nicotine, and Defendants' manipulation of the
20 levels of nicotine in their Tobacco products to addict consumers. Through such acts of fraudulent
21 concealment, Defendants have successfully concealed from the public and the Plaintiffs the truth
22 about the addictive nature of tobacco. and their manipulation of nicotine levels in their Tobacco
23 products. thereby tolling the running of any applicable statutes of limitation. The Plaintiffs could
24 not reasonably have discovered the true facts until very recently, the truth having been
25 fraudulently and knowingly concealed by Defendants for years.

26 250. In the alternative, Defendants are estopped from relying on any statutes of
27 limitation because of their fraudulent concealment of the addictive nature of nicotine and their
28 manipulation of nicotine levels and bio-availability of nicotine in their Tobacco products.

1 Defendants were under a duty to disclose their manipulation of nicotine levels and bio-availability
2 of nicotine in their Tobacco products because this is nonpublic information over which Defendants
3 had exclusive control. because Defendants knew that this information was not available to the
4 Plaintiffs.

5 251. Until shortly before the filing of the Complaint in this action, the Plaintiffs had no
6 knowledge that Defendants were engaged in the wrongdoing alleged herein. Because of the
7 fraudulent and active concealment of the wrongdoing by Defendants, including deliberate
8 efforts—which continue to this day—to give the County of Los Angeles and its residents the
9 materially false impression that nicotine is not addictive and that Defendants are not manipulating
10 the nicotine levels of their Tobacco products, the Plaintiffs could not reasonably have discovered
11 the wrongdoing at any time prior to this time. Defendants have attempted and are continuing their
12 attempts to keep such internal information from reaching the public. Indeed, Defendants still
13 refuse to admit that nicotine is addictive and that they have manipulated the levels of nicotine in
14 their tobacco products.

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1 FIRST CAUSE OF ACTION
2 BY PLAINTIFF ZEV YAROSLAVSKY,
3 IN HIS OFFICIAL CAPACITY AS A MEMBER
4 OF THE BOARD OF SUPERVISORS OF THE
5 COUNTY OF LOS ANGELES,
6 ON BEHALF OF THE GENERAL PUBLIC
7 BUSINESS AND PROFESSIONS CODE §§17204 AND 17206
8 [UNLAWFUL BUSINESS PRACTICES]
9

10 252. Zev Yaroslavsky, on behalf of the general public hereby incorporates by reference
11 the allegations contained in paragraphs 1 through 251 of this complaint, as though fully set forth
12 herein.

13 253. Beginning at an exact date unknown to plaintiffs but at least since 1954
14 defendants have committed acts of unfair competition, as defined by Business and Professions
15 Code §17200, by engaging in unlawful practices including but not limited to the following:

16 a. The acts and practices described in Paragraphs 1 through 248 above constitute
17 violations of California Business and Professions Code §17500: The acts alleged in Paragraphs 1
18 through 248 show a pattern of untruthful statements, false representations, concealment, intent to
19 mislead, and a conspiracy to defraud that were all part of a scheme to mislead customers and that
20 each of the misrepresentations to the customers conforms to that scheme. These
21 misrepresentations set out in Paragraphs 1 through 248 include but are not limited to: The tobacco
22 companies misled the customer concerning the addictive nature of nicotine, the tobacco companies
23 manipulated the levels of nicotine in their product, the industry deceived the public about disease
24 and death, the tobacco companies issuance of their misleading "Frank Statement To Cigarette
25 Smokers", in 1954, the tobacco companies formation of the CTR which was nothing more than a
26 sham developed by the tobacco industry to redeem potential losses in sales by providing
27 misleading and inaccurate information regarding the health risks of tobacco. The tobacco
28 companies use of the CTR to promote the sale of cigarettes by providing inaccurate research. The

1 CTR actually discovering the health risks through its own research and not revealing it to the
2 public as the tobacco industry had originally pledged, and the tobacco defendants and CTR breach
3 of their own statements to the public regarding the CTR. The deceitful manner in which the
4 manufacturers targeted minors. The individual companies concealment of their own research and
5 their own scheme to mislead the customer as set out in Paragraphs 1 through 248.

