

**STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE**

STATE OF NEW MEXICO, ex rel.,
TOM UDALL, ATTORNEY GENERAL
OF THE STATE OF NEW MEXICO,

Plaintiff,

vs.

THE AMERICAN TOBACCO COMPANY;
AMERICAN BRANDS, INC.;
R. J. REYNOLDS TOBACCO COMPANY;
RJR NABISCO, INC.;
BATUS, INC.;
BROWN & WILLIAMSON TOBACCO CORPORATION
(individually and as successor by merger
to THE AMERICAN TOBACCO COMPANY);
BATUS HOLDINGS, INC.;
BRITISH AMERICAN TOBACCO CO., LTD.;
B.A.T. INDUSTRIES P.L.C.;
PHILIP MORRIS INCORPORATED;
PHILIP MORRIS COMPANIES INC.;
LORILLARD TOBACCO COMPANY,
LORILLARD, INC.;
LOEWS CORPORATION;
UNITED STATES TOBACCO COMPANY;
UST INC.;
SANTA FE NATURAL TOBACCO COMPANY, INC.;
THE TOBACCO INSTITUTE, INC.;
GENERAL DISTRIBUTORS, INC.;
THE COUNCIL FOR TOBACCO RESEARCH-U.S.A., INC.;
CORE-MARK MID CONTINENT, INC.; and
GEM STATE DISTRIBUTORS, INC.

Defendants.

No. _____

COMPLAINT

Plaintiff, the State of New Mexico, ex rel. Attorney
General Tom Udall ("Plaintiff"), alleges:

NATURE OF THE ACTION

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

2. The cigarette manufacturers have known for decades, on the basis of their own long-concealed research, that nicotine is addictive. At the same time, at least certain defendants have developed sophisticated techniques to manipulate the nicotine delivery of cigarettes so as to create and sustain addiction in smokers. Yet publicly the cigarette manufacturers have denied, and continue to deny, that nicotine is addictive and that they manipulate the nicotine delivery of cigarettes. In April 1994, each of the Chief Executive

Officers of the defendant cigarette manufacturers testified before the Congressional Subcommittee on Health and the Environment that nicotine is not addictive.

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

4. Each year, more than 2,000 New Mexico residents die from smoking the defendant cigarette manufacturers' products, according to the American Cancer Society. Each year, the State of New Mexico must spend millions of dollars to purchase or provide medical and related services for New Mexico citizens suffering from diseases caused by cigarette smoking.

Each year, the defendant cigarette manufacturers reap huge profits from the sale of cigarettes in New Mexico. Each year, the defendant cigarette manufacturers spend millions of dollars on advertising in New Mexico, like the colorful cartoon character, Joe Camel, which has enormous appeal to young people. Each year, more New Mexico children and teenagers begin smoking.

5. The State of New Mexico seeks both monetary damages and injunctive relief for the conduct alleged in this Complaint. Among other things, the State of New Mexico seeks a permanent injunction to require the defendants to disclose their research on smoking, addiction and health, to fund a

remedial public education campaign on the health consequences of smoking and to fund smoking cessation programs for nicotine-dependent smokers.

THE PARTIES

6. Plaintiff is the State of New Mexico on the relation of its Attorney General, Tom Udall. Plaintiff is acting pursuant to his authority under inter alia, New Mexico common law, Section 8-5-2 NMSA 1978, the New Mexico Unfair Practices Act, §§57-12-2 et seq., NMSA 1978 (1995 Repl.), the New Mexico Racketeering Act, §§30-42-1 et seq. NMSA 1978 (1996 Repl.) and the New Mexico Anti-Trust Act, §§57-1-1 et seq. NMSA 1978 (1995 Repl.) Plaintiff brings this action to obtain declaratory and equitable relief, damages and restitution. Plaintiff seeks to recover the smoking-related costs to the State of New Mexico, including, but not limited to, increased expenditures for:

a. Medical assistance provided under New Mexico's Medicaid program pursuant to the Public Assistance Act, §§27-2-12 et seq. NMSA 1978 (1995 Repl. and 1996 Supp.). Under the medical assistance program, the State of New Mexico pays for medical services provided to program recipients. The State pays approximately 25% of these costs, with the federal government bearing the remaining costs.

b. Public employees' health and disability insurance coverage costs pursuant to the Group Benefits Act,

§10-7B-6 NMSA 1978 (1995 Repl.).

c. Public employees' disability retirement pension costs pursuant to the Public Employees Retirement Act, §10-11-10.1 NMSA 1978 (1995 Repl.).

d. Retired public employees' group health insurance costs from the Retiree Health Care Fund, pursuant to the Retiree Health Care Act, §10-7C-8 NMSA 1978 (1995 Repl.).

e. Public school employees and school board retirees' group health insurance costs from the Public School Insurance Fund, pursuant to the Public School Insurance Act, §22-2-6.6 NMSA 1978 (1993 Repl.), and disability benefits from the Educational Retirement Fund, pursuant to the Educational Retirement Act, §§22-11-1 et seq., NMSA 1978 (1993 Repl.).

In fulfilling its statutory duties, the State of New Mexico has expended and will expend substantial sums of money due to the increased costs of providing health care services for smoking-related diseases.

THE DEFENDANTS

7. The American Tobacco Company, Inc. is a Delaware corporation whose principal place of business is located at Six Stamford Forum, Stamford, Connecticut. On December 21, 1994, The American Tobacco Company was purchased by B.A.T. Industries, P.L.C. who, on information and belief, has succeeded to the liabilities of the American Tobacco Company by operation of law or as a matter of fact. In 1995, on

information and belief, the American Tobacco Company was purchased by Brown & Williamson and merged into Brown & Williamson. On information and belief, Brown & Williamson has succeeded to the liabilities of the American Tobacco Company either by operation of law, or as matter of fact. Brown & Williamson is in trade or commerce. The American Tobacco Company manufactured, advertised and sold Lucky Strike, Pall Mall, Tareyton, Malibu, American, Montclair, Newport, Misty, Barkeley, Iceberg, Silk Cut, Silva Thins, Sobrania, Bull Durham and Carlton cigarettes throughout the United States, including the State of New Mexico.

8. American Brands, Inc. is a Delaware corporation whose principal place of business is located at 1700 East Putnam Avenue, Old Greenwich, Connecticut, 06870. American Brands, Inc. is the parent corporation of or the successor in interest to The American Tobacco Company and has participated in the manufacture and distribution of cigarettes and other tobacco products throughout the United States, including the State of New Mexico, both individually and through its alter ego the defendant American Tobacco Company.

