
DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 97CV3432

COMPLAINT

STATE OF COLORADO, ex rel. GALE A. NORTON, ATTORNEY GENERAL,

Plaintiff,

v.

R.J. REYNOLDS TOBACCO CO.; AMERICAN TOBACCO CO., INC.; BROWN & WILLIAMSON TOBACCO CORP.; LIGGETT & MYERS, INC.; LORILLARD TOBACCO CO., INC.; PHILIP MORRIS, INC.; UNITED STATES TOBACCO CO.; B.A.T. INDUSTRIES, P.L.C.; THE COUNCIL FOR TOBACCO RESEARCH -- U.S.A., INC.; and TOBACCO INSTITUTE, INC.,

Defendants.

I. INTRODUCTION

1. The State of Colorado, through Attorney General Gale A. Norton, brings this action for monetary damages, including treble damages, civil penalties, declaratory and injunctive relief, forfeiture of the proceeds of a public nuisance, and other equitable remedies, including restitution and disgorgement of profits.

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

- a. Failing to disclose to public health authorities and the public at large -- including the State of Colorado -- the full extent of the health risks of cigarette smoking; and suppressing and distorting the state of their knowledge of those health risks;
- b. Establishing tobacco industry-driven research organizations -- such as the Tobacco Industry Research Council (later the Council for Tobacco Research) -- and holding them out to the public as independent research organizations, when they were, in fact, controlled by the Tobacco Companies and their public relations firms, and were used by the Tobacco Companies as industry "fronts" to prevent the public from learning what the Tobacco Companies knew about the health risks of smoking and to create a false controversy about the health risks of smoking;
- c. Destroying, concealing, and/or shipping overseas incriminating evidence of industry testing and research on the health risks of cigarette smoking and the addictive nature of nicotine, shutting down laboratories overnight, and making threats against scientists who tried to publish research revealing what the industry knew, and asserting improper claims of attorney-client and work product privileges to suppress the results of adverse scientific

research;

- d. Conspiring, in violation of state antitrust law, to eliminate and to restrain competition based on the health effects of smoking and by agreeing not to market "safer" cigarettes;
- e. Conspiring to conceal and concealing the addictive nature of tobacco products and the Tobacco Companies' manipulation of the nicotine levels in tobacco products; and
- f. Engaging in deceptive trade practices by undertaking a course of conduct designed to promote illegal purchases of cigarettes by minors and, thereby, also contributing to the delinquency of minors.

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

A. The Defendants' Unlawful Conduct

3. The tobacco industry in the U.S. is a highly profitable oligopoly dominated by R.J. Reynolds Tobacco Co.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; the American Tobacco Co., Inc.; B.A.T. Industries, P.L.C.; and United States Tobacco Co. (collectively referred to as the "Tobacco Companies" or "Tobacco Industry"). For decades, the Tobacco Companies have profited from the sale of tobacco products to millions of consumers. To build and sustain the market for their products, the Tobacco Companies concealed and/or misrepresented the addictive nature of tobacco products, created confusion concerning the damage to human health caused by tobacco products, manipulated the levels of nicotine in tobacco products in order to maintain and boost addiction, agreed not to compete for the sale of a "safer cigarette" and other innovative products, and focused their marketing efforts on minors.

4. The Tobacco Companies, as well as their public relations agents, lawyers and industry trade associations, have known for more than forty years that their tobacco products contained nicotine -- which they knew was a highly addictive substance -- as well as numerous carcinogens and other harmful elements.

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

6. Nicotine is addictive. The Tobacco Industry has known of the addictive nature of nicotine, as evidenced by just one of the many internal industry documents addressing this subject:

Moreover, nicotine is addictive. We are, then in the business of selling nicotine, an addictive drug. . . .

7. Tobacco products are not only addictive, they are dangerous for human use. Tobacco products kill and injure those who use them. The Tobacco Companies know this, but continue to deny the existence of adverse health effects in their public statements.

8. The Tobacco Industry has manipulated the level of nicotine in tobacco products, and/or added other chemicals to tobacco in order to enhance nicotine's effect, in order to increase addiction and sell more product. The Industry has denied this practice, but the Food and Drug Administration has reported that nicotine manipulation does occur.

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

10. Those representations were and continue to be false. Despite the Tobacco Companies' denials, the Tobacco Industry knew its products were addictive and harmful. Further, the industry's publicly-proclaimed special undertaking to pursue and to report the truth about smoking was false, and deliberately misleading to the public in an effort to avoid state or federal regulation, to encourage existing smokers to continue smoking and to induce others to commence smoking.

11. An additional important element of the conspiracy was an agreement by the Tobacco Companies to restrain competition for sales of innovative "safer" cigarettes. The purpose and effect of this aspect of this conspiracy was to suppress and to restrain competition based on claims of health because such competition would have exposed the ill effects and addictive nature of smoking, thereby substantially increasing the Tobacco Companies' exposure to legal liability for the harm caused by cigarettes and tobacco products, and thereby threatening their shares of the tobacco market.

12. The conspiracy described above originated in response to medical and scientific studies in the early 1950's publicizing the adverse health impact of smoking. In response to what the industry internally called the "big scare," in late 1953 and early 1954, the Tobacco Companies and their public relations agent, Hill & Knowlton, jointly created a purportedly independent entity initially known as the Tobacco Industry Research Council (the "TIRC"). In 1964, the TIRC was renamed the Council for Tobacco Research (the "CTR"). As part of their unlawful conspiracy, the Tobacco Companies publicly represented that the TIRC would undertake, on behalf of the public, to perform objective research and to gather data concerning the relationship between cigarette smoking and health and to publicize truthfully the results of this "independent" research. From 1954 forward, the industry has been using the TIRC and its successor, the CTR, to engage in a deceptive public relations campaign designed to mislead and confuse the American public regarding the relationship between smoking and health.

13. The Tobacco Companies, their lawyers and Hill & Knowlton controlled the affairs of TIRC/CTR by, among other things, causing it to publicize information, regardless of its merit,

tending to obscure any relationship between cigarette smoking and disease. This course of conduct was designed to create the notion that there was a legitimate and good faith medical/scientific controversy over whether smoking is harmful to human health or whether nicotine is addictive.

14. Also in the 1950's, the Tobacco Companies began, and continued thereafter, to tailor their cigarette advertisements, promotional activities and public statements to conceal and/or to misrepresent the addictive nature and the adverse health impact of cigarette smoking and tobacco use, while at the same time presenting cigarette smoking in a glamorous, youthful, exciting, relaxing posture by associating it with professional and economic success, intelligence, athletic ability and sexual attraction. This course of conduct accomplished the purpose of suppressing or misstating the addictive nature and the adverse health impact of smoking, so that new smokers, mainly young teenagers, could be "hooked," and existing smokers would continue smoking.

B. Damages Caused by The Tobacco Companies' Unlawful Conduct

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

1. Health care costs.

16. One of the consequences of the Tobacco Companies' conduct has been to unjustly enrich the Tobacco Companies at the expense of Colorado's health care system and, ultimately, all Colorado residents and taxpayers.

(a) Approximately 50 million residents of the United States smoke cigarettes, and another 6 million use smokeless tobacco products. Nationwide, tobacco-related deaths are a national tragedy: More than 400,000 deaths per year in the United States are tobacco-related.

(b) In Colorado, approximately 550,000 adults are smokers. Tens of thousands of Colorado adults use smokeless tobacco. Colorado has one of the highest levels of smokeless tobacco use among its teenagers.

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

(d) The Tobacco Companies' unlawful conduct described herein has wrongfully increased medical costs to the State of Colorado, including, but not limited to, increased Medicaid payments and increased health care insurance for public employees.