6 254. Such acts and omissions constitute a violation of Business and Professions Code
7 §§17200 et seq. Plaintiffs reserve the right to identify additional violations by defendants of law
8 as established through discovery.

9 255. As a result of their unlawful and fraudulent conduct described above, defendants
10 have been and will be unjustly enriched. Specifically, defendants have been unjustly enriched by
11 the receipt of hundreds of millions of dollars in ill-gotten gains from sales of millions of packs and
12 cartons of cigarettes in California, sold in large part as a result of the unlawful acts and omissions
13 described herein.

14 256. Plaintiffs, pursuant to California Business and Professions Code §17203, seek an
15 order of this Court compelling defendants to:

- 16 (a) Provide restitution to the public for all funds unlawfully, unfairly or fraudulently
17 obtained by defendants as a result of their violation of Business and Professions
18 Code §§17200 et seq.; and
19 (b) Disgorge all revenues and profits acquired as a result of the unlawful business
20 practice.

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1 SECOND CAUSE OF ACTION
2 BY PLAINTIFF ZEV YAROSLAVSKY,
3 IN HIS OFFICIAL CAPACITY AS A MEMBER
4 OF THE BOARD OF SUPERVISORS OF THE
5 COUNTY OF LOS ANGELES.
6 ON BEHALF OF THE GENERAL PUBLIC
7 UNDER BUSINESS AND PROFESSIONS CODE §§17204 and 17206
8 [UNFAIR AND FRAUDULENT BUSINESS PRACTICES]
9

10 257. Zev Yaroslavsky, on behalf of the general public hereby incorporates by reference
11 the allegations contained in paragraphs 1 through 256 of this complaint, as though fully set forth
12 herein.

13 258. California Business and Professions Code § 17200 provides that unfair competition
14 shall mean and include "all unlawful, unfair or fraudulent business practices and unfair, deceptive,
15 untrue or misleading advertising."

16 259. The acts and practices described in paragraphs 1 through 248 above, were and are
17 likely to mislead the general public and therefore constitute unfair business practices within the
18 meaning of Business and Professions Code §17200. The acts of untrue and misleading advertising
19 set forth above in Paragraphs 1 through 248, are incorporated herein by reference and are, by
20 definition, violations of Business and Professions Code §17200.

21 260. The unlawful, unfair and fraudulent business practices of defendants described
22 above present a continuing threat to members of the public in that the defendants continue to
23 engage in the conduct described therein. This conduct includes but is not limited to: Deceiving
24 the public about disease and health, the misleading Frank Statement, the creation of the CTR as
25 nothing more than a sham developed by the tobacco industry to redeem potential losses and sales
26 by providing misleading and inaccurate information regarding the health risks of tobacco, the
27 tobacco companies using the CTR to promote the sale of cigarettes by providing inaccurate
28 research, the CTR actually discovering health risks through its own research and not revealing

1 them to the public as the tobacco industry originally pledged. the tobacco companies breach of
2 their own statements to the public regarding the CTR, the control of the TIRC by Hill and
3 Knowlton and using the term "scientific" research as a public relations front. the role of tobacco
4 lawyers and tobacco lobbyists in deceiving the public and their involvement in "special projects".
5 the recently disclosed incriminating documents from the CTR, the defendants' tactics to suppress
6 and avoid disclosure of its internal research on smoking and disease, the repeated false promises to
7 the public commencing in 1954 and including the statement on January 15, 1968 and the Tobacco
8 Institutes advertisements in 1970 and the memo of May 1, 1972, the deceit concerning whether
9 nicotine is addictive, the manipulation of nicotine levels, the recited tobacco companies active
10 participation in the fraud disclosed in Paragraphs 105 through 126, as well as the industry's
11 concealment of its knowledge that smoking is harmful to the customer as set out in Paragraphs 127
12 through 134, the tobacco companies' suppressing the truth about nicotine as set out in Paragraph
13 135, the gentlemen's agreement, the mouse house massacres, the manufacturers refusing to accept
14 its responsibility to disclose information as set out in Paragraphs 136 to 152, the suppression of
15 safer cigarettes in Paragraphs 153 through 165, the marketing hoax regarding "light cigarettes" as
16 set out in Paragraphs 166 through 175, the fraudulent advertising of tar and nicotine content as set
17 out in Paragraphs 176 through 178, the fraud concerning nicotine addiction as set out in
18 Paragraphs 179 through 197, as well as the other unfair business practices set out in the allegations
19 of Paragraphs 1 through 251. In addition plaintiffs would reserve the right to amend the complaint
20 to add additional unfair business practices as these are discovered in this litigation.

