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Plaintiffs allege as follows:

NATURE OF THE ACTION

1. For years, and continuing to date, the defendant cigarette manufacturers and their trade associations have engaged in a conspiracy to mislead, deceive and confuse Plaintiffs and their residents regarding the overwhelming evidence that cigarette smoking causes fatal disease -- and that the nicotine in cigarettes is a powerfully addictive substance. Although the cigarette manufacturers promised the public that they would lead the effort to discover and disclose the truth about smoking and health, they have, in fact, systematically suppressed and concealed material information and waged an aggressive campaign of disinformation about the health consequences of cigarette smoking. The cigarette manufacturers have taken these actions, even though they have known for years, based on their own secret research, that their products eventually injure or kill the consumer when used exactly as intended.

2. The cigarette manufacturers have known for decades, on the basis of their own long-concealed research, that nicotine is addictive. At the same time, at least certain defendants have developed sophisticated techniques to manipulate the nicotine delivery of cigarettes so as to create and sustain addiction in smokers. Yet publicly the cigarette manufacturers have denied, and continue to deny, that nicotine is addictive and that they manipulate the nicotine delivery of cigarettes. In April 1994, each of the Chief Executive Officers of the defendant cigarette manufacturers testified before the Congressional Subcommittee on Health and the Environment that nicotine is not addictive.

3. The cigarette manufacturers are engaged in this course of conduct despite their knowledge that the vast majority of new smokers are children and teenagers. Of daily smokers, eighty-two percent start before the age of eighteen. Every day more than 3,000 American teenagers begin smoking.

4. Each year, thousands of Plaintiffs' residents die from smoking the defendant cigarette manufacturers' products. Each year, Plaintiffs must spend millions of dollars to purchase or provide medical and related services for their residents suffering from diseases caused by

cigarette smoking. Each year, the defendant cigarette manufacturers reap huge profits from the sale of cigarettes in Plaintiffs' cities and counties. Each year, the defendant cigarette manufacturers spend millions of dollars on advertising which has enormous appeal to young people. Each year, more of Plaintiffs' children and teenagers begin smoking.

5. Plaintiffs seek both economic damages and injunctive relief for the conduct alleged in this First Amended Complaint. Among other things, Plaintiffs seek a permanent injunction to require the defendants to disclose their research on smoking, addiction and health, to fund a remedial public education campaign on the health consequences of smoking, and to fund smoking cessation programs for nicotine-dependent smokers.

THE PARTIES

6. The City and County of San Francisco brings this action to obtain declaratory and equitable relief and restitution. In addition, the City and County of San Francisco seeks to recover the smoking-related costs to the City and County including, but not limited to, expenditures for medical assistance due to the use of tobacco by San Francisco residents, as well as health insurance for its employees.

7. The County of Alameda brings this action to obtain declaratory and equitable relief and restitution. In addition, the County of Alameda seeks to recover the smoking-related costs to the County including, but not limited to, expenditures for medical assistance due to the use of tobacco by Alameda County residents, as well as health insurance for its employees.

8. The County of Contra Costa brings this action to obtain declaratory and equitable relief and restitution. In addition, the County of Contra Costa seeks to recover the smoking-related costs to the County including, but not limited to, expenditures for medical assistance due to the use of tobacco by Contra Costa County residents, as well as health insurance for its employees.

9. The County of Marin brings this action to obtain declaratory and equitable relief and restitution. In addition, the County of Marin seeks to recover the smoking-related costs to the County including, but not limited to, expenditures for medical assistance due to the use of tobacco by Marin County residents, as well as health insurance for its employees.

10. The County of Sacramento brings this action to obtain declaratory and equitable relief and restitution. In addition, the County of Sacramento seeks to recover the smoking-related costs to the County including, but not limited to, expenditures for medical assistance due to the use of tobacco by Sacramento County residents, as well as health insurance for its employees.

11. The County of San Bernardino brings this action to obtain declaratory and equitable relief and restitution. In addition, the County of San Bernardino seeks to recover the smoking-related costs to the County including, but not limited to, expenditures for medical assistance due to the use of tobacco by San Bernardino County residents, as well as health insurance for its employees.

12. The County of San Mateo brings this action to obtain declaratory and equitable relief and restitution. In addition, the County of San Mateo seeks to recover the smoking-related costs to the County including, but not limited to, expenditures for medical assistance due to the use of tobacco by San Mateo County residents, as well as health insurance for its employees.

13. The County of Santa Barbara brings this action to obtain declaratory and equitable relief and restitution. In addition, the County of Santa Barbara seeks to recover the smoking-related costs to the County including, but not limited to, expenditures for medical assistance due to the use of tobacco by Santa Barbara residents, as well as health insurance for its employees.

14. The County of Santa Clara brings this action to obtain declaratory and equitable relief and restitution. In addition, the County of Santa Clara seeks to recover the smoking-related costs to the County including, but not limited to, expenditures for medical assistance due to the use of tobacco by Santa Clara County residents, as well as health insurance for its employees.

15. The County of Santa Cruz brings this action to obtain declaratory and equitable relief and restitution. In addition, the County of Santa Cruz seeks to recover the smoking-related costs to the County including, but not limited to, expenditures for medical assistance due to the use of tobacco by Santa Cruz County residents, as well as health insurance for its employees.

16. The County of Shasta brings this action to obtain declaratory and equitable relief and restitution. In addition, the County of Shasta seeks to recover the smoking-related costs to the County including, but not limited to, expenditures for medical assistance due to the use of tobacco by Shasta County residents, as well as health insurance for its employees.

17. These parties are hereinafter referred to collectively as "Plaintiffs."

18. Philip Morris Incorporated ("Philip Morris") is a Virginia corporation with its principal place of business at 120 Park Avenue, 16th Floor, New York, New York 10017. Philip Morris is in trade or commerce.

19. R.J. Reynolds Tobacco Company ("RJR") is a New Jersey corporation with its principal place of business at North Main Street, Winston-Salem, North Carolina 27102. RJR is in trade or commerce.

20. Brown & Williamson Tobacco Corporation ("Brown & Williamson") is a Delaware corporation with its principal place of business at 1500 Brown & Williamson Tower, Louisville, Kentucky 40202. On information and belief, Brown & Williamson has succeeded to the liabilities of the American Tobacco Company either by operation of law, or as matter of fact. Brown & Williamson is in trade or commerce.

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

in Plaintiffs' cities and counties. B.A.T. Industries is in trade or commerce.

22. Lorillard Tobacco Company ("Lorillard") is a Delaware corporation with its principal place of business at 1 Park Avenue, New York, New York 10016. Lorillard is in trade or commerce.

23. Liggett Group, Inc. ("Liggett") is a Delaware corporation with its principal place of business at 700 West Main Street, Durham, North Carolina 27702. Liggett is in trade or commerce.

24. The American Tobacco Company ("ATC") is a Delaware corporation with its principal place of business at 1500 Brown & Williamson Tower, Louisville, KY 40202. ATC manufactured, marketed and sold cigarettes throughout the United States. ATC was purchased by Brown & Williamson which has succeeded to the liabilities of ATC. On information and belief, ATC is in trade and commerce.

25. The Council for Tobacco Research - U.S.A., Inc. ("CTR"), successor in interest to the Tobacco Industry Research Committee ("TIRC"), is a nonprofit corporation organized under the laws of the State of New York with its principal place of business at 900 3rd Avenue, New York, New York 10022. CTR is in trade or commerce.

26. The Tobacco Institute, Inc. ("TI") is a nonprofit corporation organized under the laws of the State of New York with its principal place of business at 1875 I Street N.W., Suite 800, Washington, D.C. 20006. TI at all relevant times operated as the public relations and lobbying arm of the cigarette manufacturers. TI is in trade or commerce.

27. DOES 1-100 are private partnerships, sole proprietors or corporations, presently unknown to Plaintiffs, who conspired with, or who aided and abetted defendants in the wrongful conduct alleged herein.

28. As used in this First Amended Complaint, the term "defendant" includes all predecessor and successor entities to the named defendants.

29. Each defendant cigarette manufacturer and each defendant trade association is sued individually as a primary violator and as an aider and abettor. In acting to aid and abet the commission of the fraud and other wrongful conduct complained of herein, each defendant acted

with an awareness of the fraud and other wrongful conduct and nonetheless rendered substantial assistance or encouragement to the accomplishment of that fraud and was aware of its overall contribution to the conspiracy, scheme and common course of wrongful conduct alleged herein: the manipulation of nicotine content in cigarettes, the misrepresentation, concealment and suppression of information regarding the health consequences of smoking and the addictive properties of nicotine, the deceptive practices relating to "light" cigarettes, the restraint of trade in the market for a less dangerous cigarette, and the targeting of minors.

30. Each defendant cigarette manufacturer and each defendant trade association is sued as a co-conspirator and the liability of each arises from the fact that each such defendant entered into an agreement with the other defendant cigarette manufacturers and defendant trade associations and third parties to pursue, and knowingly pursue, the common course of conduct to commit or participate in the commission of all or part of the unlawful acts, plans, schemes, transactions, and artifices to defraud alleged herein: the manipulation of nicotine content in cigarettes, the misrepresentation, concealment and suppression of information regarding the health consequences of smoking and the addictive properties of nicotine, the deceptive practices relating to "light" cigarettes, the restraint of trade in the market for a less dangerous cigarette, and the targeting of minors.

31. All defendants did and continue to do business in Plaintiffs' cities and counties; made contracts to be performed in whole or in part in Plaintiffs' cities and counties; manufactured, tested, sold, offered for sale, supplied or placed in the stream of commerce, cigarettes, or in the course of business, materially participated with others in so doing; and performed such acts as were intended to, and did, result in the sale and distribution in Plaintiffs' cities and counts of cigarettes from which the defendants derived substantial revenue. All defendants also caused tortious injury by acts or omissions in Plaintiffs' cities and counties, or caused tortious injury in Plaintiffs' cities and counties by acts or omissions outside such cities and counties.

JURISDICTION AND VENUE

32. This Court has jurisdiction over the subject matter of this action pursuant to

28 U.S.C. §§ 1331 and 1332.

33. This Court has venue because several of the Plaintiff cities and counties are located in the Northern District of California. In addition, all defendants did and continue to do business in the Northern District of California; made contracts to be performed in whole or in part in the Northern District of California; and performs such acts as were intended to, and did, result in the sale and distribution of cigarettes in the Northern District of California. All defendants caused tortious injury by acts or omissions in the Northern District of California, or caused tortious injury in the Northern District of California by acts or omissions outside the District.

THE HEALTH CONSEQUENCES OF SMOKING

34. The human tragedy of smoking-related disease is enormous. Cigarette smoking is the leading cause of premature death in the United States. According to the federal Centers for Disease Control and Prevention, each year cigarette smoking kills more than 400,000 Americans, exceeding the combined deaths caused by automobile accidents, AIDS, alcohol use, use of illegal drugs, homicide, suicide and fires. Smoking-related illnesses account for one of every five deaths each year in the United States.