(e) Colorado's increased health care costs caused by the Tobacco Companies' conduct is in the hundreds of millions of dollars. These costs would have been avoided if the Tobacco Companies had not engaged in the course of conduct described in this Complaint. Colorado's share of those costs are sought as damages in this case.

2. Targeting minors in violation of state law.

17. A further effect of the Tobacco Companies' course of unlawful conduct and continuing conspiracy is the targeting and eventual addiction of minors and young people. Recognizing the addictive nature of their products, the Tobacco Industry seeks new customers among the youth of the nation. Because of the deaths or smoking cessation of so many of the industry's adult customers, the Tobacco Companies must constantly add new customers in order to maintain their profits.

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

(b) It is against the law of Colorado for minors to purchase tobacco products, and efforts to encourage them to do so contravene public policy. Nonetheless, to lure minors into smoking, the Tobacco Companies have deceptively designed special marketing campaigns particularly appealing to minors. This targeting of minors is accomplished by extensive marketing research, polling and surveys to determine the most effective means of advertising to minors. An integral part of this campaign is the use of images and advertising themes particularly appealing to minors, and the placement of promotional materials in locations likely to be accessed primarily by minors.

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

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

C. Public Interest

18. Through their continuous unlawful, deceptive and fraudulent business practices described herein, the Tobacco Companies have and will continue to deceive, mislead and financially injure the State of Colorado and its citizens. Therefore, the Attorney General believes these legal proceedings to be in the public interest: (i) to secure for the residents of the State of Colorado a fair and open market, free from deception and illegal restraints of trade; (ii) to recover civil penalties, restitution and damages; (iii) to require fair and full disclosure by the Tobacco Companies of the nature and effects of their products; and (iv) to halt the marketing of tobacco products to minors and to disgorge the Tobacco Companies' illegal proceeds from their sales of tobacco products accomplished through the violation of state law.

II. JURISDICTION AND VENUE

19. This complaint is filed and these proceedings are instituted under the provisions of the Colorado Consumer Protection Act, §§ 6-1-101 through 307, C.R.S.; the Colorado Antitrust Act, §§ 6-4-101 through 122, C.R.S.; the Abatement of Public Nuisance Statute, §§ 16-13-301 through 316, C.R.S.; and the Colorado Organized Crime Control Act, §§ 18-17-101 through 109, C.R.S.

20. Authority for the Attorney General to commence this action for injunctions, mandatory injunctions, damages, restitution, disgorgement, civil penalties, attorney fees, and such other relief as the Court deems proper, is conferred by, inter alia, § 6-1-103, § 6-4-111, § 18-17-106(5), C.R.S., and by consent of the District Attorney for the Second Judicial District, City and County of Denver, to bring an action to abate a public nuisance, as provided by § 16-13-307(4), C.R.S.

21. The violations alleged herein have been and are being committed in whole or in part, and affect commerce in, and the Tobacco Companies do business in, the City and County of Denver, and elsewhere throughout the State of Colorado.

III. THE PARTIES

PLAINTIFF

22. The State of Colorado, is one of the 50 sovereign states of the United States. Gale A. Norton is the duly-elected Attorney General of Colorado. As the chief law enforcement officer and attorney for the State of Colorado, she brings this action on behalf of the State.

DEFENDANTS

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

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

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

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

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

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

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

30. Each of the Tobacco Companies advertises, sells and promotes their tobacco products in the State of Colorado.

31. B.A.T. Industries P.L.C. ("B.A.T. Industries") is a British corporation whose principal place of business is 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 the State of Colorado. B.A.T. Industries has itself, or through its agents, subsidiaries, associated companies, and/or co-conspirators, conducted significant research for Brown & Williamson on the topics of smoking, disease and addiction. On information and belief, Brown & Williamson also sent to England research conducted in the United States on the topics of smoking, disease and addiction, in order to remove sensitive and inculpatory documents from the United States' jurisdiction, and such documents were subject to B.A.T. Industries' control. B.A.T. Industries is a participant in the conspiracy described herein and has caused harm and affected commerce in the State of Colorado.

32. The Council for Tobacco Research -- U.S.A., Inc. (the "CTR"), successor in interest to the Tobacco Institute Research Committee (the "TIRC"), is a New York nonprofit corporation with its principal place of business at 900 3rd Avenue, New York, New York 10022. At all relevant times, the CTR and the TIRC operated as public relations and lobbying arms of the Tobacco Companies and as agents of the Tobacco Companies. They also acted as facilitating agencies in furtherance of the Tobacco Companies' combination and conspiracy as described in this Complaint. In doing the things alleged, the CTR and the TIRC acted within the course and scope of their agency and employment, and acted with the consent, permission, and authorization of each of the Tobacco Companies. All actions of the CTR and the TIRC alleged herein were ratified and approved by the officers or managing agents of the Tobacco Companies. The CTR

and the TIRC have been involved continuously in the conspiracy described in this Complaint. The actions of the CTR and the TIRC have affected commerce and caused harm in Colorado.

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

IV. RELEVANT TIMES

34. The relevant times for these claims for relief contained in this Complaint have not been determined specifically, but are believed to cover a period of time from at least December 1953 to the present date.

V. CONSPIRACY ALLEGATIONS

35. In committing the wrongful acts alleged, the Tobacco Companies, and the other entities and persons identified, have pursued a common and continuing course of conduct, and have acted in concert with, aided and abetted and conspired with one another, in furtherance of their common plan and scheme outlined herein.

VI. STATEMENT OF THE FACTS

A. Background

36. Today, 50 million Americans smoke and, according to current trends, 22% of adult Americans will still be smokers in 2000. In the latter half of the 20th century, some 10 million Americans have died as a result of tobacco-related illnesses. This year (and every year into the foreseeable future), more than 400,000 Americans will die prematurely due to disease caused by cigarette smoking. Based upon current smoking trends, of the American children alive today, more than 5 million will die from smoking-related diseases during the 21st century.

37. Smoking causes lung cancer. It is also virtually the only cause of throat cancer and emphysema. Smoking-caused heart disease results in more deaths than lung cancer. Smoking is responsible for approximately one-fourth of all cancer deaths, as well as one-third of all heart disease deaths.

38. Several factors account for the persistence of cigarette smoking. First, smoking became socially acceptable before it was proven to be a cause of lung cancer and other diseases. Second, the long latency period between smoking initiation and disease contraction masked the causal relationship for decades. Third, cigarettes contain large amounts of nicotine, an addictive

substance, which makes it difficult for a person to stop smoking. Fourth, the Tobacco Industry has conspired not to compete on the basis of relative health risk, to restrict output in safer and alternate products, and to create confusion as to whether smoking is really harmful. The Tobacco Industry further conspired to make it appear that there is a legitimate good faith scientific dispute over the health impact of smoking, while presenting cigarette smoking in an attractive, youthful and positive way -- concealing all the while that the product is, in fact, highly addictive and unquestionably dangerous.

39. Despite their knowledge that cigarette smoking is addictive, the Tobacco Companies to this day, pursuant to their continuing conspiracy, deny that smoking is the cause of disease and that nicotine is addictive.

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

40. The promotional activities and conduct of the Tobacco Industry, after the conspiracy was agreed to and implemented (which is described below), is best understood in the context of the fraudulent and false claims they had engaged in pre-conspiracy regarding cigarette smoking and health. Until the mid-1950's, explicit or implied health claims and/or medical endorsement for smoking were major advertising campaign themes for many cigarette brands and in the public statements published by the Tobacco Industry.

41. Cigarette smoking increased dramatically in the first half of the 20th century. With the increase of cigarette smoking came an increase in lung cancer. Despite growing evidence showing their cigarettes caused lung disease and cancer, the Tobacco Companies chose sales over public health and safety. Starting in the 1930s, and continuing until the mid-1950's, the Tobacco Companies made express claims as to the healthfulness of their products without regard to the truth of their claims and the consequential adverse impact on consumers. For example, Camel cigarettes were advertised with the claim, "Not a single case of throat irritation due to smoking Camels."