9. R. J. Reynolds Tobacco Company, is a New Jersey corporation whose principal place of business is located at Fourth and Main Streets, Winston-Salem, North Carolina. R. J. Reynolds Tobacco Company is a wholly owned subsidiary of RJR Nabisco, Inc., a Delaware corporation, whose principal place of business is 1301 Avenue of the Americas, New York, New

York. R. J. Reynolds Tobacco Company and RJR Nabisco, Inc. are both Defendants herein and manufacture, advertise and sell Camel, Vantage, Now, Doral, Winston, Sterling, Magna, More, Century, Bright Rite and Salem cigarettes through the United States, including the State of New Mexico.

10. Brown & Williamson Tobacco Corporation (individually and as successor by merger to The American Tobacco Company), is a Delaware corporation. Batus, Inc., is the parent of Brown & Williamson Tobacco Corporation and is a Wisconsin corporation. Batus Holdings, Inc., is the parent of Batus, Inc., and is a Delaware corporation. All three corporations are named as Defendants herein. The principal place of business of Brown & Williamson Tobacco Corporation, Batus, Inc., and Batus Holdings, Inc., is 1500 Brown & Williamson Tower, Louisville, Kentucky. Brown & Williamson Tobacco Corporation, Batus, Inc., and Batus Holdings, Inc. manufacture, advertise and sell Kool, Barclay, BelAir, Capri, Raleigh, Richland, Laredo, Eli Cutter and Viceroy cigarettes throughout the United States, including the State of New Mexico.

11. British American Tobacco Co., Ltd. is a British corporation whose principal place of business is Millbank, Knowle Green, Staines, Middlesex, England TW181DY. Brown & Williamson Tobacco Corporation is or was a subsidiary or division of British American Tobacco Co., Ltd.

12. B.A.T. Industries P.L.C. (hereinafter "B.A.T.

Industries") is a British corporation with its principal place of business at Windsor House, 50 Victoria St., London. Through a succession of intermediary corporations and holding companies, B.A.T. Industries P.L.C. is the shareholder of Brown & Williamson Tobacco Corporation. Through Brown & Williamson, B.A.T. Industries P.L.C. has placed cigarettes into the stream of commerce with expectation that substantial sales of cigarettes would be made in the United States. In addition, B.A.T. Industries P.L.C. conducted, or through its agents and/or co-conspirators conducted, critical research for Brown & Williamson Corporation on the issue of smoking and health. Further, Brown & Williamson is believed to have sent to England research conducted in the United States on the issue of smoking and health in an attempt to remove sensitive and inculpatory documents from United States jurisdiction, and these documents were subject to the control of B.A.T. Industries P.L.C. B.A.T. Industries P.L.C. has been involved in the conspiracy described herein and the actions of B.A.T. Industries P.L.C. has affected and caused harm throughout the United States, including the State of New Mexico.

13. Philip Morris Incorporated, and its parent, Philip Morris Companies, Inc., are Virginia corporations whose principal place of business is located at 120 Park Avenue, New York, New York. Both corporations are named Defendants herein. Philip Morris, Inc., and Philip Morris Companies, Inc., manufacture, advertise and sell Philip Morris, Merit,

Cambridge, Marlboro, Benson & Hedges, Virginia Slims, Alpine, Dunhill, English Ovals, Galaxy, Players, Saratoga and Parliament cigarettes throughout the United States, including the State of New Mexico.

14. Lorillard Tobacco Company and Lorillard, Inc., and their parent, Loews Corporation, are Delaware corporations whose principal place of business is located at One Park Avenue, New York, New York. All three corporations are named Defendants herein. Lorillard Tobacco Company, Inc., Lorillard, Inc., and Loews Corporation manufacture, advertise and sell Old Gold, Kent, Triumph, Satin, Max, Spring, Newport and True cigarettes throughout the United States, including the State of New Mexico.

15. United States Tobacco Company, and its parent, UST Inc., are Delaware corporations who principal place of business is located at 100 West Putnam Avenue, Greenwich, Connecticut. Both corporations are named Defendants herein. United States Tobacco Company and UST Inc., manufacture and sell Sano cigarettes throughout the United States, including the State of New Mexico.

16. Santa Fe Natural Tobacco Company, Inc. is a New Mexico corporation with its principal place of business located at 1368 Cerrillos Road, Sante Fe, New Mexico, 87501. Sante Fe Natural Tobacco Company, Inc. manufactures and sells Natural American Spirit Regular Filter, Natural American Spirit Menthol Filter, Natural American Spirit Mild and

Natural American Spirit Non-filter cigarettes as well as rolling tobacco throughout the United States, including the State of New Mexico.

17. The Tobacco Institute, Inc., is a New York corporation, whose principal place of business is located at 1875 "I" Street, N. W., Suite 800, Washington, D.C. The Tobacco Institute, Inc., at all relevant times operated as the public relations and lobbying arm of the Defendant tobacco companies. At all relevant times, The Tobacco Institute, Inc., was an agent and/or employee of the Defendant tobacco companies. In doing the things alleged herein, The Tobacco Institute, Inc., was acting within the course and scope of its agency or employment, and was acting with the consent, permission, and authorization of each of the Defendant tobacco companies. All actions of The Tobacco Institute, Inc. ("TI") alleged herein were ratified and approved by the officers or managing agents of the Defendant tobacco companies.

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

19. General Distributors, Inc. is a New Mexico corporation, organized under the laws of the State of New Mexico, with its agent for service of process in Bernalillo

County, New Mexico, and at all relevant times hereto was qualified to do and was doing business in the State of New Mexico as a wholesale distributor of the tobacco products manufactured by the Defendant tobacco companies.

20. Core-Mark Mid Continent, Inc. is an Arkansas corporation, in good standing and authorized to do business in the State of New Mexico corporation, organized under the laws of the State of Arkansas, with its agent for service of process in Sante Fe County, New Mexico, and at all relevant times hereto was qualified to do and was doing business in the State of New Mexico as a wholesale distributor of the tobacco products manufactured by the Defendant tobacco companies.

21. Gem State Distributors, Inc., is an Idaho corporation, in good standing and authorized to do business in the State of New Mexico corporation, organized under the laws of the State of Idaho, with its agent for service of process in Bernalillo County, New Mexico, and at all relevant times hereto was qualified to do and was doing business in the State of New Mexico as a wholesale distributor of the tobacco products manufactured by the Defendant tobacco companies.

