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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

JAMES ELLIS. On Behalf of the General Public.
Plaintiff.

vs.

R.J. REYNOLDS TOBACCO COMPANY; BROWN
& WILLIAMSON TOBACCO CORPORATION;
THE AMERICAN TOBACCO COMPANY; B.A.T.
INDUSTRIES P.L.C.; PHILIP MORRIS, INC.;
THE COUNCIL FOR TOBACCO RESEARCH -
U.S.A., INC.; THE TOBACCO INSTITUTE, INC.;
LORILLARD TOBACCO COMPANY; WAYCO-
SPEEDY BAR, INC.; EAGLE VENDING
MACHINES CO., INC.; a California Corporation;
KENNEDY WHOLESALE COMPANY; and DOES I
through 500. Inclusive.

Defendants.

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Case No.

766783

COMPLAINT FOR
INJUNCTIVE AND
EQUITABLE RELIEF

JUDGE C. ROBERT JAMESON
DEPT. 11

2075832543

1 Plaintiff JAMES ELLIS, on behalf the general public, by his attorneys, alleges against
2 Defendants on information and belief, except those allegations which pertain to the named
3 Plaintiff or to his attorneys, which are alleged on personal knowledge, as follows:
4

5 NATURE OF THE CASE

6 1. Through a fraudulent course of conduct that has spanned decades, Defendants
7 have manufactured, promoted, distributed or sold tobacco products to Plaintiff and millions of
8 California consumers, citizens and residents knowing, but denying and concealing, that their
9 tobacco products contain a highly addictive drug, known as nicotine, and have, unbeknownst to
10 the public, controlled and manipulated the amount and bio-availability of nicotine in their
11 tobacco products products for the purpose and with the intent of creating and sustaining
12 addiction. Plaintiff JAMES ELLIS, on behalf of the general public, seeks equitable and
13 injunctive relief based upon Unlawful, Deceptive and Unfair Business Practices in Violation of
14 California Business and Professions Code §§17200 Et Seq. and 17500 Et Seq.
15

16 JURISDICTION AND VENUE

17 2. The Court has jurisdiction over this action pursuant to California Business and
18 Professions Code §17203. Millions of California residents purchased and used the Defendants'
19 tobacco products which were advertised, marketed, promoted and distributed in the State of
20 California. Moreover, several Defendants are corporations incorporated under the laws of the
21 State of California, which have their principal places of business in California, including:
22 Wayco-Speedy Bar, Inc. and Eagle Vending Machines Co., Inc. in Orange County; and
23 Kennedy Wholesale Company. The Defendants are all doing business in the State of
24 California, have received and continue to receive substantial compensation and profits from the
25 sale of tobacco products in the County of Orange in the State of California, and have made
26 material omissions and misrepresentations in the County of Orange, State of California. At all
27 times relevant herein, acts and conduct in furtherance of a conspiracy, which is the hub of the
28 wrongful conduct alleged herein, occurred in the State of California.

3. Venue in this case is based upon California Code of Civil Procedure §395, in that conduct of Defendants which forms the basis of this action occurred in the County of Orange, and at least one of the Defendants has its principal place of business in the County of Orange. Plaintiff JAMES ELLIS resides in the County of Orange.

PARTIES

4. Plaintiff JAMES ELLIS, a resident of the County of Orange, brings this action pursuant to California Business and Professions Code §17204 as a private attorney-general. Because of the nature of the causes of action asserted herein, while Plaintiff possesses standing to assert claims on behalf of the general public under Business and Professions Code §§17200, et seq., he is not suing in any individual capacity for individual claims for relief, and is claiming no individual injury.

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 Tobacco Company** 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. Defendant **Brown & Williamson Tobacco Corporation** (hereinafter "**Brown & Williamson**") is a Kentucky corporation, having its principal place of business at 1500 Brown & Williamson Tower, Louisville, Kentucky. Defendant **Brown & Williamson Tobacco Corporation** manufactures, advertises and sells Kool, Barclay, BelAir, Capri, Raleigh, Richland, Laredo, Eli Cutter and Viceroy cigarettes throughout the United States and in California.

7. 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. **The American Tobacco Company** 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

1 throughout the United States and in California. On December 21, 1994, **The American**
2 **Tobacco Company** was purchased by **B.A.T. Industries, P.L.C.** which, on information and
3 belief, has succeeded to the liabilities of **The American Tobacco Company** by operation of
4 law or as a matter of fact.