42. One of the key themes used to promote cigarette smoking during this period was a promise that individual cigarette brands were either "less irritating" or that "harmful irritants" had been removed. At some point during this period, every major cigarette brand made a false claim regarding health and/or irritation. These pre-1954 advertisements and representations demonstrate the Tobacco Companies' understanding prior to December 1953 that consumers wanted safer products, and, as a result, the Tobacco Companies engaged in vigorous competition on the basis of claims of health and safety.

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

43. The Tobacco Companies and their co-conspirators knew that published information about health risks would (i) increase consumer demand for safer tobacco products, (ii) induce some competitors to promote their own brands or disparage competing brands on the basis of relative health risk, (iii) materially reduce their profits and market shares, and (iv) increase the likelihood of government regulation and decrease the likelihood that they could shift to the public the health costs caused by use of tobacco products. Armed with this knowledge, and as set

forth below, the Tobacco Companies ultimately agreed not to compete in the market based on health claims, or in the market for "safer" or alternative products, and agreed to suppress adverse information concerning health risks and addiction.

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

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

46. Hartnett's actions were an invitation to Brown & Williamson's competitors to agree to restrain independent economic best interest in favor of collusion.

47. The next day, December 15, 1953, accepting Hartnett's offer to conspire, the presidents of most of the Tobacco Companies met at an extraordinary gathering in the Plaza Hotel in New York City. Present were the presidents of American Tobacco, Benson & Hedges, Brown & Williamson Lorillard, Philip Morris, Reynolds and U.S. Tobacco. Also in attendance was the advertising firm of Hill & Knowlton, which coordinated the meeting and was to play a major role in formulating and executing the industry's response.

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

49. At the Plaza Hotel meeting, these Tobacco Companies entered into a contract, combination and conspiracy to restrain competition on the basis of relative health risks. This conspiracy, which continues today, is a per se violation of the Colorado Antitrust Act, § 6-4-101 through 122, C.R.S.

50. The agreement reached at the Plaza Hotel to conceal adverse information and not to compete on the basis of health, was to be a permanent fixture of the Tobacco Companies' future

relationship. According to the Hill & Knowlton memorandum, each of the company presidents attending emphasized the fact that they consider the program to be a long-term one.

51. Thus, at the December 15, 1953 meeting, the Tobacco Companies in attendance agreed to a public relations program on the health issue; formed an informal committee to control the public relations function; and charged Hill & Knowlton, a public relations firm, with the operation, hiring of staff and disbursement of funds. However, Liggett decided not to participate at that time, choosing to ignore the whole controversy.

52. In furtherance of the conspiracy, nine days later, Hill & Knowlton presented a detailed recommendation to the Tobacco Companies and their co-conspirators. The recommendation recognized the importance of gaining public trust, and avoiding the appearance of bias, if the industry's "pro-cigarette" public relations strategy was to succeed.

53. John Hill of Hill & Knowlton suggested that the word "research" be included in the name of the Committee. The suggestion was adopted, and thus, an organization designed to pursue a very delicate "public relations function" was given the misleading name of the "Tobacco Industry Research Committee."

54. Five of the Tobacco Companies were original members of the TIRC. Liggett did not join until 1964. In 1964, the TIRC changed its name to the Council for Tobacco Research (the "CTR"). The industry formed equivalent organizations in other countries, as well, including the Tobacco Advisory Committee, formerly the Tobacco Research Council in the United Kingdom, and Verband der Cigarettenindustrie in Germany. The U.S. Tobacco Companies, either directly or through affiliates, are members of these other organizations.

55. In forming the TIRC, the Tobacco Companies agreed to undertake joint action to ensure that health claims would no longer form the basis for competition.

56. To further the existing conspiracy, a second trade group, the Tobacco Institute, was formed by the Tobacco Companies in 1958. It performs a variety of functions and provides opportunities for the conspirators to exchange information, to police their agreement, and otherwise to coordinate activities.

D. Representations and Special Undertakings by the Industry

57. The Tobacco Industry announced the formation of the TIRC on January 4, 1954, with newspaper advertisements placed in virtually every city with a population of 50,000 or more, including Denver, reaching a circulation of more than 43 million Americans. The advertisement was captioned "A Frank Statement to Cigarette Smokers" and was run under the auspices of the TIRC with, inter alia, five of the Tobacco Companies listed by name. The advertisement stated concern over reports linking smoking with health problems. The advertisement went on to state these Tobacco Companies were forming the TIRC to aid in research of health risk out of their concern for the public.

58. By issuing this publication, and others that followed, the Tobacco Industry represented that it would conduct and disclose unbiased and authenticated research on the health risks of cigarette smoking. When they made this representation, the Tobacco Companies intended that the public and government regulators would believe and rely upon it. They knew or should have

known that consumers would consider the representation material to their decisions to purchase and smoke cigarettes and that government regulators would consider the representation material to their decisions to regulate cigarettes. At that time, and continuing through the present, the Tobacco Companies intended or knew or should have known that their misrepresentations would encourage more smoking, and thereby increase the health care costs to the State of Colorado. The issuance of this publication was an integral step in the conspiracy to suppress and to conceal information that might reduce the Tobacco Industry's sale of tobacco products.

E. Repeated False Promises to the Public

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

60. Additional representations were made in 1970 when the Tobacco Companies, through their lobbying group, the Tobacco Institute, placed in various media a number of announcements similar to the 1954 "Frank Statement." These announcements stated that, after 20 years of independent research, and millions of dollars later, no link had been found between cigarette smoke and disease.

61. Subsequent announcements co-sponsored by the TIRC and the TI continued to proclaim the Tobacco Industry's efforts, including the funding of independent research and grants to determine the facts about tobacco and health, and about certain diseases that have been associated with tobacco use.

62. In 1984, Reynolds placed an editorial style announcement in the New York Times stating:

Studies which conclude that smoking causes disease have regularly ignored significant evidence to the contrary. These scientific findings come from research completely independent of the Tobacco Industry [emphasis added].

63. Each of the representations to the public that the Tobacco Companies were sponsoring independent objective research, that they were endeavoring to bring the truth to light, and that the public could therefore rely upon the statements made, were false and deceptive. These misrepresentations were designed to gain the trust of the public and public health authorities in order better to distort and to suppress substantive information about smoking and health.

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

64. The TIRC was an agent of the conspirators. Part of the TIRC's function was to facilitate the Tobacco Companies' implementation of the Plaza Hotel agreement/conspiracy to suppress and/or misrepresent information and to not compete in the development of a "safer" cigarette. Its acts were the acts of the Tobacco Companies in furtherance of their conspiracy not to compete on health issues.

65. The TIRC was physically located one floor below the Hill & Knowlton offices. Internal documents confirm that Hill & Knowlton, and not independent scientists as represented, actually ran the TIRC. In 1954, its first year of operation, 35 staff members of Hill & Knowlton worked full or part time for the TIRC. In that year, the TIRC paid \$477,955 to Hill & Knowlton, over 50% of the TIRC's entire budget.

66. According to reports by Hill & Knowlton, by the spring of 1955, their strategy of representation, implemented by the industry through the "Frank Statement," was largely successful in counteracting public information adverse to the Tobacco Industry.

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

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

68. The true purpose of the "Special Projects" division was to concoct research regarding the links between smoking and disease in order to develop a number of expert witnesses for defense purposes in tort suits against the Tobacco Industry. Consistent with this purpose, the Tobacco Industry's counsel were substantially involved in strategic and specific decision-making within the "Special Projects" division to conceal damaging evidence from the public.

