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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

COUNTY OF LOS ANGELES,

Plaintiff,

vs.

R.J. REYNOLDS TOBACCO COMPANY; BROWN & WILLIAMSON TOBACCO CORPORATION; BATUS HOLDINGS, INC.; BATUS, INC.; B.A.T. INDUSTRIES P.L.C.; BRITISH AMERICAN TOBACCO COMPANY, LTD.; LIGGETT & MYERS, INC.; THE AMERICAN TOBACCO COMPANY; PHILIP MORRIS, INC.; THE COUNCIL FOR TOBACCO RESEARCH U.S.A., INC.; THE TOBACCO INSTITUTE, INC.; LORILLARD CORPORATION; CORE-MARK INTERNATIONAL, INC.; MCLAIN DISTRIBUTING INC.; GLASER BROTHERS, INC.; WAYCO-SPEEDY BAR, INC.; EAGLE VENDING MACHINES CO., INC., a California Corporation; DNA PLANT TECHNOLOGY CORPORATION and DOES 1 through 500, Inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF; DEMAND FOR JURY TRIAL

The County of Los Angeles ("County") alleges as follows:

NATURE OF THE CASE

1. The County is informed and believes and based thereon alleges that through a fraudulent course of conduct that has spanned decades, Defendants have manufactured, promoted, distributed or sold tobacco products to thousands of residents of the County knowing, but denying and concealing, that their tobacco products contain a highly addictive drug, known as nicotine, and have, unbeknownst to the public, controlled and manipulated the amount and big-availability of nicotine in their tobacco products for the purpose and with the intent of creating and sustaining addiction. Each year, residents of the County die from smoking the Defendants' product, and each year the County must spend millions of dollars to purchase or provide medical and related services for residents of the County suffering from diseases caused by cigarette smoking and the use of tobacco products. Each year, the Defendants reap huge profits from the sale of cigarettes in the County, and each year the Defendants spend millions of dollars of advertising in the County which has enormous appeal to young people, causing more and more children and teenagers in the County to begin smoking. The County seeks both economic damages and injunctive relief for the conduct alleged in this complaint. Among other things, the County seeks damages and restitution for monies expended for the health care of the affected individuals, 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.

JURISDICTION AND VENUE

2. Residents of the County purchased the Defendants' tobacco products in the County and were thereby damaged and subjected to continuing harm. Moreover, several Defendants are corporations incorporated under the laws of the State of California, which have their principal places of business in California, including Core-Mark International, Inc.; McLain Distributing Inc.; Glaser Brothers, Inc.; Wayco-Speedy Bar, Inc.; Eagle Vending Machines Co., Inc; and DNA Plant Technology Corporation. The Defendants are all doing business in the County, have received and continue to receive substantial compensation and profits from the sale of tobacco products in the County, and have made material omissions and misrepresentations in the County. At all times relevant herein, acts and conduct in furtherance of a conspiracy, which is the hub of the wrongful conduct alleged herein, occurred in the County.

3. Venue in this case is based upon the fact that Defendants have at all times relevancy hereto and are currently doing business in the County.

PARTIES

A. Plaintiff

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

B. Defendants

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

6. Defendants Brown & Williamson Tobacco Corporation (hereinafter "Brown & Williamson"), Batus Holdings, Inc. and Batus, Inc. are Kentucky corporations, having their principal places of business at 1500 Brown & Williamson Tower, Louisville, Kentucky. Defendants Brown & Williamson, Batus Holdings, Inc. and Batus, Inc., manufacture, advertise and sell Kool, Barclay, BelAir, Capri, Raleigh, Richland, Laredo, Eli Cutter and Viceroy cigarettes throughout the United States and in California.

7. Defendants B.A.T. Industries P.L.C. (hereinafter "B.A.T. Industries") and British American Tobacco Company, L.T.D. (hereinafter "BATCO") are British corporations having their principal places of business at Windsor House, SO Victoria St., London. Through a succession of intermediary corporations and holding companies, B.A.T. Industries and BATCO are the sole shareholders of Brown & Williamson. Through Brown & Williamson, B.A.T. Industries, and BATCO have placed cigarettes into the stream of commerce with the expectation that substantial sales of cigarettes would be made in the United States and in California. In addition, B.A.T. Industries and BATCO have conducted, or through their agents and/or coconspirators conducted, critical research for Brown & Williamson 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 and BATCO have been involved in the conspiracy described herein, and the actions of B.A.T. Industries and BATCO have affected and caused harm in California.

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

9. Defendant The American Tobacco Company (hereinafter "American Tobacco") is a Delaware corporation having its principal place of business located at Six Stamford Forum, Stamford, Connecticut 06904. Defendant American Tobacco manufactures, advertises and sells 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 and in California. On December 21, 1994, American Tobacco was purchased by B.A.T. Industries which, on information and belief, has succeeded to the liabilities of American Tobacco by operation of law or as a matter of fact.

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

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

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

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

14. Defendant Core-Mark International Incorporated is a California corporation having its principal place of business in San Francisco, California, and is a distributor for R.J. Reynolds, licensed to and doing business in the County, and engaged in the business of selling, distributing and marketing tobacco products through wholesale distributors, retailers and vending machines.

15. Defendant McLain Distributing, Inc. is a California corporation having its principal place of business in California, licensed to and doing business in the County, and engaged in the business of selling, distributing and marketing certain tobacco products through wholesale distributors, retailers and vending machines.

16. Defendant Glaser Brothers, Inc. is a California corporation having its principal place of business in California, licensed to and doing business in the County, and engaged in the business of selling, distributing and marketing tobacco products through wholesale distributors, retailers and vending machines.

17. Defendants Wayco-Speedy Bar, Inc. and Eagle Vending Machines Co., Inc. are corporations incorporated under the laws of the State of California, having their principal place of business in the County of Orange, and have been distributors of tobacco products, engaged in the business of selling, distributing and marketing tobacco products through wholesale distributors, retailers and vending machines.

18. DNA Plant Technology Corporation is a corporation organized, existing and incorporated under the laws of the State of California, having its principal place of business in the City of Oakland, California, and licensed to and doing business in the County. Said Defendant developed Y-1, a genetically engineered

tobacco plant with a nicotine content more than twice the average found naturally in flue-cured tobacco, and was involved with Brown & Williamson in a coverup to tell investigators of the FDA that Y-1 had "never been commercialized."

19. County is informed and believes and based thereon alleges that at all times herein mentioned, the true names and capacities, whether individual, corporate, associate or otherwise of Defendants DOES 1 through 500, inclusive, are unknown at this time to County who therefore sues said Defendants by such fictitious names. County is informed and believes and thereon alleges that each of the Defendants designated herein by such fictitious name were involved in the distribution, manufacturing, promotion or sale of tobacco products, and/or were in some way negligently or otherwise legally responsible for the events and happenings referred to herein which were a legal cause and substantial factor in bringing about injuries and damages to County as herein alleged.

20. County is informed and believes and based thereon alleges that, beginning as early as the 1950s, and continuing until the present day, Defendants, and each of them, entered into an agreement 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 addictive effects of nicotine and the harmful effects of smoking; and restraining and suppressing the research, development, production, and making of a safer cigarette. In furtherance of Defendants' conspiracy, Defendants lend encouragement, substantial assistance, and otherwise aided and abetted each other with respect to these wrongful acts, and the other wrongful acts set forth herein. As a result of the conspiracy, the Defendants are vicariously, and jointly and severally liable with respect to each of the actions described herein.

21. At all times herein mentioned, Defendants, and each of them, were acting as agents of each of the other named and unnamed Defendants, and at all times herein mentioned were acting within the scope, purpose and authority of that agency and with the full knowledge, permission and consent of each of the other Defendants.

22. Each Defendant is sued individually as a primary violator and as a co-conspirator, and the liability of each arises from the fact that each Defendant entered into an agreement with the other Defendants and third parties to pursue, and knowingly pursued, the common course of conduct to commit or participate in the commission of all or part of the unlawful acts, tortious acts, plans, schemes, transactions, and artifices to defraud as alleged herein, including but not limited to: the manipulation of nicotine content and the big-availability of nicotine in tobacco products and the misrepresentation, concealment and suppression of information regarding the addictive properties of nicotine, and falsely advertising, marketing and selling cigarettes as safe, nonaddictive, and not containing levels of nicotine manipulated by Defendants to cause addiction. All Defendants did and continue to do business in the County, made contracts to be performed in whole or in part in the County, manufactured, tested, sold, offered for sale, supplied, or placed in the stream of commerce, cigarettes and tobacco products, 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 County of cigarettes and tobacco products from which Defendants derived substantial revenue. All Defendants also caused tortious injury by acts or omissions in the County, or caused tortious injury in the County by acts or omissions outside the County.

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

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

25. Defendants and their predecessors and successors in interest did business in the County, made contracts to be performed in whole or in part in California, and manufactured, tested, sold, offered for sale, supplied or placed in the stream of commerce, or, in the course of business, materially participated with others in so doing, tobacco products which the Defendants knew to be dangerous and hazardous and which the Defendants knew would be substantially certain to cause injury to County, its residents, and others similarly situated. Defendants committed and continue to commit tortious and other unlawful acts in the County.

26. Defendants and their predecessors and successors in interest, performed such acts as were intended to and did result in the sale and distribution of tobacco products in the County, and the consumption of tobacco products by residents of the County.

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

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

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

County is informed and believes and based thereon alleges:

28. The Tobacco companies reap enormous profits from their manufacture and sale of cigarettes throughout the United States. The Tobacco companies' earnings for the last year alone exceeded six billion dollars. The Tobacco companies 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 A. Waxman (D. Calif.), Chairman, House Subcommittee on Health and the Environment, stated recently that "cigarettes are the single most dangerous consumer product ever sold." Similarly, smokeless tobacco products cause mouth cancer, gum recession and other oral health problems. More than 40% of patients who develop mouth cancer die within five years of diagnosis. Despite the overwhelming weight of scientific evidence that smoking cigarettes and using smokeless tobacco pose serious health risks, and despite the gruesome statistical legacy left by the tobacco industry, approximately 50 million Americans continue to smoke cigarettes, including 3,000 new teenage smokers daily, and millions more continue to use smokeless tobacco because they are addicted to these products. More specifically, they are addicted to nicotine, the drug in tobacco that causes an addiction similar to that suffered by users of heroine and cocaine.

1. The Early Days--Claiming Cigarettes are Healthful

County is informed and believes and based thereon alleges:

29. Although tobacco in various forms has been consumed by Americans for many centuries, it was not until the 19th century that an easily inhalable tobacco product, the cigarette, became widely popular. With

the introduction of the Bonsack mechanized cigarette-rolling machine in 1884 by W. Duke and Sons, cigarettes were mass-produced and distributed and sold nationwide.

30. In 1881, Duke's factory produced 9.8 million cigarettes, 1 1/2 percent of the total market. But five years later, W. Duke and Sons were able to manufacture 744 million cigarettes more than the national total in 1883. By 1890, Duke's competitors, who themselves had now become mechanized, joined forces with him to establish American Tobacco. By the turn of the century, 9 out of every 10 cigarettes carried the Duke label. Shortly after American Tobacco was formed, the State of North Carolina started an antitrust lawsuit against it-and other such litigation followed. In May, 1911, American Tobacco was dissolved by order of the Supreme Court, to be succeeded by four large firms--Liggett, Reynolds, Lorillard, and American--plus many smaller ones.

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

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

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

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

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

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

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

38. Earlier consumer-oriented ads from the 1930s and 1940s often carried wide-ranging medical claims that placed cigarette-touting physicians in the company of endorsers such as Santa Claus ("Luckys are

easy on my throat"), movie stars, sports heroes, and steady-nerved circus stars. Similar ads even appeared in medical journals, where ads were directed solely at physician. One, for example, touted the Camel cigarettes booth at the American Medical Association's 1942 Annual Meeting.

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

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

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

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

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

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

2. The "Big Scare" and Creation of the TIRC

County is informed and believes and based thereon alleges:

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

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

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

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

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

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

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

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

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

49. Thus, the TIRC was conceived and born. Five of the Big Six cigarette manufacturers were original members. Liggett did not join until 1964, the same year that the Surgeon General issued its first report on smoking and health and concluded that cigarette smoking was a cause of lung cancer. Also in 1964, TIRC changed its name to CTR.

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

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

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

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

3. The "Frank Statement to Cigarette Smokers"

County is informed and believes and based thereon alleges:

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

RECENT REPORTS on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked to lung cancer in human beings. Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research. However, we do not believe that any serious medical research, even though its results are inconclusive, should be disregarded or lightly dismissed. At the same time, we feel it is in the public interest to call attention to the fact that eminent doctors and research scientists have publicly questioned the claimed significance of these experiments. Distinguished authorities point out:

1. That medical research of recent years indicates many possible causes of lung cancer.
2. That there is no agreement among the authorities regarding what the cause is.
3. That there is no proof that cigarette smoking is one of the causes.
4. That statistics purporting to link cigarette smoking with the disease could apply with equal force to any one of many aspects of modern life. Indeed the validity of the statistics themselves is questioned by numerous scientists.

We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business. We believe the products we make are not injurious to health. We always have and always will cooperate closely with those whose task it is to safeguard the public health. For more than 300 years tobacco has given solace, relaxation, and enjoyment to mankind. At one time or another during those years, critics have held it responsible for practically every disease of the human body. One by one these charges have been abandoned for lack of evidence. Regardless of the record of the past, the fact that cigarette smoking today should even be suspected as a cause of serious disease is a matter of deep concern to us. Many people have asked us what we are doing to meet the public's concern aroused by the recent reports. Here is the answer:

1. We are pledging aid and assistance to the research effort into all phases of tobacco use and health. This joint financial aid will of course be in addition to what is already being contributed by individual companies.
2. For this purpose we are establishing a joint group consisting initially of the undersigned. This group will be known as the TOBACCO INDUSTRY RESEARCH COMMITTEE.
3. In charge of the research activities of the Committee will be a scientist of unimpeachable integrity and national repute. In addition there will be an Advisory Board of scientists disinterested in the cigarette industry. A group of distinguished men from medicine, science and education will be invited to serve on this Board. These scientists will advise the Committee on its research activities. This statement is being issued because we believe the people are entitled to know where we stand on this matter and what we intend to do about it.

52. In this advertisement, the participating Tobacco companies recognized their "special responsibility" to the public, and promised to learn the facts about smoking and health. The participating Tobacco companies promised to sponsor independent research on the subject, claiming they would make health a basic responsibility, paramount to any other consideration in their business. The participating Tobacco companies also promised to cooperate closely with public health officials. At the time these promises were made, the Tobacco companies had no intent to honor their promises. In fact, these promises so

publicly and dramatically made to the public, the residents of California and government regulators, have been breached over and over again.

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

County is informed and believes and based thereon alleges:

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

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

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

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

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

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

a. "The first big scare continues on the wane. Progress has been made."

b. "The research program of the [TIRC] has won wide acceptance in the scientific world as a sincere, valuable and scientific effort."

c. "Positive stories are on the ascendancy."

B. The Role Of Tobacco Lawyers And Tobacco Lobbyists

County is informed and believes and based thereon alleges:

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

59. The Defendants designed a litigation strategy over the years to conceal, delay, and to run up consumers' expenses in a war of attrition. For example, a memo written by J. Michael Jordan, an attorney

for Defendant R.J. Reynolds, noted: "[T]he aggressive posture we have taken regarding depositions and discovery in general continues to make these cases extremely burdensome and expensive for Plaintiff's lawyers, particularly sole practitioners. To paraphrase General Patton, the way we won these cases was not by spending all of Reynolds' money, but by making that other son of a bitch spend all his."

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

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

1. "Special Projects"

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

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

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

2. "Deadwood"

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

3. The Best Insurance the Industry Can Buy

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

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

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

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

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

4. The Kings of Concealment and Disinformation

County is informed and believes and based thereon alleges:

71. On February 6, 1992, United States District Court Judge H. Lee Sarokin for the District of New Jersey issued an opinion in *Haines v. Liggett Group, Inc.*, Civ. Action 84-678. After reviewing 1500 documents in camera, Judge Sarokin noted that "In 1954, the tobacco industry promised to disseminate the results of industry-sponsored, independent scientific research for the purpose of answering the question: 'Does cigarette smoking cause illness?' To fulfill its promise, the tobacco industry proffered the allegedly independent research organization, the Council for Tobacco Research (the CTR), which purportedly would examine the risks of smoking and report its findings to the public." After his review of the withheld documents, Judge Sarokin concluded:

Despite the industry's promise to engage independent researchers to explore the dangers of cigarette smoking and to publicize their findings the evidence clearly suggests the research was not independent, that potentially adverse results were shielded under the caption of "special projects," that the attorney-client privilege was intentionally employed to guard against such unwanted disclosure, and that the promise of full disclosure was never meant to be honored, and never was.

As a result of this finding, Judge Sarokin went on to note:

A jury might reasonably conclude that the industry's announcement of proposed independent research into the dangers of smoking, and its promise to disclose its findings was nothing but a public relations ploy--a fraud--to deflect the growing evidence against the industry, to encourage smokers to continue and non-smokers to begin, and to reassure the public that adverse information would be disclosed.

72. Undaunted by Judge Sarokin's findings, in April, 1994, Tobacco companies' executives asserted, under oath, that tobacco does not cause cancer, that nicotine is not addictive and that tobacco advertising does not target new smokers. Judge Sarokin's earlier written opinion in Haines is still valid for describing the Defendants: ". . . despite some rising pretenders, the tobacco industry may be the king of concealment and disinformation."

C. Repeated False Promises To The Public

County is informed and believes and based thereon alleges:

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

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

75. The January 15, 1968, issue of True Magazine contained an article written by Stanley Frank called, "To Smoke or Not to Smoke- That is Still the Question." The article dismissed the evidence against smoking as "inconclusive and inaccurate" and claimed that "[s]tatistics alone link cigarettes with lung cancer . . . it is not accepted as scientific proof of the cause and effect. " A few months later, a similar but shorter article appeared in the National Enquirer entitled "Cigarette Cancer Link is Bunk" written by "Charles Golden" (a fictitious name commonly used by the Enquirer.) The real author was Stanley Frank. Two million reprints of the True Magazine article were distributed to physicians, scientists, journalists, government officials, and other opinion leaders with a small card which stated, "As a leader in your profession and community, you will be interested in reading this story from the January issue of True Magazine about one of today's controversial issues." The cost for this was paid by Brown & Williamson, Philip Morris and R.J. Reynolds. It was subsequently disclosed that author Frank had been paid \$500 to write the article, by Joseph Field, a public relations professor working for Brown Williamson. Brown & Williamson reimbursed Field for that amount.

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

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

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

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

c. "Scientific advisors inform us that until much more is known about such diseases as lung cancer, medical science probably will not be able to determine whether tobacco or any other single factor plays a causative role or whether such a role might be direct or indirect, incidental or important."

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

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

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

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

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

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

e. "The findings are not secret."

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

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

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

81. On April 14, 1994, the chief executives of the Defendant cigarette manufacturers testified under oath before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives, chaired by Congressman Waxman. These executives knowingly made material misrepresentations and omissions to the Subcommittee about smoking, health and addiction, and in particular, stated that nicotine is not addictive. These statements were made with the knowledge that they would be communicated to California consumers, including residents of the County. These Defendants' testimony to the Subcommittee included the following:

a. Andrew Tisch, then CEO of Lorillard, asserted that smoking does not cause cancer. "We have looked at the data and the data that we have been able to see has all been statistical data that has not convinced me that smoking causes death."

b. Philip Morris President and CEO William I. Campbell said that:

(1) "Philip Morris does not manipulate nor independently control the level of nicotine in our products."

(2) "Cigarette smoking is not addictive."

(3) "Philip Morris research does not establish that smoking is addictive."

c. R.J. Reynolds CEO James W. Johnston said that, "Smoking is no more addictive than coffee, tea or Twinkies."

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

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

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

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

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

87. The recent disclosures of the sworn testimony of a former research chief for Brown & Williamson, Dr. Jeffrey S. Wigand, and former Philip Morris scientists, Jerome Rivers, Dr. Ian L. Uydess and Dr. William Farone, directly contradict the Tobacco companies' CEOs' testimony regarding addiction, as well as the industry's denial of nicotine manipulation.

D. Industry Knowledge That Smoking Is Harmful

County is informed and believes and based thereon alleges:

88. Even before the sponsors of the "Frank Statement" represented that "there is no proof that cigarette smoking is one of the causes of lung cancer," an industry researcher had reported the contrary. As early as 1946, Lorillard chemist H.E. Parmele, who later became Vice President of Research and a member of Lorillard's Board of Directors, wrote to his company's manufacturing committee: "Certain scientists and medical authorities have claimed for many years that the use of tobacco contributes to cancer

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

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

90. Internal cigarette industry documents reveal, for example:

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

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

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

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

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

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

g. A 1963 memorandum from the Liggett consulting research firm states: "Basically, we accept the inference of a causal relationship between the chemical properties of ingested tobacco smoke and the development of carcinoma, which is suggested by the statistical association shown in the studies of Doll and Hill, Horn, and Dorn with some reservations and qualifications and even estimate by how much the

incidence of cancer may possibly be reduced if the carcinogenic matter can be diminished, by an appropriate filter, by a given percentage."

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

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

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

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

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

E. Suppressing The Truth About Cigarettes And Nicotine

County is informed and believes and based thereon alleges:

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

1. The Gentleman's Agreement

County is informed and believes and based thereon alleges:

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

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

2. The Mouse House Massacres

County is informed and believes and based thereon alleges:

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

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

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

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

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

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

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

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

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

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

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

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

County is informed and believes and based thereon alleges:

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

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

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

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

F. Suppression Of Safer Cigarettes

County is informed and believes and based thereon alleges:

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

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

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

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

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

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

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

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

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

123. Dr. Mold has provided the following overview of the XA Project and its abandonment:

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

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

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

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

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

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

1. Light Cigarettes: A Marketing Hoax

County is informed and believes and based thereon alleges:

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

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

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

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

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

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

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

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

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

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

2. Fraudulent Advertising of Tar and Nicotine Content

County is informed and believes and based thereon alleges:

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

138. In 1982, The New York Times noted that Brown & Williamson had complained to the FTC that American Brands, Inc., Philip Morris U.S.A., and R.J. Reynolds were engaging in deceptive advertising. While promoting very low-tar cigarettes packaged in flip-top boxes, the three were also marketing cigarettes containing 10 to 100 times more tar-in look-alike soft packages. The Times also reported that Brown & Williamson's much publicized low-tar Barclay was designed to fool the FTC's smoking machines. The machines preserve Barclay filters-but the human lips probably destroy them, giving smokers heavy doses of just what they are trying to avoid. In January, 1993, Consumer Reports noted that while the Barclay ads claimed "1 mg. of tar," smokers actually got 3 to 7 times as much.

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

G. Knowledge That Nicotine Causes Addiction

County is informed and believes and based thereon alleges:

140. The fact that nicotine delivered by tobacco products is highly addictive was carefully and comprehensively documented in the 1988 Surgeon Generals Report, "The Health Consequences of Smoking: Nicotine Addiction." The major conclusions contained in this report are (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." Likewise, in a 1988 report addressing the health effects of smokeless tobacco, the World Health Organization concluded: "[T]here is ample evidence that the blood nicotine levels of smokeless tobacco users were as high as or even higher than those found in many cigarette smokers. Its continued use, therefore, does cause addiction and dependence in humans."

141. Nicotine in cigarettes and smokeless tobacco 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 Counsel in the United Kingdom. The National Institute on Drug Abuse has called cigarette smoking the most common example of drug dependence in the United States.

142. Despite their knowledge that cigarette smoking and the use of smokeless tobacco is, as a result of nicotine, extremely addictive, the Tobacco companies to this day deny that smoking, "dipping" or "chewing" tobacco is addictive. Through their individual advertising and public relations campaigns, and collectively through the Tobacco Institute, the Tobacco companies have successfully promoted and sold tobacco products by concealing and misrepresenting the addictive nature of cigarettes and smokeless tobacco.

1. The Tobacco companies' Understanding of Nicotine Addiction

County is informed and believes and based thereon alleges:

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

144. Cigarette manufacturers have known since at least the early 1960s of the addictive properties of the nicotine contained in the cigarettes they manufacture and sell. Industry documents are replete with evidence of such knowledge:

a. In 1962, Sir Charles Ellis, scientific advisor to the board of directors of BATCO, Brown & Williamson's parent company, stated at a meeting of BATCO's worldwide subsidiaries, that "smoking is a habit of addiction" and that "[n]icotine is not only a very fine drug, but the technique of administration by smoking has considerable psychological advantages...." He subsequently described Brown & Williamson as being "in the nicotine rather than the tobacco industry."

b. A research report from 1963 commissioned by Brown & Williamson states that when a chronic smoker is denied nicotine: "A body left in this unbalanced state craves for renewed drug intake in order to restore the physiological equilibrium. This unconscious desire explains the addiction of the individual to nicotine." No information from that research has ever been voluntarily disclosed to the public; in particular, it was not shared with the Committee that was preparing the first Surgeon General report and hence was not reflected in that report.

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

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

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

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

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

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

b. "Why then is there not a market for nicotine per se, 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. Let me explain my conviction. The cigarette should be conceived not as a product but as a package. The product is nicotine."

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

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

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

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

149. As recently as December, 1995, the Wall Street Journal reported on an internal Philip Morris draft document analyzing the competitive market for nicotine products for the years 1990-1992. The report describes the importance of nicotine: Different people smoke for different reasons. But the primary reason is to deliver nicotine into their bodies. It is a physiologically active, nitrogen containing substance. Similar organic chemicals include nicotine, quinine, cocaine, atropine and morphine. While each of these substances can be used to affect human physiology, nicotine has a particularly broad range of influence. During the smoking act, nicotine is inhaled into the lungs in smoke, enters the bloodstream and travels to the brain in about eight to ten seconds."

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

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

2. The Waxman Hearings

County is informed and believes and based thereon alleges:

152. On February 25, 1994, David A. Kessler, M.D., Commissioner of the FDA, sent a letter to Scott D. Bailin, Esq., Chairman of the Coalition on Smoking and Health, asserting: "Evidence brought to our attention is accumulating that suggests that cigarette manufacturers may intend that their products contain nicotine to satisfy an addiction on the part of some of their customers. The possible inference that cigarette vendors intend cigarettes to achieve drug effects in some smokers is based on mounting

evidence we have received that: (1) the nicotine ingredient in cigarettes is a powerfully addictive agent and (2) cigarette vendors control the levels of nicotine that satisfy this addiction."

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

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

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

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

c. "[T]he public thinks of cigarettes as simply blended tobacco rolled in paper. But they are much more than 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 to sustain addiction in the vast majority of individuals who smoke regularly."

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

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

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

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

156. When four FDA investigators visited the Brown & Williamson plant in Macon, Georgia on May 3, 1994, Brown & Williamson officials denied that the company was involved in breeding tobacco for specific nicotine levels.

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

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

& Williamson on September 21, 1992, did the company admit that it had developed the high-nicotine tobacco.

3. Manipulation of Nicotine

County is informed and believes and based thereon alleges:

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

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

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

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

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

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

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

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

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

165. The Tobacco industry's own trade literature explains that the Kimberly-Clark process enables manufacturers to triple or even quadruple the nicotine content of reconstituted tobacco, thereby increasing the nicotine content of the final manufactured product.

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

167. Another enterprise quite explicitly specializes in the manipulation of nicotine and its use as an additive. This company does business under the name "The Tobacco companies of the Contraf Group." An advertisement run by the Contraf Group in the international trade press states: "Don't Do Everything Yourself Let us do it More Efficiently" Calling itself, "The Niche Market Specialists," Contraf lists among its areas of specialization "Pure Nicotine and Other Special Additives."

4. The FDA Response

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

H. Targeting Children And Minorities

County is informed and believes and based thereon alleges:

169. Across the nation, the overwhelming majority of cigarette use and addiction begins when users are children or teenagers. Eighty-two (82%) percent of daily smokers had their first cigarette before age 18, sixty-two (62%) percent before the age of 16, thirty-eight (38%) percent before the age of 14. Thus, a person who does not begin smoking in childhood or adolescence is unlikely ever to begin. The younger a person begins to smoke, the more likely he or she is to become a heavy smoker. Sixty-seven (67%) percent of children who start smoking in the sixth grade become regular adult smokers and forty-six (46%) percent of teenagers who start smoking in the eleventh grade become regular adult smokers.

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

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

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

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

advertising appeals to young people, continue to use these same marketing techniques to sell their products.

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

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

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

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

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

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

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

181. For many years, the Defendants have engaged in a vast and misleading promotional, public relations, and sham lobbying blitz that had as its goal (1) increasing the numbers of people addicted to nicotine in cigarettes and/or smokeless tobacco products and (2) decreasing the number of people who attempt or succeed in quitting. Their efforts have been and continue to be directed toward children. They have done so and continue to do so in contravention of their duty not to make false statements of material fact and their duty not to conceal such true facts from the public. At the cost of countless lives, the Defendants spend billions of dollars every year misleading the public and promoting the myth that smoking cigarettes and using smokeless tobacco products does not cause cardiovascular disease, lung and other cancers, emphysema and other diseases and that smokers live healthy and vital lives. The Defendants have at all pertinent times presented and promoted smoking as an attractive, glamorous, youthful, and relaxing pastime, associating it with movie stars, athletes and successful professionals.

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

183. One of the best examples of this was the transformation of Marlboro cigarettes, from a red-tipped cigarette for women to the cigarette for the "macho cowboy." By changing advertising imagery, Philip Morris was able to tap into a wholly new and different market. In 1950, R.J. Reynolds was the king of the cigarette business. It sold more cigarettes than any other company. Philip Morris, though doing well on the basis of its fraudulent health oriented advertising, was still far behind. In 1981, Philip Morris overtook R.J. Reynolds, and each year has extended its lead, by developing an effective marketing campaign for recruiting young new smokers to its brands. The image created by the Marlboro man captured the adolescent imagination, leading to experimentation with that particular cigarette and eventual addiction due to the manipulation by Philip Morris of the nicotine and other ingredients in the cigarette. The children and teenagers who started smoking Marlboro became tenaciously loyal customers. Soon, Marlboro became the "gold standard" of cigarettes among teenagers. Through the year 1988, nearly three-fourths of teenage smokers used Marlboro.

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

185. R.J. Reynolds' Vantage cigarettes entered the 1980s as a brand targeted at the health conscious adult smoker. Advertisements were intended to assuage fears of lung cancer and other diseases and give the concerned smoker arguments for rationalizing their continuation of the addiction. Through multiple-advertising transmogrifications, Vantage cigarettes have been progressively repositioned to ever-younger audiences. During the mid-1980s, this advertising campaign featured young, successful professionals including architects, fashion designers, lawyers, etc., with the slogan "The Taste of Success." These ads promoted the implication that smoking is helpful--if not essential--to success or prominence. In the late

1980s, the advertising theme for Vantage cigarettes began to feature professional-caliber athletes and auto racers. These advertisements depict physical activity requiring strength or stamina beyond that of everyday activity. The obvious implication is that smoking does not harm you.

186. During the 1980s, advertising for Salem cigarettes also became more youth-oriented. Whereas the dominant advertising theme for Salem cigarettes used to be clean, fresh country air, during the 1980s Salem ads were populated by muscular surfers and bikini clad women, fun-loving party animals, and other attractive adolescent role models. Another successful advertising campaign targeted at young people is the Lorillard campaign promoting Newport cigarettes. Newport ads frequently show men and women in sexually suggestive positions always having fun, using the slogan "Alive With Pleasure."

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

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

189. Many teenage boys fantasize about owning a powerful motorcycle. For this reason many cigarette brands have used motorcycle imagery to encourage teenage boys to smoke. Many cigarette ads that target young boys glamorize high risk activities like hang gliding, motorcycle racing, mountain climbing, etc. Cigarette makers do this deliberately to undermine awareness that smoking is dangerous. In its campaign to attract adolescent boys to become smokers, R.J. Reynolds has made extensive use of risktaking and danger in its advertising. By glorifying risk-taking, these ads have a more insidious purpose. How a person estimates the magnitude and likelihood of a risk can be significantly affected by what it is compared against. By portraying dangerous activities like hang- gliding, mountain climbing, and stunt motorcycle riding in tobacco advertising, R.J. Reynolds minimizes the dangers of smoking in adolescent minds.

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

191. When R.J. Reynolds began the Joe Camel cartoon campaign, Camel's share of the children's market was only 0.5 %. In just a few years, Camel's share of this illegal market has increased to 32.8%, representing sales estimated at \$476 million per year. Another indication of the phenomenal success of this marketing campaign is the fact that in a recent survey of six-year-olds, 91% of the children could

correctly match Joe Camel with a picture of a cigarette. Both the silhouette of Mickey Mouse and the face of Joe Camel were nearly equally well-recognized by almost all children surveyed.

192. The themes within cigarette advertising are not the only feature of tobacco marketing that betray the real target. The location and placement of those ads further reveal that children are the intended target. During the decade of the 1980s, there was a steady migration of cigarette advertising into youth-oriented publications. Magazines with sexually-oriented themes and those concerning entertainment and sporting activities had the highest concentration of cigarette ads. For many of these magazines, teenagers comprise a quarter or more of the total readership. Cigarette ads in these youth-oriented magazines were frequently multi-page, pop-up ads which are significantly more costly, but also more attention-grabbing than conventional ads. News magazines, like Time and Newsweek which have older audiences, had few cigarette ads, and those tended to emphasize health promises concerning tar and nicotine rather than glamorous images.

193. The companies sell more than one billion packs of cigarettes per year to children under the age of 18. In 1988, the tobacco industry reaped \$221 million in profits from \$1.25 billion in sales to children under the age of 18. Marlboro and Camel cigarettes dominate the teenage smoking market.

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

195. Perhaps the most vicious element of this advertising campaign has been advertising aimed at young girls. Nearly every issue of magazines for young girls, like Teen and Young Miss, includes an advertisement by R.J. Reynolds urging children not to smoke. But the reasons given for refraining are not that smoking is addictive, that it can harm or kill the infants of pregnant woman, or that it causes cancer and other lethal diseases; rather, the reason given is that it is an "adult decision."

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

197. This despicable conduct has gone on for 40 years and continues into this decade. In January, 1990, the Manager of Public Relations of R.J. Reynolds wrote the principal of a public school that: "The tobacco industry is also concerned about the charges being made that smoking is responsible for so many serious diseases. Long before the present criticism began, the tobacco industry in a sincere attempt to determine the harmful effects, if any, smoking might have on human health, established the Council for Tobacco Research-USA. The industry has also supported research grants by the American Medical Association. Over the years the tobacco industry has given in excess of \$162 million to independent research on the controversies surrounding smoking--more than all voluntary health associations combined. Despite all the research going on, the simple and unfortunate fact is that scientists do not know the cause or causes of the chronic diseases reported to be associated with smoking. The answers to many

unanswered controversies surrounding smoking-- and the fundamental causes of the diseases often statistically associated with smoking--we do believe can only be determined through much more scientific research. Our company intends, therefore, to continue to support such research in a continuing search for answers. We would appreciate your passing this information along to your students."

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

199. Defendants have for many years also targeted inner city African- American communities with billboard and other advertising so as to lure African-Americans into smoking, to introduce them at an early age into the use of cigarettes, and, by the manipulation of nicotine levels, to keep them addicted to such usage. This has been achieved by a cleverly contrived, targeted advertising campaign designed to depict smoking as an especially attractive and appealing lifestyle. This advertising has been the result of a contemptuous disregard of the health concerns of African-Americans and has been carried out with callous disregard of the rights of the residents.

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

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

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

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

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

I. Other Tobacco Products

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

206. The "roll your own" tobacco products distributed in the County by these Defendants are unreasonably dangerous to the consumer.

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

208. Smokeless tobacco delivers a similar amount of nicotine as cigarettes and is equally as addictive. County is informed and believes and based thereon alleges that smokeless tobacco manufacturers intend to cause nicotine dependence among consumers through a strategy that involves promoting the use of lower nicotine brands with the intent of moving users up to higher, more addictive brands over time. The "graduation" strategy calls for three different brands of low, medium and high nicotine content. The strategy is based on the premise that new users of smokeless tobacco are most likely to begin with products that are milder tasting, more flavored, and lighter in nicotine content. After a period of time, there is a natural progression, switching to brands that are more full-bodied and have more concentrated tobacco taste, with more nicotine, than the entry brand. This graduation strategy is supported by the manufacturers' advertising practices which indicate the manufacturers' intent to have consumers experiment with low- nicotine brands and graduate to higher-nicotine brands over time.

J. Fraudulent Concealment

209. Defendants have fraudulently concealed the existence of the causes of action alleged below. County has exercised due diligence to learn of its legal rights, and despite such diligence, failed to uncover the existence of the violations alleged below until very recently. Defendants affirmatively concealed the existence of the causes of action alleged below through the following actions, among others:

- a. Testifying falsely under oath before the United States Congress.
- b. Providing false explanations to customers and to governmental entities regarding the health hazards of tobacco and the addictive qualities of nicotine.
- c. Conducting activities in furtherance of the conspiracy in secret, including clandestine meetings, using tobacco company attorneys to secure documents that might reveal the dangers of cigarettes and the addictive nature of nicotine, closing down research projects and moving research and information facilities outside the United States.
- d. Requiring employees to keep secret all information about the dangers of cigarette smoking and the addictive nature of nicotine under threats of severe legal consequences.

K. Tolling Of Applicable Statutes Of Limitation

210. Any applicable statutes of limitation have been tolled by Defendants' affirmative and intentional acts of fraudulent concealment, suppression, and denial of the facts as alleged above. On information and belief, the County alleges that such acts of fraudulent concealment included intentionally covering up and refusing to disclose internal documents, suppressing and subverting medical and scientific research, and failing to disclose and suppressing information concerning the addictive properties of nicotine, and Defendants' manipulation of the levels of nicotine in their tobacco products to addict consumers. Through such acts of fraudulent concealment, Defendants have successfully concealed from the public and the County the truth about the addictive nature of tobacco. and their manipulation of nicotine levels in their tobacco products, thereby tolling the running of any applicable statutes of limitation. The County could not reasonably have discovered the true facts until very recently, the truth having been fraudulently and knowingly concealed by Defendants for years.

211. In the alternative, Defendants are estopped from relying on any statutes of limitation because of their fraudulent concealment of the addictive nature of nicotine and their manipulation of nicotine levels and big-availability of nicotine in their tobacco products. Defendants were under a duty to disclose their manipulation of nicotine levels and big-availability of nicotine in their tobacco products because this is

nonpublic information over which Defendants had exclusive control, because Defendants knew that this information was not available to the County.

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

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS (FOR BREACH OF EXPRESS WARRANTY)

213. The County hereby incorporates by reference the allegations contained in paragraphs 1 through 212 of this complaint, as though fully set forth herein.

214. The Defendants made affirmations or promises regarding the health effects of their products to the public. Starting with the "Frank Statement" in 1954, and subsequent representations through to the present, Defendants promised to study the health effects of their products and fully disclose the results of such research to the general public, including residents of the County. Defendants have repeatedly warranted that tobacco products were not addictive and did not cause nicotine dependency.

215. These affirmations, as well as the extensive advertising of the industry, became the basis of the bargain for many individuals, both in beginning to use tobacco or continuing to use tobacco. Residents of the County relied on these continuing affirmations in buying and using the Defendants' products. Residents of the County relied on Defendants' skill or judgment in manufacturing, promoting, distributing and selling a product fit for human consumption.

216. As a direct result of the Defendants' fraudulent misrepresentations and active concealment, the County has sustained and will continue to sustain substantial damages for which the County is entitled to recovery, and for which Defendants are jointly and severally liable. Specifically, the County has been required to furnish hospital, medical and surgical care and treatment and expend substantial sums for the treatment of sickness, disease and injury to residents of the County, resulting from the use of Defendants' products. At the time said representations, affirmations and promises were made, the Defendants knew or should have known that the County would sustain the damages herein alleged.

SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS (FOR UNLAWFUL, DECEPTIVE AND UNFAIR BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTIONS 17200 ET SEQ. AND 17500 ET SEQ.)

217. The County hereby incorporates by reference the allegations contained in paragraphs 1 through 216 of this complaint, as though fully set forth herein.

218. California Business and Professions Code Section 17200 provides that unfair competition shall mean and include any "unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

219. California Penal Code Section 308 states, in relevant part:

(a) Every person, firm or corporation which knowingly sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or any other

preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco [or] products prepared from tobacco . . . is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$ 1,000) for the third offense....

(b) Every person under the age of 18 years who purchases or receives any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco [or] products prepared from tobacco . . . shall, upon conviction, be punished by a fine of fifty dollars (\$50) or 25 hours of community service work.

220. Defendants have committed, and continue to commit, an unlawful business practice in violation of California Business and Professions Code Section 17200 by their use of marketing and promotional activities intended and designed to solicit, encourage, and aid and abet the illegal purchase or receipt of cigarettes by minors, in violation of California Penal Code Section 308. Defendants' marketing and promotional activities directed towards minors also assist vendors in making illegal sales of cigarettes to minors.

221. Defendants' conduct is also unlawful in that it violates the Cartwright Act, California Business and Professions Code Section 16720 et seq., Beginning at a time uncertain, but at least as early as the 1960s, and continuing until at least 1996, Defendants, separately and in contract, combination, or conspiracy with each other, engaged in a scheme to restrain trade in the market for safer cigarettes in the United States, including the County. The direct and foreseeable effects of Defendants' conduct were to deprive consumers in interstate commerce, including in the County, of quality and price options that would have been available in a competitive marketplace.

222. Each of the Defendants has engaged in one or more overt acts in furtherance of the contract, combination, or conspiracy alleged. Such acts included the restraint and suppression of biological research and of the development, production and marketing of alternative, higher quality and safer cigarettes.

223. In addition, Defendants' marketing and promotional activities designed to addict young people and others to smoking, as well as their ongoing misrepresentations regarding the health risks associated with smoking and the addictive nature of nicotine, their suppression of scientific evidence regarding the true health consequences of smoking, and their manipulation of nicotine content and delivery, constitute an unfair business practice because their effect is to make the County pay for the illnesses and diseases that Defendants' tobacco products cause. By deliberately shifting the true costs of the sale and consumption of cigarettes onto the County, Defendants have been unjustly enriched at the expense of the County. Because Defendants' business practices have caused, and will continue to cause, the County, and not Defendants, unfairly to pay substantial costs associated with the injuries and illnesses caused by use of Defendants' products, Defendants have engaged in and continue to be engaged in unfair business practices in violation of Business and Professions Code Section 17200 et seq. and Section 17500 et seq.

224. In furtherance of Defendants' contract, combination, or conspiracy to eliminate competition, the Defendants entered into an agreement to undertake joint funding and control of studies regarding the effect of tobacco products on human health and to undertake joint funding and control over trade publications and promotion and marketing efforts. Through these and other agreements, understandings, and joint undertakings, the Defendants conspired or combined to suppress and withhold information on the true causal relationship between tobacco products and various diseases from consumers, local, state and federal governments, medical and health care entities, and the public at large.

225. By reason of Defendants' contract, combination, or conspiracy to restrain trade in the market for a safer cigarette, consumers, including within the County, have been injured within the meaning of the antitrust laws.

226. Defendants have also violated Business and Professions Code Section 17200 et seq. by their commission of deceptive acts which had and continue to have a tendency to deceive the consuming public, including children and adolescents. In particular, Defendants affirmatively misrepresented material facts and failed to disclose material facts to consumers in the County and public health officials, including but not limited to the following:

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

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

(c) Defendants' concealment of scientific information relating to the issue of smoking and health, including scientific studies demonstrating the causal relationship between cigarette smoking and cancer and between nicotine and addiction.

227. Such misrepresentations and concealment of information regarding the relationship of smoking, health and addiction, are and have been immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

228. Defendants' deceptive conduct, including their affirmative misrepresentations and their concealment of information relating to smoking, health and addiction, is ongoing and continues to this day.

229. Defendants have also violated Business and Professions Code Section 17200 et seq in that they violated Business and Professions Code Section 17500 et seq. by their deceptive and misleading statements.

230. As a result of the unlawful conduct of the Defendants as described above, the County has been and will be damaged as previously set forth herein, and Defendants have been and will be unjustly enriched. Specifically, Defendants have been unjustly enriched by the receipt of hundreds of millions of dollars in ill-gotten gains from sales of millions of packs and cartons of cigarettes in the County, sold in large part as a result of the unlawful acts and omissions described herein.

231. The County seeks an order of this court enjoining such methods, acts and practices and enjoining Defendants from failing or refusing to:

(a) Undertake a corrective advertising campaign on television stations in the County which warns consumers of the health hazards associated with cigarette smoking. Said broadcast campaign should be shown at such times and in sufficient numbers so as to negate the effect of the unlawful acts described in this complaint;

(b) Undertake a corrective print media and billboard campaign warning consumers of the health hazards of smoking. Said print campaign shall be published prominently and in sufficient numbers so as to negate the effect of the unlawful acts described in this complaint;

(c) Provide restitution for all funds unlawfully, unfairly or fraudulently obtained by Defendants as a result of their violation of California Business and Professions Code Sections 17200 et seq. and 17500 et seq.

(d) Disgorge all revenues and profits acquired as a result of the unlawful methods, acts and practices.

(e) Requiring Defendants to establish a fund for payment of medical costs to monitor residents of the County affected by Defendants' products in order to detect the onset of diseases and illnesses caused by tobacco products.

THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS (FRAUD AND MISREPRESENTATION)

232. The County hereby incorporates by reference the allegations contained in paragraphs 1 through 231 of this complaint, as though fully set forth herein.

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

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

235. Defendants have made and continue to make representations and statements about the safety of cigarettes and their effect on human health and addiction. Such representations and statements were and remain materially false, incomplete and fraudulent at the time Defendants made them, and Defendants knew or had reason to know of their falsity.

236. At all relevant times, Defendants intentionally, willfully or recklessly misrepresented or failed to disclose material facts about the human health hazards of smoking cigarettes, including addiction and its association with various kinds of cancer.

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

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

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

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

241. Defendants engaged in this fraudulent course of conduct for the purpose of influencing the market and reaping a profit, despite Defendants' duty to disclose all material information about the known defects in their cigarettes and the hazards of smoking them, including their addictive character. Defendants' fraudulent statements and conduct, including their effect upon the market for cigarettes, was a substantial cause persuading residents of the County to purchase and use a deadly and addictive product.

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

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

244. As a direct and proximate result of Defendants' fraudulent misrepresentations and active concealment, the County has suffered and will continue to suffer substantial damages as previously set forth herein for which the County is entitled to recovery, and for which Defendants are jointly and severally liable.

245. Defendants' conduct as described above was fraudulent, despicable and carried on with a willful and conscious disregard for the rights and safety of the general public, entitling the County to exemplary damages under Civil Code Section 3294.

PRAYER FOR RELIEF

WHEREFORE, the County prays for relief and judgment against the Defendants, jointly and severally, as follows:

1. For injunctive and declaratory relief:

A. Declaring that Defendants have violated the provisions of California Business and Professions Code Sections 17200 et seq., and California Business and Professions Code Sections 17500 et seq.;

B. Enjoining Defendants and their respective successors, agents, servants, officers, directors, employees and all persons acting in concert with them, directly or indirectly, from engaging in conduct violative of California Business and Professions Code Sections 17200 et seq., and California Business and Professions Code Sections 17500 et seq.;

C. Requiring Defendants to disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the issue of smoking and health and addiction;

D. Requiring Defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party;

E. Requiring Defendants to cease targeting minors in their advertising campaigns;

F. Requiring Defendants to fund smoking cessation programs including the provision of nicotine replacement therapy for dependent smokers;

G. Requiring Defendants to disclose the nicotine yields of their products based on machine tests and human confirmation studies for each brand;

H. Requiring Defendants to disgorge all profits acquired by means of any act or practice by this Court to be an unlawful, unfair or deceptive business practice; and

1. Enjoining Defendants from failing or refusing to undertake a corrective advertising campaign on television stations in the County, and a corrective print media and billboard campaign, warning consumers of the health hazards associated with cigarette smoking.
2. Requiring Defendants to pay restitution.
3. Awarding damages and compensation to the County for past and future damages including, but not limited to, health care expenditures caused by the Defendants' actions in violation of any laws, together with interest and costs.
4. Requiring Defendants to establish a fund for payment of medical costs to monitor residents of the County affected by Defendants' conduct, in order to detect the onset of diseases and illnesses caused by tobacco products.
5. Awarding penalties pursuant to California Business and Professions Code Section 17206 and Section 17536.
6. Awarding the County reasonable attorneys' fees and costs.
7. For costs of suit incurred herein.
8. For prejudgment interest as provided by law.
9. For punitive or exemplary damages according to proof against Defendants.
10. Such other and further relief as this Court deems equitable, just and proper.

Dated: August 5, 1996

Respectfully submitted,

DE WITT W. CLINTON County Counsel

By

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