5 8. Defendant **B.A.T. Industries P.L.C.** (hereinafter "**B.A.T. Industries**") is a
6 British corporation having its principal place of business at Windsor House, 50 Victoria St.,
7 London. Through a succession of intermediary corporations and holding companies, **B.A.T.**
8 **Industries P.L.C.** is the sole shareholder of **Brown & Williamson Tobacco Corporation.**
9 Through **Brown & Williamson, B.A.T. Industries P.L.C.** has placed cigarettes into the stream
10 of commerce with the expectation that substantial sales of cigarettes would be made in the
11 United States and in California. In addition, **B.A.T. Industries P.L.C.** conducted, or through
12 its agents and/or co-conspirators conducted, critical research for **Brown & Williamson**
13 **Tobacco Corporation** on the issue of smoking and health. Further, **Brown & Williamson**
14 **Tobacco Corporation** is believed to have sent to England research conducted in the United
15 States on the issue of smoking and health in an attempt to remove sensitive and inculpatory
16 documents from United States jurisdiction, and these documents were subject to the control of
17 **B.A.T. Industries P.L.C.** **B.A.T. Industries P.L.C.** has been involved in the conspiracy
18 described herein and the actions of **B.A.T. Industries P.L.C.** have effected and caused harm in
19 California.

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

26 10. Defendant, **The Council for Tobacco Research - U.S.A., Inc.** (hereinafter
27 "**CTR**"), successor in interest to the Defendant Tobacco Industry Research Committee
28 ("**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.

11. 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 **The Tobacco Institute, Inc.** has since its incorporation in 1958, operated as the public relations and lobbying arm of the tobacco companies.

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

13. 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.

14. Defendant **Kennedy Wholesale Company**, is a California corporation or other business entity, having its principal place of business at 205 West Harvard, Glendale, in the County of Los Angeles, State of California, and engaged in the business of selling, distributing and marketing tobacco products through wholesale distributors, retailers and vending machines.

15. Plaintiff 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 Plaintiff who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and based 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 herein referred to herein.

1 16. Beginning as early as the 1950s, and continuing until the present day,
2 Defendants, and each of them, entered into an agreement with the intentional and unlawful
3 purpose and effect of restraining and suppressing research on the harmful effects of smoking:
4 restraining and suppressing the dissemination of information on the addictive effects of nicotine
5 and the harmful effects of smoking; and restraining and suppressing the research, development,
6 production, and making of a safer cigarette. In furtherance of Defendants' conspiracy,
7 Defendants lent encouragement, substantial assistance, and otherwise aided and abetted each
8 other with respect to these wrongful acts, and the other wrongful acts set forth herein. As a
9 result of the conspiracy, the Defendants are vicariously, and jointly and severally liable with
10 respect to each of the actions described herein.

11 17. At all times herein mentioned, Defendants, and each of them, were acting as an
12 agent of each of the other named and unnamed Defendants, and at all times herein mentioned
13 were acting within the scope, purpose and authority of that agency and with the full knowledge,
14 permission and consent of each of the other Defendants.

15 18. Each Defendant is sued individually as a primary violator and as a co-
16 conspirator, and the liability of each defendant under each of the causes of action alleged herein
17 arises from the fact that each Defendant entered into an agreement with the other Defendants
18 and third parties to pursue, and knowingly pursued, the common course of conduct to commit
19 or participate in the commission of all or part of the unlawful acts, tortious acts, plans, schemes,
20 transactions, and artifices to defraud alleged herein, including but not limited to: the
21 manipulation of nicotine content and the bio-availability of nicotine in tobacco products and the
22 misrepresentation, concealment and suppression of information regarding the addictive
23 properties of nicotine, and falsely advertising, marketing and selling cigarettes as safe, non-
24 addictive, and not containing levels of nicotine manipulated by Defendants to cause addiction.

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

20. 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, ratification and consent of their officers, directors and managing agents.

21. Defendants listed above and their predecessors and successors in interest did business in the State of California, 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 the general public. Defendants committed and continue to commit tortious and other unlawful acts in the State of California.

22. The 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 State of California, and the consumption of tobacco products by citizens and residents of the State of California.

23. 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 psychoactive 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 purposes of understanding the drug effects of nicotine.

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SUMMARY OF OPERATIVE FACTS

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

24. The Tobacco Companies reap enormous profits from their manufacture and sale of cigarettes to consumers throughout the United States, including the State of California, County of Orange. 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."

25. 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.

26. Cigarettes contain nicotine. Nicotine is an addictive substance and the use of cigarettes results in addiction to them. Nicotine causes compulsive use of cigarettes, despite

1 knowledge that they are harmful, if not lethal; nicotine has a psychoactive (mood-altering)
2 effect in the brain; and, nicotine invokes what is called "reinforcing behavior," causing
3 continued use of the nicotine-containing products. Cigarette smokers suffer an inability to quit,
4 notwithstanding a desire to do so, and those who do quit (or attempt to) endure withdrawal
5 symptoms such as headaches, insomnia, depression, lack of concentration, and anxiety.

6 27. The addictive power of nicotine is further illustrated by these statistical facts: at
7 least two-thirds of adults who smoke say they wish they could quit: 17 million Americans try to
8 quit smoking each year, but fewer than 1 out of 10 succeed: for every smoker who quits, 9 try
9 and fail: 8 out of 10 smokers say they wish they had never started smoking: after surgery for
10 lung cancer, almost half of the smokers resumed smoking: among smokers who suffer heart
11 attack, 38% resume smoking while they are still in the hospital; even when a smoker has their
12 larynx removed, 40% try smoking again: 70% of young people ages 12 to 18 who smoke say
13 they believe they are already dependent on cigarettes: and 40% of high school seniors who
14 smoke regularly have tried to quit and failed. According to David A. Kessler, M.D.,
15 Commissioner of the United States Food and Drug Administration, "Once they have started
16 regularly, most smokers are in effect deprived of the choice to stop smoking.... Seventeen
17 million Americans try to quit smoking each year.' But, more than 15 million are unable to
18 exercise that choice because they cannot break their addiction to cigarettes."

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20 **B. Knowledge That Nicotine Causes Addiction.**

21 28. The fact that nicotine delivered by tobacco products is highly addictive was
22 carefully and comprehensibly documented in the 1988 Surgeon Generals Report, "The Health
23 Consequences of Smoking: Nicotine Addiction." The major conclusions contained in this report
24 are (a) "Cigarettes and other forms of tobacco are addicting"; (b) "Nicotine is the drug in
25 tobacco that causes addiction"; and (c) "The pharmacologic and behavioral processes that
26 determine tobacco addiction are similar to those that determine addiction to drugs such as
27 heroin and cocaine." Likewise, in a 1988 report addressing the health effects of smokeless
28 tobacco, the World Health Organization concluded: "[T]here is ample evidence that the blood

1 nicotine levels of smokeless tobacco users were as high as or even higher than those found in
2 many cigarette smokers. Its continued use, therefore, does cause addiction and dependence in
3 humans."

4 29. Nicotine is now recognized as an addictive substance by such major medical
5 organizations as the Office of U.S. Surgeon General, the World Health Organization, the
6 American Medical Association, the American Psychiatric Association, the American
7 Psychological Association, the American Society of Addiction Medicine, the American Public
8 Health Association, and the Medical Research Counsel in the United Kingdom. The National
9 Institute on Drug Abuse has called cigarette smoking the most common example of drug
10 dependence in the United States.

11 30. Despite the recent recognition of nicotine's addictive properties by these and
12 other organizations, the Tobacco Companies and their distributors continue to misinform the
13 general public in general and the Orange County residents who are members of this action.
14 Although it now appears that the Tobacco Companies have known for decades, on the basis of
15 their own long-concealed research and testing, that nicotine is addictive, they have denied, and
16 continue to deny, that nicotine is addictive. The Tobacco Companies' insistent and affirmative
17 denial that nicotine is addictive, coupled with their pervasive advertising, promotional and
18 public relations strategy, is designed to and has effectively nullified the public's meaningful
19 appreciation of the nature and extent of nicotine dependence. Specifically, the Tobacco
20 Companies' emphasis on smoking as a voluntary personal choice and its positive social benefits
21 misleads the public, especially the impressionable young people, into thinking that smoking
22 may be stopped as easily as started. Knowledge of addiction then may thus come too late,
23 when the phenomenon of addiction prevents or complicates any "personal choice" to quit.

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1 **1. The Tobacco Companies' Understanding of Nicotine Addiction.**

2 31. The Defendants know of the difficulties smokers experience in quitting smoking
3 and of the tendency of addicted individuals to focus on any rationalization to justify their
4 continued smoking. The Defendants exploit this weakness and capitalize upon the known
5 addictive nature of nicotine. Nicotine addiction guarantees a market for cigarettes. The
6 addictive nature of the nicotine in cigarettes virtually eliminates personal choice in those who
7 become addicted.

8 32. By no later than the early 1960s, and perhaps as early as the 1940s, the Tobacco
9 Companies were fully aware, based on their own scientific research, that nicotine is an
10 addictive substance and that regular cigarette smoking results in nicotine dependence. For
11 example, an internal Philip Morris report from 1971 describes the difficulties a smoker has in
12 stopping smoking once they are addicted to nicotine. "Even after eight months, quitters were
13 apt to report having neurotic symptoms, such as feeling depressed, being restless and tense,
14 being ill-tempered, having a loss of energy, being apt to doze off, etc. They were further
15 troubled by constipation and weight gains...."

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

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

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

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

31 Nicotine is a powerful pharmacological agent with
32 multiple sites of action and may be the most important
33 component of cigarette smoke. Nicotine and an

1 understanding of its properties are important to the
2 continued well being of our cigarette business since this
3 "alkaloid has been cited often as the reason for smoking"
4 and theories have been advanced for "nicotine titration"
by the smoker. Nicotine is known to have effects on the
central nervous system as influencing memory, learning,
pain perception, response to stress, and level of arousal.

5 35. Additional documents are, likewise, replete with evidence of such knowledge:

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

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

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

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

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

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

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

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

20 b. "Why then is there not a market for nicotine per se, eaten, sucked, drunk,
21 injected, inserted or inhaled as a pure aerosol? The answer, and I feel quite strongly about this,
22 is that the cigarette is in fact among the most awe-inspiring examples of the ingenuity of man.
23 Let me explain my conviction. The cigarette should be conceived not as a product but as a
24 package. The product is nicotine."

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

27 37. Documents from a BATCO study called Project Hippo, uncovered only in May
28 1994, show that as far back as 1961, this cigarette company was actively studying the

1 physiological and pharmacological effects of nicotine. Project Hippo reports were circulated to
2 other U.S. cigarette manufacturers and to TIRC, demonstrating that at least some of the
3 industry's nicotine research was shared. BATCO sent the reports to officials at Brown &-
4 Williamson and R.J. Reynolds, and circulated a copy to TIRC with a request that TIRC
5 "consider whether it would help the U.S. industry for these reports to be passed on to the
6 Surgeon General's Committee."

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

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

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

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

26 42. The cigarette manufacturers have affirmatively misrepresented to consumers and
27 to Congress the role of nicotine in tobacco use. Even today, Brown & Williamson, R.J.
28 Reynolds and the Tobacco Institute continue to claim that nicotine is important in cigarettes for

1 taste and "mouth-feel." However, tobacco industry patents specifically disti-
2 from flavorants and an R.J. Reynolds book on flavoring tobacco, while listin-
3 thousand flavorants, fails to include nicotine as a flavoring agent. The cigare-
4 actually concentrated on developing technologies to mask the acrid flavor of
5 nicotine in cigarettes.

6 43. Patent filings by the Tobacco Companies further reveal their
7 addictive quality of nicotine. In a 1971 patent filing, Philip Morris discusses
8 "nicotine content at a sufficiently high level to provide the desired physiolog-
9 Years of numerous patent filings by the Tobacco Companies underscore the
10 knowledge that nicotine is addictive.

11 44. Despite their knowledge that cigarette smoking is, as a result
12 extremely addictive, the Tobacco Companies still continue to deny that smok-
13 Through their individual advertising and public relations campaigns, and col-
14 the work of the Tobacco Institute, the Tobacco Companies have successfully
15 cigarettes by concealing and misrepresenting their highly addictive nature. T
16 Subcommittee on Health and the Environment commenced a public hearing i
17 on the potential regulation of nicotine-containing products under the Federal
18 Cosmetic Act. In the wake of the March 25, 1994, Congressional Hearings, s
19 the Tobacco Institute and the Tobacco Companies have denied in nationwide
20 broadcasts and print publications that nicotine is addictive. On April 14, 199
21 executives of each of the Tobacco Companies testified under oath before Con-
22 general public that nicotine is not addictive. Following the appearance of the
23 Companies' executives before Congress, Philip Morris took out full-page new-
24 stated, in part: "Philip Morris does not believe cigarette smoking is addictive

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1 2. The Waxman Hearings.

2 45. On February 25, 1994, David A. Kessler, M.D., Commissioner of the FDA,
3 sent a letter to Scott D. Bailin, Esq., Chairman of the Coalition on Smoking and Health,
4 asserting: "Evidence brought to our attention is accumulating that suggests that cigarette
5 manufacturers may intend that their products contain nicotine to satisfy an addiction on the part
6 of some of their customers. The possible inference that cigarette vendors intend cigarettes to
7 achieve drug effects in some smokers is based on mounting evidence we have received that: (1)
8 the nicotine ingredient in cigarettes is a powerfully addictive agent and (2) cigarette vendors
9 control the levels of nicotine that satisfy this addiction."

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

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

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

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

23 c. "[T]he public thinks of cigarettes as simply blended tobacco rolled in
24 paper. But they are much more than that. Some of today's cigarettes may, in fact, qualify as
25 high technology nicotine delivery systems that deliver nicotine in precisely calculated
26 quantities—quantities that are more than sufficient to create and to sustain addiction in the vast
27 majority of individuals who smoke regularly."

28 ///

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

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

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

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

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

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

25 51. As part of its cover-up, Brown & Williamson even went so far as to instruct the
26 DNA Plant Technology Corporation of Oakland, California, which had developed Y-1, to tell
27 FDA investigators that Y-1 had "never [been] commercialized." Only after the FDA discovered
28 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
2 admit that it had developed the high-nicotine tobacco.

3 52. The general public is only now beginning to learn about the measures taken by
4 the Tobacco Industry to conceal the truth about nicotine. On March 31, 1994, Congressman
5 Waxman released a copy of a previously secret Philip Morris funded research study
6 substantiating the addictive nature of nicotine. Philip Morris scientists, upon conducting tests,
7 found strong evidence that nicotine might be addicting, which suggested further testing should
8 be done. The experiment used in the study - self administration by rats - is one of the primary
9 tests used by the U.S. Food and Drug Administration, the U.S. Drug Enforcement Agency, and
10 World Health Organization to determine whether a drug is addictive. The research was
11 submitted in 1983 to the scientific journal *Psychopharmacology* and was accepted for
12 publication. Prior to publication, the journal was notified by the scientist that the article was
13 being withdrawn "due to factors beyond [his] control." The scientist subsequently left Philip
14 Morris and in 1986 resubmitted a revised version of the article to the journal. After the article
15 was accepted for publication again, the scientist was forced to withdraw it by Philip Morris.

16 53. If the Tobacco Companies had disclosed their knowledge of the addictive nature
17 of nicotine when they first acquired this knowledge, then the public would have learned about
18 the addictiveness of nicotine many years ago. As a result, the scientific and medical
19 community would have had access to critical Tobacco Industry secrets on the subject, which
20 would have resulted in a more rapid popular determination and consensus on the subject. The
21 Tobacco Industry concealed and continues to attempt to conceal the truth about nicotine in
22 order to sustain the additions of existing cigarette smokers and to "hook" thousands of new
23 smokers every day, so that the Tobacco Companies can continue to profit at the expense of the
24 lives and health of the general public.

25 54. Not only does the Tobacco Industry know and conceal that nicotine is an
26 additive drug, the Plaintiff is informed and believes that the Tobacco Companies intend that
27 their products contain sufficient nicotine to satisfy additional on the part of smokers, and
28 therefore control the levels of nicotine inn these products to create and sustain the addition. It

1 is this scheme to deceive the general public that enables the Tobacco Companies to see its life-
2 threatening products to tens of millions of Americans as their captive customers.

3
4 3. The Tobacco Companies Manipulate the Level of Nicotine in Cigarettes With the
5 Intent and for the Purpose of Creating and Sustaining Addictions to their
6 Products.

7 55. The Plaintiff is informed and believes that the Tobacco Companies control, or
8 manipulate, the levels of nicotine in cigarettes. The Tobacco Companies developed technology
9 years ago to remove nicotine from tobacco and to control precisely the amount of nicotine in
10 cigarettes. Nevertheless, the Tobacco Companies continues to manufacture, market and sell
11 their products with levels of nicotine that are sufficient to produce and sustain addition. Rather
12 than remove nicotine from cigarettes and smokeless tobacco—and hence remove the addictive
13 drug contained therein—the Tobacco Companies add nicotine to their cigarettes, through a
14 variety of methods, to maintain levels of nicotine sufficient to make their cigarettes additive to
15 consumers.

16 56. The Tobacco Companies prepare a substantial portion of the contents of their
17 cigarettes through what is called a "Reconstitution process." Prior to the 1940s, the waste
18 products from cigarettes—tobacco leaf scraps and stems, dried tobacco dust, adhesive
19 reinforcing fibers, mineral ash modifiers, humectant, and some other inexpensive materials -
20 were discarded. Thereafter, the tobacco companies began to sue these previously unusable
21 materials to make reconstituted tobacco. As part of the process, the Tobacco Companies
22 removed ingredients from these materials at an early stage of the process and replaced some of
23 the nicotine in later stages. The reconstitution process allows the Tobacco Companies to
24 manufacture cigarettes at a lower costs by using less tobacco, which is the most expensive part
25 of the cigarette, and by making up the difference in content with the reconstituted tobacco. By
26 removing the nicotine and then carefully replacing as much nicotine as desired, the Tobacco
27 Companies are able to control the precise amount of nicotine in cigarettes.