21 261. As a result of their conduct described above, defendants have been and will be
22 unjustly enriched. Specifically, Defendants have been unjustly enriched by receipt of hundreds of
23 millions of dollars in ill-gotten gains from sales of millions of packs and cartons of cigarettes in
24 California, sold in large part as a result of the acts and omissions described herein.

25 262. Because of the fraudulent misrepresentations made by defendants as detailed above,
26 and the inherently unfair practice of committing a fraud against the public and the state and the
27 federal government agencies by intentionally misrepresenting and concealing evidence from the
28 public and the government by the acts alleged above, by which all defendants disseminated biased

1 and flawed studies, and fraudulently concealed and shielded from public scrutiny those studies
2 which supported the conclusions of the substantia link between numerous health hazards and
3 cigarette smoking, the acts of defendants described herein constitute unfair and/or fraudulent
4 business practices.

5 263. Plaintiffs, pursuant to California Business and Professions Code §17203, seek an
6 order of this Court compelling the defendants to provide the following:

7 (a) Provide restitution to the public for all funds unlawfully, unfairly or fraudulently
8 obtained by defendants as a result of their violation of Business and Professions
9 Code §§17200 et seq.; and

10 (b) Disgorge all revenues and profits acquired as a result of the unfair and/or fraudulent
11 business practices.

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THIRD CAUSE OF ACTION
BY THE COUNTY OF LOS ANGELES
AS AGAINST ALL DEFENDANTS UNDER
BUSINESS AND PROFESSIONS CODE §17500

264. The County of Los Angeles hereby incorporates by reference the allegations contained in paragraphs 1 through 263 of this complaint, as though fully set forth herein.

265. The County of Los Angeles brings this cause of action under Business and Professions Code §17535.

266. Beginning at an exact date unknown to plaintiff but at least since 1954 defendants have committed acts of disseminating untrue and misleading statements as defined by Business and Professions Code §17500, by engaging in the following acts and practices with intent to induce members of the public to purchase cigarettes: Each of the fraudulent statements referenced in Paragraphs 1 through 251 above; the defendants publicized efforts of the tobacco industry to research issues through the Council for Tobacco Research (CTR) and pledged to accurately report the results to the public; the fact that the CTR was nothing more than a sham developed by the tobacco industry to redeem potential losses and sales by providing misleading and inaccurate information regarding the health risks of tobacco; the tobacco companies using the CTR to promote the sale of cigarettes by providing inaccurate research, the CTR actually discovering the health risks through research and not revealing them to the public as the tobacco industry originally pledged; the tobacco companies and all defendants herein breach of their own statements to the public regarding the CTR, as well as the fraudulent statements that were set out in the First and Second Causes of Action above. The acts of untrue and misleading statements by Defendants described above present a continuing threat to members of the public in the acts alleged herein are continuous and ongoing, and the public will continue to suffer the harm alleged herein.

267. As a result of their false and misleading statements described above, Defendants have been and will be unjustly enriched. Specifically, Defendants have been unjustly enriched by

1 hundreds of millions of dollars in ill-gotten gains from sales of millions of packs and cartons of
2 cigarettes in California, sold in large part as a result of the false or misleading statements described
3 herein.