35. At least 43 chemicals in the smoke inhaled by persons using defendant cigarette manufacturers' products have been determined to be carcinogenic. Cigarette smoking causes more than 85% of all lung cancer, which has now surpassed breast cancer as the primary cause of death from cancer among women. Smoking is also linked to cancers of the mouth, larynx, esophagus, stomach, pancreas, uterus, cervix, kidney and colon, among others. All told, cigarette smoking is responsible for at least 30% of all deaths from cancer.

36. Smoking is the cause of more than 80% of deaths from pulmonary diseases such as emphysema and bronchitis. These chronic obstructive lung diseases have a profound social and economic impact because of the extended disability of their victims.

37. Smoking is also responsible for thousands of deaths from cardiovascular disease, including stroke, heart attack, peripheral vascular disease and aortic aneurysm. Smoking is also linked to a large number of other serious illnesses.

38. The health consequences of smoking among women are of special concern

because of the deleterious effect on reproduction. Smoking reduces fertility, increases the rate of miscarriages and stillbirths, retards uterine fetal growth and results in lower birth weights in infants.

39. The nicotine in cigarettes is addictive. Nicotine is recognized as an addictive substance by such major medical organizations as the Office of the U.S. Surgeon General, the World Health Organization, the American Medical Association, the American Psychiatric Association, the American Psychological Association, the American Society of Addiction Medicine, and the Medical Research Council in the United Kingdom. All of these organizations acknowledge tobacco use as a form of drug dependence or addiction with severe adverse health consequences.

1994 Congressional Testimony By Cigarette Manufacturers

40. In 1994, the chief executives of the defendant cigarette manufacturers testified under oath before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives, chaired by Congressman Waxman ("Waxman Subcommittee"). These executives knowingly made material misrepresentations and omissions to the Waxman Subcommittee about smoking, health and addiction, and in particular, stated that nicotine is not addictive. These statements were made with the knowledge that they would be communicated to Plaintiffs' consumers. These defendants' testimony to the Waxman Subcommittee included the following:

- a. Andrew Tisch, then CEO of Lorillard, asserted that smoking does not cause cancer. "We have looked at the data and the data that we have been able to see has all been statistical data that has not convinced me that smoking causes death."
- b. Philip Morris President and CEO William I. Campbell, said that:
 - i. "Philip Morris does not manipulate nor independently control the level of nicotine in our products."
 - ii. "Cigarette smoking is not addictive."
 - iii. "Philip Morris research does not establish that smoking is addictive."

c. RJR CEO James W. Johnston said that, "smoking is no more addictive than coffee, tea or Twinkies."

41. These representations were made despite a substantial body of evidence, including evidence developed by the cigarette manufacturers themselves, dating back at least 40 years, indicating that nicotine is not only addictive, but is the main reason why people smoke and continue to smoke.

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

THE COMPOSITION OF THE CIGARETTE INDUSTRY IN THE UNITED STATES

43. At all relevant times, Philip Morris, RJR, Brown Williamson, B.A.T. Industries, Lorillard, Liggett and ATC (hereafter sometimes collectively "the cigarette manufacturers") together control virtually 100% of the cigarette market in the United States.

44. The cigarette industry is one of the most profitable industries in the United States, with profit margins estimated to be in the range of 30%. Industry profits are in the billions of dollars annually from domestic sales alone.

45. The unusually concentrated and highly profitable nature of the cigarette industry has facilitated the planning, implementation and funding of a decades-long conspiracy by the cigarette manufacturers and their trade associations relating to the issues of smoking, health and addiction.

NATURE OF THE CONSPIRACY

46. This action arises out of an ongoing conspiracy by the leading cigarette manufacturers and their trade associations which together control the cigarette industry.

47. The cigarette manufacturers have pursued a conspiracy of deceit and misrepresentation against the public designed to protect cigarette sales. The means by which the cigarette manufacturers carried out their conspiracy were twofold: first, they agreed falsely to

represent to the public that questions about smoking and health would be answered by a new unbiased, and trustworthy source; and second, they counted on the resulting public trust more effectively to misrepresent, suppress and confuse the facts about the health dangers of smoking, including addiction. The cigarette manufacturers set their plan in motion by creating a joint industry research organization in 1954. Since that time, they have used the credibility gained by claims of disinterested industry funded research better to misrepresent the material facts to the public. In what has become the industry "mantra," cigarette manufacturers claim that there is insufficient "objective" research to determine if cigarette smoking causes disease, and that cigarettes are not addictive.

48. The two interconnected strategies of misrepresenting their objectivity to gain credibility, and using that credibility better to deceive the public about smoking and health, have been repeated consistently for more than four decades. The cigarette manufacturers and their trade associations have engaged in a continuous conspiracy to deceive the public regarding facts material to the decision to purchase cigarettes.

49. Moreover, as internal industry research confirmed the dangers of smoking and addiction, their deception rose to a new level: they concealed their own negative health and addiction research results from both the public and public health officials. These research results have still not been voluntarily released. But the internal research that has become available directly contradicts what the cigarette manufacturers and their trade associations have told the public for decades.

50. The cigarette manufacturers have also not told the public that they manipulate and control the nicotine content and delivery of their products to create and sustain smokers' addiction to cigarettes.

51. The success of the industry's campaign of deceit and misinformation depended on the cigarette manufacturers acting in concert. If one company broke ranks and told the public what it knew about the health consequences of cigarette smoking, or its addictive nature, the conspiracy would fail. Without the agreement of each cigarette manufacturer to suppress the truth, the deception that the joint industry research efforts were objective would be revealed, and the

substantive claim that "not enough facts are known" to indict cigarette smoking as the cause of disease would ring hollow. The cigarette manufacturers agreed to come together and to stay together in order to accomplish what could not have otherwise occurred -- the unified and consistent distortion of public information on smoking, health and addiction.

52. The testimony of the cigarette manufacturers before Congress in 1994 that smoking is not a proven cause of disease and death, and that nicotine is not addictive, is only one recent example of this ongoing pattern of deception and suppression that began more than 40 years ago.

I. CIGARETTE SMOKING AND DISEASE: THE INDUSTRY'S PUBLIC AND PRIVATE RESPONSES

1953 "Big Scare" and the Joint Industry Response

53. In December of 1953, Dr. Ernest L. Wynder of the Sloan-Kettering Institute published the results of a study where he painted the shaved backs of mice with cigarette smoke condensate residue. Malignant tumors grew in 44% of the mice in Dr. Wynder's study, providing biological evidence that cigarette smoke caused cancer. The previous year, a British researcher, Dr. Richard Doll, published a statistical analysis showing that lung cancer was more common among people who smoked and that the risk of lung cancer was directly proportional to the number of cigarettes smoked. The widespread reporting of these studies caused what cigarette company officials later called the "Big Scare."

54. The cigarette industry responded quickly to the mounting adverse publicity of a link between smoking and cancer. The Chief Executive Officers of the leading cigarette manufacturers met on December 15, 1953, at the Plaza Hotel in New York City. Also in attendance was the public relations firm of Hill and Knowlton which was to play a central role in formulating and executing the industry response.

55. According to a Hill and Knowlton memorandum summarizing the meeting, cigarette industry executives viewed the problem as "extremely serious and worthy of drastic action." The document continues, "officials stated that salesmen in the industry are frantically alarmed and that the decline in tobacco stocks on the stock exchange market has caused grave

concern"

56. The participants in the meeting agreed that a strong public relations response from the industry was necessary. From the beginning, the emerging research linking smoking and cancer was viewed by these defendants as a public relations problem, not a public health issue. According to the Hill and Knowlton memorandum summarizing the meeting:

- a. The Chief Executive Officers of all the leading companies, except Liggett, "agreed to go along with a public relations program on the health issue."
- b. "They are also emphatic in saying that the entire activity is a long-term, continuing program, since they feel that the problem is one of promoting cigarettes and protecting them from these and other attacks that may be expected in the future."
- c. "The current plans are for Hill and Knowlton to serve as the operating agency of the companies, hiring all the staff and disbursing all funds."

Creation of Tobacco Industry Research Committee

57. Nine days later, Hill and Knowlton presented a detailed recommendation to the cigarette manufacturers and others. The recommendation recognized the importance of gaining the public trust, and avoiding the appearance of bias, if the "pro-cigarette" industry strategy was to be successful. According to the memorandum:

"[T]he grave nature of a number of recently highly publicized research reports on the effects of cigarette smoking have confronted the industry with a serious problem of public relations.

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

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."

58. As a result of the meeting of December 15, 1953, and the recommendations

of Hill and Knowlton, five of the six cigarette manufacturers agreed to create the Tobacco Industry Research Committee ("TIRC"). Liggett joined the industry trade group in 1964, the same year the Surgeon General issued his first report linking cigarette smoking to lung cancer. Also in 1964, TIRC changed its name to the Council for Tobacco Research ("CTR"). A second trade group, the Tobacco Institute, was formed by cigarette manufacturers in 1958.

TIRC Control by Hill and Knowlton

59. As had been proposed at the December 15, 1953 meeting, the cigarette manufacturers (except Liggett), through their agent Hill and Knowlton, operated, and effectively controlled TIRC.

60. TIRC was physically established in the Empire State building in New York City, one floor below the Hill and Knowlton offices. Internal documents confirm that Hill and Knowlton, and not independent scientists, actually ran TIRC. A "highly confidential" internal memo reported:

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

61. In 1954, 35 staff members of Hill and Knowlton worked full or-part time for TIRC. In that year, TIRC spent \$477,955 on payments to Hill and Knowlton, over 50% of TIRC's entire budget.

The Industry's Promise to Smokers

62. Shortly after creating TIRC, the member cigarette manufacturers made an unambiguous pledge to the public, including Plaintiffs' residents and those who advance and protect the public health. These defendants represented that through TIRC, they would conduct and report objective and unbiased research regarding smoking and health. When they made this representation, these defendants knew or should have known that Plaintiffs' consumers would consider the representation material to their decisions to purchase and smoke cigarettes. At that time, and

continuing to the present, these defendants knew or should have known that their failure to fulfill the duty they undertook, and other conduct as alleged herein, would result in increased health care costs to Plaintiffs.

63. On January 4, 1954, the member defendants announced the formation and purpose of TIRC, with a full page newspaper advertisement entitled "A Frank Statement to Cigarette Smokers." The statement appeared in 448 newspapers across the nation, reaching a circulation of 43,245,000 in 258 cities.