28 ///

1 57. LT. Industries, a subsidiary of Kimberly-Clarke Corporation, specializes in the
2 tobacco reconstitution process and, as LT. says, in helping tobacco companies "control" their
3 nicotine. The LT. reconstitution process is the most widely used in the world. An LT.
4 advertisement, entitled "More Nicotine. Or Less." published in tobacco trade publications
5 states:

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

11 In fact, the process described in the LT. advertisement can raise the level of nicotine
12 beyond that which is naturally found in tobacco materials. In 1985, a *Tobacco Journal* article
13 describing the LT. process states: "Those standard reconstituted Tobacco Products contained
14 0.7-1.0 nicotine. LT. Industries offers the possibility of increasing the nicotine content of the
15 final sheet to a maximum of 3.5% . . . A dramatic increase in tobacco taste and smoke is noted
16 in the nicotine-fortified reconstituted tobacco."

17 58. Without informing the general public, the Tobacco Companies have long viewed
18 cigarettes in terms of their nicotine delivery function. For example, Philip Morris' William L.
19 Dunn, Jr., wrote in a 1973 internal memorandum:

20 Why then is there not a market for nicotine per se, to be eaten,
21 sucked, drunk, injected, inserted or inhaled as a pure aerosol?
22 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 . . .

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

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

3 59. Evidence of the Tobacco Industry's intent and ability to manipulate nicotine in
4 cigarettes at a sufficiently high level to provide the "desired physiological activity" is found in
5 years of Tobacco Company patent applications. Tobacco Company patents illustrate an intent
6 and ability by the Tobacco Companies to control the amount of nicotine in cigarettes: to
7 provide desired physiological effects: to increase nicotine content in cigarettes by adding
8 nicotine to various parts of the cigarette; to manipulate nicotine levels in cigarettes; and to
9 manipulate the rate at which the nicotine is delivered in the cigarettes. For example:

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

14 B. A 1971 Philip Morris patent states:

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

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

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

C. Another 1971 Philip Morris patent application discusses a design to
increase the nicotine content in the smoke of the tobacco product by
adding nicotine. One of the expressed objects of the invention was to
"provide an agent for the treatment of tobacco smoke whereby nicotine is

1 easily released under controlled amounts." The same Philip Morris
2 application explains that the proposed invention "is particularly useful
3 for the maintenance of the proper amount of nicotine in tobacco smoke."
4 and notes that "previous efforts have been made to add nicotine to
5 Tobacco Products when the nicotine level in the tobacco was undesirably
6 low."

7 D. A 1980 Loews' Corporation patent application discusses a process that
8 "enables the manipulation of the nicotine content of tobacco materials,
9 such as cut leaf and reconstituted leaf, by removal of nicotine from a
10 suitable nicotine tobacco source, or by the addition of nicotine to a low
11 nicotine material."

12 E. A 1986 R.J. Reynolds Tobacco Company patent indicates that the
13 Tobacco Companies can precisely manipulate the rate at which the
14 nicotine is delivered in the cigarette: "It is a further object of this
15 invention to provide a cigarette which delivers a larger amount of
16 nicotine in the first few puffs of the cigarette than in the last few puffs."

17 F. A 1991 R.J. Reynolds Tobacco Company patent application states that
18 "processed tobaccos can be manufactured under conditions suitable to
19 provide products having various nicotine levels."

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

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

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1 systems that deliver nicotine in precisely calculated quantities - quantities that are more than
2 sufficient to cease and sustain an addiction in the vast majority of individuals who smoke
3 regularly." During the March 25, 1994, hearing, Dr. Kessler and others presented evidence of
4 the Tobacco Companies' manipulation of nicotine levels, including reference to internal
5 memoranda and more than 30 industry patents.

6 62. Just as the Tobacco Companies deny that the nicotine contained in cigarettes is
7 additive, through their individual advertising and public relations campaigns and collective
8 through The Tobacco Institute, the Tobacco Companies have denied unequivocally that they are
9 engaged in controlling the level of nicotine in cigarettes for the purpose of developing and
10 sustaining addiction to their products. Since the "Day One" program broadcast by ABC and the
11 March 24, 1994, Congressional Hearings, spokespeople for The Tobacco Institute and the
12 Tobacco Companies have in nationwide television broadcasts and publications denied all the
13 charges that the Tobacco Companies manipulate nicotine levels in cigarettes. During their
14 appearance before Congress on April 14, 1994, the chief executives of each of the Tobacco
15 Companies testified that their companies do not manipulate nicotine levels or otherwise add
16 nicotine to their cigarettes to create or sustain addiction to their products.

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

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

25 65. Brown & Williamson publicly denies that the use of ammonia in the processing
26 of tobacco increases the amount of nicotine absorbed by the smoker. Nevertheless, the
27 company's own internal documents reveal that it and its rivals use ammonia compounds to
28 increase nicotine delivery. A 1991 Brown & Williamson confidential blending manual states:

1 "Ammonia, when added to a tobacco blend, reacts with the indigenous nicotine salts and
2 liberates free nicotine As the result of such change the ratio of extractable nicotine to
3 bound nicotine in the smoke may be altered in favor of extractable nicotine. As we know,
4 extractable nicotine contributes to impact in cigarette smoke and this is how ammonia can act
5 as an impact booster." According to the Brown & Williamson manual, all American cigarette
6 manufacturers except Liggett use ammonia technology in their cigarettes.

7
8 **C. Fraudulent Concealment.**

9 66. Defendants have fraudulently concealed the existence of the causes of action
10 alleged below. The Plaintiff and members of the general public have exercised due diligence to
11 learn of their legal rights, and despite such diligence, failed to uncover the existence of the
12 violations alleged below until very recently. Defendants affirmatively concealed the existence
13 of the causes of action alleged below through the following actions, among others:

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

23
24 **D. Tolling Of Applicable Statutes Of Limitation.**

25 67. Any applicable statutes of limitation have been tolled by Defendants' affirmative and
26 intentional acts of fraudulent concealment, suppression, and denial of the facts as alleged above.
27 Plaintiff is informed and believes that such acts of fraudulent concealment included intentionally
28 covering up and refusing to disclose internal documents, suppressing and subverting medical and

1 scientific research, and failing to disclose and suppressing information concerning the addictive
2 properties of nicotine, and Defendants' manipulation of the levels of nicotine in their Tobacco
3 products to addict consumers. Through such acts of fraudulent concealment, Defendants have
4 successfully concealed from the public the truth about the addictive nature of tobacco, and their
5 manipulation of nicotine levels in their Tobacco products, thereby tolling the running of any
6 applicable statutes of limitation. Plaintiff and members of the general public could not reasonably
7 have discovered the true facts until very recently, the truth having been fraudulently and knowingly
8 concealed by Defendants for years.

9 68. In the alternative, Defendants are estopped from relying on any statutes of
10 limitation because of their fraudulent concealment of the addictive nature of nicotine and their
11 manipulation of nicotine levels and bio-availability of nicotine in their Tobacco products.
12 Defendants were under a duty to disclose their manipulation of nicotine levels and bio-availability
13 of nicotine in their Tobacco products because this is nonpublic information over which Defendants
14 had exclusive control, because Defendants knew that this information was not available to Plaintiff
15 or the general public, and because this information was crucial to the consuming public in making
16 their purchasing decisions. As a result of this concealment, members of the general public were
17 deprived of informed consent regarding their ingestion of an addictive drug, and were deprived of
18 any choice on which to make a risk/benefit assessment.

19 69. Until shortly before the filing of the Complaint in this action, Plaintiff and the
20 general public had no knowledge that Defendants were engaged in the wrongdoing alleged herein.
21 Because of the fraudulent and active concealment of the wrongdoing by Defendants, including
22 deliberate efforts—which continue to this day—to give Plaintiff and members of the general
23 public the materially false impression that nicotine is not addictive and that Defendants are not
24 manipulating the nicotine levels of their Tobacco products, Plaintiff and members of the general
25 public could not reasonably have discovered the wrongdoing at any time prior to this time.
26 Defendants have attempted and are continuing their attempts to keep such internal information
27 from reaching the public. Indeed, Defendants still refuse to admit that nicotine is addictive and
28 that they have manipulated the levels of nicotine in their Tobacco products.

FIRST 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.)

70. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 69 of this complaint, as though fully set forth herein.

71. California Business and Professions Code §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."

72. California Penal Code §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.

73. Defendants have committed, and continue to commit unlawful business practices in violation of California Business and Professions Code §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 §308. Defendants' marketing and promotional activities directed towards minors also assist vendors in making illegal sales of cigarettes to minors.

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

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

13 76. In addition, beginning at a time uncertain but at least since the 1950s, Defendants,
14 separately and in contract, combination, or conspiracy with each other, engaged in a scheme to
15 eliminate competition by agreeing to affirmatively misrepresent and not to disseminate product
16 information regarding the quality, safety and composition of cigarettes and tobacco products.

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

25 78. By reason of Defendants' contract, combination, or conspiracy to restrain trade in
26 the market for a safer cigarette, members of the general public within the State of California have
27 been harmed, and will suffer harm in the future, within the meaning of the antitrust laws.

28 ///

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

- 6 (a) Defendants' misleading and deceptive statements and
7 practices relating to the issue of smoking and health,
8 including misrepresentations that there is no proof of causal
9 connection between cigarette smoking and adverse health
10 effects, and that cigarette smoking is not addictive;
- 11 (b) Defendants' misleading and deceptive statements and
12 practices relating to the industry's promises to conduct and
13 disclose objective scientific research on the issue of smoking
14 and health; and
- 15 (c) Defendants' concealment of scientific information relating to
16 the issue of smoking and health, including scientific studies
17 demonstrating the causal relationship between cigarette
18 smoking and cancer and between nicotine and addiction.

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

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

25 82. Defendants have also violated Business and Professions Code §17200 et seq. in that
26 they violated Business and Professions Code §17500 and Civil Code §1770 by their deceptive and
27 misleading statements and representations,

28 ///

1 83. As a result of the unlawful conduct of the Defendants as described above,
2 Defendants have been and will be unjustly enriched. Specifically, Defendants have been unjustly
3 enriched by the receipt of hundreds of millions of dollars in illgotten gains from sales of millions
4 of packs and cartons of cigarettes in California, sold in large part as a result of the unlawful acts
5 and omissions described herein.

6 84. Plaintiff and members of the general public have no adequate remedy at law, and
7 the continuing conduct of Defendants will subject them to a substantial risk of irreparable harm in
8 the absence of injunctive relief. Therefore, Plaintiff, on behalf of the general public, pursuant to
9 Business and Professions Code §17203, seeks an order of this court:

- 10 A. Declaring that Defendants have violated the provisions of California
11 Business and Professions Code §17200, California Business and
12 Professions Code §17500 and California Civil Code §1770:
13 B. Enjoining Defendants and their respective successors, agents, servants,
14 officers, directors, employees and all persons acting in concert with them,
15 directly or indirectly, from engaging in conduct violative of California
16 Business and Professions Code §17200, California Business and
17 Professions Code §17500 and California Civil Code §1770:
18 C. Requiring Defendants to disclose, disseminate, and publish all research
19 previously conducted directly or indirectly by themselves and their
20 respective agents, affiliates, servants, officers, directors, employees, and all
21 persons acting in concert with them, that relates to the issue of smoking and
22 health and addiction:
23 D. Requiring Defendants to fund a corrective public education campaign
24 relating to the issue of smoking and health, administered and controlled by
25 an independent third party;
26 E. Requiring Defendants to cease targeting minors in their advertising
27 campaigns;

28 ///

- 1 F. Requiring Defendants to fund smoking cessation programs including the
2 provision of nicotine replacement therapy for nicotine dependent smokers:
3 G. Requiring Defendants to disclose the nicotine yields of their products based
4 on machine tests and human confirmation studies for each brand:
5 H. Requiring Defendants to disgorge all profits acquired by means of any act
6 or practice by this Court to be an unlawful, unfair or deceptive business
7 practice; and
8 I. Requiring Defendants to undertake a corrective advertising campaign on
9 television stations in California, and a corrective print media and billboard
10 campaign, warning consumers of the health hazards associated with
11 cigarette smoking.
12 J. Requiring Defendants to pay restitution to the public for all funds.
13 unlawfully, unfairly or fraudulently obtained by Defendants as a result of
14 their unfair and deceptive acts.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of the general public, prays for relief and judgment against the Defendants, jointly and severally, as follows:

1. For injunctive and equitable and declaratory relief:

- A. Declaring that Defendants have violated the provisions of California Business and Professions Code §17200, California Business and Professions Code §17500 and California Civil Code §1770;
- 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 §17200, California Business and Professions Code §17500 and California Civil Code §1770;
- 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;

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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


I. Requiring Defendants to undertake a corrective advertising campaign on television stations in California, and a corrective print media and billboard campaign, warning consumers of the health hazards associated with cigarette smoking.

J. Requiring Defendants to pay restitution to the general public of California for all funds, unlawfully, unfairly or fraudulently obtained by Defendants as a result of their unfair and deceptive acts.

- 2. Awarding reasonable attorneys' fees and costs.
- 3. For costs of suit incurred herein.
- 4. For prejudgment interest as provided by law.
- 5. Such other and further relief as this Court deems equitable, just and proper.

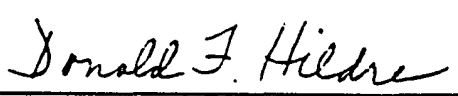
Dated: July 24, 1996

ROBINSON, PHILLIPS & CALCAGNIE

By: 
MARK P. ROBINSON, JR.
Attorneys for Plaintiff

Dated: July 24, 1996

DOUGHERTY & HILDRE

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