4 268. Plaintiffs, pursuant to California Business and Professions Code §17535, seeks an
5 order of this Court ordering the Defendants to:

6 (a) Provide restitution to the public for all funds unlawfully, unfairly or fraudulently
7 obtained by Defendants as a result of their violation of Business and Professions
8 Code §17500 et seq.; and

9 (b) Disgorge all revenues and profits acquired as a result of the false and misleading
10 statements.

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FOURTH CAUSE OF ACTION
BY THE COUNTY OF LOS ANGELES
AS AGAINST ALL DEFENDANTS FOR
BREACH OF EXPRESS WARRANTIES

269. The County of Los Angeles hereby incorporates by reference the allegations contained in paragraphs 1 through 268 of this complaint, as though fully set forth herein.

270. The County of Los Angeles brings this cause of action under Government Code §23004.1, contending that the defendants committed cumulative and repeat acts in breach of various warranties made by these defendants.

271. The Defendants made affirmations or promises regarding the health effects of their products to the public. Starting with the "Frank Statement" in 1954, and subsequent representations through to the present, Defendants promised to study the health effects of their products and fully disclose the results of such research to the general public, including residents of the County of Los Angeles. Defendants have repeatedly warranted that tobacco products were not addictive and did not cause nicotine dependency.

272. Specifically the Defendants repeat affirmations included the affirmations made in Paragraphs 45 through 126, as well as other affirmations made in Paragraphs 127 to 251. The deceptions of the 1954 "Frank Statement to cigarette smokers" were renewed and repeated by the industry. These included among others: R.J. Reynolds statement in 1964 to Congress; the True Magazine article funded by Brown & Williamson, Philip Morris and R.J. Reynolds which was dated January 15, 1968; the Tobacco Institute advertisements in 1970; the testimony before Congress in 1994; Philip Morris' ad on April 15, 1994 Wall Street Journal stating "Fact: Philip Morris does not believe cigarette smoking is addictive."; as well as a variety of misleading and untrue promises that were made by Defendants commencing in 1953 through 1996.

273. These affirmations, as well as the extensive advertising of the industry, became the basis of the bargain for many individuals, both in beginning to use tobacco or continuing to use tobacco. Residents of the County of Los Angeles relied on these continuing affirmations in

1 buying and using the Defendants' products. Residents of the County of Los Angeles relied on
2 Defendants' skill or judgment in manufacturing, promoting, distributing and selling a product fit
3 for human consumption.

4 274. As a direct result of the Defendants' breach of these express warranties, the County
5 of Los Angeles has sustained and will continue to sustain substantial damages for which the
6 County of Los Angeles is entitled to recovery, and for which Defendants are jointly and severally
7 liable. Specifically, the County of Los Angeles has been required to furnish hospital, medical and
8 surgical care and treatment and expend substantial sums for the treatment of sickness, disease and
9 injury to residents of the County of Los Angeles, resulting from the use of Defendants' products.
10 At the time said representations, affirmations and promises were made, the Defendants knew or
11 should have known that the resident cigarette purchasers of the County of Los Angeles, and the
12 County of Los Angeles, would sustain the damages herein alleged.

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FIFTH CAUSE OF ACTION
BY THE COUNTY OF LOS ANGELES
AS AGAINST ALL DEFENDANTS
(FRAUD AND MISREPRESENTATION)

275. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 274 of this complaint, as though fully set forth herein.

276. The County of Los Angeles brings this action pursuant to Government Code §23004.1.

277. By virtue of Defendants' affirmative misconduct, as more specifically described below, Defendants had a duty to disclose to the American public, including residents of the County of Los Angeles, all material facts about the health hazards of smoking cigarettes, including their highly addictive qualities.

278. Defendants represented to residents of the County of Los Angeles and to those who advance and protect the public health, including employees of the County of Los Angeles, that they would discover and disclose all material facts about the effects of cigarette smoking on human health, including addiction.

279. Defendants have made and continue to make representations and statements about the safety of cigarettes and their effect on human health and addiction. Such representations and statements were and remain materially false, incomplete and fraudulent at the time Defendants made them, and Defendants knew or had reason to know of their falsity.