69. The Tobacco Companies have been successful in using the CTR Special Projects division to conceal harmful information. Research from the Special Projects division remains shielded from public scrutiny. The Tobacco Companies furthered the conspiracy by shielding company documents with claims of attorney-client privilege and through tactics such as that undertaken by Brown & Williamson, which over the years has transferred documents described as "deadwood" to its British parent company, BAT Industries, so that those documents would not be discovered in legal proceedings in the United States.

70. Other internal industry documents also shed light on the true nature of the conspirators' associations and upon their efforts to protect the interests of the Tobacco Industry through public relations campaigns based upon questionable scientific research to dispute the link between smoking and disease.

71. Despite overwhelming scientific evidence, and the confirmation of this evidence by their own internal research, the Tobacco Companies and their trade associations continue to deny that there is a causal connection between cigarette smoking and adverse health effects, or that nicotine is addictive. As one industry representative testified: "[A company can't represent that] smoking doesn't cause cancer. You can't say that. But you can say it is a risk factor, and scientifically it hasn't been established. And that's what the research is for." [emphasis added]. He added, "I don't agree [that nicotine is addictive]. From what I've read on nicotine is that it contributes to the flavor, the taste of the product." These representations are intentionally misleading and deceptive. They are also a result of the industry's ongoing conspiracy and combination arising from the 1953 agreement, and are made to maintain the Tobacco Companies' market and profits from a deadly and addictive product.

H. Beyond 1953: The Continuing Conspiracy to Restrain Trade

1. The "Gentlemen's Agreement"

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

73. As part and in furtherance of the agreement not to compete to develop a "safer" cigarette, there was a "gentlemen's agreement" among the manufacturers to suppress independent research on the issue of smoking and health, for the purpose of and with the effect of restricting output. Despite increasing market demand, the Tobacco Companies agreed not to market any safer or alternative products. The means of effecting this output restriction conspiracy included suppression of independent research and policing violators, as described below.

74. It was believed within the industry that individual Tobacco Companies were performing biological research on their own, in addition to the joint industry "research". Some companies viewed the strengthening demand for safer and alternative products as a potential future marketing opportunity. But the fundamental understanding and agreement remained: information and activities deemed harmful to the unified, defensive posture of the industry or inconsistent with the non-competition conspiracy would be restrained, suppressed, and/or concealed. No company or industry trade organization stood behind the "promise" the Tobacco Companies had made. As American Tobacco's former CEO testified, "[If the health studies are correct], consumers have the right to know whatever is affecting their health. I think that's what the public health agencies and the government agencies have that responsibility."

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

76. The Tobacco Companies policed their conspiracy internally and externally. One member of the conspiracy, US Tobacco, went so far as to terminate an employee and apologize to the other Tobacco Companies when the employee was quoted in a New York Post article referring to smokeless tobacco as less dangerous than smoking.

77. The Federal Trade Commission Cigarette Advertising Guides, adopted September 22, 1955, and modified March 25, 1966, did not allow claims based on unsubstantiated health effects. However, it was clear to the Tobacco Industry that the Guides could be modified if justification was shown. These Guides do not justify the abandonment of legitimate and truthful competition on the basis of "safety."

78. The Cigarette Advertising Code, adopted by the Tobacco Companies, was another mechanism used to enforce the illegal agreement not to compete on the basis of safety or health

characteristics of tobacco products. Among other provisions, it prohibits health claims in industry advertisements unless the "Code Administrator," to whom all cigarette advertisements are required to be submitted, approves of the advertisement. The Code, a blatant restraint of trade, provided a mechanism to monitor and police the Tobacco Companies' illegal agreement.

2 Suppression of Liggett's "Safer" Cigarette

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

80. In response to demand, Liggett was one of the Tobacco Companies which was successful in researching and actually developing a less biologically active cigarette. However, in response to threatened retaliation from co-conspirators, Liggett agreed not to market this product.

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

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

83. Liggett abandoned its XA project for the reason, among others, that it faced retaliation from industry leader Philip Morris if Liggett broke ranks. Another reason for abandoning the project was fear that the marketing of a "safer" cigarette would be, in essence, a confession that its, and the Tobacco Industries' other cigarettes, were not safe.

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

- a. Mold stated that the XA project produced a safer, commercially-acceptable cigarette.
- b. Mold testified that, after 1975, all meetings on the project were attended by lawyers, lawyers collected all notes after the meetings, and all documents were directed to the law department to maintain the attorney-client privilege.
- c. Mold testified that he was at a conference of scientists in Buenos Aires, prepared to present his research regarding a less harmful cigarette, when he received a "frantic call" from legal counsel and was told not to present the paper or issue the press release. He was instructed not to publish his results in the Journal of Preventative Medicine.
- d. Mold was asked why Liggett didn't market a safer cigarette. He answered, "Well, I

can't give you, you know, a positive statement because I wasn't in the management circles that made the decision, but I certainly had a pretty fair idea why. . . . [T]hey felt that such a cigarette, if put on the market, would seriously indict them for having sold other types of cigarettes that didn't contain this, for example, or that they were carrying on this biological research at the same time saying it meant nothing."

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

85. Brown & Williamson also developed "safer" cigarettes, which it did not market despite promising test results, because, among other reasons, such efforts would violate the output restriction conspiracy. Brown & Williamson's Project "Ariel" used a heating, as opposed to burning, system. Its Project "Janus" was intended to identify hazardous components of cigarette smoke so they could be removed.

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

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

4. Philip Morris: Avoiding an Industry War

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

5. Reynolds' Safer Product

89. Defendant Reynolds also developed an alternative product which had reduced physiological consequences. Except for a brief test in several cities, because of the output

restriction conspiracy, Reynolds did not market its safer product, "Premier."

6. The Industry Position on "Safer" Cigarettes

90. In furtherance of their illegal combination and conspiracy, the Tobacco Companies collectively denied that a safer cigarette could be produced.

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

7. Suppression of the Reynolds "Mouse House" Research

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

8. Suppression of Philip Morris Research on Nicotine Analogues

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

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

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

96. By 1983, the research was becoming particularly problematic. A number of personal injury cases had been filed against the Tobacco Industry, with nicotine addiction a critical issue. In June 1983, DeNoble was called to the Philip Morris headquarters in New York to brief top executives. Following the meeting, company lawyers visited the lab and reviewed research notebooks. There were discussions of shifting the research out of the company, perhaps to

DeNoble and Mele as outside contractors or to a lab in Switzerland, to distance Philip Morris from the results.

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

I. History of Industry Knowledge that Smoking is Harmful

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

99. 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.

100. After the 1954 "Frank Statement," the Tobacco Industry's conspiracy to suppress objective facts on smoking and health was immediately evident. As evidence mounted, both through industry research and truly independent studies, that cigarette smoking causes cancer and other diseases, the Tobacco Industry continued publicly to represent that nothing was proven against smoking. Internal documents show that the truth was very different. The Tobacco Companies knew and acknowledged among themselves the veracity of scientific evidence of the health hazards of smoking, and at the same time suppressed such evidence, affirmatively misrepresented that such evidence existed, and attacked it when it did appear.

101. Internal Tobacco Industry documents reveal, for example:

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." This memorandum also stated that, "[d]ecreased irritation is desirable not only from the subjective viewpoint but also as a partial elimination of a potential cancer hazard."

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

To achieve this objective will require a major research effort, because Carcinogens are found in practically every class of compounds in smoke. This fact prohibits complete solution of the problem by eliminating one or two classes of compounds.

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

hydrocarbons, or phenols. . . .

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

c. 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.

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

There are biologically active materials present in cigarette tobacco.

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

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

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

a. One researcher stated that "smoking is a habit of addiction" and that "[n]icotine is not only a very fine drug, but the technique of administration by smoking has considerable psychological advantages and built-in control against excessive absorption."