64. The "Frank Statement to Cigarette Smokers" stated in part:

- a. "Recent reports on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked with lung cancer in human beings."
- b. "Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research."
- c. "[T]here is no proof that cigarette smoking is one of the causes [of lung cancer]."
- d. "We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business."
- e. "We believe the products we make are not injurious to health."
- f. "We always have and always will cooperate closely with those whose task it is to safeguard the public health."
- g. "We are pledging aid and assistance to the research effort into all phases of tobacco use and health."
- h. "For this purpose we are establishing a joint industry group consisting initially of the undersigned. This group will be known as TOBACCO INDUSTRY RESEARCH

COMMITTEE."

- i. "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."
- j. "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."

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

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

Industry Knowledge That Smoking is Harmful

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

"Certain scientists and medical authorities have claimed for many years that the use of tobacco contributes to cancer development in

susceptible people. Just enough evidence has been presented to justify the possibility of such a presumption."

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

68. Internal cigarette industry documents reveal, for example:

- a. A 1956 memorandum from the Vice President of Philip Morris' Research and Development Department to top executives at the company regarding the advantages of "ventilated cigarettes" stated that: "Decreased carbon monoxide and nicotine are related to decreased harm to the circulatory system as a result of smoking decreased irritation is desirable . . . as a partial elimination of a potential cancer hazard."
- b. A 1958 memorandum sent to the Vice President of Research at Philip Morris, who later became a member of its Board of Directors, from a company researcher stated "the evidence . . . is building up that heavy cigarette smoking contributes to lung cancer either alone or in association with physical and physiological factors"
- c. A 1961 document presented to the Philip Morris Research and Development Committee by the company's Vice President of Research and Development included a section entitled "Reduction of Carcinogens in Smoke." The document stated, in part:

"To achieve this objective will require a major research effort,

because

- Carcinogens are found in practically every class of compounds in smoke.

This fact prohibits complete solution of the problem by eliminating one or two classes of compounds.

The best we can hope for is to reduce a particularly bad class, i.e., the polynuclear hydrocarbons, or phenols

- Flavor substances and carcinogenic substances come from the same classes, in many instances."

- d. A 1963 memorandum to Philip Morris' President and CEO from the company's Vice President of Research describes a number of classes of compounds in cigarette smoke which are "known carcinogens." The document goes on to describe the link between smoking and bronchitis and emphysema. "Irritation problems are now receiving greater attention because of the general medical belief that irritation leads to chronic bronchitis and emphysema. These are serious diseases involving millions of people. Emphysema is often fatal either directly or through other respiratory complications. A number of experts have predicted that the cigarette industry ultimately may be in greater trouble in this area than in the lung cancer field."
- e. Brown & Williamson and its parent company, British American Tobacco Company ("BATCO"), researched the health effects of nicotine and were aware early on, as reported at a B.A.T. Group Research Conference in November 1970, that "nicotine may be implicated in the aetiology [cause] of cardiovascular disease"
- f. A 1961 "Confidential" memorandum from the consulting research firm hired by Liggett to do research for the company states:
"There are biologically active materials present in cigarette tobacco.

These are: a) cancer causing
 b) cancer promoting
 c) poisonous
 d) stimulating, pleasurable, and flavorful."

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

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

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

71. Philip Morris also concealed from the public its actual views of the research
conducted outside the influence of the industry. In a 1971 memorandum, Dr. H. Wakeham, then
Vice President of Research and Development, referring to a recent study which found cigarette
smoke inhalation caused lung cancer in beagles, stated, "1970 might very properly be called the
year of the beagle. Early in the year, the American Cancer Society announced that they had finally

demonstrated the formation of lung cancer in beagles by smoke inhalation in the now infamous Auerbach and Hammond study." Although Dr. Wakeham criticized the mice cancer studies, he conceded that "the beagle test was a critical one . . . for the cigarette causation hypothesis."

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

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

Repeated False Promises to the Public

74. The deceptions of the 1954 "Frank Statement to Cigarette Smokers" were renewed and repeated by the industry. RJR chairman Bowman Gray told Congress in 1964: "If it is proven that cigarettes are harmful, we want to do something about it regardless of what somebody else tells us to do. And we would do our level best. It's only human."

75. Another advertisement cosponsored by TIRC and the Tobacco Institute called "A Statement about Tobacco and Health," stated:

"We recognize that we have a special responsibility to the public -- to help

scientists determine the facts about tobacco and health, and about certain diseases that have been associated with tobacco use. We accepted this responsibility in 1954 by establishing the TIRC, which provides research grants to independent scientists. We pledge continued support of this program of research until the facts are known."

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

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

- a. "After millions of dollars and over 20 years of research: The question about smoking and health is still a question."
- b. "In the interest of absolute objectivity, the tobacco industry has supported totally independent research efforts with completely non-restrictive funding."
- c. "In 1954, the Industry established what is now known as CTR, the Council for Tobacco Research--USA, to provide financial support for research by independent scientists into all phases of tobacco use and health. Completely autonomous, CTR's research activity is directed by a board of ten scientists and physicians who retain their affiliations with their respective universities and institutions. This board has full authority and responsibility for policy, development and direction of the research effort."
- d. "The findings are not secret."

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

78. In 1972, Tobacco Institute President Horace Kornegay, testifying before

Congress, stated that "the cigarette industry is as vitally concerned or more so than any other group in determining whether cigarette smoking causes human disease That is why the entire tobacco industry . . . since 1954 has committed a total of \$40 million for smoking and health research through grants to independent scientists and institutions."

79. In March of 1983, Sheldon Sommers, MD, scientific director of CTR, testified before Congress that "[c]igarette smoking has not been scientifically established to be a cause of chronic diseases, such as cancer, cardiovascular disease, or emphysema. Nor has it been shown to affect pregnancy outcome adversely."

80. In 1984, RJR placed an advertisement in The New York Times stating that "[s]tudies which conclude that smoking causes disease have regularly ignored significant evidence to the contrary."

81. In response to what he described as "a number of charges . . . leveled against the tobacco industry generally, and Philip Morris specifically," William Campbell, President of Philip Morris, told the Waxman Subcommittee in April 1994:

". . . our consumers are being misled and when that happens Philip Morris has and will continue to speak out loudly and clearly. Our consumers deserve to know the truth"

82. Each of the representations by defendants to the public about sponsoring independent objective research and bringing the truth to light were false and deceptive. These misrepresentations seek to gain the trust of the public in order to better distort and suppress substantive information about smoking and health.

The Gentlemen's Agreement

83. This industry strategy depended for its success on joint and concerted action by the cigarette manufacturers and their trade associations. Upon information and belief, each of these defendants agreed not to reveal to the public the true nature of TIRC, and later CTR, and not to disclose adverse information on smoking, addiction and health, in order to protect continued cigarette sales.

84. In 1968, a memorandum addressed to the CEO of Liggett regarding a meeting

of the research directors of the six cigarette manufacturers stated on the topic of smoking and health "a general feeling that an industry approach as opposed to an individual company approach was highly desirable."

85. Each company also agreed not to perform research on smoking and health on their own. This agreement was referred to as the "Gentlemen's Agreement." A 1968 internal Philip Morris draft memorandum entitled "Need for biological research by Philip Morris research and development," and prepared by the company's Vice President of Research and Development, states:

"We have reason to believe that in spite of the gentlemen [sic] agreement for the tobacco industry in previous years that at least some of the major companies have been increasing biological studies with their own facilities."

86. As indicated by the 1968 "Gentlemen's Agreement" memorandum, it was believed within the industry that individual companies were performing certain research on their own, in addition to the joint industry research. But the fundamental understanding and agreement remained intact: that harmful information and activities would be restrained, suppressed, and concealed. This included restraining, concealing, and suppressing research on the health effects of smoking, including the addictive qualities of cigarettes, and restraining, concealing, and suppressing the research and marketing of safer cigarettes.

Suppression and Concealment of Industry-Sponsored Biological Research

Role of CTR as a "Front"

87. Internal documents demonstrate that the joint industry research efforts undertaken through TIRC, and later, through CTR, were not disinterested or objective. Rather, they were designed and used to promote favorable research, to suppress negative research where possible, and to attack negative research where it could not be suppressed, all in order to convince the public that the "case against smoking is not closed."

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

it seems obvious that reviews of such programs for scientific relevance and merit in the smoking and health field are not likely to produce high ratings."

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

"For nearly twenty years, this industry has employed a single strategy to defend itself on three major fronts -- litigation, politics, and public opinion.

While the strategy was brilliantly conceived and executed over the years helping us win important battles, it is only fair to say that it is not - nor was it ever intended to be - a vehicle for victory. On the contrary, it has always been a holding strategy, consisting of -- creating doubt about the health charge without actually denying it -- advocating the public's right to smoke, without actually urging them to take up the practice -- encouraging objective scientific research as the only way to resolve the question of the health hazard"

"As an industry, therefore, we are committed to an ill-defined middle ground which is articulated by variations on the theme that, 'the case is not proved.'"

"In the cigarette controversy, the public -- especially those who are present and potential supporters (e.g. tobacco state congressmen and heavy smokers) -- must perceive, understand, and believe in evidence to sustain their opinions that smoking may not be the causal factor."

"As things stand, we supply them with too little in the way of ready-made credible alternatives."

90. A 1978 memo addressed to the CTR file from a Philip Morris official

characterized CTR as "an industry 'shield.'" The memorandum goes on to state:

"the 'public relations' value of CTR must be considered and continued It is extremely important that the industry continue to spend their dollars on research to show that we don't agree that the case against smoking is closed There is a 'CTR basket' which must be maintained for 'PR' purposes"

91. In 1993, a former 24-year employee of CTR confirmed publicly that the joint industry research efforts were not objective:

"When CTR researchers found out that cigarettes were bad and it was better not to smoke, we didn't publicize that." "The CTR is just a lobbying thing. We were lobbying for cigarettes."

92. This and other evidence demonstrates that the role and purpose of TIRC and CTR in the cigarette manufacturers' strategy was to seek to use the public's trust to propagate "pro-cigarette" propaganda. An industry official wrote in his personal notes describing a meeting which included high level officials from various cigarette manufacturers that:

"CTR is best & cheapest insurance the tobacco industry can buy and without it the Industry would have to invent CTR or would be dead."

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

- a. "The Council . . . sponsors research into questions of tobacco use and health and makes the results available to the public."
- b. "Council grantees are assured complete scientific freedom in conducting their studies Publication of research results is encouraged in all instances."

The Example of Dr. Homburger

94. In fact, CTR-sponsored research projects were directed away from research

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

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

"He . . . was to tell the press that the tobacco industry was attempting to suppress important scientific information about the harmful effects of smoking. He was going to point specifically at CTR."

"I arranged later that evening for it to be canceled."

"Homburger was given a cordial welcome and nicely hastened [sic] out the door."

"P.S. I doubt if you or Tom will want to retain this note."