280. At all relevant times, Defendants intentionally, willfully or recklessly misrepresented or failed to disclose material facts about the human health hazards of smoking cigarettes, including addiction and its association with various kinds of cancer.

281. Defendants' knowledge of the material facts about smoking, health and addiction, based on secret internal research, was and is superior to the knowledge of the residents of the County of Los Angeles who purchased, used and consumed Defendants' cigarettes, and to those who advance the public health, including employees of the County of Los Angeles, and public

1 access to these facts is limited because such facts are exclusively within Defendants' control.

2 282. Defendants, by expressly raising the issue of smoking, health and addiction and
3 making partial and incomplete statements about this issue, had a duty to reveal all the material
4 facts actually known to them or of which they were on notice, in order not to deceive and mislead
5 consumers in the County of Los Angeles. Defendants' disclosure of fragmentary information and
6 half-truths constitutes actionable misrepresentation.

7 283. Defendants also purposefully placed themselves in a unique relationship to
8 American consumers and to the residents of the County of Los Angeles by expressly telling the
9 public to place special trust and confidence in Defendants' promise to discover and disclose all
10 material facts about smoking, health and addiction. Defendants voluntarily undertook the
11 responsibility to discover and disclose the truth about cigarettes and, in fact, did so for the purpose
12 of cultivating that trust and confidence and inducing the public to rely on Defendants to keep their
13 promise.

14 284. Defendants sought to induced the public's reliance on Defendants' promise to
15 disclose the truth about cigarettes, knowing that the public was in a vastly inferior, unequal and
16 disadvantaged position to discover the true facts about cigarettes.

17 285. Defendants engaged in this fraudulent course of conduct for the purpose of
18 influencing the market and reaping a profit, despite Defendants' duty to disclose all material
19 information about the known defects in their cigarettes and the hazards of smoking them,
20 including their addictive character. Defendants' fraudulent statements and conduct, including their
21 effect upon the market for cigarettes, was a substantial cause persuading residents of the County of
22 Los Angeles to purchase and use a deadly and addictive product.

23 286. The facts concealed by Defendants about smoking, health and addiction were
24 material in that a reasonable consumer would have considered them important in deciding whether
25 to purchase and smoke cigarettes.

26 287. Residents of the County of Los Angeles, and the public at large, reasonably relied
27 on Defendants' materially false, incomplete and misleading representations about smoking, health
28 and addiction, and Defendants' nondisclosure of the material facts about cigarette smoking and

1 human health, and were thereby induced to purchase, smoke and become addicted to a deadly and
2 defective product, to the detriment of the County of Los Angeles.

3 288. As a direct result of the Defendants' fraudulent misrepresentations and active
4 concealment, the County of Los Angeles has sustained and will continue to sustain substantial
5 damages for which the County of Los Angeles is entitled to recovery Government Code §23004.1,
6 and for which Defendants are jointly and severally liable. Specifically, the County of Los Angeles
7 has been required to furnish hospital, medical and surgical care and treatment and expend
8 substantial sums for the treatment of sickness, disease and injury to residents of Los Angeles,
9 resulting from the use of Defendants' products. With the exception of Defendants The Tobacco
10 Institute and The Council for Tobacco Research - U.S.A., Inc., this cause of action as to all other
11 Defendants is based upon conduct and damages occurring after June 12, 1997. Specifically, since
12 June 12, 1997, said Defendants have continued in the aforementioned conduct, continued to make
13 the aforementioned misrepresentations, and continued to fail to disclose material facts, all in order
14 to induce public reliance. As a result of such reliance, residents of the County of Los Angeles
15 have suffered injury, and the County of Los Angeles has sustained damages, as previously set
16 forth herein. At the time of said representations, affirmations and promises were made, the
17 Defendants knew or should have known that the County of Los Angeles would sustain the
18 damages herein alleged. Defendants' conduct as described above was fraudulent, entitling
19 Plaintiffs to exemplary damages under Civil Code § 3294.