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

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

d. The chairman also stated that, if the company manufactured safer brands, "we

would be faced a with commercial problem which had arisen previously over filters; namely, how to justify continuing the sale of other brands." He felt that the introduction of safer cigarettes "would be admitting that some of its products already on the market might be harmful. This would create a very difficult public relations situation."

104. Addison Yeaman of Brown & Williamson wrote, in a 1963 analysis, that "nicotine is addictive. We are, then, in the business of selling nicotine, an addictive drug."

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

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

107. Subsequently, Brown & Williamson continued to conduct and conceal biological research. Some of these research projects confirmed the link between smoking and disease.

108. The internal acknowledgments of cigarette smoking as a cause of human disease demonstrate that the 1954 "Frank Statement" representations were deceptions. Far from "accept[ing] an interest in people's health as a basic responsibility, paramount to every other consideration in our business" and "cooperat[ing] closely with those whose task it is to safeguard the public health," the Tobacco Industry's approach was to mislead the public and to misrepresent their own research regarding the health hazards of smoking.

J. Industry Knowledge of the Addictive Nature of Nicotine

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

109. As alleged above, the Tobacco Companies continue to deny and conceal that tobacco products are addictive while secretly manipulating levels of nicotine to increase or maintain addiction. The evidence is clear that the Tobacco Industry has known and hidden for decades the addictive nature of tobacco products.

110. Numerous Tobacco Company documents contain statements by company researchers and executives acknowledging that nicotine is, in fact, addictive. For example, more than thirty years ago, an industry report was completed that specifically addressed the mechanism of nicotine addiction in smokers. The researchers concluded that chronic intake of nicotine, such as that which occurs in regular smokers, creates a need for ever-increasing levels of nicotine to maintain the desired action: "[u]nlike other dopings, such as morphine, the rate of increasing demand for greater dose levels is relatively slow for nicotine." The report continues:

A body left in this unbalanced state craves for renewed drug intake in order to restore the physiological equilibrium. This unconscious desire explains the addiction of the individual to nicotine.

111. Internal Tobacco Company documents reveal that all of this research has convinced company researchers and executives that nicotine in tobacco functions as a drug with powerful psychoactive effects. The Tobacco Companies, rather than disclosing material information about smoking and health, chose a course of suppression, concealment, and misinformation about the true properties of nicotine and the addictiveness of smoking.

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

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

113. The great difficulty smokers experience when they try to quit has been conceded by the Tobacco Industry on numerous occasions, including through extensive research, surveys and through sworn testimony in litigation.

114. The Tobacco Companies' own research data show that users find it extremely difficult to quit smoking and that many tobacco users would quit if they could. Their data also show that, of those smokers who try to quit, only a small percentage succeed permanently. Consequently, the Tobacco Companies are aware that the large percentage of their customers who try to quit but fail continue to buy and use tobacco products, in large part to satisfy their dependence on nicotine-containing tobacco. Despite this knowledge, the Tobacco Companies have misrepresented and suppressed the truth regarding nicotine and addiction. Instead, they have falsely claimed that tobacco use is simply a matter of individual choice.

K. The Industry's Manipulation of Nicotine Levels

115. The Tobacco Industry also has developed sophisticated technology to control the levels of nicotine in order to maintain its market and guarantee that its customers become and remain addicted. David A. Kessler, M.D., former Commissioner of the Food and Drug Administration, recently testified before a congressional committee that Tobacco Companies can manipulate precisely nicotine levels in cigarettes, manipulate precisely the rate at which the nicotine is delivered in cigarettes, and add nicotine to any part of cigarettes.

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

117. The FDA published an August 1995 report, Nicotine In Cigarettes and Smokeless Tobacco Products, which states that the Tobacco Companies use many techniques to manipulate

and control the delivery of nicotine in its products to deliver pharmacologically-satisfying levels of nicotine to smokers.

118. Upon information and belief, the Tobacco Industry's own trade literature reflects many other tobacco manufacturing and processing methods which enable manufacturers to appreciably manipulate and increase the nicotine content or impact of the final manufactured products. These include the tobacco reconstitution process, the wholesale of pure nicotine and other special additives to tobacco manufacturers, and a Tobacco Industry manufacturing process referred to as "denaturing," which involves adding near-pure nicotine combined with alcohol and applying it to tobacco or cigarette components in the manufacturing process.

119. Against this mounting body of evidence of the Tobacco Industry's manipulation and control of nicotine levels in cigarettes, the Tobacco Companies continue to deny to the public, and recently denied to Congress under oath, that they manipulate and control nicotine levels.

120. As recently as April 1994, the Tobacco Industry placed advertisements in Colorado and across the country denying that it "spikes" cigarettes with nicotine, denying that it believes cigarette smoking is addictive, and misleading the public about whether the Tobacco Companies deliberately control nicotine levels in their products.

121. These advertisements deliberately create the false impression that the "recent controversy" they refer to concerns whether reconstituted and reduced-tar tobacco have less nicotine than the original tobacco leaf. The Tobacco Companies can legitimately claim that their finished cigarettes have less nicotine. The real controversy, however, which these advertisements so carefully avoid, stems from the discrepancy between actual nicotine levels of the industry's tar-reduced and reconstituted tobacco and the claimed "essentially perfect" correlation between nicotine and tar levels. In fact, the nicotine levels have proven to be consistently higher than what the correlation would predict. Furthermore, the industry has apparently utilized additives to boost the pharmacological impact of nicotine, without disclosing that material information to the public. The inaccuracy lies not in the correlation, but in the story the Tobacco Industry has told the public about how it manufactures cigarettes. That story has carefully and deliberately omitted the Tobacco Industry's addition of nicotine in the form of an extract to these tobaccos to keep them at addictive levels.

L. Maintaining the Market through Sales to Minors

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

122. In addition to ensuring a captive market of customers, the Tobacco Industry has maintained its sales by intentionally targeting marketing and promotional efforts at children and adolescents.

123. The use of tobacco by minors has risen dramatically in recent years, largely the result of continued targeted marketing and advertising to youth by the Tobacco Companies.

124. Approximately 3 million children under the age of 18 are daily smokers. One study found that children between the ages of 8 and 11 who are daily smokers consume an average of 4 cigarettes daily, and those who are between the ages of 12 and 17 average nearly 14 cigarettes daily. The study also estimates that adolescents consume an estimated 947 million packs of

cigarettes and 26 million containers of smokeless tobacco annually and account for annual tobacco sales of \$1.26 billion. Another study estimates that teenagers in 1991 smoked 516 million packs of cigarettes and spent \$962 million purchasing them. Upon information and belief, approximately 3% of the total Tobacco Industry profits are derived directly from the sale of cigarettes to children under the age of 18. These figures are especially significant given that most states (including Colorado) prohibit the sale of tobacco to persons under the age of 18.

125. Studies have also suggested that the age one begins smoking can greatly influence the amount of smoking one will engage in as an adult and will ultimately influence the smoker's risk of tobacco related morbidity and mortality. Those who started smoking by early adolescence are more likely to be heavy smokers than those who began smoking as adults.

126. The escalating use of smokeless tobacco products by children presents an additional and growing public health problem. Smokeless tobacco products include chewing tobacco and snuff. In 1970, the prevalence of snuff use among males was lowest in those 17 to 19 years of age and the highest use was by men aged 50 or more. By 1985, a dramatic shift had occurred, and males between 16 and 19 were twice as likely to use snuff as men aged 50 and over. By 1991, school-based surveys estimated that 19.2% of male 9th to 12th grade students use smokeless tobacco.

127. In Colorado, the rates of youth smoking are especially high. According to the 1990-91 Youth Risk Behavior Survey, the smokeless tobacco product use rate among males in grades 9 through 12 was as high as 32% in Colorado.

2. The Use of Appealing Images

128. Tobacco Industry advertising is used to create a mental image associating smoking with healthy, glamorous and athletic lifestyles, with success and sexual attractiveness. This increases demand for tobacco products among young people.