22. The Defendants identified in paragraphs 19, 20 and 21 above are hereafter referred to as "the Distributor Defendants." All the remaining Defendants are referred to as "the Manufacturer Defendants." Where necessary, all Defendants are referred to collectively as "Defendants."

23. Defendants did and continue to do business in the

State of New Mexico; made contracts to be performed in whole or in part in the State of New Mexico; and/or manufactured, tested, sold, offered for sale, supplied, or placed cigarettes in the stream of commerce, or in the course of business, materially participated with others in so doing; and performed such acts as were intended to, and did, result in the sale and distribution in the State of New Mexico of cigarettes from which Defendants derived substantial revenue. Defendants also caused tortious injury by acts or omissions in the State of New Mexico, and/or caused tortious injury in the State of New Mexico by acts or omissions outside the State of New Mexico.

JURISDICTION AND VENUE

24. This Court has jurisdiction over the subject matter of this action pursuant to, inter alia, Article VI, Section 13 of the New Mexico Constitution.

25. Venue is proper in Santa Fe County pursuant to Section 38-3-1 NMSA 1978. The Attorney General resides in Santa Fe County.

FACTUAL ALLEGATIONS

I. The Nicotine in Cigarettes is Highly Addictive.

26. Manufacturer Defendants reap enormous profits from their manufacture and sale of cigarettes throughout the United States, including the State of New Mexico. Manufacturer Defendants' earnings in the last year alone exceeded six billion dollars. Manufacturer Defendants, make, advertise and sell cigarettes despite their knowledge of the following facts: More than 10 million Americans have died as a result of smoking cigarettes; more than 400,000 Americans die every year as a result of smoking cigarettes; almost one death in every five is due to a smoking-related illness; the leading cause of preventable death in the United States today is smoking cigarettes; smoking causes cardiovascular disease and is responsible for approximately one-third of all heart disease deaths; smoking causes almost all lung and throat cancers and is responsible for approximately one-tenth of all cancer deaths; smoking causes various pulmonary diseases, including emphysema; smoking causes stillbirths and neonatal deaths among the babies of mothers who smoke; and cigarettes may contain any number of approximately 700 "additives", including a number of toxic and dangerous chemicals. Congressman Henry W. Waxman (D. Calif.), former Chairman of the House Subcommittee on Health and the Environment, has stated "that cigarettes are the single most dangerous consumer product ever sold".

27. Despite the overwhelming weight of the scientific evidence that smoking cigarettes poses serious health risks, and despite the gruesome statistical legacy being left by Manufacturer Defendants, hundreds of thousands of New Mexico residents continue to smoke cigarettes, including many new teenage smokers everyday, because they are addicted to or are dependent upon these products. More specifically, they are addicted to nicotine, the drug in tobacco that causes an addiction similar to that suffered by users of heroin and cocaine.

28. Cigarettes contain nicotine. Nicotine is an addictive substance and the use of cigarettes results in addiction to them. Nicotine causes compulsive use of cigarettes, despite knowledge that they are harmful, if not lethal; nicotine has a psychoactive (mood-altering) effect in the brain; and, nicotine invokes what is called "reinforcing behavior", causing continued use of the nicotine-containing products. Cigarette smokers suffer an inability to quit, notwithstanding a desire to do so, and those who do quit (or attempt to) endure withdrawal symptoms such as headaches, insomnia, depression, lack of concentration, and anxiety.

29. The addictive power of nicotine is further illustrated by these statistical facts: at least two-thirds of adults who smoke say they wish they could quit; 17 million Americans try to quit smoking each year, but fewer than 1 out of 10 succeed; for every smoker who quits 9 try and fail; 8

out of 10 smokers say they wish they had never started smoking; after surgery for lung cancer, almost half of the smokers resumed smoking; among smokers who suffer heart attack, 38% resume smoking while they are still in the hospital; even when a smoker has their larynx removed, 40% try smoking again; 70% of young people ages 12 to 18 who smoke say they believe they are already dependent on cigarettes; and 40% of high school seniors who smoke regularly have tried to quit and failed. According to David A. Kessler, M.D., Commissioner of the United States Food and Drug Administration, "once they have started regularly, most smokers are in effect deprived of the choice to stop smoking Seventeen million Americans try to quit smoking each year. But, more than fifteen million are unable to exercise that choice because they cannot break their addiction to cigarettes."

30. The 1988 Surgeon General's Report, "The Health Consequences of Smoking: Nicotine Addiction" contained these conclusions:

- A) "Cigarettes and other forms of tobacco are addicting";
- B) "Nicotine is the drug in tobacco that causes addiction"; and
- C) "The pharmacologic and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine." Nicotine in cigarettes is now recognized as an addictive substance by such major medical organizations as the Office of U. S. Surgeon General, the World Health Organization, the American Medical Association, the American Psychiatric Association, the American Psychological Association, the American

Society of Addiction Medicine, the American Public Health Association, and the Medical Research Council in the United Kingdom. The National Institute on Drug Abuse recently called cigarette smoking the most common example of drug dependence in the United States.

31. Despite the recent recognition of nicotine's addictive properties by these and other organizations, Manufacturer Defendants continue to misinform New Mexico residents. Although it now appears that Manufacturer Defendants have known for decades, on the basis of their own long-concealed research and testing, that nicotine is addictive, they have denied, and continue to deny, that nicotine is addictive.

II. Despite Its Knowledge that Nicotine is Addictive, Manufacturer Defendants Falsely Claim that Nicotine is not Addictive.

32. By no later than the early 1960's, and perhaps as early as the 1940s, Manufacturer Defendants, or some of them, were fully aware, based on their own scientific research, that nicotine is an addictive substance and that regular cigarette smoking results in nicotine dependence. The remaining Defendants became aware of these facts over time, and participate in the wrongful acts alleged herein. For example, an internal Philip Morris report from 1971 describes the difficulties a smoker has in stopping smoking once they are addicted to nicotine. "Even after eight months, quitters were apt to report having neurotic symptoms, such as feeling depressed, being restless and tense, being ill-tempered, having a loss of energy, being apt to doze off, etc. They

were further troubled by constipation and weight gains . . .
."

33. An internal report written in 1973 by William J. Dunn, Jr., a senior scientist with Philip Morris, says the following:

The primary incentive to cigarette smoking is the immediate salutatory effect of inhaled smoke upon body function As with eating and copulating, so it is with smoking. The physiological effects serve as the primary incentive; all other incentives are secondary Without nicotine, the argument goes, there would be no smoking. Some strong evidence can be marshaled to this argument:

- (1) No one has ever become a cigarette smoker by smoking cigarettes without nicotine.
- (2) Most of the physiological responses to inhaled smoke have been shown to be nicotine-related.