CTR Special Projects Division

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

97. Notes prepared at a 1981 meeting of the cigarette industry's Committee of General Counsel state:

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

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

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

99. The recent sworn statements of Brown & Williamson's former Chief of Research, Jeffrey Wigand, confirms that Brown & Williamson's General Counsel Wells concealed sensitive documents. Wigand stated that Wells sent sensitive research documents to London to avoid production in litigation, stamped scientific documents "attorney/client work product," even though the documents were not specifically created for litigation, and edited and suppressed the minutes of a scientific meeting to remove references to topics which might be the subject of litigation.

100. Upon information and belief, Mr. Wigand, as a result of his coming forward on this and other matters, and serving as a witness in litigation against the tobacco companies, has been the subject of unlawful threats and intimidation by defendants.

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

Suppression and Concealment of Internal Biological Research

Mouse House Massacre

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

103. The RJR lab made significant progress in understanding this mechanism. Despite this progress, RJR disbanded the entire research division in one day, and fired all 26 scientists without notice.

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

105. Internally, an RJR-commissioned report favorably described the Mouse House work as "the more important of the smoking and health research effort because it comes close to determining what was thought to be the underlying pathobiology of emphysema." None of the work done at the "Mouse House" was disclosed to the public.

Safer Cigarette

106. Several cigarette manufacturers' biological research appears to have been directed toward developing a cigarette with reduced health risks. These companies performed research which involved dividing cigarette smoke into its different chemical constituents, or "fractions," to discover which part of the cigarette smoke caused disease. Several companies were

successful in discovering which specific constituents in tobacco smoke were carcinogens, or were linked to other diseases. This research was kept secret and never reported to the public.

107. A number of companies also successfully removed certain harmful constituents from cigarette smoke, and developed prototype cigarettes with reduced health effects. These products were never marketed.

108. A memorandum written by an attorney at the firm of Shook, Hardy & Bacon, long-time lawyers for the cigarette industry, articulated the industry-wide position regarding the issue of a safer cigarette. The 1987 memorandum, referring to the marketing by RJR of a smokeless cigarette, Premier, stated that the smokeless cigarette could "have significant effects on the tobacco industry's joint defense efforts" and that "[t]he industry position has always been that there is no alternative design for a cigarette as we know them." The attorney also noted that, "Unfortunately, the Reynolds announcement . . . seriously undercuts this component of industry's defense."

109. As early as 1958, a memorandum from a Philip Morris researcher to the company's Vice President of Research and Development proposed that the company attempt to make a safer cigarette that could enable it to "jump on the other side of the fence . . . on the issue of tobacco smoking and health"

110. Philip Morris did perform the research and development of such a product. However, the company never released the research, and never informed the public that existing cigarettes were not safe or that a safer cigarette was possible. A 1964 Philip Morris research and development presentation to its Board of Directors stated:

"Two years ago, in anticipation of a health crisis to be precipitated by the Smoking and Health Report of the Surgeon General's Committee, we undertook to develop a physiologically superior cigarette.

[W]e put together a charcoal filter product with performance superior to anything in the market place. That product was known as Saratoga. Physiologically it was an outstanding cigarette.

Unfortunately then after much discussion we decided not to tell the

physiological story which might have appealed to a health conscious segment of the market. The product as test marketed didn't have good 'taste' and consequently was unacceptable to the public ignorant of its physiological superiority.

111. The research and development department at Philip Morris nonetheless viewed continued research into safer cigarettes as necessary to compete in the event that another cigarette company marketed a safer cigarette. The presentation to the Philip Morris Board of Directors continued:

"The Research and Development Department is working to establish a strong technological base with both defensive and offensive capabilities in the smoking and health situation. Our philosophy is not to start a war, but if war comes, we aim to fight well and to win."

Liggett Safer Cigarette: XA

112. Liggett also developed a safer cigarette. Company researchers believed that they had discovered which cigarette smoke constituents were carcinogens, and found a way to remove them. Despite Liggett officials' belief that the product was commercially marketable, the company never marketed the safer cigarette and suppressed the research that led to its development.

113. Liggett began its research by repeating the smoke condensate painting studies of mice performed by Dr. Wynder through a contract with a consulting firm. The consulting firm confirmed Dr. Wynder's findings, and, as a result, in 1968, Liggett began "a tobacco additive program designed to reduce or eliminate the tumorigenic activity of cigarette smoke."

114. By 1979, Liggett had declared the work a success. Company documents state:

"Briefly, as a result of 20 years effort in cooperation with [the consulting firm], we have developed a cigarette system which produces smoke of reduced biological activity [T]here can be no argument that the use of the additives has resulted in a product with lower carcinogenic effects."

115. Liggett's safer cigarette, a product called "XA," was never marketed and the XA project was abandoned. On information and belief, Liggett did so for two reasons. First, disclosing the feasibility of a safer cigarette would imply that all existing cigarettes were not safe. Second, Philip Morris apparently threatened Liggett with retaliation if Liggett violated the industry agreement not to disclose negative information on smoking and health. Liggett's Assistant Research Director, Dr. James Mold, reported that Liggett's president said that he was "told by someone in the Philip Morris Company that if we tried to market such a product that they would clobber us."

Liggett, James Mold and the Suppression of the XA Research

116. During the XA project, Liggett attempted to insulate the research by the use of company lawyers. According to Dr. Mold, after 1975, "all meetings that we had regarding this project were to be attended by a lawyer All paper that was generated . . . [was] to be directed to the Law Department." Dr. Mold stated that lawyers even collected all the notes after each meeting.

117. Dr. Mold stated that despite its significance, the company lawyers not only ultimately succeeded in stopping the project, but ordered him not to publish the results of the research that led to the safer cigarette. Only an abstract of the paper, modified by the legal department, was published by the consulting firm, without Dr. Mold's name.

118. When asked why Liggett never marketed the safer XA cigarette, Dr. Mold explained that:

"[Management circles] felt that such a cigarette if put on the market would seriously indict them for having sold other types of cigarettes that didn't contain this, for example. Or that they were carrying on this biological research at the same time saying it meant nothing."

Liggett Safer Cigarette Patent

119. Liggett had also obtained a patent for the process it had discovered to produce its safer cigarette. The patent application described the reduction in cancer in mouse studies, prompting stories in the media that Liggett was the first cigarette company to admit that smoking caused cancer. Liggett responded by issuing a press release it called a "Liggettgram"

which stated:

"Liggett and the cigarette industry continue to deny, as they have consistently, that any conclusions can be drawn relating such test results on mice in laboratories to cancer in human beings. It has never been established that smoking is a cause of human cancer."

"The laboratory experiments reported in the patent were conducted for Liggett by an independent researcher, The Life Sciences Division of Arthur D. Little, Inc."

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

121. 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 adverse health effects. These representations are misleading, deceptive and untrue. They rest at the heart of the industry's ongoing conspiracy to market and profit from a product it knows is deadly.

II. THE ROLE OF NICOTINE IN SMOKING

122. The other fact that the cigarette industry has made every effort to conceal and deny is that nicotine is a powerfully addictive substance. While carefully studying its addictive character and acting upon that knowledge to maintain cigarette sales, each of the cigarette manufacturers has denied that nicotine is addictive.

123. This public deception and the industry's secret manipulation of nicotine were and are critically important to the cigarette manufacturers. As objective researchers increased their warnings of the health dangers of cigarettes, nicotine addiction kept people smoking. This second

front in their strategy to sell their dangerous products allows the cigarette manufacturers to continue to sell their dangerous products even to those who eventually come to doubt the industry's health claims. And if a new consumer is fooled for a time by "pro-cigarette" disinformation on health, and takes up smoking, it may well be too late. Instead of a simple decision not to purchase a product, the consumer must fight an addiction.

Industry Knowledge of the Addictiveness of Nicotine

124. 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 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.
- c. Addison Yeaman, general counsel at Brown & Williamson, summarized his view about nicotine in an internal memorandum also in 1963: "Moreover, nicotine is addictive.

We are, then, in the business of selling nicotine, an addictive drug effective in the release of stress mechanisms."

- d. Internal reports prepared by Philip Morris in 1972 and the Philip Morris U.S.A. Research Center in March 1978, demonstrate Philip Morris' understanding of the role of nicotine in tobacco use: "We think that most smokers can be considered nicotine seekers, for the pharmacological effect of nicotine is one of the rewards that come from smoking. When the smoker quits, he foregoes [sic] his accustomed nicotine. The change is very noticeable, he misses the reward, and so he returns to smoking."
- e. From 1940-1970, ATC conducted its own nicotine research, funding over 90 studies on the pharmacological and other effects of nicotine on the body, 80% of all biological studies funded by ATC over this period. In 1969, ATC even test marketed a nicotine-enriched cigarette in Seattle, Washington.
- f. In a 1972 document entitled "RJR confidential research planning memorandum on the nature of the tobacco business and the crucial role of nicotine therein," an RJR executive wrote: "In a sense, the tobacco industry may be thought of as being a specialized, highly ritualized, and stylized segment of the pharmaceutical industry. Tobacco products uniquely contain and deliver nicotine, a potent drug with a variety of physiological effects."

Suppression and Concealment of Research on Nicotine Addiction

125. The cigarette manufacturers, rather than fulfilling their promise to the public to disclose material information about smoking and health, chose a course of suppression, concealment, and disinformation about the true properties of nicotine and the addictiveness of

smoking.

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

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

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

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

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

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

132. DeNoble testified to the Waxman Subcommittee that "senior research

management in Richmond, Va., as well as top officials at the Philip Morris Company in New York, continually reviewed our research and approved our research." DeNoble also stated that these officials were specifically told that nicotine was a drug of abuse.

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

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

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

The Industry's Interest in Nicotine

136. A chronology of the industry's research and development activities confirms that the cigarette manufacturers understood early on that nicotine was the key to their industry's success. The industry has conducted extensive research establishing that smokers require a certain level of nicotine from their cigarettes and that tobacco "satisfaction" is attributable to nicotine's effect on the body after absorption.

137. Philip Morris internal reports from 1972 and 1978 characterize the role of nicotine in tobacco use: "The cigarette should be conceived not as a product but as a package. The product is nicotine Think of the cigarette pack as a storage container for a day's supply of

nicotine Think of the cigarette as a dispenser for a dose unit of nicotine."

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

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

140. To this day, the cigarette manufacturers have concealed from the public and public health officials their extensive knowledge of the addictive properties of nicotine and its critical role in smoking.

141. As recently as December 1995, the Wall Street Journal reported on an internal Philip Morris draft document analyzing the competitive market for nicotine products for the years 1990-1992. The report describes the importance of nicotine:

"Different people smoke for different reasons. But the primary reason is to deliver nicotine into their bodies. . . . It is a physiologically active, nitrogen containing substance. Similar organic chemicals include nicotine, quinine, cocaine, atropine and morphine. While each of these substances can be used to affect human physiology, nicotine has a particularly broad range of influence. During the smoking act, nicotine is inhaled into the lungs in smoke, enters the bloodstream and travels to the brain in about eight to ten seconds."