129. Marlboro and Camel cigarettes, produced by Philip Morris and Reynolds, respectively, dominate the teenage smoking market.

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

131. Each Tobacco Company engages in various advertising and promotional activities in an effort to market their products to minors. These activities include pervasive sponsorship of various sporting events, concerts and other events likely to attract extensive youth interest. Another means of appealing to youth used by the Tobacco Companies is paying for promotional appearances in movies which, because of the subject matter or the actors in the films, are most likely to appeal to youth.

132. One of the best examples of this was the transformation of Marlboro Cigarettes from a red-tipped cigarette for women to the cigarette for the macho cowboy. By changing advertising

imagery, Philip Morris was able to tap into a wholly new and different market. The wild spirit of the Marlboro man captured the adolescent imagination. Also, Philip Morris' representatives fanned out to colleges across the country, giving free cigarettes to incoming freshmen to get them hooked. The children and teenagers who started smoking Marlboro became tenaciously loyal customers. Soon, Marlboro became the gold standard of cigarettes among teenagers. Up until 1988, nearly three-fourths of teenage smokers used Marlboro.

133. Reynolds has also dedicated itself to an advertising campaign encouraging children and teenagers to smoke. One of the key elements of the Reynolds' strategy for attracting children was to reposition many of its cigarette brands to younger audiences.

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

135. Many cigarette ads that target young boys glamorize high-risk activities like hang gliding, motorcycle racing, mountain climbing, etc. Cigarette makers do this deliberately to undermine awareness that smoking is dangerous. In its campaign to attract adolescent boys to become smokers, Reynolds made extensive use of risk-taking and danger in its advertising. By glorifying risk-taking, these ads have a more insidious purpose. How a person estimates the magnitude and likelihood of a risk can be significantly affected by what it is compared against. By portraying extremely dangerous activities like hang-gliding, mountain climbing, and stunt motorcycle riding, Reynolds minimizes the dangers of smoking in adolescent minds.

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

136. It is not just the themes within cigarette advertising that betray the real target, it is also the location of those ads. During the 1980's, there was a steady migration of cigarette advertising into youth-oriented publications. Magazines with sexually oriented themes, and those concerning entertainment and sporting activities, had the highest concentration of cigarette ads. For many of these magazines, teenagers comprise a quarter or more of the total readership. Cigarette ads in these youth-oriented magazines were frequently multi-page, pop-up ads. News magazines like Time and Newsweek, which have older audiences, had few cigarette ads, and those tended to focus on tar and nicotine content rather than glamorous images.

137. A particularly successful element of the industry's advertising campaign has been advertising aimed at young girls. Many issues of magazines for young girls like Teen and Young Miss include advertisements by Reynolds urging children not to smoke. But the reasons given for refraining are not that smoking is addictive, that it is harmful to infants of pregnant women, or that it causes cancer and other diseases. Rather, the reason given is that it is an "adult custom."

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

139. Reynolds went so far as to secure the Flintstones cartoon characters to assist it in marketing Winston cigarettes. Fred and Wilma Flintstone tell children that Winston's have the taste they want.

4. Reynolds: "Old Joe Camel"

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

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

142. Reynolds has made premiums available in exchange for coupons included in packages of Camel cigarettes. These premiums are deliberately designed to appeal primarily to minors. Recently, for example, it began an advertising campaign offering concert tickets in return for redemption of a number of Camel coupons, again in Rolling Stone magazine.

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

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

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

145. U.S. Tobacco makes approximately 90% of the oral snuff and chewing tobacco sold

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

N. The Human Toll of Cigarette Smoking

1. Health Effects of Cigarette Smoking

146. Over 400,000 Americans die each year from smoking-related illnesses. This equates to more than one of every five deaths in the United States. Smoking is responsible for about 90% of all lung cancer deaths; 87% of deaths from chronic obstructive pulmonary diseases; 21% of deaths from coronary heart disease; and 18% of deaths from stroke. Further, a causal relationship exists between cigarette smoking and cancers of the larynx, mouth, esophagus, and bladder; and atherosclerotic peripheral vascular disease, cerebrovascular disease (stroke), and low-birth weight babies. Cigarette smoking is also a probable cause of infertility and peptic ulcer disease and contributes to, or is associated with, cancers of the pancreas, kidney, cervix, and stomach.

147. If an adolescent's tobacco use continues for a lifetime, there is a 50% chance that the person will die prematurely as a direct result of smoking. Moreover, the earlier a young person's smoking habit begins, the more likely he or she will become a heavy smoker and therefore suffer a greater risk of smoking-related diseases. Smoking's detrimental effect on lung structure and function appear within a few years after cigarette smoking begins. Children who smoke are more likely to suffer from respiratory illnesses than children who do not smoke. Adolescents who smoke may experience inflammatory changes in the lung, reduced lung growth, and may not achieve normal lung function as an adult.

2. Health Effects of Smokeless Tobacco Products

148. Smokeless tobacco use increases the risk of oral cancer, and cancers of the esophagus, gum, pharynx and larynx. Snuff and chewing tobacco contain potent carcinogens, including nitrosamines, polynuclear aromatic hydrocarbons and radioactive polonium. Smokeless tobacco use can cause oral leukoplakia, a pre-cancerous lesion of the soft tissue that consists of a white patch or plaque that cannot be scraped off. Snuff use also causes gum recession and is associated with discoloration of teeth and fillings, dental cavities and abrasion of the teeth.

O. Public Nuisance

149. The Colorado General Assembly has declared two important public policies which are highly relevant to this action. First, no person under the age of eighteen years shall purchase any tobacco product. Second, no person shall cause, encourage or contribute to the delinquency of a minor by encouraging the minor to violate any established laws. The aforementioned conduct is punishable, the latter as a felony, under the Colorado Criminal Code §§ 18-13-121 and 18-6-701, C.R.S., respectively.

150. As alleged herein, the Tobacco Companies have used deceptive acts and practices, misrepresentations, concealment and failures to disclose material facts to market their tobacco products to minors in Colorado, to encourage the unlawful purchase of tobacco by minors, and to encourage and contribute to the delinquency of minors in the State of Colorado.

151. More specifically, and as set forth herein, the Tobacco Companies have contributed to the delinquency of minors in Colorado by inducing, aiding or encouraging minors to violate the State laws prohibiting the purchase of tobacco products by persons under eighteen years of age. The Tobacco Companies' conduct has been accomplished, in part, by: a) concealing that their products are addictive and harmful, and suppressing information on these subjects, while at the same time portraying tobacco products as glamorous and in a fashion that is designed to minimize the risks associated with tobacco use; b) designing their marketing campaigns with the intent that minors rely on the Tobacco Companies' advertisements; and thereby c) engaging in conduct causing or encouraging minors to purchase and smoke tobacco products, in violation of State law. The Tobacco Companies' conduct is even more aggravated given their public proclamations that they object to minors smoking, while they have continued a course of conduct specifically designed to encourage minors to smoke.

152. Tobacco sales to minors have increased in Colorado as a direct, foreseeable and intended result of the Tobacco Companies' business practices.

153. By their skillful and aggressive marketing of tobacco products to minors, the Tobacco Companies have and continue to contribute to the delinquency of a minor in Colorado as set forth at § 18-6-701, C.R.S., by inducing, aiding or encouraging a child (anyone under the age of eighteen years) to violate a state law (§ 18-13-121(2), C.R.S.) prohibiting minors from purchasing tobacco products. The Tobacco Companies' conduct constitutes a class 3 public nuisance, pursuant to § 16-13-305(1)(a), C.R.S., in that such conduct constitutes the maintaining of a business or activity prohibited by a statute of the State of Colorado. Furthermore, the proceeds derived by the Tobacco Companies or traceable to their conduct contributing to the delinquency of minors in the State of Colorado, constitutes a class 1 public nuisance, pursuant to § 16-13-303(3)(b), C.R.S., thereby subjecting such proceeds to forfeiture and distribution, pursuant to § 16-13-311(3), C.R.S.

