

| | |
|------------------------------------|---|
| 1700 East Putnam Avenue |) |
| Greenwich, CT 06870; |) |
| |) |
| LORILLARD TOBACCO COMPANY |) |
| 714 Green Valley Road |) |
| Greensboro, NC 27408, |) |
| |) |
| LIGGETT GROUP, INC. |) |
| 300 North Duke Street |) |
| Durham, NC 27702, |) |
| directly and as parent to |) |
| LIGGETT & MYERS, INC. |) |
| 810 Craghead Street |) |
| Danville, VA 24541, |) |
| |) |
| BRITISH AMERICAN TOBACCO, P.L.C. |) |
| Windsor House |) |
| 50 Victoria Street |) |
| London SW1H 0NL, England, |) |
| directly and as successor to |) |
| B.A.T. INDUSTRIES P.L.C. |) |
| Windsor House, 50 Victoria Street |) |
| London SW1H 0NL, England; |) |
| |) |
| THE COUNCIL FOR TOBACCO RESEARCH – |) |
| USA, INC. |) |
| 900 Third Avenue |) |
| New York, NY 10022, |) |
| and |) |
| |) |
| THE TOBACCO INSTITUTE, INC. |) |
| 1875 I Street, N.W., Suite 800 |) |
| Washington, D.C. 20006, |) |
| |) |
| Defendants. |) |
| |) |
| | x |

COMPLAINT

Plaintiffs herein, by and through their undersigned attorneys, on behalf of themselves and all others similarly situated, for their complaint herein, allege as follows:¹

INTRODUCTION

1. The legislatures of all fifty states agree that children should not purchase or smoke cigarettes and have made the sale of cigarettes and other tobacco products to children a crime. Nevertheless, for decades, the major cigarette manufacturers and others have conspired to induce children to smoke through fraudulent schemes and deceptive marketing targeted to children. As a result, millions of children have been induced while they under age to purchase cigarettes for their own use and pay defendants' for their harmful, addictive, misrepresented products. Many of these children have continued smoking as adults.

2. This action is brought by named plaintiffs who are young adults on behalf of themselves and others similarly situated who are under 22 years old and who were under age when they began purchasing defendants' cigarettes. The action is brought to recover, at a minimum, the purchase price paid by plaintiffs and class members for defendants' products while they were under age, or, in the alternative, to recover the unjust enrichment obtained by defendants from plaintiffs and class members while they were under age through the use of fraud, deception, misrepresentation, and other activities constituting racketeering, in violation of federal law. This action does not seek damages for the

¹ Many of the allegations in this Complaint are stated as they appear in the Complaint in *United States of America v. Philip Morris Inc.* Civil Action No. 99-2496 (D.D.C.).

negative health effects of cigarettes upon the named plaintiffs or members of the class. Nor do plaintiffs allege or seek to prove that they or the class members are addicted to cigarettes, although most undoubtedly are. Rather, the allegations contained herein relating to the addictive effects of cigarettes and defendants' activities associated therewith are included because they are qualities of defendants' products which defendants intentionally did not disclose to plaintiffs. In addition, such allegations provide the necessary context to the defendants' conduct and are so intertwined with defendants' wrongful conduct intended to induce young people to smoke that they must be included to provide the trier of fact with the entire story of defendants' wrongdoing.

3. Plaintiffs seek to represent a class of all individuals who are twenty-one years of age or younger at the date of the filing of this Complaint who started purchasing cigarettes for their own use when they were under age. Plaintiffs do not seek damages for personal injuries caused by cigarettes. Instead, plaintiffs seek to recover treble the amount of their expenditures for cigarettes while they were under age. In the alternative, they seek disgorgement of the unjust enrichment defendants obtained from plaintiffs as a result of defendants' knowing and intentional misrepresentation of their products with the purpose of inducing young people to begin purchasing their products and to continue doing so into the future. Plaintiffs will seek an award of damages based on each defendants' aggregate sales to under age youth, out of which class members will be compensated to the extent of their economic loss. It is requested that any remaining funds under either theory of compensation be used to provide court approved educational programs regarding teen smoking, including smoking cessation efforts.

4. For many years, defendants repeatedly and consistently denied that cigarettes are addictive, even though they knew or should have known that cigarettes are addictive. Furthermore, defendants affirmatively represented to the public that cigarettes are not addictive. Defendants compounded that fraud by repeatedly and consistently stating that they did not market cigarettes to children while at the same time utilizing advertising and marketing techniques to make their products attractive to children. The combination of a product targeted at individuals not yet capable of making an informed decisions and the secrecy surrounding the addictiveness of the product resulted in a market for cigarettes among under age youth which defendants created and exploited for billions of dollars in profits.

5. In all relevant respects, defendants acted in concert with each other, both in the United States and worldwide, and in concert with other unnamed co-conspirators, in order to further their fraudulent scheme. Beginning not later than 1953, defendants, their various agents and employees, and their co-conspirators, formed an "enterprise" ("the Enterprise") as that term is defined in 18 U.S.C. § 1961(4). That Enterprise has functioned as an organized association-in-fact for more than 45 years to achieve, through illegal means, the shared goals of maximizing defendants' profits and avoiding the consequences of their actions. Each defendant has participated in the operation and management of the Enterprise, and has committed numerous acts to maintain and expand the Enterprise.

6. In order to avoid discovery of their illegal and fraudulent conduct and the possibility that they might be called to account for their conduct, defendants engaged in a widespread scheme both inside and outside the United States to frustrate public scrutiny by making false and deceptive

statements and by concealing documents and research that they knew would have exposed their public campaign of deceit. This scheme included making false and deceptive statements to the public and in congressional, judicial, and federal agency proceedings.

7. The effect of defendants' fraudulent scheme and wrongful conduct continues to this day; defendants are continuing to prosper and profit from their unlawful conduct; and defendants are likely to continue their unlawful activities into the future.

I. JURISDICTION

8. Jurisdiction in this action is predicated upon 28 U.S.C. §§ 1331, 1367, and 2201, and 18 U. S.C. §§ 1964(a) and (c).

II. VENUE

9. Venue for this action is predicated upon 18 U.S.C. § 1965 and 28 U.S.C. §§ 1391(b) and (c). Each defendant cigarette company, or its predecessor or successor, has marketed cigarettes for sale in the District of Columbia and elsewhere from at least 1953 to the present, and the other named defendants either reside in the District of Columbia or have committed substantial acts here in furtherance of the conspiracy.

III. THE PARTIES

A. Plaintiffs

10. Plaintiff Nadiyah Simms is an individual who at all times relevant to this Complaint resided in the District of Columbia and currently resides there. Nadiyah Simms is eighteen years of age.

She began purchasing cigarettes for her own use at the age of fourteen, and she has purchased them for such use since that time until the present.

11. Plaintiff Arkeba Jones is an individual who at all times relevant to this Complaint resided in the District of Columbia and currently resides there. Ms Jones is nineteen years of age. She began purchasing cigarettes for her own use at the age of twelve and she has purchased them for such use since that time until the present. Ms Jones has smoked approximately a half a pack a day since she was sixteen.

12. Elred Lewis Bruce is an individual who at all times relevant to this Complaint resided in the state of Maryland and regularly purchases cigarettes for his own use in the District of Columbia. Elred Lewis Bruce is nineteen years of age. He began purchasing cigarettes for his own use at the age of approximately fifteen years and has purchased them for such use since that time until the present.

B. Cigarette Company Defendants

13. Defendant PHILIP MORRIS, INC. ("Philip Morris") is a Virginia corporation with its principal place of business at 120 Park Avenue, New York, New York. Philip Morris is a subsidiary of PHILIP MORRIS COMPANIES, INC. At relevant times, Philip Morris has manufactured, advertised, and sold cigarettes, including Alpine, Basic, Dunhill, Benson & Hedges, Cambridge, English Ovals, Galaxy, Marlboro, Merit, Parliament, Philip Morris, Players, Saratoga, and Virginia Slims brand cigarettes throughout the United States, including in the District of Columbia. In addition, on or about January 12, 1999, Philip Morris entered into an agreement with defendant LIGGETT GROUP, INC. to purchase certain brands of cigarettes previously manufactured by Liggett, which Philip Morris also

has sold throughout the United States and in the District of Columbia. At times pertinent to this Complaint, Philip Morris, individually and through its agents, alter egos, subsidiaries, divisions, or parent companies, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

14. Defendant R.J. REYNOLDS TOBACCO COMPANY ("Reynolds" or "RJR") is a New Jersey corporation with its principal place of business at 401 North Main Street, WinstonSalem, North Carolina. At relevant times, Reynolds has manufactured, advertised, and sold cigarettes, including Best Value, Bright Rite, Camel, Century, Doral, Magna, Monarch, More, Now, Salem, Sterling, Vantage, and Winston brand cigarettes throughout the United States, including in the District of Columbia. At times pertinent to this Complaint, Reynolds, individually and through its agents, alter egos, subsidiaries, divisions, or parent companies, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

15. Defendant BROWN & WILLIAMSON TOBACCO CORPORATION ("Brown & Williamson") is a Delaware corporation with its principal place of business at 1500 Brown & Williamson Tower, Louisville, Kentucky. Brown & Williamson is a wholly owned subsidiary, directly or indirectly, of BATUS Holdings, Inc., a Delaware corporation, and its ultimate parent company is

defendant BRITISH AMERICAN TOBACCO P.L.C. At relevant times, Brown & Williamson has manufactured, advertised, and sold cigarettes, including Barclay, Bel Air, Capri, Eli Cutter, CPC, Kool, Laredo, Prime, Private Stock, Raleigh, Richland, Summit, Tall, Tareyton, and Viceroy brand cigarettes throughout the United States, including in the District of Columbia. As a result of its acquisition of defendant AMERICAN TOBACCO COMPANY in 1994 (either directly or through BAT Industries, p.l.c., the predecessor to BRITISH AMERICAN TOBACCO P.L.C.), Brown & Williamson has succeeded to the liabilities of defendant American either by operation of law, or as matter of fact. At times pertinent to this Complaint, Brown & Williamson, individually and through its agents, alter egos, subsidiaries, divisions, or parent companies, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

16. Defendant LORILLARD TOBACCO COMPANY, INC. (“Lorillard”) is a Delaware corporation with its principal place of business at 1 Park Avenue, New York, New York. Lorillard is a subsidiary of Loews Corp., a Delaware corporation. At relevant times, Lorillard has manufactured, advertised, and sold cigarettes, including Golden Lights, HarleyDavidson, Heritage, Kent, Maverick, Max, Newport, Newport Red, Old Gold, Satin, Spring, Spring Lemon Lights, Style, Triumph, and True brand cigarettes throughout the United States, including in the District of Columbia. At times pertinent to this Complaint, Lorillard, individually and through its agents, alter egos, subsidiaries, divisions, or parent companies, materially participated in the Enterprise, and materially participated,

conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

17. Defendant LIGGETT GROUP, INC. ("Liggett") is a Delaware corporation with its principal place of business at 700 West Main Street, Durham, North Carolina. Liggett is the successor to the tobacco interests of Liggett & Myers, Inc., and Liggett & Myers Tobacco Co. Liggett is a subsidiary of the Brooke Group, a Delaware corporation. At relevant times, Liggett has manufactured, advertised, and sold cigarettes, including Chesterfield, Decade, Dorado, Eve, Generic, Lark, L&M, Pyramid, and Stride brand cigarettes throughout the United States, including in the District of Columbia. At times pertinent to this Complaint, Liggett, individually and through its agents, alter egos, subsidiaries, divisions, or parent companies, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

18. Defendant the AMERICAN TOBACCO COMPANY ("American") is or was a Delaware corporation with its principal place of business at 1500 Brown & Williamson Tower, Louisville, Kentucky. At relevant times, American manufactured, marketed, and sold American, Durham, Carlton, Iceberg, Lucky Strike, Malibu, Misty, Montclair, Newport, Pall Mall, Silk Cut, Silva Thins, Sobrania, and Tareyton cigarettes throughout the United States, including in the District of Columbia. American is successor to the tobacco interests of American Brands, Inc. In 1994,

American was purchased by and merged into Brown & Williamson, which has succeeded to the liabilities of American. At times pertinent to this Complaint, American, individually and through its agents, alter egos, subsidiaries, parent companies and divisions, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

19. Defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, LIGGETT, and AMERICAN are referred to herein collectively as the “Cigarette Companies,” each of which marketed cigarettes for sale in the District of Columbia and elsewhere.