142. The cigarette manufacturers have long understood that reducing or eliminating nicotine from their products would hurt sales. As one company researcher wrote in a

1978 report to Philip Morris executives:

"If the industry's introduction of acceptable low-nicotine products does make it easier for dedicated smokers to quit, then the wisdom of the introduction is open to debate."

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

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

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

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

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

148. RJR's efforts to develop a safer cigarette also focused on delivering nicotine to the consumer without the harmful constituents of tobacco smoke. In the late 1980's, RJR developed and test marketed Premier, a smokeless and virtually tobacco-free cigarette which was, in essence, a nicotine delivery system.

149. The cigarette manufacturers have affirmatively misrepresented to consumers and to Congress the role of nicotine in tobacco use. Even today, Brown & Williamson, RJR and TI continue to claim that nicotine is important in cigarettes for taste and "mouth-feel." However,

tobacco industry patents specifically distinguish nicotine from flavorants and an RJR book on flavoring tobacco, while listing approximately a thousand flavorants, fails to include nicotine as a flavoring agent. The cigarette industry has actually concentrated on developing technologies to mask the acrid flavor of increased levels of nicotine in cigarettes.

Industry Control and Manipulation of Nicotine

150. Cigarette manufacturers have developed and used highly sophisticated technologies designed to deliver nicotine in precisely calculated quantities -- quantities that are more than sufficient to create and sustain addiction in the vast majority of individuals who smoke regularly. Cigarette manufacturers control the nicotine content of their products through selective breeding and cultivation of plants for nicotine content, and careful tobacco leaf purchasing plans. The companies control nicotine delivery (i.e., the amount received by the smoker) with various design and manufacturing techniques.

Manipulation of Nicotine Content: Y-1

151. The story of Brown & Williamson's development of a new tobacco plant dubbed "Y-1" is one of the more egregious examples of the cigarette industry's concealment of its control and manipulation of the nicotine levels in its products.

152. On June 21, 1994, Dr. David A. Kessler, Commissioner of the Food & Drug Administration, told the Waxman Subcommittee that FDA investigators had discovered that Brown & Williamson had developed a high nicotine tobacco plant, which the company called "Y-1." This discovery followed Brown & Williamson's flat denial to the FDA on May 3, 1994, that it had engaged in "any breeding of tobacco for high or low nicotine levels."

153. When four FDA investigators visited the Brown Williamson plant in Macon, Georgia on May 3, 1994, Brown & Williamson officials denied that the company was involved in breeding tobacco for specific nicotine levels. Only after the FDA had learned of the development of Y-1 in its investigation and confronted company officials with the evidence did the company admit that it was growing and using the high-nicotine plant.

154. In fact, in a decade-long project, Brown & Williamson secretly developed a genetically-engineered tobacco plant with a nicotine content more than twice the average found

naturally in flue-cured tobacco. Brown & Williamson took out a Brazilian patent for the new plant, which was printed in Portuguese. Brown & Williamson and a Brazilian sister company, Souza Cruz Overseas, grew Y-1 in Brazil and shipped it to the United States where it was used in five Brown & Williamson cigarette brands sold in Plaintiffs' cities and counties, including three labeled "light." When the company's deception was uncovered, company officials admitted that close to four million pounds of Y-1 were stored in company warehouses in the United States.

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

156. Y-1 is one example of an overall trend in the tobacco industry to increase the nicotine content of tobaccos. American tobaccos of all types have undergone cumulative increases in total nicotine levels since the 1950s. Nicotine levels in the most widely grown American tobaccos increased between 10 - 50 percent between 1955 and 1980. On information and belief, this increase is the result of the industry's active and controlling participation in efforts to breed and cultivate tobacco for high nicotine levels.

Manipulation of Nicotine Delivery

157. The nicotine content of the raw tobacco is not the only variable manipulated by the cigarette manufacturers to deliver a pharmacologically active dose of nicotine to the smoker. Cigarettes are not simply cut tobacco rolled into a paper tube. Modern cigarettes as sold in Plaintiffs' cities and counties are painstakingly designed and manufactured to control nicotine delivery to the smoker.

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

159. In 1995, Brown & Williamson publicly denied that the use of ammonia in the

processing of tobacco increases the amount of nicotine absorbed by the smoker. Nevertheless, the company's own internal documents reveal that it and the other cigarette manufacturers use ammonia compounds to increase nicotine delivery. A 1991 Brown & Williamson confidential blending manual states:

"Ammonia, when added to a tobacco blend, reacts with the indigenous nicotine salts and liberates free nicotine As the result of such change the ratio of extractable nicotine to bound nicotine in the smoke may be altered in favor of extractable nicotine. As we know, extractable nicotine contributes to impact in cigarette smoke and this is how ammonia can act as an impact booster."

According to the Brown & Williamson manual, all American cigarette manufacturers except Liggett use ammonia technology in their cigarettes.

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

- a. A Philip Morris patent application discusses an invention that "permits the release . . . in controlled amounts and when desired, of nicotine into tobacco smoke."
- b. Another Philip Morris patent application explains that the proposed invention "is particularly useful for the maintenance of the proper amount of nicotine in tobacco smoke," and notes that "previous efforts have been made to add nicotine to Tobacco Products when the nicotine level in the tobacco was undesirably low."
- c. A 1991 RJR patent application states that "processed tobaccos can be manufactured under conditions suitable to provide products having various nicotine levels."

161. Dr. David A. Kessler testified in detail before the Waxman Subcommittee about the various forms of nicotine manipulation practiced by the tobacco industry: manipulating the rate at which nicotine is delivered in the cigarette; transferring nicotine from one material to

another; increasing the amount of nicotine in cigarettes; and adding nicotine to any part of a cigarette.

162. Dr. Kessler's disclosures show that nicotine is not an inevitable or unavoidable component of tobacco products. In fact, each of the defendant cigarette manufacturers has the capability to remove all or virtually all of the nicotine from cigarettes using technology already in existence.

163. The cigarette manufacturers' manipulation and control of nicotine levels is further evidenced by the emergence of companies that specialize in manipulating nicotine and that are now offering their services to tobacco manufacturers. On information and belief, a process called tobacco reconstitution, patented and marketed by the Kimberly-Clark Corporation subsidiary, LTR Industries, is widely used throughout the industry.

164. 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 re-added. 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 setting levels of nicotine . . . for the tobacco sheet."

165. An advertisement in tobacco industry trade publications for the Kimberly-Clark tobacco reconstitution process states:

"Nicotine levels are becoming a growing concern to the designers of modern cigarettes, particularly those with lower 'tar' deliveries. The Kimberly-Clark tobacco reconstitution process used by LTR Industries permits adjustments of nicotine to your exact requirements We can help you control your tobacco."

166. 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.

167. 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."

Light Cigarettes: A Marketing Hoax

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

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

170. Cigarette manufacturers know that the ability to block ventilation holes allows smokers to "compensate" for nicotine losses that would otherwise be caused by tar-reducing modifications. The industry has studied smoker compensation in order to design cigarettes that allow smokers to compensate for lower nicotine yields. One such design feature is known as "elasticity." This refers to the ability of a cigarette, whatever its FTC measured nicotine yield, to deliver enough smoke to permit a smoker to obtain the nicotine he needs, e.g., through more or longer puffs, or by covering ventilation holes.

171. Industry studies show that smokers tend to obtain close to the same amount of nicotine from each cigarette despite differences in yield as measured by the FTC smoking machine.

In a 1974 BATCO conference, researchers described the result of one such study:

"The Kippa study in Germany suggests that whatever the characteristics of cigarettes as determined by smoking machines, the smoker adjusts his pattern to deliver his own nicotine requirements (about 0.8 mg. per cigarette)."

Smokers' compensation to obtain adequate nicotine also results in the delivery of more tar than the FTC test measure.

172. Second, the use of the more potent "free" nicotine that ammonia helps release, as opposed to the slower acting salt-bound nicotine, also serves to increase the amount of nicotine delivered to smokers of "light" cigarettes. An ammoniated cigarette that delivers more potent nicotine to smokers measures the same as a cigarette with no such additives.

173. The use of ammonia is another method used by the cigarette industry to reduce the FTC measured tar and nicotine levels in their cigarettes over the past two decades while still furnishing smokers with sufficient nicotine delivery. According to John Kreisher, a former associate scientific director for CTR, "[a]mmonia helped the industry lower the tar and allowed smokers to get more bang with less nicotine. It solved a couple of problems at the same time."

174. Third, the cigarette industry maintains that nicotine levels follow tar levels. In the words of Dr. Alexander Spears, Vice Chairman of Lorillard, in his 1994 testimony before the Waxman Subcommittee -- "[n]icotine [level] follows the tar level," and the correlation between the two "is essentially perfect," and "shows that there is no manipulation of nicotine." Dr. Spears neglected to mention to Congress that in a 1981 study, not intended for public release, he stated explicitly that low-tar cigarettes use special blends of tobacco to keep the level of nicotine up while tar is reduced: "[T]he lowest tar segment [of product categories] is composed of cigarettes utilizing a tobacco blend which is significantly higher in nicotine." RJR, Lorillard, ATC, and TI have similarly represented to the public and to the FDA that the nicotine levels in their products are purely a function of setting the tar levels of such products.

175. ATC told the Waxman Subcommittee in an October 14, 1994 letter that "nicotine follows 'tar' delivery, i.e. high 'tar' -- high nicotine, low 'tar' -- low nicotine Nicotine is neither adjusted nor altered to compensate for losses inherent in the manufacturing process." Internal company documents reviewed by the Waxman Subcommittee show, however, that ATC's experimentation with adding nicotine to its tobacco was extensive -- extensive enough for ATC executive John T. Ashworth to instruct employees in a confidential memorandum: "In the future, our use of nicotine should be referred to as 'Compound W' in our experimental work, reports, and memorandums, either for distribution within the Department or for outside distribution."

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

177. Against this mounting body of evidence of the cigarette industry's manipulation and control of nicotine levels in cigarettes, the cigarette manufacturers continue to deny to the public, and recently denied to Congress under oath, that they manipulate and control nicotine levels. Top executives from Philip Morris, RJR, Lorillard, Liggett and Brown & Williamson testified in April 1994 that their respective companies do not manipulate nicotine, add it, independently control it, restore it during the manufacturing process, or otherwise achieve a minimum level of nicotine in their products. Thomas E. Sandefur, Jr., CEO of Brown & Williamson, has admitted that the company controlled nicotine, but in a now familiar refrain, stated that the company did so only for "taste."

178. Thus, the cigarette manufacturers' attempt to deceive the public and

government officials continues. As recently as April 1994, cigarette manufacturers placed advertisements across the country denying that they believe cigarette smoking is addictive, and misleading the public about whether the cigarette manufacturers deliberately control nicotine levels in their products.

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

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

181. These statements mislead the consuming public because, as alleged above, Philip Morris and RJR use various sophisticated techniques to increase the nicotine content in their cigarettes and the actual nicotine delivery to the smokers.