34. Another internal Philip Morris document, this one from 1981, acknowledges that:

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

35. Patent filings by some of Manufacturer Defendants further reveal their knowledge of the addictive quality of nicotine. In a 1971 patent filing, Philip Morris discusses maintaining the "nicotine content at a sufficiently high level to provide the desired physiological activity." Years of

numerous patent filings by Manufacturer Defendants underscore the industry's knowledge that nicotine is addictive.

36. Despite their knowledge that cigarette smoking is, as a result of nicotine, extremely addictive, Manufacturer Defendants still continue to deny that smoking is addictive. Through their individual advertising and public relations campaigns, and collectively through the work of the TI, Manufacturer Defendants have successfully promoted and sold cigarettes by concealing and misrepresenting their highly addictive nature. The Congressional Subcommittee on Health and the Environment commenced a public hearing March 25, 1994, on the potential regulation of nicotine-containing products under the Federal Food, Drug and Cosmetic Act. In the wake of the March 25, 1994, Congressional Hearings, spokespersons for the TI and Manufacturer Defendants have denied in nationwide television broadcasts and print publications that nicotine is addictive. On April 14, 1994, the chief executives of some of Manufacturer Defendants testified under oath before Congress and told the American public that nicotine is not addictive. Following the appearance of Manufacturer Defendants' executives before Congress, Philip Morris took out full-page newspaper ads that stated, in part: "Philip Morris does not believe cigarette smoking is addictive."

37. The American public is only now beginning to learn about the measures taken by the Manufacturer Defendants to conceal the truth about nicotine. On March 31, 1994,

Congressman Waxman released a copy of a previously secret Philip Morris-funded research study substantiating the addictive nature of nicotine. Philip Morris scientists, upon conducting tests, found strong evidence that nicotine might be addicting, which suggested further testing should be done. The experiment used in the study -- self-administration by rats -- is one of the primary tests used by the U.S. Food and Drug Administration, the U.S. Drug Enforcement Agency, and the World Health Organization to determine whether a drug is addictive. The research was submitted in 1983 to the scientific journal Psychopharmacology and was accepted for publication. Prior to publication, the journal was notified by the scientist that the article was being withdrawn "due to factors beyond [his] control." The scientist subsequently left Philip Morris, and in 1986, resubmitted a revised version of the article to the journal. After the article was accepted for publication again, the scientist was forced to withdraw it by Philip Morris.

38. If Manufacturer Defendants had disclosed their knowledge of the addictive nature of nicotine when they first acquired this knowledge, then the public would have learned about the addictiveness of nicotine many years ago. As a result, the scientific and medical community would have had access to critical secrets on the subject, which would have resulted in a more rapid popular determination and consensus on the subject. Manufacturer Defendants concealed and

continue to attempt to conceal the truth about nicotine in order to sustain the addictions of existing cigarette smokers and to "hook" thousands of new smokers every day, so that Manufacturer Defendants can continue to profit at the expense of the lives and health of the American public.

39. Not only do Defendants know and conceal that nicotine is an addictive drug, Plaintiff is informed and believes that Manufacturer Defendants intend that their products contain sufficient nicotine to satisfy addiction on the part of smokers, and therefore control the levels and/or bioavailability of nicotine in these products to create and sustain the addiction. It is this scheme to deceive New Mexicans that enables Manufacturer Defendants to sell their life-threatening products to tens of thousands of New Mexicans as their captive customers.

III. Manufacturer Defendants Manipulate the Level and/or Bioavailability of Nicotine in Cigarettes With the Intent and for the Purpose of Creating and Sustaining Addictions to their Products.

40. Plaintiff is informed and believes that Manufacturer Defendants control, or manipulate, the levels and/or bioavailability of nicotine in cigarettes. Manufacturer Defendants, or some of them, developed technology years ago to remove nicotine from tobacco and to control precisely the amount of nicotine in cigarettes. Nevertheless, Manufacturer Defendants continue to manufacture, market and sell their products with levels and/or bioavailability of nicotine that are sufficient to produce and sustain addiction. Rather than remove nicotine from cigarettes and smokeless tobacco -- and hence remove the addictive drug contained therein -- Manufacturer Defendants add nicotine to their cigarettes, through a variety of methods, to maintain levels and/or bioavailability of nicotine sufficient to make their cigarettes addictive to consumers.

41. Manufacturer Defendants prepare a substantial portion of the contents of their cigarettes through what is called a "Reconstitution process". Prior to the 1940s, the waste products from cigarettes -- tobacco leaf scraps and stems, dried tobacco dust, adhesive reinforcing fibers, mineral ash modifiers, humectants, and some other inexpensive materials -- were discarded. Thereafter, Manufacturer Defendants began to use these previously unusable materials to make reconstituted tobacco. As part of the process,

Manufacturer Defendants removed ingredients from these materials at an early stage of the process and replaced some of the nicotine in later stages. The reconstitution process allows Manufacturer Defendants to manufacture cigarettes at a lower cost by using less tobacco, which is the most expensive part of the cigarette, and by making up the difference in content with the reconstituted tobacco. By removing the nicotine and then carefully replacing as much nicotine as desired, Manufacturer Defendants are able to control the precise amount of nicotine in cigarettes.

42. LTR Industries, at the relevant time a subsidiary of Kimberly-Clarke Corporation, specializes in the tobacco reconstitution process and, as LTR says, in helping tobacco companies "control" their nicotine. The LTR reconstitution process is the most widely used in the world. An LTR advertisement, entitled "More Nicotine, Or Less," published in tobacco trade publications states:

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

In fact, the process described in the LTR advertisement can raise the level and/or bioavailability of nicotine beyond that which is naturally found in tobacco materials. In 1985,

a Tobacco Journal article describing the LTR process states:
"Those standard reconstituted Tobacco Products contained 0.7-1.0 nicotine. LTR Industries offers the possibility of increasing the nicotine content of the final sheet to a maximum of 3.5% A dramatic increase in tobacco taste and smoke is noted in the nicotine- fortified reconstituted tobacco."