P. Racketeering Enterprise

154. During the times relevant to this complaint, the Tobacco Companies and tobacco trade associations constituted a group of corporations associated in fact, although not a legal entity, which formed a racketeering "enterprise" within the meaning of § 18-17-103(2), C.R.S. In addition to the Tobacco Companies' association with each other as an enterprise, they conducted

and participated in a racketeering enterprise for the purpose of marketing and selling tobacco products in Colorado through a pattern of racketeering activity described below.

Q. Pattern of Racketeering Activity

155. During the relevant times, and continuing presently throughout the State of Colorado, the racketeering enterprise referred to above did engage in a "pattern of racketeering activity," within the meaning of § 18-17-103(3), C.R.S.

156. The pattern of racketeering activity involved numerous acts of "racketeering activity," within the meaning of § 18-17-103(5)(a), C.R.S., which provision includes racketeering activity listed at 18 U.S.C. § 1961(1), including mail and wire fraud.

157. More specifically, the Tobacco Companies' racketeering activities involve:

a. devising schemes or artifices to defraud the public or schemes or artifices for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, as described throughout this Complaint and by using the U.S. Postal Service to mail materials or matter in furtherance of, or for the purpose of executing such scheme or artifice, including mailing advertisements and other materials about their tobacco products in violation of 18 U.S.C. §§ 1341 and 1343; and

b. devising schemes or artifices to defraud the public or to obtain money or property by means of false pretenses, representations or promises as described throughout this Complaint, and transmitting or causing to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, writings, signs, signals, pictures or sounds about their tobacco products for the purpose of executing their scheme or artifice in violation of 18 U.S.C. § 1343.

158. The Tobacco Companies' conduct began as early as the 1950's, continued after July 1, 1981 (the effective date of § 18-17-103, C.R.S.). Numerous acts of racketeering activity referred to herein have occurred in the past ten years. The last of such acts occurred in Colorado as recently as 1997.

159. The Tobacco Companies' racketeering activity described herein has been continuous and systematic for a period of at least 43 years, and has involved numerous separate criminal offenses, each similar in design and purpose -- to unlawfully acquire money and economic benefit from the State of Colorado and from the consuming public.

160. The Tobacco Companies have acquired tens of millions of dollars derived from their pattern of racketeering activity in violation of § 18-17-104, C.R.S.

R. The Injury to the State of Colorado is a Direct and Foreseeable Consequence of the Tobacco Companies' Unlawful Conduct

161. In addition to the human toll, the economic costs of tobacco use, and, in particular, health care expenditures from tobacco-attributable diseases, amount to a huge burden on society and the State of Colorado.

162. The State spends millions of dollars each year to provide or pay for health care and

other necessary facilities and services on behalf of state employees, the needy, indigents and other eligible residents.

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

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

a. Medical Payments: Pursuant to § 26-4-401 et seq., C.R.S., Colorado makes payments for medical care services provided to recipients of public assistance. The amount paid for Medicaid is higher than it would be otherwise due to payment for tobacco-related illnesses; and

b. Health Care: Pursuant to §§ 24-50-601 through 615, C.R.S., Colorado purchases health care insurance for public employees and dependents. The premiums paid for all employees and dependents are higher than they would be otherwise due to the potential of payments for tobacco-related illnesses for some employees and dependents.

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

S. Fraudulent Concealment

166. The State was without knowledge of the Tobacco Companies' combination or conspiracy, or of any facts from which it might reasonably be concluded that the Tobacco Companies were illegally conspiring, or which would have led to the discovery thereof until recently. Colorado could not have reasonably discovered such facts or the alleged violations at an earlier time, because the Tobacco Industry fraudulently concealed, and continues to conceal, its course of conduct.

167. Colorado is not fully aware of the methods used by the Tobacco Industry to conceal its activities, but believes that the methods used in furtherance of its combination and conspiracy were inherently self-concealing, and could not have reasonably been apparent to plaintiff.

168. The Tobacco Industry's conspiracy and concealment of its fraudulent conduct is ongoing and continues to this day. The Tobacco Companies continue to deny that (i) nicotine is addictive; (ii) smoking causes cancer and other health problems; (iii) that they are targeting marketing to minors; and (iv) that they manipulate the level of nicotine in tobacco products.

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Failure to Disclose Material Information)

169. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 168 of this Complaint.

170. Through the above-described conduct undertaken by the Tobacco Companies in the regular course of their business, the Tobacco Companies have failed to disclose material information concerning their goods, services or property, which information was known at the time of an advertisement or sale, when such failure to disclose such information was intended to induce consumers to enter a transaction (to purchase the Tobacco Companies' tobacco products), in violation of § 6-1-105(1)(u), C.R.S., by, among other things:

- a. failing to disclose to the public the Tobacco Companies' ability and effort to manipulate nicotine in their tobacco products, including the use of chemical additives to boost nicotine's impact;
- b. failing to disclose to government authorities and to the public, important scientific information regarding their studies of tobacco products;
- c. failing to disclose to the public that the Tobacco Companies' TIRC and CTR were closely affiliated with the Tobacco Companies and would not provide independent and unbiased research about tobacco and tobacco products;
- d. failing to disclose to the public meaningful information regarding, the levels of nicotine in the Tobacco Companies' tobacco products;
- e. failing to disclose to the public the addictive nature of both nicotine and the Tobacco Companies' tobacco products; and
- f. failing to disclose to the public the adverse health consequences of using the Tobacco Companies' tobacco products.

171. By means of the above-described deceptive trade practices, the Tobacco Companies have unlawfully acquired money from numerous Colorado consumers and have caused monetary damages to the State of Colorado.

SECOND CLAIM FOR RELIEF

(False Representations as to Characteristics and Ingredients of Tobacco Products)

172. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 171 of this Complaint.

173. Through the above-described conduct undertaken by the Tobacco Companies, in the regular course of their business, the Tobacco Companies have knowingly made false representations as to the characteristics, uses, or benefits of goods and services, in violation of §

6-1-105(1)(e), C.R.S., by, among other things:

- a. misrepresenting, directly or by omission, the addictive nature of nicotine and the adverse health consequences of smoking;
- b. misrepresenting, directly or by omission, the manipulation of nicotine and additives to increase nicotine's impact in tobacco products; and
- c. misrepresenting and/or prohibiting the dissemination of their scientific information regarding their studies of tobacco products.

174. By means of the above-described deceptive trade practices, the Tobacco Companies have unlawfully acquired money from numerous Colorado residents and have caused monetary damages to the State of Colorado.

THIRD CLAIM FOR RELIEF

(Misrepresentations of the Standard and Quality of Tobacco Products)

175. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 174 of this Complaint.

176. Through the above-described conduct undertaken by the Tobacco Companies in the regular course of their business, the Tobacco Companies have represented that their goods and services are of a particular standard, quality, or grade, when the Tobacco Companies know or should know that they are of another, in violation of § 6-1-105(1)(g), C.R.S.

177. By means of the above-described deceptive trade practices, the Tobacco Companies have unlawfully acquired money from numerous Colorado consumers and have caused monetary damages to the State of Colorado.

FOURTH CLAIM FOR RELIEF

(False Representations Concerning Associations Between the Tobacco Companies)

178. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 177 of this Complaint.

179. Through the above-described conduct undertaken by the Tobacco Companies in the regular course of their business, the Tobacco Companies have knowingly made false representations as to their affiliation, connection or association with or certification by another, in violation of § 6-1-105(1)(c), C.R.S., by, among other things, falsely representing to the public that the TIRC and the CTR were independent tobacco product research and development entities not controlled by the Tobacco Companies, when such representations were false.