20 289. Defendants' conduct as described above was carried by Defendants' officers,
21 directors, and managing agents, with the authorization and ratification of Defendants' officers,
22 directors and managing agents, for the purpose of enhancing Defendants' profits. Defendants, and
23 each of them, engaged in the aforementioned conduct knowing that such conduct would result in
24 damage to Plaintiffs, and knowing that persons would be exposed to serious injury. Defendants'
25 conduct was despicable, and so contemptible that it would be looked down upon and despised by
26 ordinary decent people, and carried on by Defendants with a willful and conscious disregard for
27 Plaintiffs and others, entitling Plaintiffs to exemplary damages under Civil Code § 3294.

28 290. Defendants' conduct as described above was fraudulent, despicable and carried on

1 with a willful and conscious disregard for the rights and safety of the general public, entitling
2 Plaintiffs to exemplary damages under Civil Code §3294.

3 SIXTH CAUSE OF ACTION FOR
4 STRICT PRODUCT LIABILITY
5 BY PLAINTIFF COUNTY OF LOS ANGELES,
6 AS AGAINST ALL DEFENDANTS EXCEPT
7 THE TOBACCO INSTITUTE AND THE COUNCIL
8 FOR TOBACCO RESEARCH - U.S.A., INC.

9 291. The County of Los Angeles hereby incorporates by reference the allegations
10 contained in paragraphs 1 through 290 of this complaint, as though fully set forth herein.

11 292. Plaintiff is informed and believes and thereon alleges that at all times herein
12 mentioned, Defendants, and each of them, were the manufacturers, designers, developers,
13 processors, producers, assemblers, testers, inspectors, endorsers, distributors, wholesalers and
14 sellers of the aforementioned tobacco products. The Defendants manufactured, sold and
15 distributed defective tobacco products after June 12, 1997, causing injuries since that date to
16 County residents, and damages to the County of Los Angeles.

17 293. Plaintiff is informed and believes and thereon alleges that the tobacco products, as
18 previously described, were defective at the time of their manufacture, design, development,
19 processing, production, assembly, testing, inspection, endorsement, distribution, wholesaling, and
20 sale, and that they failed to perform as safely as an ordinary consumer would expect when used in
21 an intended or reasonably foreseeable manner, in that any benefits derived from the design of said
22 products were substantially outweighed by the risk of harm inherent in said products, in that, and
23 not by way of limitation, said products presented a substantial and unreasonable risk of death or
24 injury to the users of said products or those in the vicinity of their use.

25 294. Specifically, Plaintiff is informed and believes that said products were defective in
26 their design, construction, assembly and manufacture and presented an extreme risk of injury or
27 death to users and bystanders, in that, among other things and not by way of limitation, said
28 products are highly addictive, cause nicotine dependency, and cause the aforementioned illnesses

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SEVENTH CAUSE OF ACTION
BY PLAINTIFF COUNTY OF LOS ANGELES,
AS AGAINST ALL DEFENDANTS FOR NEGLIGENCE

299. The County of Los Angeles hereby incorporates by reference the allegations contained in paragraphs 1 through 298 of this complaint, as though fully set forth herein.

300. At all times herein mentioned, Defendants, and each of them, had a duty not to unreasonably manufacture, design, develop, process, produce, assemble, test, inspect, endorse, distribute or sell the aforementioned tobacco products. Said Defendants, and each of them, breached their duty to Plaintiff and to residents of the County of Los Angeles, thereby causing the injuries and damages as hereinafter described. More specifically, Defendants, and each of them, acted unreasonably in designing, manufacturing and marketing tobacco products which presented a substantial and unreasonable risk of injury or death to users as a result of the defects herein alleged.

301. At all times herein mentioned, Defendants, and each of them, by and through their promises and representations, engaged in a voluntary undertaking, and thereby assumed a duty of care to the consuming public, including residents of the County of Los Angeles, and to the County of Los Angeles, to discover and disclose the truth about cigarettes and all material facts about smoking, health and addiction, and to study the health effects of tobacco products and fully disclose the results of their research. Residents of the County of Los Angeles, the County of Los Angeles and the public at large, reasonably relied upon the Defendants' promises and representations. Defendants, and each of them, breached their duty to Plaintiff and to the residents of the County of Los Angeles, by failing to conduct such studies, failing to disclose such information, and by concealing material facts known to the Defendants regarding the defects in their cigarettes, their health effects and the hazards of smoking them, including their addictive character.