43. Without informing New Mexicans, Manufacturer Defendants have long viewed cigarettes in terms of their nicotine delivery function. For example, Philip Morris' William L. Dunn Jr., wrote in a 1973 internal memorandum:

Why then is there not a market for nicotine per se, to be eaten, sucked, drunk, injected, inserted or inhaled as a pure aerosol? The answer, and I feel quite strongly about this, is that the cigarette is in fact among the most awe-inspiring examples of the ingenuity of man

The cigarette should be conceived not as a product, but as a package. The product is nicotine. The cigarette is but one of many package layers. There is the carton, which contains the pack, which contains the cigarette, which contains the smoke. The smoke is the final package. The smoker must rip off all of these packaged layers to get to that which he seeks Think of the cigarette as a storage container for [a] days' supply of nicotine Think of the cigarette as a dispenser for a dose unit of nicotine Think of a puff of smoke as the vehicle for nicotine Smoke is beyond question the most optimized vehicle of nicotine and the cigarette the most optimized dispenser of smoke

Likewise, a 1981 Lorillard study indicates that "current research is directed toward increasing the nicotine levels while maintaining or marginally reducing the tar deliveries."

44. Evidence of Manufacturer Defendants' intent and

ability to manipulate nicotine in cigarettes at a sufficiently high level and/or bioavailability to provide the "desired physiological activity" is found in years of patent applications. Some of Defendants' patent applications illustrate an intent and ability to control the amount of nicotine in cigarettes; to provide desired physiological effects; to increase nicotine content in cigarettes by adding nicotine to various parts of the cigarette; to manipulate nicotine levels and/or bioavailability in cigarettes; and to manipulate the rate at which the nicotine is delivered in the cigarettes. For example:

A. A 1966 Philip Morris patent application discusses an invention that "permits the release into tobacco smoke, in controlled amounts, of desirable flavorants, as well as the release, in controlled amounts and when desired, of nicotine into tobacco smoke.

B. A 1971 Philip Morris patent states:

It has long been known in the Tobacco Industry that in order to provide a satisfactory smoke, it is desirable to maintain a nicotine content of Tobacco Products at a uniform level. However, it is difficult to accomplish this result since the nicotine content of tobacco varies widely, depending on the type of tobacco and the conditions under which the tobacco was grown.

Maintaining the nicotine content at a sufficiently high level to provide the desired physiological activity, taste, and odor which this material imparts to the smoke, without raising the nicotine content through an undesirably high level, can thus be seen to be a significant problem in the tobacco art. The addition of nicotine to tobacco in such a way that it remains inert and stable in the product, and yet is released in a controlled amount into the smoke aerosol when the tobacco is paralyzed,

is a result which is greatly desirable.

The present invention provides a solution to this longstanding problem and results in accurate control of the nicotine which is released in tobacco smoke. By employing the nicotine-releasing agents in methods of the present invention, it is possible to incorporate exact amounts of nicotine into tobacco composition, which will remain constant over extended periods of time and which will ultimately yield a smoke containing a controlled amount of nicotine.

- C. Another 1971 Philip Morris patent application discusses a design to increase the nicotine content in the smoke of the tobacco product by adding nicotine. One of the expressed objects of the invention was to "provide an agent for the treatment of tobacco smoke whereby nicotine is easily released under controlled amounts." The same Philip Morris application explains that the proposed invention "is particularly useful for the maintenance of the proper amount of nicotine in tobacco smoke," and notes that "previous efforts have been made to add nicotine to Tobacco Products when the nicotine level in the tobacco was undesirably low."
- D. A 1980 Loews Corporation patent application discusses a process that "enables the manipulation of the nicotine content of tobacco material, such as cut leaf and reconstituted leaf, by removal of nicotine from a suitable nicotine tobacco source, or by the addition of nicotine to a low nicotine material."
- E. A 1986 R.J. Reynolds Tobacco Company patent indicates that Manufacturer Defendants can precisely manipulate the rate at which the nicotine is delivered in the cigarette: "It is a further object of this invention to provide a cigarette which delivers a larger amount of nicotine in the first few puffs of the cigarette than in the last few puffs."
- F. A 1991 R.J. Reynolds Tobacco Company patent application states that "processed tobaccos can be manufactured under conditions suitable to provide products having various nicotine levels."

45. Information about Manufacturer Defendants' manipulation of the nicotine level and/or bioavailability in cigarettes, with the intent and purpose of creating and sustaining addictions to their cigarettes, has only recently come to the public's attention. An ABC television show, "Day One," broadcast an episode February 28, 1994, entitled, "Smokescreen -- Cigarette Companies and Nicotine Levels," during which "Day One's" investigators reported their findings that Manufacturer Defendants have been carefully controlling the levels and/or bioavailability of nicotine in their products for years. "Day One's" investigators reported that, to verify that nicotine is being added to reconstituted tobacco in cigarettes, they went to the American Health Foundation which analyzed the reconstituted tobacco portion of several brands of R.J. Reynolds Tobacco Company cigarettes. According to "Day One," the samples tested had up to 70% of the nicotine that would be found in regular tobacco.

46. During the March 25, 1994, Congressional Hearings, FDA Commissioner Dr. David Kessler testified that accumulating evidence suggests that Manufacturer Defendants "may be controlling smokers' choice by controlling the level of nicotine in their products in a manner that creates and sustains an addiction in the vast majority of smokers." Dr. Kessler went on to say that some of "today's cigarettes may, in fact, qualify as high technology nicotine delivery systems that deliver nicotine in precisely calculated quantities --

quantities that are more than sufficient to create and sustain an addiction in the vast majority of individuals who smoke regularly." During the March 25, 1994 Hearing, Dr. Kessler and others presented evidence of Manufacturer Defendants' manipulation of nicotine levels and/or bioavailability, including reference to internal memoranda and more than 30 industry patents, several of which are identified in paragraph 33, above.

47. Just as Manufacturer Defendants deny that the nicotine contained in cigarettes is addictive, through their individual advertising and public relations campaigns and collectively through the TI, Manufacturer Defendants have denied unequivocally that they are engaged in controlling the level and/or bioavailability of nicotine in cigarettes for the purpose of developing and sustaining addiction to their products. Since the "Day One" program broadcast by ABC and the March 24, 1994 Congressional Hearings, spokespeople for Manufacturer Defendants, or some of them, have in nationwide television broadcasts and publications denied all the charges that Manufacturer Defendants manipulate nicotine levels and/or bioavailability in cigarettes. During their appearance before Congress on April 14, 1994, the chief executives of each of Manufacturer Defendants testified that their companies do not manipulate nicotine levels in or otherwise add nicotine to their cigarettes to create or sustain addiction to their products.

TOLLING OF THE STATUTE OF LIMITATIONS

48. Defendants have fraudulently concealed the facts as alleged above.

49. Manufacturer Defendants were under a duty to disclose their manipulation of nicotine levels and/or bioavailability in their cigarettes because this is non-public information over which they had exclusive control, and because they knew that this information was not generally available to New Mexicans and the Plaintiff.