180. By means of the above-described deceptive trade practices, the Tobacco Companies have unlawfully acquired money from numerous Colorado consumers and have caused monetary damages to the State of Colorado.

FIFTH CLAIM FOR RELIEF

(Restraint of Trade)

181. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 180 of this Complaint.

182. As described above, beginning at least as early as 1953, and continuing until the present date, the Tobacco Companies engaged in an unlawful combination and conspiracy in unreasonable restraint of trade or commerce in the market for tobacco products in violation of §§ 6-4-104, C.R.S. The essential terms of the combination and conspiracy were to frustrate consumer demand for safer tobacco products by agreeing not to compete on the basis of health claims and agreeing not to market a less harmful tobacco product.

183. Pursuant to the Tobacco Companies' agreement, understanding and concert of action, the Tobacco Companies engaged in the following acts in furtherance of their conspiracy, as set forth in considerably more detail above:

- a. They restrained and suppressed research on the health consequences of smoking, despite strong consumer demand for less harmful products;
- b. They restrained, controlled, limited and suppressed research in and the development, manufacture, and marketing of a "safer" cigarette and other tobacco products that would have reduced the harmful effects of tobacco use and, consequently, reduced health costs for the State of Colorado;
- c. In general, they declined to compete in Colorado in any manner relating to the health claims of cigarettes, despite the strong consumer demand for less harmful products; and
- d. Apart from maintaining the demand for their tobacco products, the Tobacco Companies knew that their conduct would cause tobacco-related diseases in Colorado as well as cause the State of Colorado to incur substantial health care costs in treating such diseases.

184. As a direct result of the Tobacco Companies' conduct, the State of Colorado incurred substantial health care costs arising from tobacco-related diseases and injuries. The Tobacco Companies' conduct is thus inextricably intertwined with the State's increased health care costs and expenditures.

185. The Tobacco Companies' conduct has had a direct and foreseeable effect on the State's medical insurance costs. The Tobacco Companies continue to reap enormous profits by virtue of their wrongful contract, combination or conspiracy in restraint of trade at the expense of the State. In addition, they have effectively shifted these insurance costs to third parties, including the State of Colorado.

SIXTH CLAIM FOR RELIEF

(Abatement of Public Nuisance)

186. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 185 of this Complaint.

187. The Tobacco Companies' activities described herein constitute contributing to the delinquency of minors as provided by § 18-6-701, C.R.S., by inducing, aiding or encouraging children (persons under the age of eighteen years) to violate the state law prohibiting minors from purchasing tobacco products (§ 18-13-121(2), C.R.S.).

188. The Tobacco Companies' violation of § 18-6-701, C.R.S., constitutes a class 3 public nuisance as provided by § 16-13-305(1)(a), C.R.S.

189. By means of the above-described public nuisance, the Tobacco Companies have unlawfully acquired money from numerous Colorado consumers and have caused monetary damages to the State of Colorado.

SEVENTH CLAIM FOR RELIEF

(Forfeiture of Monies Deemed a Public Nuisance)

190. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 189 of this Complaint.

191. The Tobacco Companies' activities described herein, and in particular, their conduct contributing to the delinquency of a minor in violation of § 18-6-701, C.R.S., constitutes a public nuisance act pursuant to § 16-13-301(2.3), C.R.S. and § 16-13-303(1)(i), C.R.S.

192. By means of their numerous and repeated public nuisance acts described above, the Tobacco Companies have derived considerable monetary proceeds. Such proceeds, directly traceable to the Tobacco Companies' public nuisance acts, constitute a class 1 public nuisance pursuant to § 16-13-303(3)(b), C.R.S., and are subject to forfeiture and distribution under § 16-13-311, C.R.S.

EIGHTH CLAIM FOR RELIEF

(Association with Racketeering Enterprise)

193. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 192 of this Complaint.

194. During the relevant times, each defendant named herein was associated with the racketeering enterprise herein, and did knowingly conduct or participate, directly or indirectly, in the enterprise through the pattern of racketeering activity in violation of § 18-17-104(3), C.R.S.

NINTH CLAIM FOR RELIEF

(Racketeering Conspiracy)

195. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 194 of this Complaint.

196. During the relevant times, each defendant named herein conspired to knowingly receive proceeds derived, directly or indirectly, in the conduct of the affairs of the racketeering enterprise, in violation of § 18-17-104(4), C.R.S.

VIII. RELIEF REQUESTED

WHEREFORE, plaintiff prays for judgment against the Tobacco Companies as follows:

1. An order finding that the Tobacco Companies have engaged in violations of the Colorado Consumer Protection Act, §§ 6-1-105(1)(c), (e), (g) and (u), C.R.S., as alleged herein.
2. An order finding that the Tobacco Companies have engaged in unlawful combinations and conspiracies in restraint of trade and commerce in violation of the Colorado Antitrust Act, §§ 6-4-101 through 122, C.R.S.
3. An order permanently enjoining the Tobacco Companies, their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with the Tobacco Companies with notice of such injunctive orders from:
 - a. engaging in any deceptive trade practices as defined by the Colorado Consumer Protection Act, § 6-1-105, C.R.S., and as set forth in this Complaint;
 - b. continuing or renewing the combinations or conspiracies alleged herein, and from engaging in any other combination, conspiracy, contract, agreement, understanding, or concert of action having similar purpose or effect;
 - c. engaging in any public nuisance or public nuisance act defined by the Abatement of Public Nuisance Act in § 16-13-305(1)(a), C.R.S. and § 16-13-301(2.3), C.R.S., as set forth in this Complaint; and
 - d. engaging in any racketeering activities as defined by the Colorado Organized Crime Control Act, § 18-17-103(3) and (5), C.R.S., as set forth in this Complaint.
4. An order requiring the Tobacco Companies to pay restitution to the State of Colorado for their violations of the Colorado Consumer Protection Act, the Colorado Antitrust Act, and the Colorado Organized Crime Control Act, as set forth in this Complaint.
5. An order requiring the Tobacco Companies to pay civil penalties to the State of Colorado in an amount not to exceed \$2,000 per violation of the Colorado Consumer Protection Act, and in an amount not to exceed \$100,000 per violation of the Colorado Antitrust Act.
6. An order declaring the Tobacco Companies' monetary proceeds from their sales of tobacco products to minors in the State of Colorado to be a class 1 public nuisance and ordering these proceeds forfeited to the State of Colorado pursuant to § 16-13-311, C.R.S., and entering a money judgment of forfeiture for said proceeds pursuant to § 16-13-303(4), C.R.S.
7. An order requiring the Tobacco Companies to disgorge all unjust profits from tobacco sales to minors and from all other tobacco sales in the State of Colorado which the Tobacco Companies should not be allowed to retain.

8. An order awarding damages, including treble damages, to the State of Colorado in the amount of increased health care costs paid by the State as a result of the Tobacco Companies' unlawful conduct as alleged herein.

9. An order requiring the Tobacco Companies to compensate the State of Colorado for its costs of investigating and prosecuting this lawsuit, including, but not limited to, its reasonable attorney fees and costs of experts.

10. Any further equitable relief and orders as the court may deem just and proper.

DATED this 5th day of June, 1997.

STATE OF COLORADO

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VERIFICATION

Martha Phillips Allbright, Chief Deputy Attorney General for the State of Colorado, being first duly sworn, deposes and states that, as required by § 16-13-307(5), C.R.S., she has read the foregoing complaint, and that the facts set forth therein with respect to the public nuisance claims are true to the best of her knowledge, information and belief.

MARTHA PHILLIPS ALLBRIGHT

Subscribed and sworn to before me in the City and County of Denver, State of Colorado, this 5th day of June, 1997.

NOTARY PUBLIC

My Commission expires: