

DANIEL E. LUNGREN, Attorney General
of the State of California

1 FLOYD D. SHIMOMURA (State Bar No. 58294)
HERSCHEL T. ELKINS (State Bar No. 27279)
2 CHARLTON G. HOLLAND, III (State Bar No. 36404)
THOMAS GREENE (State Bar No. 57159)
3 Senior Assistant Attorneys General
1300 I Street, Suite 125
4 Post Office Box 944255
Sacramento, California 94244-2550
5 Telephone: (916) 324-7874 (Greene)

6 (All Counsel Listed on Last Page)

7 Attorneys for Plaintiffs

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SACRAMENTO

10	PEOPLE OF THE STATE OF CALIFORNIA ex)	Case No. 97AS03031
	rel. DANIEL E. LUNGREN, ATTORNEY)	
11	GENERAL OF THE STATE OF CALIFORNIA;)	FIRST AMENDED COMPLAINT
	S. KIMBERLY BELSHÉ, DIRECTOR OF)	FOR RECOVERY OF MEDI-CAL
12	HEALTH SERVICES OF THE STATE OF)	COSTS AND CIVIL PENALTIES
	CALIFORNIA,)	AND INJUNCTIVE RELIEF FOR
13)	VIOLATIONS OF THE CARTWRIGHT
	Plaintiffs,)	ACT; THE CALIFORNIA FALSE
14)	CLAIMS ACT;
	v.)	AND THE UNFAIR COMPETITION
15)	ACT
)	
16	PHILIP MORRIS, INC.; R.J. REYNOLDS)	
	TOBACCO COMPANY; BROWN &)	
17	WILLIAMSON TOBACCO CORPORATION;)	
	B.A.T INDUSTRIES, P.L.C.; BRITISH)	
18	AMERICAN TOBACCO COMPANY;)	
	LORILLARD TOBACCO COMPANY, INC.;)	
19	AMERICAN TOBACCO COMPANY, INC.;)	
	UNITED STATES TOBACCO COMPANY;)	
20	HILL & KNOWLTON, INC.; THE COUNCIL)	
	FOR TOBACCO RESEARCH-U.S.A., INC.;)	
21	TOBACCO INSTITUTE, INC.; SMOKELESS)	
	TOBACCO COUNCIL, INC. and DOES 1)	
22	through 200, inclusive,)	
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23	Defendants.)	
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The People of the State of California, by and through Daniel E. Lungren, Attorney
General of the State of California, and S. Kimberly Belshé, in her official capacity as Director of Health

Services for the State of California, allege on information and belief as follows:

PARTIES

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3 1. Plaintiff Daniel E. Lungren is the duly elected Attorney General of the State of
4 California and is the chief law officer of the State. (Cal. Const., art. 5, § 13.) He is authorized by
5 Business and Professions Code section 16750 et seq. to bring actions to enforce the State's antitrust
6 statutes. He is authorized by Government Code section 12652 to bring a civil action against persons
7 violating the California False Claims Act, Government Code sections 12650 et seq. Finally, he is
8 authorized by Business and Professions Code section 17206 to bring actions to enforce the State's
9 statutes governing unfair competition.

10 2. Plaintiff S. Kimberly Belshé is the Director of Health Services of the State of
11 California. Plaintiff Belshé administers the Department of Health Services (“Health
12 Services
13 ”) which is the single state agency responsible for administering and managing the California Medical
14 Assistance Program (“Medi-Cal”) pursuant to Welfare and Institutions Code section 14000 et seq.
15 Plaintiff Belshé is authorized by Welfare and Institutions Code section 14124.71 to bring an action
16 against any person who is liable for an injury to a Medi-Cal beneficiary to recover the reasonable value
17 of Medi-Cal benefits provided or to be provided to the Medi-Cal beneficiary because of such injury.

18 3. Defendant Philip Morris, Inc. (“Philip Morris”) is a Virginia corporation whose
19 principal place of business is 120 Park Avenue, New York, New York 10017. Philip Morris
20 manufactures, advertises, promotes and sells Philip Morris, Merit, Cambridge, Marlboro, Benson &
21 Hedges, Virginia Slims, Alpine, Dunhill, English Ovals, Galaxy, Players, Saratoga, and Parliament
22 cigarettes and other tobacco products throughout the United States. Philip Morris advertises, promotes
23 and sells its tobacco products throughout the State of California.

24 4. Defendant Brown & Williamson Tobacco Corporation (“Brown &
25 Williamson”) is a Delaware corporation whose principal place of business is 1500 Brown & Williamson
26 Tower, Louisville, Kentucky 40202. Brown & Williamson manufactures, advertises, promotes and
27 sells Kool, Raleigh, Barclay, Belair, Capri, Richland, Loreda,
28 Eli Cutter, and Viceroy cigarettes and other tobacco products throughout the United States. Brown &

Williamson advertises, promotes and sells tobacco products throughout the State of California.

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2 5. Defendant R.J. Reynolds Tobacco Company (“Reynolds”) is a New Jersey
3 corporation whose principal place of business is Fourth and Main Streets, Winston-Salem, North
4 Carolina 27102. Reynolds manufactures, advertises, promotes and sells Camel, Vantage, Now, Doral,
5 Winston, Sterling, Magna, More, Century, Bright Rite and Salem cigarettes and other tobacco products
6 throughout the United States. Reynolds advertises, promotes and sells its products throughout the State
7 of California.

8 6. Defendant B.A.T Industries, p.l.c. (“B.A.T Industries”) is a British corporation
9 whose principal place of business is Windsor House, 50 Victoria Street, Town of London; defendant
10 British American Tobacco Company (“BATCO”) is a British corporation, whose principal place of
11 business, on information and belief, is Windsor House, 50 Victoria Street, Town of London. At all
12 times material hereto, and until in or about 1976, defendant BATCO was the parent and sole
13 shareholder of defendant Brown & Williamson. In or about 1976, through a complex scheme of
14 corporate reorganization, defendant B.A.T Industries became, and remains today, the successor in
15 interest to BATCO, and acquiror of all of BATCO’s assets, liabilities, and corporate goodwill.
16 Following the referenced corporate reorganization, all the former directors of BATCO became the
17 directors of B.A.T Industries, and the Chief Executive Officer of BATCO became the Chief Executive
18 Officer of B.A.T Industries. Through a succession of intermediary corporations and holding companies,
19 B.A.T Industries is now the sole shareholder of defendant Brown & Williamson. BATCO and B.A.T
20 Industries have placed cigarettes and other tobacco products into the stream of commerce with the
21 expectation that substantial sale of tobacco and other tobacco products would be made in the United
22 States and in the State of California. BATCO and B.A.T Industries have also, through their agents,
23 subsidiaries, and/or associated companies, participated in the conspiracy described below by, among
24 other things, conducting significant research for Brown & Williamson on the topic of smoking, disease
25 and addiction and, on information and belief, assisting Brown & Williamson in removing sensitive and
26 inculpatory documents from the United States.

27 7. On information and belief, and from in or around 1992 to the present. B.A.T
28 Industries has intentionally up streamed billions of dollars from Brown & Williamson, and maintained
Brown & Williamson’s substantial long term debt, with the intent and effect of rendering said subsidiary

insolvent and unable to respond to an award of damages in this and similar litigation.

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2 8. Defendant LORILLARD Tobacco Company, Inc. (“LORILLARD”) is a
3 Delaware corporation whose principal place of business One Park Avenue, New York, New York
4 10016. Lorillard manufactures, advertises, promotes and sells Old Gold, Kent, Triumph, Satin, Max,
5 Spring, Newport, and True cigarettes and other tobacco products throughout the United States.
6 Lorillard advertises, promotes and sells its tobacco products throughout the State of California.

7 9. Defendant American Tobacco Company, Inc. (“American Tobacco”) is a
8 Delaware corporation whose principal place of business is Six Stamford Forum, Stamford, Connecticut
9 06904. American Tobacco manufactured, advertised, promoted and sold Lucky Strike, Pall Mall,
10 Tareyton, American, Malibu, Montclair, Newport, Misty, Iceberg, Silk Cut, Silva Thins, Sobrania, Bull
11 Durham, and Carlton cigarettes and other tobacco products throughout the United States. American
12 Tobacco advertised, promoted and sold its tobacco
13 products throughout the State of California. In 1994, American Tobacco was sold to British-American
14 Tobacco Co., a company related to B.A.T Industries, P.L.C., the parent of Brown & Williamson.

15 10. Defendant United States Tobacco Company (“U.S. Tobacco”) is a Delaware
16 corporation with its principal place of business at 100 West Putnam Avenue, Greenwich, Connecticut.
17 U.S. Tobacco manufactures, advertises, promotes and sells Sano cigarettes. U.S. Tobacco also
18 manufactures, advertises and sells more than 88% of the smokeless tobacco (snuff and chewing
19 tobacco) sold in the United States under various brand names including Happy Days, Skoal and
20 Copenhagen. U.S. Tobacco advertises, promotes and sells its tobacco products throughout the State
21 of California.

22 11. Hill & Knowlton, Inc. (“Hill”) is a public relations firm whose principal place of
23 business is 420 Lexington Avenue, New York, New York. Hill was the primary advertising agency for
24 Philip Morris, Reynolds, American Tobacco, Lorillard, The Tobacco Institute Research Committee
25 (“TIRC”), and The Council for Tobacco Research-U.S.A. (“CTR”). As such, Hill aided and conspired
26 with these defendants in doing the things hereinafter alleged, including, but not limited to, creating false
27 information concerning the link between smoking and cancer and other health hazards, the addictive
28 nature of nicotine, and the true nature of the relationship between TIRC/CTR and the tobacco industry.

12. Defendant Tobacco Institute, Inc. (“Tobacco Institute”) is a New York non-

1 profit corporation with its principal place of business at 1875 I Street Northwest, Suite 800,
2 Washington, D.C. 20006. Tobacco Institute is operated as the Tobacco Companies'
3 public relations and lobbying arm and as their agent and employee. As such, it acted to facilitate and
4 further the unlawful acts in or affecting the State of California set forth in this complaint.

5 13. Defendant the Council for Tobacco Research-U.S.A., Inc. ("CTR"), the
6 successor to the Tobacco Institute Research Committee ("TIRC"), is a New York non-profit
7 corporation with its principal place of business at 900 3rd Avenue, New York, New York 10022.
8 CTR is operated as the Tobacco Companies' public relations and lobbying arm and as their agent and
9 employee, it acted to facilitate and further the unlawful acts in or affecting the State of California set forth
10 in this complaint. By way of example, the Defendant Tobacco Companies created TIRC, and later
11 CTR, with the intent of suppressing information from the consuming public and from public health
12 officials or others who may have taken steps to inform or safeguard the public.

13 14. Defendant Smokeless Tobacco Council, Inc. ("STC") is a New York non-
14 profit corporation whose principal place is 1627 K Street, Northwest, Washington, D.C.. STC, which
15 was ostensibly formed to support objective research into the biologic consequences of smokeless
16 tobacco, is operated as the Tobacco Companies' public relations and lobbying arm and, as their agent
17 and employee, it acted to facilitate and further the unlawful acts set forth in this complaint in or affecting
18 the State of California. By way of example, STC was reliably informed that nicotine is equally addictive
19 whether delivered by cigarette or by smokeless tobacco products, but failed to disclose that information
20 to consumers or to public health officers or others who may have taken action to inform or safeguard
21 the public.

22 15. The true names and capacities of defendants sued in the Complaint under the
23 fictitious names of Does 1 through 200, inclusive, are unknown to plaintiffs who therefore sue such
24 defendants by such fictitious names.

25 16. All the defendants described in paragraphs 3 through and 10 -- Philip Morris,
26 Inc., Brown & Williamson, R. J. Reynolds, B.A.T Industries, BATCO, Lorillard, American Tobacco
27 and U.S. Tobacco -- shall collectively be referred to as "Defendant Tobacco Companies" in this
28 complaint.

17. Whenever reference is made in this complaint to any act of defendants, such

1 allegation shall mean that each defendant acted individually and jointly with the other defendants named
2 in that cause of action.

3 18. Whenever reference is made in this complaint to any act of any corporate or
4 other business defendant, such allegation shall mean that such corporation or other business did the acts
5 alleged in the complaint through its officers, directors, employees, agents and/or representatives while
6 they were acting within the actual or ostensible scope of their authority.

7 19. At all relevant times, each of the defendants has acted as an agent,
8 representative, or employee of each of the other defendants and has acted within the course and scope
9 of said agency or representation or employment with respect to the causes of action in this complaint.

10 20. At all relevant times, each defendant has committed the acts, caused others to
11 commit the acts, or permitted others to commit the acts referred to in this complaint

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1 and has made, caused, or permitted others to make the deceptive statements referred to in this
2 complaint.

3 21. While not named as a defendant herein, Liggett & Myers, Inc. ("Liggett") is a
4 Delaware corporation whose principal place of business is Main and Fuller, Durham, North Carolina.
5 Liggett manufactures, advertises, promotes and sells Chesterfield, Decade, L&M, Pyramid, Dorado,
6 Eve, Stride, Generic, and Lark cigarettes and other tobacco products throughout the United States.
7 Liggett advertises, promotes, and sells its tobacco products throughout the State of California.

8 22. Whenever reference is made in this complaint to the Tobacco Companies, such
9 allegation shall mean the Defendant Tobacco Companies and Liggett.

10 **VENUE**

11 23. The violations of law alleged in this Complaint occurred in Sacramento County
12 and in other counties in California, or occurred outside California but were intended by defendants to
13 influence consumers and prospective consumers of the Tobacco Companies' products in Sacramento
14 County and in other counties in California, and consumers in Sacramento County and elsewhere in the
15 State of California purchased the cigarettes and other tobacco products manufactured and sold by the
16 Defendant Tobacco Companies.

17 **NATURE OF TRADE AND COMMERCE**

18 24. For purposes of this action, cigarettes and smokeless tobacco products
19 constitute relevant product markets. The Tobacco Companies manufacture, ship and sell tobacco
20 products throughout the United States and throughout the State of California. The relevant geographic
21 markets are the United States and the State of California.

22 25. Six tobacco companies, including American Tobacco, Reynolds, Brown &
23 Williamson, Philip Morris, Liggett and Lorillard, dominate and control the market for cigarettes and
24 other tobacco products in the United States and the State of California. Two companies, Philip Morris
25 and Reynolds, are dominant in the industry, with national market shares at approximately 46% and
26 25%, respectively.

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28 **FACTUAL ALLEGATIONS**

29 26. In the 1940's and early 1950's, scientists and doctors began finding a link

1 between cigarette smoking and health. The Tobacco Companies were, at that time, aware of this
2 research.

3 27. Until the mid-1950's, in public statements and advertisements, the Tobacco
4 Companies disseminated explicit and implied health related claims about their products and smoking.
5 These claims included, but were not limited to, deceptive representations of safety and medical
6 endorsements.

7 28. Through at least the 1950's, the Tobacco Companies introduced products that
8 were claimed to be safer for consumers. The Tobacco Companies introduced and promoted filtered
9 cigarettes as being better for consumers' health. For example, in 1952 Lorillard introduced the Kent
10 micronite filter, which Lorillard represented removed seven times more tar and nicotine than any other
11 cigarette. Filtered cigarettes were very popular with consumers.

12 29. As demonstrated by the health-related advertising claims and the introduction
13 and promotion of filtered cigarettes, the Tobacco Companies understood that consumers were
14 concerned about their health and wanted safer products. During this period, the Tobacco Companies
15 competed vigorously on the basis of health and safety, in their advertising and promotional material and
16 in the products they marketed.

17 30. In the early 1950's, two significant scientific studies were published warning of
18 the health hazards of cigarettes. These studies not only confirmed the relationship between cancer and
19 smoking, but they also established the causal link between exposure to tobacco products and cancer.

20 31. In December 1953, Hill organized a meeting of Philip Morris, Brown &
21 Williamson, Reynolds, Lorillard, American Tobacco, and U.S. Tobacco to discuss the effect of these
22 health studies. The attendees discussed forming an association specifically charged with a public
23 relations function of disinformation and chose Hill to hire the staff, disburse the funds, and play a central
24 role in this function. Shortly thereafter, Hill presented a detailed recommendation which included the
25 creation of the Tobacco Industry Research Committee ("TIRC") which was to, and did, operate for the
26 primary purpose of suppressing information from the consuming public and from public health officials or
27 others who may have taken steps to inform or safeguard the public.

28 32. As a result of this meeting, the Defendant Tobacco Companies and Hill formed
TIRC. Hill controlled the operation of TIRC and TIRC's successor, the Council for Tobacco Research

1 (“CTR”). There was substantial staff overlap between Hill and TIRC and CTR. TIRC and later CTR
2 were intended to provide a vehicle for the Tobacco Companies' joint actions.

3 33. In 1964, TIRC changed its name to Council for Tobacco Research (CTR).

4 34. Also in 1964, Liggett joined the TIRC/CTR.

5 35. Another organization, the Tobacco Institute, was formed by the Tobacco
6 Companies in 1958. It performed a variety of functions for the Tobacco Companies in relation to their
7 joint activities, including exchanges of information, policing the agreement and coordinating activities. By
8 way of example, Tobacco Institute placed false advertisements on behalf of the Tobacco Companies
9 stating that, in the interest of absolute objectivity, they were supporting totally independent research
10 efforts with completely non-restrictive funding and that the tobacco industry recognized and accepted
11 the responsibility to promote the progress of independent scientific research in the field of tobacco and
12 health. Tobacco Institute knew at the time it placed those advertisements that the statements were
13 deceptive.

14 36. Beginning with the meeting in December 1953, and continuing to the present,
15 the defendants, and each of them, and their coconspirators, formed and maintained an illegal
16 combination to restrain and manipulate health information about tobacco and cigarettes and to restrain
17 and limit the development of new products in order to stabilize and/or increase the market for cigarettes
18 and other tobacco products.

19 37. The tools used by the conspirators to achieve their goals include: a campaign of
20 disinformation by misrepresenting the health effects of smoking and by suppressing research relating to
21 the dangers of cigarettes, while purporting to provide honest, unbiased information regarding the safety
22 of tobacco and cigarettes; misleading the public about the addictive qualities of nicotine; agreeing among
23 themselves not to conduct individual research on the issue of health and tobacco; and suppression of
24 research, development, and marketing of safer cigarettes.

25 38. The purpose and effect of this conspiracy has been to unreasonably restrain and
26 to stabilize the market for cigarettes and other tobacco products.

27 39. Defendant TIRC placed an advertisement in the newspapers of the State of
28 California on January 4, 1954, which promised that the tobacco industry had undertaken a special and
continuing duty to protect the public health by representing that it would conduct

1 and disclose unbiased and authenticated research on the health risks of cigarette smoking. The issuance
2 of this publication was an integral step in the conspiracy to suppress and conceal information that might
3 reduce the sale of tobacco products.

4 40. Despite this statement, TIRC and the Tobacco Companies did not live up to
5 their commitment. TIRC, and later CTR, developed and implemented a coordinated, industry-wide
6 strategy, on behalf of the Tobacco Companies, to mislead and confuse the public about the dangers of
7 smoking, by suppressing information about tobacco and cigarettes and by challenging or diluting any
8 negative information that became public. This strategy included the dissemination of articles,
9 publications and advertisements that misrepresented scientific knowledge about the health effects of
10 smoking and the addictive nature of nicotine, the suppression of research by tobacco industry scientists
11 relating to the dangers of smoking and the addictive qualities of nicotine, and wrongful claims of privilege
12 in order to keep documents and information from the public.

13 41. In 1964, in furtherance of the conspiracy, CTR formed a "Special Projects
14 Division" as a method to create an artificial attorney-client and attorney work product privilege for
15 projects of the Division, so that the Tobacco Companies could conceal unfavorable information about
16 tobacco products. A series of research grants designated as CTR "Special Projects" were developed
17 by defendants in a manner so as to artificially cloak this work with the protection of the attorney-client
18 or attorney work product privilege. Defendants have used the CTR Special Projects Division to
19 conceal accurate information that was harmful to the object of the Tobacco Companies' conspiracy.
20 Defendants shielded company documents with artificial claims of attorney-client privilege and as
21 attorney work product and made documents unavailable by sending them out of the United States so
22 that they would not be discovered in legal proceedings in the United States. To this day the Tobacco
23 Companies have kept research from the Special Projects Division shielded from public scrutiny. The
24 artificial attorney-client and attorney work product privileges the Tobacco Company Defendants
25 created were part of a scheme intended to cover-up and conceal over forty years of misconduct and
26 illegal actions.

27 42. In furtherance of this conspiracy, the Tobacco Companies agreed among
28 themselves to limit individual research.

43. In furtherance of this conspiracy, the Tobacco Companies agreed not to

1 develop and market safer cigarettes. All defendants knew such products would have significant effects
2 on the Tobacco Companies' joint defense efforts, because they had taken the position in litigation that
3 there was no alternative design for cigarettes. In addition, defendants knew that the introduction of safer
4 cigarettes would imply other cigarettes were not safe. Defendants stopped and/or suppressed
5 laboratory research on safer cigarettes. While some defendants, in violation of the agreement, did work
6 to develop safer cigarettes, none of these products were marketed, except in limited test markets. For
7 example, in 1968, Liggett stopped marketing a "safer cigarette" because it was threatened with
8 retaliation by industry leader Philip Morris.

9 44. Defendants have represented to the consuming public that the Tobacco
10 Companies would conduct and disclose unbiased research on the health risks of cigarette smoking to
11 the smoker and health risks to non-smokers who are recipients of second-hand smoke, and that CTR
12 would fully and honestly publicize any information it obtained implicating cigarette smoking and ingestion
13 of other tobacco products as causing human disease. Although CTR obtained such information and
14 although such information was known to defendants, CTR and the other defendants concealed that
15 information from the consuming public and from public health officials or others who may have taken
16 steps to inform or safeguard the public.

17 45. Defendants have claimed nicotine is not addictive, when they knew that it was.
18 Defendants have assured the consuming public that they would disclose information concerning the
19 addictive nature of nicotine and although they have continually denied they have such information, they
20 have been in possession of such information. By way of example, researchers working for Philip Morris
21 confirmed the addictive nature of nicotine and attempted
22 to develop a synthetic form of nicotine that would avoid its cardiovascular complications. Philip Morris
23 fired the researchers, closed their laboratory, and threatened them with legal action if they published
24 their work.

25 46. In furtherance of selling their "lite" or "light" cigarettes, the defendants have
26 represented that these products are healthier and have less tar and nicotine than regular cigarettes. In
27 fact, the amount of nicotine in these cigarettes is higher than the amount set forth on the cigarette
28 package; the amount of nicotine in these cigarettes is equivalent to the amount of nicotine in standard
cigarettes; and such cigarettes are not healthier for consumers than are "regular" cigarettes.

1 47. Defendants have manipulated the amount of nicotine in cigarettes and other
2 tobacco products, in order to maintain and increase their market for tobacco products. Defendants
3 have failed to disclose these facts.

4 48. The Tobacco Companies have specifically targeted minors through their
5 advertisement and marketing campaigns in order to induce minors to start smoking cigarettes and in
6 order to increase cigarette sales to minors. The Tobacco Companies need to induce minors to start
7 smoking in order to maintain their customer base. The Tobacco Companies have known for years that
8 most people who are addicted to smoking cigarettes begin smoking cigarettes as minors. According to
9 a 1994 U.S. Surgeon General's report, 3,000 children become regular smokers each day.

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11 49. The Tobacco Companies have specifically targeted youthful consumers,
12 including children, in their advertising with sophisticated promotional schemes. By way of example,
13 Reynolds in a secret memorandum, stated that evidence is available that the 14 to 18-year-old market is
14 an increasing segment of the smoking population and that Reynolds must soon establish a successful
15 new brand in that market in order to maintain its industry position. It also wrote to public school
16 principals asking that the principals inform students that scientists do not know the causes of chronic
17 diseases reported to be associated with smoking.

18 50. Several brands were repositioned in the market to appeal to young consumers.

19 51. The Tobacco Companies have developed advertising imagery intended to
20 appeal to children. The Tobacco Companies have employed various techniques to induce children to
21 smoke or to increase their consumption of cigarettes, including the give-away of T-shirts, caps and other
22 items with decals or graphics associated with tobacco products, promoting sporting events and other
23 activities associated with successful and/or healthy athletes, associating cigarette smoking with
24 independence and freedom from authority, with success, with risk-taking, with sexual attractiveness, and
25 with a healthful, athletic, youthful and glamorous lifestyle, and by emphasizing girls' and young women's
26 interests in slim and feminine products. Marlboro was transformed from a red-tipped cigarette for
27 women to the cigarette for manly cowboys, and Philip Morris developed the "Joe Camel" cartoon
28 character.

 52. The Tobacco Companies further target children as consumers by the placement

1 of their advertising. For example, cigarette advertisements are conspicuous in youth-oriented
2 publications. As a further example, Reynolds ordered its employees to identify stores near high schools
3 so as to increase its marketing efforts in those locations. The California Department of Health Services,
4 in a July 1995 report, found that stores within 1,000 feet of a school had significantly more tobacco
5 advertising and promotion than the average store and that stores near schools were more likely to have
6 at least one tobacco advertisement placed next to a candy display than were other stores.

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8 53. The Tobacco Institute and several Tobacco Companies have begun public
9 relations campaigns which purportedly aim to discourage children from smoking. In reality, they are a
10 pro-smoking subterfuge. The only reason given children for not smoking is that smoking, like marriage
11 and driving, is for "grown-ups". By describing smoking as an "adult" decision or as something "adults"
12 can do safely, tobacco companies make smoking more attractive to children. None of the materials
13 developed by these public relations campaigns discloses to children the real risks of smoking.

14 54. U.S. Tobacco aimed its smokeless tobacco sales campaigns at young people to
15 such an extent that the percentage of its advertising budget for "starter brands" such as Happy Days,
16 Skoal Bandits, and Skoal Long Cut was more than 20 times the percentage of sales for those brands.
17 The "starter brands" have low nicotine and are utilized to adjust the young user to smokeless tobacco
18 and to avoid rejection of the product. When accustomed to the "starter brand", the user is then
19 introduced to a product with much greater nicotine.

20 55. The Medi-Cal program, Welfare and Institutions Code section 14000 et seq., is
21 jointly funded by the federal government and the State on a fifty-fifty basis. The State of California
22 through the Medi-Cal program pays for necessary medical treatment for approximately 5½ million
23 Medi-Cal beneficiaries or those who otherwise meet the eligibility requirements for receipt of Medi-Cal
24 benefits. Thousands of these Medi-Cal beneficiaries are receiving treatment for tobacco-related injuries
25 as a result of using tobacco products from the Defendant Tobacco Companies.

26 **FIRST CAUSE OF ACTION**
Recovery of Medi-Cal Expenditures

27 **(Welfare and Institutions Code section 14124.71)**

28 56. Plaintiff S. Kimberly Belshé restates and realleges and incorporates herein the

foregoing paragraphs 1 through 55 of this Complaint.

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2 57. Over the years and continuing to the present time, the Defendant Tobacco
3 Companies placed on the market defective tobacco products, knowing that they would
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5 be used without inspection for defects, which have caused injury to human beings, including many who
6 were and are California Medi-Cal beneficiaries.

7 58. The Defendant Tobacco Companies' products were defectively designed
8 because their products failed to perform as safely as an ordinary smoker or user would expect when
9 used in the intended or reasonably foreseeable manner. Among other things, while ordinary smokers or
10 users understood that the normal use of tobacco would expose them to certain health risks, they were
11 unaware that over the years the Tobacco Companies took steps to increase, rather than decrease, the
12 addictive nature of their products.

13 59. Specifically, according to the extensive recent investigation by the United States
14 Food and Drug Administration (FDA), although the Tobacco Companies continue to deny it, nicotine is
15 addictive. According to the FDA, the Tobacco Companies have conducted extensive research and
16 development projects to optimize the delivery of nicotine by using nicotine rich tobacco blends, by using
17 filtration and ventilation technologies to keep nicotine levels high in low-tar cigarettes, and by using
18 chemical additives to increase the delivery of nicotine to the consumer. From its investigation, the FDA
19 concluded that cigarettes and smokeless tobacco are combination products consisting of the drug
20 nicotine and delivery devices designed to assure the consumer a pharmacologically-active dose of
21 nicotine.

22 60. The risk of nicotine addiction was not known to or voluntarily assumed by
23 California consumers. Indeed, this risk is still contested by the Tobacco Companies who claim that
24 nicotine is non-addictive and who deny manipulating the design of their products to deliver an addicting
25 level of the drug.

26 61. The Defendant Tobacco Companies' products were defectively designed
27 because they contained excessive preventable dangers. Among other things, as research revealed and
28 confirmed the harmful, addictive nature of nicotine in their products, the Defendant Tobacco Companies
failed to redesign their products to reduce this health risk and, in fact, frequently took steps to increase

or enhance this risk.

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2 62. Specifically, thousands of California consumers were injured by the design of
3 the Tobacco Companies' products. The nicotine in tobacco products causes addiction. As a result of
4 their addiction, thousands of Californians suffer lung cancer, throat cancer, emphysema, heart disease,
5 birth defects, and death.

6 63. The Defendant Tobacco Companies' products were defective when they were
7 sold to California consumers and users, including Medi-Cal beneficiaries.

8 64. California consumers, including Medi-Cal beneficiaries, used Defendant
9 Tobacco Companies' products in the intended and reasonably foreseeable way when they caused
10 injury.

11 65. As a direct and proximate result of the design defect alleged above, California
12 Medi-Cal beneficiaries have been injured and as a result have received health care benefits paid for by
13 the Medi-Cal program.

14 66. Welfare & Institutions Code section 14124.71(a) provides in pertinent part that:
15 "When benefits are provided or will be provided to a beneficiary under this chapter
16 because of an injury for which another person is liable, . . . the director [of the
17 Department of Health Services] shall have a right to recover from such person or carrier
the reasonable value of benefits so provided."

18 67. Plaintiff Belshé is entitled to recover from Defendant Tobacco Companies, the
19 reasonable value of the Medi-Cal health care benefits provided to treat injuries or illnesses for which
20 Defendant Tobacco Companies are liable.

21 68. For each of the past three years, Health Services has paid health care providers
22 hundreds of millions of dollars for treating tobacco-related illnesses of Medi-Cal beneficiaries.

23 69. In manufacturing and marketing their products, the Tobacco Companies are
24 guilty of fraud, oppression and/or malice. Specifically, the Tobacco Companies acted with willful and
25 conscious disregard for the safety of others, including thousands of California consumers, by
26 manufacturing and marketing tobacco products knowing that they were dangerously addictive and
27 hazardous to the consumers' health and fraudulently misrepresenting and concealing the risk of nicotine
28 addiction. Moreover, in addition to misrepresenting the danger and in willful disregard of the

1 consumers' rights, the Tobacco Companies deliberately enhanced and manipulated the nicotine levels to
2 assure that addiction would result. The Tobacco Companies knowingly misrepresented the risk of
3 nicotine addiction knowing and intending that thousands of California consumers and especially young
4 people would become addicted to tobacco products, would be unable to quit using the products and
5 would then suffer from lung cancer, throat cancer, emphysema, heart disease, birth defects, and death.
6 This course of conduct is fraudulent, oppressive and/or malicious, and justifies an award of punitive
7 damages according to proof to punish the Tobacco Companies and to deter such conduct in the future.

8 **SECOND CAUSE OF ACTION**

9 **Violation of the Cartwright Act**

10 **(Business and Professions Code section 16720 et seq.)**

11 70. Plaintiff People of the State of California ex rel. Daniel E. Lungren, Attorney
12 General, realleges and incorporates by reference paragraphs 1 through 46 inclusive as if fully set forth
13 herein.

14 71. Since 1953 and up to the present time, defendants, and each of them,
15 combined, conspired, and agreed together and continue to combine, conspire and agree to
16 unreasonably restrain the market for cigarettes and other tobacco products, in violation of Business and
17 Professions Code section 16720, by limiting and suppressing research and information which could
18 have led to product innovations, including, but not limited to, making a safer cigarette available to the
19 consuming public, and which could have allowed other manufacturers to lawfully compete against
20 defendants and by limiting, misrepresenting and suppressing information regarding the health effects of
21 smoking and the addictive qualities of nicotine.

22 72. As a direct consequence of the agreements by defendants, and each of them,
23 competition in the tobacco industry has been restrained, suppressed, and eliminated. The People of the
24 State of California have been deprived of the benefit of a free, competitive marketplace for cigarettes
25 and of the benefit of full and truthful information in deciding whether to smoke and in making their
26 selection of cigarettes, and they have been deprived of a choice of safer cigarette products.

27 73. Defendants' continuing wrongful conduct as alleged herein, unless and until
28 restrained by order of this court, will cause great and irreparable harm to the People of the State of
California.

1 74. The People of the State of California have no adequate remedy at law for the
2 injuries currently being suffered or which will result in the future from defendants' continued wrongful
3 conduct since damages flowing from the artificial restraint of the free market are difficult if not impossible
4 to ascertain.

5 **THIRD CAUSE OF ACTION**

6 **False Record Or Statement To Avoid Obligation**

7 **(Government Code section 12650 et seq.)**

8 75. Plaintiff People of the State of California ex rel. Daniel E. Lungren, Attorney
9 General, realleges and incorporates by reference paragraphs 1 through 55 inclusive as if fully set forth
10 herein.

11 76. This is a claim under the California False Claims Act (Gov. Code,
12 § 12651(a)(7)), which provides that a person shall not knowingly make, use, or cause to be made a
13 false record or statement to conceal, avoid, or decrease any obligation to pay money to the state or to
14 any political subdivision.

15 77. As alleged in the Fourth Cause of Action, defendants have engaged in activities
16 in violation of Business and Professions Code sections 17200 et seq. (Unfair Competition Act) which
17 gives rise, among other things, to the obligation to pay monetary fines and penalties.

18 78. Defendants utilized, among others, attorneys in carrying out and planning such
19 violations, and knowingly undertook to make, use, or caused to be made or used false records or
20 statements to conceal, avoid, or decrease their obligation to pay monetary fines and penalties arising as
21 a result of such violations. Defendants' knowingly created false records and statements by falsely
22 marking documents and cloaking otherwise non-privileged projects as being artificially covered by the
23 attorney/client or work product privilege in order to conceal evidence of their payment obligations
24 arising from their unlawful activities when they knew such documents were not privileged and/or fell
25 within the "crime/fraud" exception.

26 79. As a result of the continued making and use of such false records and
27 statements, up to the present day through artificial creation of the attorney-client and attorney work
28 product privileges, the defendants have significantly impaired the ability of enforcement officials to detect
violations and collect the fines and penalties arising therefrom.