302. The Defendants' failure to exercise reasonable care in the exercise of their undertaking increased the risk of harm to residents of the County of Los Angeles and the County of Los Angeles, and the negligence of said Defendants, and each of them, was a substantial factor

1 in causing the injuries and damages herein alleged. With the exception of Defendants Council for
2 Tobacco Research - U.S.A., Inc. and The Tobacco Institute, this cause of action as to all other
3 Defendants is based upon conduct and damages occurring after June 12, 1997. Specifically, after
4 June 12, 1997 said Defendants failed to exercise reasonable care in the exercise of their
5 undertaking, and breached their duty to Plaintiff and to the residents of the County of Los Angeles,
6 by failing to conduct studies, failing to disclose such information, and by concealing material
7 facts, all of which conduct has resulted in the injuries and damages as herein alleged.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray for relief and judgment against the Defendants, jointly and
11 severally, as follows:

12 **FOR PLAINTIFF ZEV YAROSLAVSKY**
13 **IN HIS OFFICIAL CAPACITY AS A MEMBER**
14 **OF THE BOARD OF SUPERVISORS OF THE**
15 **COUNTY OF LOS ANGELES,**
16 **ON BEHALF OF THE GENERAL PUBLIC:**

- 17 1. For injunctive and declaratory relief:
- 18 A. Declaring that Defendants have violated the provisions of California
19 Business and Professions Code §17200, and California Business and
20 Professions Code §17500;
- 21 B. Enjoining Defendants and their respective successors, agents, servants,
22 officers, directors, employees and all persons acting in concert with them,
23 directly or indirectly, from engaging in conduct violative of California
24 Business and Professions Code §17200, and California Business and
25 Professions Code §17500;
- 26 C. Requiring Defendants to disclose, disseminate, and publish all research
27 previously conducted directly or indirectly by themselves and their
28 respective agents, affiliates, servants, officers, directors, employees, and all

- 1 persons acting in concert with them, that relates to the issue of smoking and
2 health and addiction;
- 3 D. Requiring Defendants to cease targeting minors in their advertising
4 campaigns;
- 5 E. Requiring Defendants to fund smoking cessation programs including the
6 provision of nicotine replacement therapy for dependent smokers;
- 7 F. Requiring Defendants to disclose the nicotine yields of their products based
8 on machine tests and human confirmation studies for each brand;
- 9 G. Requiring Defendants to disgorge all profits acquired by means of any act
10 or practice by this Court to be an unlawful, unfair or deceptive business
11 practice; and
- 12 H. Awarding Plaintiff reasonable attorneys fees and costs.
- 13 2. For costs of suit incurred herein.
- 14 3. For prejudgment interest as provided by law.
- 15 4. Such other and further relief as this Court deems equitable, just and proper.

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FOR PLAINTIFF

THE COUNTY OF LOS ANGELES:

1. Requiring Defendants to pay restitution for health care expenditures made by the County of Los Angeles.
2. Awarding the County of Los Angeles damages and compensation for past and future damages including, but not limited to, those for health care expenditures caused by the Defendants' wrongful actions, together with interest and costs.
3. Awarding the County of Los Angeles fines and penalties for the claim brought by County Counsel for violations of California *Penal Code* §308 in the sum of \$200.00 for the first offense, \$500.00 for the second offense and \$1,000.00 for the third offense.
4. Ordering pre-judgment and post-judgment interest, as provided by law.
5. Awarding punitive damages in an amount to punish Defendants and deter future conduct.
6. Awarding the County of Los Angeles reasonable attorneys' fees and costs; and
7. Such other and further relief as the Court deems just and proper.

Dated: January 20, 1998

ROBINSON, PHILLIPS & CALCAGNIE

By: Mark P. Robinson, Jr.
MARK P. ROBINSON, JR.
Attorneys for Plaintiff

The foregoing instrument is a full, true and correct copy of the original on file in this office.

Attest: MAR 12 1998
KENNETH E. MARTONE
Clerk of the Superior Court of the State of California
in and for the County of San Diego.

By: Erlin M. Lopez Deputy
ERLIN M. LOPEZ

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PROOF OF SERVICE

I certify that I am over the age of 18 years and not a party to the within action and that my business address is

Robinson, Phillips & Calcagnie
28202 Cabot Road, Suite 200
Laguna Niguel, CA 92677

and that on this date I placed a true copy of the foregoing document(s) entitled: **SUMMONS ON FIFTH AMENDED COMPLAINT AND FIFTH AMENDED COMPLAINT** on the parties in this action by placing a true copy thereof in a sealed envelope addressed as stated

(X) on the attached mailing list

() as follows:

_____ I caused each envelope to be sent by Overnight Courier

X (By Mail) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Laguna Niguel, CA in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

_____ (By Personal Service) I caused to be delivered such envelope by hand to the offices of the addressee.

_____ (By FAX) I caused each document to be sent by FAX to the following numbers:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 20, 1998, at Laguna Niguel, California.

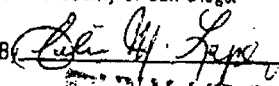

DONNA HOSEA

The foregoing instrument is a full, true and correct copy of the original on file in this office.

Attest: Jan 12 1998

KENNETH E. MARTONE

Clerk of the Superior Court of the State of California,
in and for the County of San Diego.

By  Deputy
K. M. LOPEZ

FILED
CIVIL

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LOS ANGELES v. R.J. REYNOLDS, et al. -PROOF OF SERVICE

San Diego Superior Court Case No. 707651

Page 1

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LOS ANGELES v. R.J. REYNOLDS, et al. -PROOF OF SERVICE

San Diego Superior Court Case No. 707651

Page 2

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LOS ANGELES v. R.J. REYNOLDS, et al. -PROOF OF SERVICE

San Diego Superior Court Case No. 707651

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Updated 07/24/97

LOS ANGELES v. R.J. REYNOLDS, et al. -PROOF OF SERVICE

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Page 4

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LOS ANGELES v. R.J. REYNOLDS, et al. -PROOF OF SERVICE

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U.S.A., Inc.

Updated 07/24/97

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Page 6

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LOS ANGELES v. R.J. REYNOLDS, et al. -PROOF OF SERVICE

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Page 7

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The foregoing instrument is a full, true and correct
copy of the original on file in this office.

Attest:

KENNETH E. MARTONE

Clerk of the Superior Court of the State of California,
in and for the County of San Diego

By  Deputy

ERLIN M. LOPEZ

Updated 07/24/97

EXHIBIT E

JUL 07 1999

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SON & GERSHON

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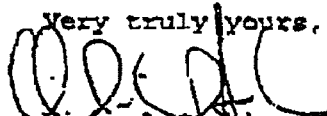
P.03

RICHARDS, WATSON & GERSHON

Thomas A. Papageorge
July 1, 1999
Page 2

I would greatly appreciate a prompt response from your office and have included a signature block below for the requested consent. Also enclosed is an extra copy of this letter for your file. If you have any questions, please do not hesitate to contact me. Thank you for your time and assistance.

Very truly yours,


Michael Jenkins
City Attorney
City of West Hollywood

Pursuant to California Business and Professions Code Section 17204 and 17206, the Los Angeles County District Attorneys' Office gives consent to City of West Hollywood City Attorney Michael Jenkins to prosecute violations of Business and Professions Code, Division 7, Part 3, Chapter 1, Article 1, Sections 17200, et seq. in People of the State of California, et al. v. Arcadia Machine & Tool, et al., LACSC Case No. BC 210894.

Gil Garcetti
District Attorney

By: Thomas A. Papageorge
Thomas A. Papageorge
Head Deputy
Consumer Protection Division

Dated: 8/17/99

SW:nlc
1754718