C. The Parent Company Defendants

20. Defendant PHILIP MORRIS COMPANIES, INC. (“Philip Morris Companies”), is a Virginia corporation whose principal place of business is located at 120 Park Avenue, New York, New York 10017. Philip Morris Companies is the parent corporation of Philip Morris and Philip Morris International, Inc., and has participated in the manufacture and distribution of cigarettes and tobacco products both individually and through its agents defendant Philip Morris and Philip Morris International, Inc. In acting as alleged herein, Philip Morris and Philip Morris International, Inc., have acted within the course and scope of their agency and employment, and with the knowledge, consent, permission, and authorization of Philip Morris Companies. Actions of Philip Morris were ratified and approved by the officers and managing agents of Philip Morris Companies. At times relevant herein, Philip Morris Companies has participated substantially in the management and control of Philip Morris.

Through Philip Morris, Philip Morris Companies has placed cigarettes into the stream of commerce with the expectation that substantial sales of cigarettes would be made in the United States, including in the District of Columbia, and elsewhere. At times pertinent to this Complaint, Philip Morris Companies, individually and through its agents, alter egos, subsidiaries, or divisions, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

21. Defendant BRITISH AMERICAN TOBACCO, P.L.C. ("BAT p.l.c.") is a British corporation with its principal place of business at Globe House, 4 Temple Place, London WC2R 2PG, England. BAT p.l.c. is sued directly and as successor to B.A.T. INDUSTRIES, P.L.C. ("B.A.T. Industries"). (This Complaint will refer to this defendant alternatively as "BAT p.l.c" and "BAT Industries"). Defendant Brown & Williamson is the agent of defendant BAT p.l.c. In acting as alleged herein, Brown & Williamson has acted within the course and scope of its agency and employment, and with the consent, permission, and authorization of BAT p.l.c. Actions of Brown & Williamson were ratified and approved by the officers and managing agents of BAT p.l.c. Through a succession of intermediary corporations and holding companies, BAT p.l.c. is the sole shareholder of Brown & Williamson. At times relevant herein, BAT p.l.c. has participated substantially in the management and control of Brown & Williamson. Through Brown & Williamson, BAT p.l.c. has placed cigarettes into the stream of commerce with the expectation that substantial sales of cigarettes would be made in the

United States, including in the District of management and control of Philip Morris. Through Philip Morris, Philip Morris Companies has placed cigarettes into the stream of commerce with the expectation that substantial sales of cigarettes would be made in the United States, including in the District of Columbia, and elsewhere. At times pertinent to this Complaint, Philip Morris Companies, individually and through its agents, alter egos, subsidiaries, or divisions, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

22. Defendants PHILIP MORRIS COMPANIES and BAT P.L.C. are referred to herein collectively as the "Parent Companies."

D. The Industry "Research," Public Relations, and Lobbying Defendants

23. Defendant COUNCIL FOR TOBACCO RESEARCH -- U.S.A., Inc. ("CTR"), is or was a New York non-profit corporation with its principal place of business at 900 Third Avenue, New York, New York. CTR is the successor in interest to the Tobacco Industry Research Committee ("TIRC"). TIRC and CTR were not primarily "research" organizations but, instead, were established by the Cigarette Companies to carry out their fraudulent course of conduct beginning in January 1954. At all relevant times, TIRC and CTR operated as public relations and lobbying arms of the Cigarette Companies and as agents and employees of the Cigarette Companies. They also acted as facilitating agencies and co-conspirators in furtherance of the Cigarette Companies' combination and conspiracy

as described in this Complaint. In acting as alleged herein, TIRC and CTR acted within the course and scope of their agency and employment, and with the knowledge, consent, permission, and authorization of the Cigarette Companies. All actions of TIRC and CTR were ratified and approved by the officers and managing agents of each of the Cigarette Companies. At times pertinent to this Complaint, TIRC and CTR, individually and through their agents, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and have affected foreign and interstate commerce in the United States, including the District of Columbia.

24. Defendant THE TOBACCO INSTITUTE, INC. ("Tobacco Institute" or "TI") is or was a New York non-profit corporation with its principal place of business at 1875 I Street N.W., Suite 800, Washington, D.C. At all relevant times, the Tobacco Institute operated as a public relations arm of the Cigarette Companies, and as an agent and employee of the Cigarette Companies. It has also acted as a participant and facilitating agent and co-conspirator in furtherance of the conspiracy of the Cigarette Companies as described in this Complaint. In acting as alleged herein, the Tobacco Institute has acted within the course and scope of its agency and employment, and with the knowledge, consent, permission, and authorization of each of the Cigarette Companies. All actions of the Tobacco Institute were ratified and approved by the officers and managing agents of the Cigarette Companies. At times pertinent to this Complaint, the Tobacco Institute, individually and through its agents, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and

fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

25. At all relevant times, each defendant was a "person" within the meaning of 18 U.S.C. § 1961(3), because each defendant was "capable of holding a legal or beneficial interest in property." The Cigarette Companies, the Parent Companies, CTR, and the Tobacco Institute are referred to herein collectively as "defendants."