COUNT I

**QUANTUM MERUIT FROM UNJUST ENRICHMENT
(ALL DEFENDANTS)**

50. Plaintiff re-alleges by reference the preceding paragraphs of this Complaint.

51. Defendants here realized significant profits from the manufacture, distribution and sale of tobacco and tobacco products in New Mexico. Such manufacture, distribution and sale has caused residents of New Mexico to suffer illnesses and diseases.

52. Plaintiff has expended substantial sums of money in the form of Medicaid reimbursements and reimbursements from other New Mexico government programs, described in paragraph 6 of this Complaint, to hospitals, health care providers and individuals for the treatment of tobacco and tobacco product related illnesses and diseases.

53. Defendants have not contributed to the expenditure

of said sums of money for treatment, and those payments have not met the costs of treatment of tobacco and tobacco product related illnesses and diseases.

54. Defendants have rather wrongfully appropriated to themselves the profits from manufacture, distribution and sale of tobacco and tobacco products.

55. Defendants' wrongful appropriation of profits from causing illness and disease has given them an unjust enrichment to the extent of the costs to Plaintiff as alleged.

56. Defendants' conduct has created a quasi-contract by which Defendants owe Plaintiff in quantum meruit the costs of treatment of tobacco and tobacco product related illnesses and diseases.

COUNT II

FRAUD (ALL DEFENDANTS)

57. Plaintiff re-alleges the preceding paragraphs of this Complaint.

58. As more fully set forth above, Defendants have made false representations regarding the serious adverse health effects of cigarettes and the addictive properties of cigarettes.

59. Defendants knew that these representations were false at the time they were made, or made the representations with reckless disregard as to whether they were true or false.

60. As more fully set forth above, Defendants knowingly

failed to disclose and actively took steps to conceal material information known to Defendants regarding the serious adverse health effects of cigarettes and the addictive properties of cigarettes.

61. Defendants failed to disclose these material facts and actively took steps to conceal them in order to induce unsuspecting members of the public to purchase and consume tobacco and tobacco-related products.

62. Defendants made the representations and material omissions with the intent to deceive and to induce Plaintiff and members of the public to rely on the representations to their detriment.

63. Plaintiff as well as hundreds of thousands of New Mexicans did in fact rely to their detriment on Defendants' false representations and material omissions.

64. As a direct and proximate result of Defendants' false representations and material omissions, thousands of New Mexicans, and Plaintiff, have suffered damages.

COUNT III

NEGLIGENT PERFORMANCE OF A VOLUNTARY UNDERTAKING (MANUFACTURER DEFENDANTS)

65. Plaintiff re-alleges the preceding paragraphs of this Complaint.

66. Manufacturer Defendants, or some of them, represented in the January 4, 1954 edition of the Albuquerque Journal that they would undertake a special responsibility and

duty to citizens of New Mexico, and the State of New Mexico: to aid and assist the research effort into all aspects of tobacco use and human health; to continue to research and otherwise undertake all possible efforts to learn all the facts and to discover the truth about smoking and health; and finally, to disclose to the State and its citizens complete and accurate information about the effects of cigarette smoking on human health.

67. Manufacturer Defendants, or some of them, recognized that their undertaking was necessary for the protection of the public health and that their conduct and representations would affect the smoking habits and health of the citizens of the State and the cost of health care.

68. Manufacturer Defendants failed to exercise reasonable care to protect the health of the citizens of the State.

69. Manufacturer Defendants have breached and continue to breach their responsibility and duty by failing to exercise reasonable care in carrying out their undertaking. Manufacturer Defendants' failure to use reasonable care in performing that duty that they voluntarily undertook to perform has increased the risk of harm to the public and increased the cost of health care for the State.

70. As a direct and proximate result of Manufacturer Defendants' conduct, Plaintiff has suffered and will continue to suffer substantial injuries and damages for which it is

entitled to recovery.

COUNT IV

**PRODUCTS LIABILITY
(MANUFACTURER DEFENDANTS)**

71. Plaintiff re-alleges the preceding paragraphs of this Complaint.

72. Manufacturer Defendants manufactured, distributed and sold tobacco products in New Mexico.

73. Manufacturer Defendants' product contained nicotine, a substance they knew was addictive to users of their product.

74. Those products were defective and unreasonably dangerous and proximately caused serious and severe health problems, including heart disease, lung cancer and respiratory illnesses, in the consumers of Manufacturer Defendants' products.

75. Manufacturer Defendants knew of these defects and withheld this knowledge from consumers.

76. Manufacturer Defendants were aware of remedial actions they could have taken to eliminate or lessen the detrimental effects of the use of their products.

77. Manufacturer Defendants consciously decided not to undertake the remedial actions to reduce or eliminate the dangers of their products. Manufacturer Defendants purposely withheld information regarding such remedial actions from consumers and regulators.

78. It was reasonably foreseeable to Manufacturer

Defendants that as a result of their conduct as alleged, Plaintiff would sustain the injuries alleged.

COUNT V

**BREACH OF IMPLIED WARRANTY
(ALL DEFENDANTS)**

79. Plaintiff re-alleges the preceding paragraphs of this Complaint.

80. By the manufacture, sale and distribution of tobacco and tobacco products, Defendants warranted the merchantability of those goods to be fit for the purpose of pleasurable consumption by smoking.

81. Defendants' tobacco and tobacco products have been unfit for the ordinary purposes for which they were intended.

82. This lack of fitness has caused illness, disease and death in a large number of New Mexicans who use and have used tobacco and tobacco products.

83. It was reasonably foreseeable that Defendants' breach of the implied warranty of merchantability would, and the same did, proximately cause the losses to Plaintiff alleged herein.

COUNT VI

**BREACH OF EXPRESS WARRANTY
(MANUFACTURER DEFENDANTS)**

84. Plaintiff re-alleges the preceding paragraphs of this Complaint.

85. From approximately 1954 until the present

Manufacturer Defendants, or some of them, have represented to the public that they would study the health effects of smoking and disclose the results of the studies to the public.

86. Manufacturer Defendants' representation that they would disclose health hazards created an express warranty that they would not sell tobacco and tobacco products if they created health hazards.

87. Manufacturer Defendants knew or should have known of the existence of scientific research that tended to demonstrate health hazards arising from smoking tobacco, did not communicate the information from the scientific studies, but nonetheless continued the manufacture, distribution and sale of tobacco and tobacco products.