1 80. Because of defendants' conduct, the State of California and its subdivisions
2 have suffered "damages" under Government Code section 12651, subdivision (a) based upon each
3 payment obligation arising from defendants' statutory violations of the Business and Professions Code,
4 as alleged in the Fourth Cause of Action, which defendants sought to conceal by making or using such
5 false records or statements.

6 **FOURTH CAUSE OF ACTION**

7 **Violation of the Unfair Competition Act**

8 **(Business and Professions Code Section 17200)**

9 81. Plaintiff People of the State of California ex rel. Daniel E. Lungren, Attorney
10 General, realleges and incorporates by reference paragraphs 1 through 55 inclusive as if fully set forth
11 herein.

12 82. Defendants, and each of them, have engaged in and are still engaged in acts of
13 unfair competition, as defined in Business and Professions Code section 17200, including but not limited
14 to the following:

15 A. Defendants have violated and continued to violate Business and
16 Professions Code section 16720, as alleged hereinabove.

17 B. Defendants have violated and continue to violate Civil Code section
18 1770(a)(16), in that in furtherance of selling their cigarettes and other tobacco products they represent
19 that they are being supplied in accordance with previous representations, to wit,

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21 that defendants would affirmatively disclose to the public complete and accurate information about
22 smoking and health, when in fact defendants have not made such disclosures.

23 C. Defendants have violated and continue to violate Civil Code section
24 1770(a)(16), in that in furtherance of selling their products they represent that they are being supplied in
25 accordance with previous representations, to wit, that defendants' products are not addictive, when in
26 fact they are addictive.

27 D. Defendants have violated and continue to violate Civil Code section
28 1770(a)(5), in that in furtherance of selling their products defendants have represented that cigarettes
and other tobacco products have uses or benefits which they do not have, in that:

1 i. They imply that their cigarettes can be smoked and enjoyed and
2 other tobacco products ingested without consumers becoming addicted to cigarette or other tobacco
3 products; when in fact, cigarettes and other tobacco products are addictive;

4 ii. Defendants have assured the consuming public that they would
5 disclose information concerning the addictive nature of nicotine and although they have continually
6 denied they have such information, they have been in possession of such information.

7 E. Defendants have violated and continue to violate Civil Code section
8 1770(a)(5), in that in furtherance of selling their products they imply that their cigarettes can be smoked
9 and enjoyed and other tobacco products ingested without worry over health concerns, when, in fact,
10 defendants knew of the health hazards of using cigarettes and other tobacco products and actively
11 concealed the results of research and other information that demonstrated the dangers of using cigarettes
12 and other tobacco products.

13 F. Defendants have violated and continue to violate Civil Code section
14 1770(a)(5), in that in furtherance of selling their “lite” or “light” cigarettes which purportedly contain
15 lower levels of nicotine than standard cigarettes, they have represented that these products have
16 characteristics, ingredients, or benefits which they do not have, in that:

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18 i. The amount of nicotine in these cigarettes is higher than the
19 amount set forth on the cigarette package.

20 ii. The amount of nicotine in these cigarettes is equivalent to the
21 amount of nicotine in standard cigarettes.

22 iii. Defendants imply that such cigarettes are healthier for
23 consumers than are “regular” cigarettes, when in fact they are not.

24 iv. Defendants manipulate the delivery system so as to provide
25 more nicotine and tar to the smoker than is listed on the cigarette package.

26 G. Defendants have violated and continue to violate Civil Code section
27 1770(a)(2) in that in furtherance of selling their products they have represented that cigarettes are
28 regarded as a safe product by CTR, successor in interest to TIRC, allegedly an independent research
group, without disclosing that CTR and TIRC are organizations funded and controlled by the Defendant

Tobacco Companies and are not independent organizations.

1 H. Defendants have violated and continue to violate Penal Code section
2 272, in that in furtherance of selling their products they market their products in such a way as to attract,
3 encourage, cause, or tend to cause minors to purchase, receive, or possess tobacco products in
4 violation of Penal Code section 308(b).

5 I. Defendants have aided and abetted and continue to aid and abet
6 retailers to sell their products to minors in violation of Penal Code section 308(a).

7 J. Defendants have violated and continue to violate Penal Code section
8 370, in that in furtherance of selling their products they market their products in such a way as to attract,
9 encourage, cause, or tend to cause minors to purchase and smoke their products even though such
10 products are addictive and otherwise injurious to health and the use, purchase, and possession of such
11 products by minors is contrary to public morals and in violation of Penal Code section 308.

12 K. Defendants have failed to advise potential consumers of the addictive
13 qualities of nicotine.

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15 L. Defendants have failed to advise potential consumers under the age of
16 18 years of the addictive qualities of nicotine.

17 M. Defendants have encouraged consumers under the age of 18 years to
18 purchase and use cigarettes and other tobacco products through various promotional efforts.

19 N. Defendants have deceptively represented to the public and to public
20 health officers or others who may have taken action to inform or safeguard the public that defendants
21 would:

22 i. Aid and assist research related to tobacco use and health, and
23 ii. Provide the public with information on the relationship between
24 tobacco use and health; and defendants have failed to honor their commitment to inform the public
25 about research showing tobacco products to have adverse health effects.

26 O. Defendants disseminated false or misleading statements to legislators,
27 public health officials, and the general public about the adverse health effects of tobacco use on health.

28 P. Defendants have used or have directed the use of techniques or

1 processes in the growth of tobacco and the manufacture of tobacco products to control the level of
2 nicotine in tobacco and tobacco products and the effects of nicotine on users of tobacco products. By
3 way of example, defendants have increased the pH of tobacco or cigarette smoke in order to boost the
4 delivery and the pharmacological effects of nicotine.

5 Q. Defendants have misrepresented or failed to disclose that they have
6 used or have directed the use of techniques or processes in the growth of tobacco and the manufacture
7 of tobacco products to control the level of nicotine in tobacco and tobacco products and the
8 pharmacological effects of nicotine on users of tobacco products. By way of example, defendants have
9 increased the pH of tobacco or cigarette smoke in order to boost the delivery and the pharmacological
10 effects of nicotine.