III. SALES TO MINORS

182. In California, and 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 in the United States had their first cigarette before the age of 18, sixty-two (62%) percent before the age of 16, thirty-eight (38%) percent before the age of 14. Thus, a person who does not begin smoking in childhood or adolescence is unlikely ever to begin. The younger a person begins to smoke, the more likely he or she is to become a heavy smoker. Sixty-seven (67%) percent of children who start smoking in the sixth grade become regular adult smokers and forty-six (46%) percent of teenagers who start smoking in the eleventh grade become regular adult smokers.

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

184. Although young people frequently believe they will not become addicted to nicotine or become long-term users of tobacco products, they often find themselves unable to quit smoking. Among smokers age 12 to 17 years, a 1992 Gallup survey found that 70% said if they had to do it over again, they would not start smoking and 66% said that they want to quit. Fifty-one (51%) percent of the teen smokers surveyed had made a serious effort to stop smoking -- but had failed.

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

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

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

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

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

190. The cigarette manufacturers know that they attract underage consumers to their products. For example, since 1988, RJR has used a cartoon character called Joe Camel in its advertising campaign. It has massively disseminated products such as matchbooks, signs, clothing, mugs, and drink can holders advertising Camel cigarettes. The advertising has been effective in attracting adolescents, and RJR has knowledge of this fact but still continues the Joe Camel advertising campaign. As a result of the campaign, the number of teenage smokers who smoke Camel cigarettes has risen dramatically. One study found that Joe Camel is almost as familiar to six-year old children as Mickey Mouse, is enticing thousands of teens to smoke that brand, and has caused Camel's popularity with 12-17 year olds to surge dramatically. RJR knew or willfully disregarded the fact that cartoon characters attract children.

191. The model who portrayed the "Winston Man" for RJR's Winston brand cigarettes testified before Congress: "I was clearly told that young people were the market that we were going after." He further testified that "it was made clear to us that this image was important because kids like to role play, and we were to provide the attractive role models for them to follow I was told I was a live version of the GIJoe"

192. An RJR affiliate studied in detail the motivations of young smokers. A "Youth Target" study was the first of a planned series of research studies into the lifestyles and value systems of young men and women in the 15-24 age range, the stated purpose of which was to

"provide marketers and policy makers with an enriched understanding of the mores and motives of this important emerging adult segment which can be applied to better decision making in regard to products and programs directed at youth." The study focused on the "primary elements of lifestyles and values among the youth of today," in learning how to market products to children and teens.

Tolling of Applicable Statutes of Limitation

193. Any applicable statutes of limitation have been tolled by defendants' affirmative and intentional acts of fraudulent concealment, suppression and denial of the facts as alleged above. On information and belief, such acts of fraudulent concealment included intentionally covering up and refusing to disclose internal documents, suppressing and subverting medical and scientific research, and failing to disclose and suppressing information concerning the health consequences of smoking, the addictive properties of nicotine and the defendant cigarette manufacturers' manipulation of the levels of nicotine yield in their cigarettes to addict consumers. Through such acts of fraudulent concealment, defendants have successfully concealed from Plaintiffs and their residents the truth about the health consequences of smoking, the addictive nature of cigarettes and the defendant cigarette manufacturers' manipulation of nicotine yield levels in their cigarettes, thereby tolling the running of any applicable statutes of limitation. Plaintiffs and their residents could not reasonably have discovered the true facts until very recently, the truth having been fraudulently and knowingly concealed by defendants for years.

194. In the alternative, defendants are estopped from relying on any statutes of limitation because of their fraudulent concealment of the health consequences of smoking, the addictive nature of nicotine and the defendant cigarette manufacturers' manipulation of nicotine yield levels in their cigarettes. Defendant cigarette manufacturers were under a duty to disclose their manipulation of nicotine levels in their cigarettes because this is nonpublic information over which such defendants had exclusive control, because such defendants knew this information was not available to Plaintiffs or their residents, and because this information was crucial to the consuming public in making purchasing decisions.

195. Until very recently, Plaintiffs and their residents had no knowledge that defendants were engaged in much of the wrongdoing alleged herein. Because of the fraudulent and

active concealment of the wrongdoing by defendants, including deliberate efforts -- which continue to this day -- to give Plaintiffs and their residents the materially false impression that there are no negative health consequences to smoking cigarettes, that cigarettes do not cause cancer and other disease, that nicotine is not addictive and that defendant cigarette manufacturers are not manipulating the nicotine levels and delivery of their cigarettes, Plaintiffs could not reasonably have discovered the wrongdoing any time prior to this time, nor could the Plaintiffs have, as a practical matter, taken legally effective action given the unavailability, until very recently, of internal memoranda and other documents (as generally described herein) as evidence in support of their claims. Defendants have attempted and are continuing their attempts to keep such internal information from reaching Plaintiffs and their residents. Indeed, defendants still refuse to admit, and continue to conceal, the fact that smoking defendants' cigarettes causes disease and that nicotine in defendants' cigarettes is addictive. The cigarette manufacturers still refuse to admit that they have manipulated the level and delivery of nicotine in their cigarettes.

COUNT I
**(Federal Racketeer Influenced and Corrupt
Organizations Act -- 18 U.S.C. §§ 1962(c) and (d))**
(Against all defendants except TI and CTR)

196. Plaintiffs incorporate and adopt by reference the allegations contained in paragraphs 1-195 of this First Amended Complaint.

197. This claim for relief is asserted against each of the defendants (except TI and CTR), and arises under 18 U.S.C. § 1962(c) and (d) of RICO, which provide:

- (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity
- (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection[] . . . (c) of this section.

198. At all relevant times, each of the defendants was a "person" within the meaning of 18 U.S.C. § 1961(3), as each of the defendants was "capable of holding a legal or

beneficial interest in property."

199. At all relevant times, TI and CTR (formerly TIRC) each constituted an "enterprise" within the meaning of 18 U.S.C. § 1961(4). Each enterprise is an ongoing organization. Each enterprise has an ascertainable structure and purpose beyond the scope of the defendants' predicate acts and their conspiracy to commit such acts. The purpose and function of each enterprise is to maximize sales of cigarettes and other tobacco products. Each enterprise has engaged in, and its activities have affected, interstate and foreign commerce.

200. Each defendant has been associated with both of these enterprises. Each defendant helped to direct each enterprise's actions and manage its affairs. Each defendant conducted or participated, directly or indirectly, in the conduct of each enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c). The defendants' pattern of racketeering activity dates from at least 1953 and continues to the present, and threatens to continue in the future. The defendants' multiple predicate acts of racketeering include:

- a. Mail and wire fraud, in violation of 18 U.S.C. §§ 1341 and 1343. The defendants engaged in schemes to defraud members of the public and others regarding the health consequences associated with smoking cigarettes. Those schemes have involved suppression of information regarding the health consequences associated with smoking, as well as fraudulent misrepresentations and omissions reasonably calculated to deceive persons of ordinary prudence and comprehension. Defendants executed or attempted to execute such schemes through the use of the United States mails and through transmissions by wire, radio and television communications in interstate commerce.
 - i. Numerous documents were disseminated or transmitted by the defendants and their agents as part of a fraudulent scheme to mislead the public and others about the health risks associated with smoking cigarettes. On information and

belief, defendants used the mails and wires to disseminate and transfer information in at least the following ways:

- Defendants' marketing and promotional activities, communicated to the public nationwide in newspapers, magazines and other periodicals, as well as over the broadcast media, were designed to deceive the public regarding, among other things, the addictive nature of smoking, the adverse health effects associated with smoking, as well as the accuracy of defendants' "independent" research efforts regarding such health effects. Examples of these marketing and promotional activities are described at paragraphs 63, 75, 76, 77, 80, 92, 178, 179, and 180;
- Defendants' communications directed toward government agencies and health officials were designed to preserve and increase the market for cigarettes while concealing the deleterious health effects caused by smoking cigarettes. Examples of these communications with government agencies include the defendants' communications with the Surgeon General as well as their communications among themselves regarding what should not be disclosed to the Surgeon General (e.g., ¶¶ 69, 70, 80, 135), and letters to the congressional subcommittees (e.g., ¶¶ 175);
- Defendants communicated with each other regarding research into the effects of nicotine and ways to suppress such information (e.g., ¶¶ 138); and
- Defendants communicated with each other and the public regarding ways to identify and target the minors' market for the sale of cigarettes (e.g., ¶¶ 188, 192).

- ii. Chief executive officers or representatives of the defendants made false and fraudulent statements under penalty of perjury in hearings before the House Subcommittee on Health and the Environment, convened on March 25, April 14, April 28, May 17, May 26, June 21 and June 23, 1994, and televised nationwide. Defendants' press releases also recounted defendants' fraudulent statements. The witnesses affirmatively denied that defendants manipulate the amount of nicotine contained in cigarettes; denied that using tobacco products causes cancer; and denied that there was any correlation between the amount of nicotine in tobacco products and the incidence of cancer (e.g., ¶¶ 40-42).
 - iii. On the nationally televised CBS program *Face the Nation*, air date March 27, 1994, 10:30 a.m. - 11:00 a.m., EDT, Ms. Brenda Dawson, Vice-President of the Tobacco Institute, stated before a live television and radio audience: "all six cigarette manufacturers in the United States do . . . not add nicotine" and "they don't manipulate nicotine. So Congress has been told form[ally] by every cigarette manufacturer in the United States that this claim is without foundation."
- b. Obstruction of justice in the form of threatening and intimidating a witness in violation of 18 U.S.C. § 1512, and threatening to retaliate against a witness, in violation of 18 U.S.C. § 1513. Upon information and belief, the defendants have made threats against Jeffrey Wigand, former research chief of Brown & Williamson, to discourage him from providing testimony in connection with Mike Moore, Attorney General, ex rel., State of Mississippi v. The American Tobacco Co., No. 94-1429 (Ch. Ct. Jackson Co. Miss.),

and in other litigation against the tobacco companies, and to retaliate against him for having served as a witness.

- c. Engaging in interstate or foreign travel in aid of racketeering activities, in violation of 18 U.S.C. § 1952.

201. The acts form a "pattern" of racketeering activity. They have been related in their common objectives of maximizing sales of tobacco products, misleading the public and government regulators as to the hazards of tobacco and the addictive properties of nicotine, suppressing the truth concerning the addictive properties of nicotine and defendants' manipulation of nicotine levels, soliciting minors and others to purchase cigarettes through false and misleading advertising, directing marketing and advertising towards teenagers and children so as to addict more cigarette buyers at an early age, devising means for manipulating and controlling nicotine levels of cigarettes so as to addict minors and others, suppressing research and design and marketing of safer cigarettes, and avoiding responsibility for the foreseeable costs of medical care for tobacco related diseases now being imposed on the public and Plaintiffs. These acts have had the same or similar purposes, results, participants, victims and methods of commission. The acts have been consistently repeated and are capable of further repetition.