88. Manufacturer Defendants' breach of their express warranty not to sell tobacco and tobacco products if negative scientific studies about tobacco products existed caused numerous New Mexico residents to begin and to continue smoking tobacco and tobacco products.

89. Numerous New Mexico residents have suffered illnesses, disease and death as a result of their use of tobacco and tobacco products.

90. Manufacturer Defendants' breach of the express warranty as alleged herein proximately caused Plaintiff to suffer the damages alleged herein.

COUNT VII

FAILURE TO WARN

(ALL DEFENDANTS)

91. Plaintiff re-alleges the preceding paragraphs of this Complaint.

92. Defendants knew, or should have known, that the nicotine in cigarettes can create a dependency or addiction in persons who smoke. As such, defendants had a duty to give adequate warning to the citizens of the State as to the potential of nicotine in cigarettes for creating dependence or addiction.

93. Defendants, however, failed to give adequate warning as to cigarettes' potential for creating dependence or addiction. Therefore, persons who might have been aware of the health hazards of smoking, but who were not aware of the potential dependency created by nicotine, may have begun smoking, and persons who have begun smoking may not continue voluntarily because of their dependency on nicotine even though they may be aware of the health hazards of smoking.

94. Defendants have breached and continue to breach their duty to warn the citizens of New Mexico of the potential for dependence on or addiction to the nicotine in cigarettes.

95. As a direct and proximate result of defendants' conduct, Plaintiff has suffered and will continue to suffer substantial injuries and damages as alleged for which it is entitled to recovery.

COUNT VIII

**CIVIL CONSPIRACY
(ALL DEFENDANTS)**

96. Plaintiff re-alleges the preceding paragraphs of this Complaint.

97. Beginning at least as early as the 1950's, and continuing until the present day, Defendants entered into a civil conspiracy with the intentional and unlawful purpose and effect of restraining and suppressing research on the harmful effects of smoking; restraining and suppressing the dissemination of information on the harmful effects of smoking; engaging in affirmative misrepresentations on the harmful effects of smoking; and restraining and suppressing the research, development, production, and marketing of a safer cigarette. In furtherance of Defendants' conspiracy, Defendants lent encouragement, substantial assistance, and otherwise aided and abetted each other with respect to these wrongful acts.

98. Defendants agreed to act jointly and to cooperate with each other in this conspiracy in order to seek to mislead the public. Through their united efforts of misrepresentation and concealment over the last four decades, Defendants have managed to control the medical and scientific information concerning smoking and health and thereby ensure, through joint representations and concealment, that the public remains ignorant of the true facts about smoking and health.

99. In furtherance of this conspiracy, Manufacturer Defendants formed the TIRC, its successor CTR and the TI, whose true purpose was not to discover and disclose the facts about smoking and health, but falsely to gain the public's confidence so that the cigarette manufacturers could suppress and conceal those facts more effectively.

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

101. As a result, tobacco consumers became seriously ill and required medical care for which the State of New Mexico was required to pay. The State of New Mexico is now entitled to recover such damages.

102. As a direct and proximate result of Defendants' wrongful conduct committed pursuant to the conspiracy, Plaintiff has suffered and will continue to suffer substantial injuries and damages.

103. As a direct and proximate result of Defendants' wrongful conduct committed pursuant to the conspiracy, Defendants are jointly and severally liable with respect to each cause of action described above.

COUNT IX

VIOLATIONS OF THE NEW MEXICO
UNFAIR PRACTICES ACT
(ALL DEFENDANTS)

104. Plaintiff re-alleges the preceding paragraphs of this Complaint.

105. The New Mexico Unfair Practices Act, Section 57-12-2 NMSA 1978, provides in part:

D. "unfair or deceptive trade practice" means any false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale ... of goods or services ... by any person in the regular course of his trade or commerce, which may, tends to or does deceive or mislead any person and includes but is not limited to:

(5) representing that goods or services have characteristics, ingredients, uses, benefits ... that they do not have...;

(7) representing that goods or services are of a particular standard, quality or grade ... if they are of another;

(14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive.

E. "unconscionable trade practice" means any act or practices in connection with the sale ... or in connection with the offering for sale ... of any goods or services ... which to a person's detriment:

(1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree.

106. Defendants, by engaging in the conduct described above, have violated and continue to violate the New Mexico Unfair Practices Act. Defendants' wrongful conduct includes but is not limited to:

a. Defendants' fraudulent, false, misleading and deceptive statements and practices relating to the issue of smoking and health, including intentional misrepresentations that there is no causal connection between cigarette smoking and adverse health effects and that cigarette smoking is not addictive;

b. Defendants' fraudulent, false, misleading and deceptive statements and practices relating to the industry's false promises to conduct and disclose objective research on the issue of smoking and health;

c. Defendants' fraudulent concealment of information relating to the issue of smoking and health and failure to disclose material facts, including intentional concealment and failure to disclose material facts related to the adverse health effects related to cigarette smoking and the fact that cigarette smoking is addictive.

107. Defendants' violations of the Unfair Practices Act were and continue to be willful.

108. Unless enjoined from doing so, Defendants will continue to violate the New Mexico Unfair Practices Act.

109. As a direct and proximate result of Defendants' wrongful conduct, the State of New Mexico has suffered and will continue to suffer substantial damage and injury.

COUNT X
VIOLATIONS OF THE NEW MEXICO RACKETEERING ACT
(MANUFACTURER DEFENDANTS)

110. Plaintiff re-alleges the preceding paragraphs of this Complaint.

111. Manufacturer Defendants have operated as an association in fact to engage in the fraudulent acts alleged herein. This association in fact is an enterprise within the meaning of the New Mexico Racketeering Act, NMSA 1978 § 30-42-3(C).

112. The fraudulent acts alleged herein constitute a pattern of racketeering activity within the meaning of NMSA 1978 § 30-42-3(D).

113. Manufacturer Defendants have each received income from the pattern of racketeering activity in which they have participated, and have invested that income to establish and operate the enterprise in violation of NMSA 1978 § 30-42-4(A).

114. Manufacturer Defendants have each used the pattern of racketeering activity in which they have participated to maintain an interest in and control of the enterprise in violation of NMSA 1978 § 30-42-4(B).