11 R. Defendants have suppressed scientific research or suppressed the
12 disclosure of scientific research regarding the health effects of tobacco use.

13 S. Defendants have suppressed research and development of cigarettes
14 that delivered less nicotine and/or had fewer deleterious health effects on smokers than standard
15 cigarettes manufactured and sold to the public.

16 T. Defendants have designed cigarettes, including cigarette filters, in a
17 manner that would cause the cigarettes to register low levels of tar and/or nicotine under the artificial
18 circumstances of federally prescribed tests but that would deliver tar and/or nicotine
19 levels comparable to the levels of standard cigarettes to smokers under the circumstances in which
20 cigarettes are generally held and smoked.

21 U. Defendants have marketed and sold cigarettes under brands
22 represented to the public as low in tar and/or nicotine when the cigarettes contained tobacco and other
23 ingredients similar to that contained in standard cigarettes and delivered comparable levels of tar and/or
24 nicotine when smoked.

25 WHEREFORE, plaintiffs pray for judgment against defendants, and each of them as
26 follows:

27 First Cause of Action

28 1. For the costs of Medi-Cal benefits provided on behalf of Medi-Cal
beneficiaries for treatment of tobacco-related illnesses for the past three years in an amount according to

proof.

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2. For punitive damages in an amount sufficient to punish defendants and to deter future conduct.
3. For costs of suit incurred herein;
4. For such other and further relief as the Court deems just and proper.

Second Cause of Action

1. For an order declaring that the defendants have conspired to and did engage in conduct that is an unreasonable restraint of trade in violation of the Cartwright Act, Business and Professions Code section 16720 et seq.
2. For a permanent injunction, enjoining defendants, and each of them, their agents, servants, and employees, and all persons acting under, in concert with, or for them, from directly or indirectly or in any other manner engaging in conduct as hereinabove alleged in violation of the Cartwright Act, Business and Professions Code section 16720 et seq.;
3. For payment of plaintiff's reasonable attorneys' fees;
4. For costs of suit herein incurred; and
5. For such other and further relief as the court may deem proper.

Third Cause of Action

1. For civil penalties of \$10,000 for each violation of Government Code section 12651(a)(7).
2. For reasonable attorneys' fees;
3. For costs of suit incurred herein;
4. For such other and further relief as the court deems just and proper.

Fourth Cause of Action

1. That pursuant to Business and Professions Code section 17203 defendants, and each of them, their successors, agents, representatives, employees and all persons acting in concert with them be permanently enjoined and restrained from engaging in unfair competition as defined in Business and Professions Code section 17200, including, but not limited to the types of acts or practices alleged in the Fourth Cause of Action.
2. Pursuant to Business and Professions Code section 17206, the Court assess a

1 civil penalty of two thousand five hundred dollars (\$2,500) against each defendant for each violation of
2 Business and Professions Code section 17200 alleged in the Fourth Cause of
3 Action, and that the Court assess a total penalty of no less than five hundred million dollars
4 (\$500,000,000).

5 3. For costs of suit incurred herein.

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1 4. For such other and further relief as the nature of the case may require and the
2 court deems appropriate and just.

3 Dated: August _____, 1997

4 DANIEL E. LUNGREN, Attorney General
5 of the State of California

6 M. DAVID STIRLING
7 Chief Deputy Attorney General

8 ROBERT L. MUKAI
9 RODERICK E. WALSTON
10 Chief Assistant Attorneys General

11 _____
12 FLOYD D. SHIMOMURA
13 Senior Assistant Attorney General

14 HERSCHEL T. ELKINS
15 CHARLTON G. HOLLAND, III
16 THOMAS GREENE
17 Senior Assistant Attorneys General
18 LINDA A. CABATIC
19 DENNIS ECKHART
20 BARBARA M. MOTZ
21 ALBERT NORMAN SHELDEN
22 Supervising Deputy Attorneys General

All Plaintiffs' Counsel

1 DANIEL E. LUNGREN, Attorney General
of the State of California

2
3 M. DAVID STIRLING
Chief Deputy Attorney General

4 ROBERT L. MUKAI
5 RODERICK E. WALSTON
Chief Deputy Attorneys General

6 FLOYD D. SHIMOMURA (State Bar No. 58294)
HERSCHEL T. ELKINS (State Bar No. 27279)
7 CHARLTON G. HOLLAND, III (State Bar No. 36404)
THOMAS GREENE (State Bar No. 57159)
8 Senior Assistant Attorneys General

9 LINDA A. CABATIC (State Bar No. 87483)
DENNIS ECKHART (State Bar No. 70730)
10 BARBARA M. MOTZ (State Bar No. 66933)
ALBERT NORMAN SHELDEN (State Bar No. 46277)
11 Supervising Deputy Attorneys General

12 SHELLEYANNE CHANG (State Bar No. 155150)
KATHLEEN FOOTE (State Bar No. 65819)
13 THEODORE GARELIS (State Bar No. 95193)
EILEEN GRAY (State Bar No. 95770)
14 AMY HERTZ (State Bar No. 119900)
ANDREA HOCH (State Bar No. 117870)
15 JON M. ICHINAGA (State Bar No. 137290)
LAURA KAPLAN (State Bar No. 64264)
16 KAREN LEAF (State Bar No. 107703)
MARGARET SPENCER (State Bar No. 62870)
17 LARRY RASKIN (State Bar No. 116112)
RONALD A. REITER (State Bar No. 62497)
18 Deputy Attorneys General

19 1300 I Street, Suite 125
Post Office Box 944255
20 Sacramento, California 94244-2550
Telephone: (916) 324-7874 (Greene)
21 (619) 645-2089 (Shelden)
(916) 445-0767 (Garelis)
22 (916) 324-5501 (Raskin)
(213) 897-2628 (Reiter)

23

24

25

26

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