202. Each defendant also conspired to violate 18 U.S.C. § 1962(c), in violation of 18 U.S.C. § 1962(d).

203. Plaintiffs have been injured in their business and property by reason of defendants' violations of 18 U.S.C. §§ 1962(c) and (d), because Plaintiffs have been required to incur significant costs and expenses attributable to tobacco-related diseases. In the absence of the defendants' violation of 18 U.S.C. §§ 1962(c) and (d), these costs and expenses would have been substantially reduced. Under the provisions of 18 U.S.C. § 1964(c), Plaintiffs are entitled to bring this action and to recover herein treble damages, the costs of bringing this suit and reasonable attorneys' fees.

COUNT II

**(Federal Racketeer Influenced and Corrupt
Organizations Act -- 18 U.S.C. §§ 1962(a) and (d))
(Against all defendants)**

204. Plaintiffs restate and incorporate herein the foregoing paragraphs 1-203 of this First Amended Complaint.

205. This claim for relief is asserted against each of the defendants, and arises under 18 U.S.C. § 1962(a) and (d) of RICO, which provide:

- (a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.
- (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection[] (a) . . . of this section.

206. At all relevant times, each of the defendants was a "person" within the meaning of 18 U.S.C. § 1961(3), as each of the defendants was "capable of holding a legal or beneficial interest in property."

207. At all relevant times TI and CTR (formerly TIRC) have constituted an enterprise within the meaning of 18 U.S.C. § 1961(4) or, in the alternative, each defendant has constituted an enterprise within the meaning of 18 U.S.C. § 1961(4). Each enterprise is an ongoing organization. Each enterprise and its activities have an effect on interstate commerce in that the enterprise is engaged in the business of maximizing the sales of cigarettes and other tobacco products.

208. Defendants have engaged in a pattern of racketeering activity which dates from 1953 through the present and threatens to continue in the future. The defendants' multiple predicate acts of racketeering are set forth at paragraph 192 above. These racketeering acts generated income for the defendants because they contributed to the suppression and concealment of scientific and medical information regarding the health effects of smoking, the manipulation of nicotine to create and sustain addiction to defendants' products, the targeting of teenagers and children with marketing and advertising designed to addict them at an early age, all to protect and ensure continued sales of cigarettes and other tobacco products.

209. Defendants have used or invested their illicit proceeds, generated through the

pattern of racketeering activity, directly or indirectly, in the acquisition of an interest in, or the establishment or operation of, each enterprise in violation of 18 U.S.C. § 1962(a). Defendants' use and investment of these illicit proceeds in each enterprise is for the specific purpose and has the effect of controlling the material information distributed to the public concerning the health effects of smoking, suppressing and concealing scientific and medical information regarding the adverse health effects of smoking, devising means for manipulating nicotine to create and sustain addiction to defendants' products, directing marketing and advertising toward teenagers and children to addict them to nicotine at an early age, and enticing more individuals to smoke cigarettes and use tobacco products.

210. Each defendant also conspired to violate 18 U.S.C. § 1962(a), in violation of 18 U.S.C. § 1962(d).

211. Plaintiffs have been injured in their business and property by reason of defendants' violations of 18 U.S.C. § 1962(a) and (d) in that Plaintiffs have been required to incur significant costs and expenses attributable to tobacco-related diseases. Under the provisions of 18 U.S.C. § 1964(c), Plaintiffs are entitled to bring this action and to recover herein treble damages, the costs of bringing this suit and reasonable attorneys' fees.

COUNT III
(Fraud and Misrepresentation)
(Against all defendants)

212. Plaintiffs restate and incorporate herein the foregoing paragraphs 1-211 of this First Amended Complaint.

213. By virtue of defendants' affirmative misconduct, as more specifically described below, defendants had a duty to disclose to the American public, including Plaintiffs and their residents, all material facts about the health hazards of smoking cigarettes, including their highly addictive qualities.

214. Defendants represented to those who advance and protect the public health, including Plaintiffs herein, that they would discover and disclose all material facts about the effects of cigarette smoking on human health, including addiction.

215. 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.

216. 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.

217. Defendants' knowledge of the material facts about smoking, health and addiction, based on secret internal research, was and is superior to the knowledge of Plaintiffs' residents who purchased, used and consumed defendants' cigarettes, and to those who advance the public health, including Plaintiffs' public health officials, and public access to these facts is limited because such facts are exclusively within defendants' control.

218. Defendants, by expressly raising the issue of smoking, health and addiction and making partial and incomplete statements about this issue, had a duty to reveal all the material facts actually known to them or of which they were on notice, in order not to deceive and mislead Plaintiffs' residents and their public health officials. Defendants' disclosure of fragmentary information and half-truths constitutes actionable misrepresentation.

219. Defendants also purposefully placed themselves in a unique relationship to Plaintiffs' consumers and to Plaintiffs by expressly telling the public to place special trust and confidence in defendants' promise to discover and disclose all material facts about smoking, health and addiction. Defendants voluntarily undertook the responsibility to discover and disclose the truth about cigarettes and, in fact, did so for the purpose of cultivating that trust and confidence and inducing the public to rely on defendants to keep their promise.

220. Defendants sought to induce the public's reliance on defendants' promise to disclose the truth about cigarettes, knowing that the public was in a vastly inferior, unequal and disadvantaged position to discover the true facts about cigarettes.

221. Defendants engaged in this fraudulent course of conduct for the purpose of influencing the market and reaping a profit, despite defendants' duty to disclose all material

information about the known defects in their cigarettes and the hazards of smoking them, including their addictive character. Defendants' fraudulent statements and conduct, including their effect upon the market for cigarettes, was a substantial cause persuading Plaintiffs' residents to purchase and use a deadly and addictive product.

222. The facts concealed by defendants about smoking, health and addiction were material in that a reasonable consumer would have considered them important in deciding whether to purchase and smoke cigarettes.

223. Residents of Plaintiffs, and the public at large, reasonably relied on defendants' materially false, incomplete and misleading representations about smoking, health and addiction, and defendants' nondisclosure of the material facts about cigarette smoking and human health, and were thereby induced to purchase, smoke and become addicted to a deadly and defective product, to the detriment of Plaintiffs.

224. As a direct and proximate result of defendants' fraudulent misrepresentations and active concealment, Plaintiffs have suffered and will continue to suffer substantial injuries and damages for which Plaintiffs are entitled to recovery, and for which defendants are jointly and severally liable.

COUNT IV
(Undertaking of Special Duty)
(Against all defendants)

225. Plaintiffs restate and incorporate herein the foregoing paragraphs 1-224 of this First Amended Complaint.

226. Defendants represented that they would undertake a special responsibility and duty to Plaintiffs and their residents, including those who advance and protect the public health, to accept an interest in the public's health as a basic and paramount responsibility; to cooperate closely with those who safeguard the public health; to aid and assist the research effort into all aspects of tobacco use and human health; to continue to research and otherwise undertake all possible efforts to learn all the facts and to discover the truth about smoking and health; and finally, to disclose to Plaintiffs, their health officials and their residents complete and accurate information

about the effects of cigarette smoking on human health.

227. Defendants undertook to render such services recognizing that they were necessary for the protection of the public health, including the health of Plaintiffs' residents.

228. Defendants have breached and continue to breach their special responsibility and duty by failing to exercise reasonable care to protect their undertaking. Defendants' failure to use due care in performing the duty that they voluntarily undertook to perform was grossly negligent and has increased the risk of harm to the public and the cost of health care for Plaintiffs above and beyond what such costs would have been had defendants not publicly represented that they were going to engage in the undertaking at all.

229. Defendants have not publicly retracted or otherwise withdrawn from their undertaking, or otherwise informed the public that it could no longer rely on the defendants' performance of their special responsibility and duty.

230. As a direct and proximate result of defendants' conduct, Plaintiffs have suffered and will continue to suffer substantial injuries and damages for which they are entitled to recovery.

COUNT V
(Breach of Express and Implied Warranties)
(Against all defendants except CTR and TI)

231. Plaintiffs restate and incorporate herein the foregoing paragraphs 1-230 of this First Amended Complaint.

232. The defendant tobacco companies 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 residents of Plaintiffs and their health officials.

233. 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. Plaintiffs and their residents relied on these continuing affirmations in buying and

using the defendants' products. The Plaintiffs and their residents relied on defendants' skill or judgment in manufacturing, designing, and marketing a product fit for human consumption.

234. Defendants' products are unmerchantable and are unfit for safe use when sold and consumed as intended. Defendants have breached their implied warranty of merchantability because their products are not fit for their intended purposes. Further, defendants knew their tobacco products were unfit for use as intended.

235. As a direct and proximate result of the defendants' breach of express warranties and the implied warranties of merchantability and fitness for a particular purpose, Plaintiffs have been damaged because they have incurred substantial expenses in the treatment of sickness, disease or injury caused by defendants' products, and are entitled to recovery.

COUNT VI

(Restitution) (Against all defendants)

236. Plaintiffs restate and incorporate herein the foregoing paragraphs 1-235 of this First Amended Complaint.

237. Defendants assumed and owe a duty to pay for the harm caused by their wrongful conduct, yet have repeatedly refused to do so. Instead, defendants have engaged in a conspiracy of suppression, concealment, and deceit in order to deny responsibility and avoid paying for the consequences of the harm they have caused Plaintiffs and their residents.

238. Plaintiffs have been and are required by statute and contractual obligations to expend substantial sums of money to pay for the harm caused by the wrongful conduct of defendants.

239. As a result of defendants' wrongful activities, Plaintiffs have borne a duty that, in law, equity and fairness, ought to have been borne by defendants.

240. As a direct and proximate result of defendants' conduct, Plaintiffs have suffered and will continue to suffer substantial injuries and damages for which Plaintiffs are entitled to recovery.

COUNT VII

(Unjust Enrichment) (Against all defendants)

241. Plaintiffs restate and incorporate herein the foregoing paragraphs 1-240 of this First Amended Complaint.

242. Defendants, through their wrongful conduct as described in this First Amended Complaint, have reaped substantial profits from the sale of cigarettes. These cigarette sales have caused thousands of Plaintiffs' residents to suffer cancer and other illnesses, which, in turn, have resulted in substantial public health care costs. The illnesses and resulting public health care costs were foreseeable and the foreseen consequences of defendants' actions.

243. Without justification, defendants have refused and failed to pay for the consequences of their unlawful conduct. Plaintiffs' expenditure of substantial sums to pay for the costs of medical care for indigent smokers and for their employees has unjustly enriched the defendants.

244. As a result, Plaintiffs have been required to pay for the medical costs resulting from defendants' unlawful conduct. Plaintiffs have borne a duty that, in law, equity and fairness, ought to have been borne by defendants.