115. Manufacturer Defendants have each conspired to do the foregoing acts in violation of NMSA 1978 § 30-42-4(D).

116. Plaintiff has sustained the injuries alleged as a result of Manufacturer Defendants' conduct as alleged.

COUNT XI:
VIOLATIONS OF THE NEW MEXICO ANTITRUST ACT
(MANUFACTURER DEFENDANTS)

117. Plaintiff re-alleges the preceding paragraphs of this Complaint.

118. Beginning at a time uncertain, but at least as early as 1954 and continuing to the present, Manufacturer Defendants entered into a contract, agreement, combination or conspiracy in unreasonable restraint of trade and commerce in the market for cigarettes and other tobacco products in the United States, including the State of New Mexico, in violation of Section 57-1-1 of the New Mexico Antitrust Act, NMSA 1978.

119. Manufacturer Defendants' contract, agreement, combination or conspiracy had the purpose and effect of eliminating competition in the market for cigarettes and other tobacco products in New Mexico and controlling that market, by restraining and suppressing the dissemination of information about the quality, composition and safety of cigarettes and tobacco products, thereby eliminating alternative products from the market, restricting consumer choice and causing consumers to suffer tobacco-related illnesses and health care costs. These health care costs flow directly from, and are inextricably intertwined with Manufacturer Defendants' anticompetitive suppression of product information.

120. In furtherance of their contract, agreement, combination or conspiracy to eliminate competition, including

their suppression of product information, Manufacturer Defendants, or some of them, restrained and suppressed research on the harmful effects of cigarettes and other tobacco products; restrained and suppressed disclosure of information on the addictive properties of nicotine and information on the addictive properties of nicotine and other harmful effects of cigarettes and tobacco products; and restrained and suppressed research, development, production and marketing of alternative, higher quality and safer cigarettes and tobacco products, thereby eliminating future as well as current competition for their products.

121. In furtherance of their conspiracy, Manufacturer Defendants, or some of them, agreed to undertake joint funding and control of studies relating to the effect of tobacco products on human health and agreed to undertake joint funding and control over trade publications and promotion and marketing efforts. Through these and other agreements, understandings and joint undertakings, Manufacturer Defendants conspired to suppress and withhold information from consumers, state and federal governments, medical and health care entities and the public at large concerning the causal relationship between tobacco products and various diseases.

122. In furtherance of their conspiracy, Manufacturer Defendants, or some of them, formed the TIRC, its successor CTR, and the TI, with the actual purpose of fraudulently concealing their suppression of research and information

relating to the causal relationship between tobacco products and various diseases.

123. Manufacturer Defendants' contract, agreement, combination or conspiracy has had the purpose and effect of inflating the price of and demand for their cigarettes and tobacco products; of erecting barriers to the market and protecting the structure of the market from competition; of suppressing information that otherwise would have affected consumer and regulatory behavior; and causing citizens of New Mexico to purchase cigarettes and tobacco products when they otherwise would not have done so. Manufacturer Defendants' conspiracy has raised and stabilized prices, wrongfully increased their profits, restrained and suppressed competition in the research, development, production and sale of alternative products and standardized the tobacco products manufactured and sold in the United States.

124. Manufacturer Defendants' contract, agreement, combination or conspiracy also increased tobacco-related illnesses and associated health care costs and suppressed research into and treatment of tobacco-related illnesses. The cost of medical care for tobacco-related illnesses is a foreseeable and necessary consequence of Manufacturer Defendants' conspiracy. These medical care costs are inextricably intertwined with the injury inflicted by Manufacturer Defendants on competition in the market for tobacco products and flow directly from their conspiracy to

suppress and withhold product information and suppress competition for alternative, higher quality and safer cigarettes and tobacco products.

125. Through their conspiracy, Manufacturer Defendants have caused serious injury to the business and property of New Mexico citizens, who would not have purchased cigarettes for the same price and in the same quantity in the absence of Manufacturer Defendants' conspiracy and would not have suffered tobacco-related illnesses and associated health care costs.

126. Through their conspiracy, Manufacturer Defendants have caused serious injury to the business and property of Plaintiff in the form of increased costs of medical care for its citizens. Through its Medicaid program, state employee retirement agreements, state and other governmental employee insurance plans, and other statutory and contractual duties, Plaintiff has been required to pay many of these increased costs.

127. Unless enjoined from continuing this course of conduct, Manufacturer Defendants will continue to engage in a contract, agreement, combination or conspiracy in violation of the New Mexico Antitrust Act, and Plaintiff will continue to suffer substantial injury to its business and property as a direct result of their anticompetitive activity.

PRAYER FOR RELIEF

Plaintiff requests that the Court issue an order and judgment against Defendants, jointly and severally, as follows:

- a. Awarding the State its actual damages;
- b. Awarding punitive damages;
- c. Ordering Defendants to undertake an accounting of their profits from the manufacture, sale and distribution of tobacco products in New Mexico under such terms as the Court deems proper.
- d. Declaring that Defendants have engaged in unfair, deceptive and unconscionable trade practices in violation of the laws of the State of New Mexico;
- e. Enjoining Defendants and their respective officers, directors, employees, agents, servants and all persons acting in concert with them, directly or indirectly, from engaging in any unfair, deceptive or unconscionable trade practices in violation of the laws of the State of New Mexico;
- f. Ordering Defendants to disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective officers, directors, employees, agents, affiliates, servants and all persons acting in concert with them, that relates to the issue of smoking and health;
- g. Ordering Defendants to fund a campaign of corrective public advertising relating to the issue of smoking and health

to be controlled and administered by an independent third party;

h. Ordering Defendants to take reasonable and necessary affirmative measures to prevent the distribution and sale of cigarettes to minors;

i. Ordering Defendants to fund clinical smoking cessation programs in the State of New Mexico, said programs to be administered and controlled by an independent third party;

j. Awarding civil penalties against each Defendant in an amount equal to \$5,000 for each separate willful violation of the New Mexico Unfair Practices Act;

k. Declaring that Manufacturer Defendants have violated the provisions of the New Mexico Racketeering Act;

l. Enjoining Manufacturer Defendants and their respective officers, directors, employees, agents and servants and all persons acting in concert with them from any further violations of the New Mexico Racketeering Act;

m. Awarding Plaintiff three times the damage it has sustained, and will sustain, as a result of the New Mexico Racketeering Act violations alleged herein;

n. Awarding Plaintiff recovery under Section 57-1-7 of the New Mexico Antitrust Act against each Manufacturer Defendant in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) for each violation of the Antitrust Act;

o. Awarding Plaintiff three times the damages it has

sustained, and will sustain, as a result of the antitrust violations alleged herein, under Section 57-1-3 of the New Mexico Antitrust Act;

- p. Awarding attorney fees, costs and expenses; and
- q. Providing for such other and further relief as the Court deems equitable and just.

Respectfully submitted,

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