IV. THE FACTS

A. The Impact of Cigarette Smoking on the Public

26. Cigarette smoking is the single largest preventable cause of premature death in the United States and one of the largest preventable causes of premature death throughout the world. Each year, millions of people suffer from smoking-related diseases, which often require a long-term course of medical and surgical treatment. For example, each year more than 400,000 Americans die from cigarette smoking. Nearly one in every five deaths in the United States is smoking related. According to the World Health Organization, tobacco use kills four million people annually and threatens to kill ten million people a year by the year 2030.

27. Cigarette smoking causes lung and other types of cancers, emphysema and other chronic lung diseases, heart attacks, strokes, and a variety of other diseases. Cigarette smoking by pregnant women is also a leading cause of low birth weight infants.

28. Cigarettes contain nicotine, which is an addictive drug. It is a scientifically-proven fact that a significant percentage of the population that begins to smoke will not be able to quit. For

example, although over 80% of the individuals who currently smoke express a desire to stop smoking and 35% try to stop each year, less than 5% are successful in unaided attempts to quit. (DSM-IV at p. 243). In the United States, between 50%-80% of individuals who currently smoke are “clinically addicted.” (DSM-IV at p. 246). Upon information and belief, the percentage of current smokers who are clinically addicted worldwide is similarly high, if not higher.

29. The addictive nature of cigarettes is particularly egregious in light of the fact that, although it is illegal to sell cigarettes to children, the vast majority of adults who smoke began smoking before they were 18. Children are particularly susceptible to cigarette advertising, especially advertising that presents smoking as a rite of passage into adulthood. When they first begin to smoke, children do not believe that they will have difficulty in quitting, but because of the addictive nature of nicotine, many are unable to quit once they have started.

30. For example, more than one million children under age 18 begin smoking each year in the United States. Of these children, most continue as adult smokers.

B. The Formation of the Enterprise and the Nature of the Conspiracy

31. In the 1940s and early 1950s, scientific researchers published findings that indicated a relationship between cigarette smoking and diseases, including lung cancer.

32. Senior Cigarette Company executives and researchers closely monitored such research and knew that if the public came to understand that cigarette smoking causes cancer and other diseases, the Cigarette Companies’ profits would decline and the industry would face the prospect of civil liability and government regulation. In response to the published research linking cigarettes and

disease, in December 1953, Paul Hahn, President of American Tobacco Company, sent a telegram to the other Cigarette Company presidents, suggesting a meeting to formulate “an industry response” to the studies.

33. As a direct result of Mr. Hahn’s telegram, on December 15, 1953, the chief executives of American, Brown & Williamson, Lorillard, Philip Morris, and Reynolds met at the Plaza Hotel in New York City. At that meeting, these chief executives agreed that the published studies were "extremely serious" and "worthy of drastic action." At the meeting, the chief executives determined to respond to this serious public health issue with a concerted public relations campaign intended to preserve their profits.

34. The decisions made by these chief executives at the Plaza Hotel meeting have shaped the actions of the Cigarette Companies, including companies not in attendance at the meeting, to this day. The chief executives at the Plaza Hotel agreed that the strategy they were implementing was a "long-term one" that required defendants to act in concert with each other on the current health controversy, as well as on issues that would face them in the future. This Enterprise and conspiracy still continues today.

35. The fundamental goal of the Enterprise and conspiracy was to preserve and expand the market for cigarettes and to maximize the Cigarette Companies’ profits. To achieve this goal, defendants' strategy was to respond to scientific evidence of the adverse health consequences of cigarette smoking -- including issues regarding nicotine and addiction -- with fraud and deception. Rather than provide full disclosure to the public and in congressional, federal agency, and judicial

proceedings about what they knew or learned about the dangers of cigarette smoking, defendants and their agents determined, in furtherance of this Enterprise and conspiracy, to deny that smoking caused disease or that nicotine was addictive, despite having actual knowledge to the contrary.