245. In equity and good conscience, it would be unjust for defendants to enrich themselves at the expense of Plaintiffs.

246. As a direct and proximate result of defendants' conduct, Plaintiffs have suffered and will continue to suffer substantial injuries and damages for which Plaintiffs are entitled to recovery.

COUNT VIII
(Conspiracy)
(Against all defendants)

247. Plaintiffs restate and incorporate herein the foregoing paragraphs 1-246 of this First Amended Complaint.

248. At least as early as the 1950's, defendants entered into an agreement for the unlawful purposes of suppressing and concealing material scientific and medical information concerning smoking, addiction and diseases; agreeing not to compete in the market for a safer

cigarette, and to eliminate competition through the suppression of adverse information about cigarettes and smoking; representing falsely to the public at various times that they would undertake a special responsibility and duty to the public, including Plaintiffs' residents, to undertake all possible efforts to learn all the facts and to discover and disclose the truth about smoking and health; attempting to keep the public ignorant of the true facts regarding smoking and addiction; and of restraining trade in the market for a less dangerous cigarette.

249. Defendants agreed to act jointly and to cooperate with each other in this conspiracy with the primary purpose of misleading the public, causing consumers, and particularly minors, to start or continue to smoke defendants' dangerous, disease-causing cigarettes, and to benefit from and protect cigarette sales. This deception would not have been possible for each cigarette manufacturer acting individually. Through their combined actions of intentional misrepresentation and concealment over the last four decades, defendants have managed to control the material information concerning smoking and health.

250. In furtherance of their conspiracy, the cigarette manufacturers formed the Tobacco Industry Research Council, its successor Council for Tobacco Research, and the Tobacco Institute, whose true purpose was not to discover and disclose the facts about smoking and health, but to thwart public health efforts and to gain the public's confidence so that the cigarette manufacturers could suppress and conceal those damaging facts more effectively.

251. The TIRC, CTR and TI actively participated in the conspiracy to conceal, suppress and diffuse all information about the hazards of cigarette smoking.

252. In furtherance of defendants' conspiracy, defendants also intentionally restrained and suppressed research, development, production and marketing of safer cigarettes, and agreed to suppress information regarding the adverse health consequences of their products. In furtherance of their conspiracy, defendants also gave encouragement and substantial assistance to each other and otherwise aided and abetted each other in perpetrating these wrongful acts.

253. Defendants intended to protect profits by controlling the public information about smoking and health, and by manipulating nicotine to create and sustain addiction to defendants' products. These actions were done to benefit the conspirators, with the natural and

necessary consequence of addicting Plaintiffs' minors and other residents to cigarettes.

254. As a direct and proximate result of acts done in furtherance of defendants' conspiracy, Plaintiffs and their residents have suffered and will continue to suffer substantial injuries and damages for which Plaintiffs are entitled to recovery.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment against the defendants, jointly and severally, as follows:

1. For injunctive and declaratory relief:
 - (a) Declaring that defendants have violated the provisions of the Racketeering Influenced Corrupt Organizations Act, 18 U.S.C. §§ 1961 et seq.;
 - (b) Enjoining defendants and their respective successors, agents, servants, officers, directors, employees and all persons acting in concert with them, directly or indirectly, from engaging in conduct violative of 18 U.S.C. §§ 1961 et seq.;
 - (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 fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party;
 - (e) Requiring defendants to cease targeting minors in their advertising campaigns;
 - (f) Requiring defendants to fund smoking cessation programs including the provision of nicotine replacement therapy for dependent smokers;
 - (g) Requiring defendants to disclose the nicotine yields of their products based on machine tests and human confirmation studies for each brand; and
2. Requiring defendants to pay restitution.
3. Awarding damages and compensation to Plaintiffs for past and future

damages, including but not limited to health care expenditures caused by the defendants' actions in violation of any laws, together with interests and costs.

4. Ordering Pre-judgment and Post-judgment interest, as provided by law.
5. Ordering treble damages pursuant to 18 U.S.C. § 1964(c).
6. Awarding punitive damages in an amount to punish defendants and to deter future conduct.
7. Awarding Plaintiffs reasonable attorneys' fees and costs.
8. Granting such other and further relief as this Court deems equitable, just and proper.

DATED: _____, 1996

LIEFF, CABRASER, HEIMANN
& BERNSTEIN, LLP
Richard M. Heimann (SB# 063607)
Elizabeth J. Cabraser (SB# 083151)
William B. Hirsch (SB# 111609)
Robert J. Nelson (SB# 132797)
Melanie M. Piech (SB# 143472)

By: _____
Richard M. Heimann

275 Battery Street, 30th Floor
San Francisco, California 94111-3339
Telephone: (415) 956-1000

Attorneys for Plaintiffs

COUNTY OF ALAMEDA
Kelvin H. Booty, Jr. (SB# 030013)
Alameda County Counsel
Lorenzo E. Chambliss (SB# 39013)
Senior Deputy County Counsel
1221 Oak Street, Suite 463
Oakland, CA 94612
Telephone: (510) 272-6700

COUNTY OF MARIN
Thomas G. Hendricks (SB# 35025)
Marin County Counsel
Mari-ann G. Rivers (SB# 117053)
Deputy County Counsel
Room 342, Civic Center
San Rafael, CA 94930
Telephone: (415) 499-6117

COUNTY OF SAN BERNARDINO
Alan K. Marks (SB# 045597)
San Bernardino County Counsel
Charles J. Larkin (SB# 074027)
Deputy County Counsel
385 No. Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415
Telephone: (909) 387-5455

Telephone: (415) 363-4756
COUNTY OF SANTA BARBARA
Stephen Shane Stark (SB# 063779)
Santa Barbara County Counsel
Jerry F. Czuleger (SB# 110397)
Senior Deputy County Counsel
105 East Anapamu, Suite 201
Santa Barbara, CA 93101

Respectfully submitted,

CITY AND COUNTY OF SAN FRANCISCO
LOUISE H. RENNE (SB# 36508)
City Attorney
PATRICK MAHONEY (SB# 46264)
Chief Trial Attorney
ELIZABETH D. LAPORTE (SB# 106670)
Chief of Special Litigation

By: _____
Elizabeth D. Laporte

1390 Market Street
San Francisco, California 94102
Telephone: (415) 554-3932

COUNTY OF CONTRA COSTA
Victor J. Westman (SB# 34044)
Contra Costa County Counsel
Vickie Dawes (SB# 81789)
Deputy County Counsel
651 Pine Street, 9th Floor
Martinez, CA 94553
Telephone: (510) 335-1800

COUNTY OF SACRAMENTO
Robert A. Ryan, Jr. (SB#69355)
County Counsel
700 H Street, Suite 2650
Sacramento, CA 95814
Telephone: (916) 264-5346

COUNTY OF SAN MATEO
Thomas F. Casey, III (SB# 47562)
San Mateo County Counsel
Brenda B. Carlson (SB# 121355)
Deputy County Counsel
401 Marshall Street
Redwood City, CA 94063

COUNTY OF SANTA CLARA
Steven M. Woodside (SB# 58684)
Santa Clara County Counsel
Ann M. Ravel (SB# 62139)
Chief Assistant County Counsel
70 W. Hedding Street, 9th Fl. East
San Jose, CA 95110
Telephone: (408) 299-2111

Telephone: (805) 568-2950

COUNTY OF SANTA CRUZ
Dwight L. Herr (SB# 39157)
Santa Cruz County Counsel
Rahn Garcia (SB# 129825)
Deputy County Counsel
701 Ocean Street, Room 505
Santa Cruz, CA 95060
Telephone: (408) 454-2040

COUNTY OF SHASTA
Karen Keating Jahr (SB# 80248)
Shasta County Counsel
1815 Yuba Street, Suite 3
Redding, CA 96001
Telephone: (916) 225-5711

JURY DEMAND

Plaintiffs demand a jury trial of all claims so triable.

DATED: _____, 1996

LIEFF, CABRASER, HEIMANN
& BERNSTEIN, LLP
Richard M. Heimann (SB# 063607)
Elizabeth J. Cabraser (SB# 083151)
William B. Hirsch (SB# 111609)
Robert J. Nelson (SB# 132797)
Melanie M. Piech (SB# 143472)

By: _____
Richard M. Heimann

275 Battery Street, 30th Floor
San Francisco, California 94111-3339
Telephone: (415) 956-1000

Attorneys for Plaintiffs

COUNTY OF ALAMEDA
Kelvin H. Booty, Jr. (SB# 030013)
Alameda County Counsel
Lorenzo E. Chambliss (SB# 39013)
Senior Deputy County Counsel
1221 Oak Street, Suite 463
Oakland, CA 94612
Telephone: (510) 272-6700

COUNTY OF MARIN
Thomas G. Hendricks (SB# 35025)
Marin County Counsel
Mari-ann G. Rivers (SB# 117053)
Deputy County Counsel
Room 342, Civic Center
San Rafael, CA 94930
Telephone: (415) 499-6117

COUNTY OF SAN BERNARDINO
Alan K. Marks (SB# 045597)
San Bernardino County Counsel
Charles J. Larkin (SB# 074027)
Deputy County Counsel
385 No. Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415
Telephone: (909) 387-5455

Telephone: (415) 363-4756
COUNTY OF SANTA BARBARA
Stephen Shane Stark (SB# 063779)
Santa Barbara County Counsel
Jerry F. Czuleger (SB# 110397)
Senior Deputy County Counsel
105 East Anapamu, Suite 201
Santa Barbara, CA 93101

Respectfully submitted,

CITY AND COUNTY OF SAN FRANCISCO
LOUISE H. RENNE (SB# 36508)
City Attorney
PATRICK MAHONEY (SB# 46264)
Chief Trial Attorney
ELIZABETH D. LAPORTE (SB# 106670)
Chief of Special Litigation

By: _____
Elizabeth D. Laporte

1390 Market Street
San Francisco, California 94102
Telephone: (415) 554-3932

COUNTY OF CONTRA COSTA
Victor J. Westman (SB# 34044)
Contra Costa County Counsel
Vickie Dawes (SB# 81789)
Deputy County Counsel
651 Pine Street, 9th Floor
Martinez, CA 94553
Telephone: (510) 335-1800

COUNTY OF SACRAMENTO
Robert A. Ryan, Jr. (SB#69355)
County Counsel
700 H Street, Suite 2650
Sacramento, CA 95814
Telephone: (916) 264-5346

COUNTY OF SAN MATEO
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Steven M. Woodside (SB# 58684)
Santa Clara County Counsel
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70 W. Hedding Street, 9th Fl. East
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Dwight L. Herr (SB# 39157)
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Rahn Garcia (SB# 129825)
Deputy County Counsel
701 Ocean Street, Room 505
Santa Cruz, CA 95060
Telephone: (408) 454-2040

COUNTY OF SHASTA
Karen Keating Jahr (SB# 80248)
Shasta County Counsel
1815 Yuba Street, Suite 3
Redding, CA 96001
Telephone: (916) 225-5711