36. Defendants sought to ensure that no company -- in the United States or overseas -- broke ranks from defendants' public posture, which was based on falsehood and deception. If any Company admitted that smoking was hazardous, that nicotine was addictive, that the delivery of nicotine was manipulated by the Cigarette Companies, that defendants' research commitment was a sham, or that the Cigarette Companies marketed to children, the conspiracy would be endangered. To further and protect the Enterprise, the conspiracy and their profits, defendants:

- made false and misleading statements to the public through press releases, advertising, and public statements, such as before the United States Congress, that were intended to be heard by the consuming public.
- adhered to their common scheme of deception and falsehood in lawsuits, including, among other things, destroying and concealing documents.

37. Throughout the course of the Enterprise and conspiracy and to the present day, defendants have engaged in these acts knowingly and intentionally and with a common purpose. Their own documents -- secreted in internal files and revealed only in recent years despite defendants' involvement in continuous litigation about their products for more than 45 years -- demonstrate that defendants:

- sought to create false doubt about the health effects of smoking because they knew that such doubt would influence consumers to begin or continue smoking;
- falsely denied that nicotine was addictive and that they controlled the nicotine delivery of cigarettes so that they could addict new users and make it more difficult for addicted cigarette smokers to quit;
- suppressed research, destroyed documents, and took steps to prevent discovery of such documents;
- aggressively targeted children because children fail to appreciate the hazards of smoking and the addictiveness of nicotine and are more easily induced to start smoking and begin a lifetime of cigarette purchases; and
- knew that use of their product was unreasonably and unnecessarily dangerous to the lifelong customers that they sought to attract.

C. False Statements About Smoking and Disease

38. Consistent with the recommendations made in connection with the December 1953 meeting at the Plaza Hotel, defendants formed the TIRC and, on January 4, 1954, caused to be published a full-page statement to the public called "A Frank Statement to Cigarette Smokers" in 448 newspapers in the United States. The "Frank Statement" explained that:

Many people have asked us what we are doing to meet the public's concern aroused by the recent reports. Here is the answer:

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.

For this purpose we are establishing a joint industry group consisting initially of the undersigned. This group will be known as TOBACCO INDUSTRY RESEARCH COMMITTEE.

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.

39. Even those companies that were not involved in the issuance of the Frank Statement joined, and committed acts in furtherance of, the Enterprise and conspiracy. Defendant Liggett, which joined TIRC/CTR in 1964, maintained the same false and misleading public positions as the other

Cigarette Companies until 1997, when Liggett admitted that nicotine is addictive, smoking is harmful, and that the Cigarette Companies have marketed to children. The Parent Company defendants also acted in furtherance of the Enterprise and conspiracy by committing acts as described in the Appendix to this Complaint and by using their corporate families, to keep documents and research out of reach of courts and others in the United States. For example, BAT p.l.c., by itself or through its agents, subsidiaries, or co-conspirators, has conducted significant research for Brown & Williamson on the topics of smoking, disease, and addiction. Brown & Williamson also sent to England research conducted in the United States on the topics of smoking, disease and addiction in order to remove sensitive and inculpatory documents from United States jurisdiction, and such documents were subject to the control of BAT p.l.c.

40. In addition to the false statements made by the Cigarette Companies themselves and in furtherance of their scheme to defraud, in 1958 defendants created the Tobacco Institute, a public relations organization whose function was to make certain that defendants' false and misleading positions on issues related to, among other things, the relationship between nicotine and addiction, were kept constantly before the public, doctors, the press, and the government. At all times, defendants controlled the Tobacco Institute, including its public statements made on behalf of defendants, as stated in the Appendix to this Complaint, which is essential to this Complaint and is hereby incorporated in this Complaint and made a part thereof.

41. In contrast to defendants, who long knew and understood the harmful health effects and addictive properties of nicotine and cigarettes, members of the public did not fully appreciate the health

effects and addictive nature of cigarettes. Furthermore, defendants knew that the public was uninformed and misinformed about the harmful nature of their products. Nevertheless, at all times, defendants made false and misleading statements with the express purpose of deceiving the public and inducing smokers and non-smokers to minimize the health risks and continue or start smoking. Defendants also had full knowledge that, as their fraud succeeded, more people would suffer from tobacco-related disease. Because of their fraudulent and illegal activities and statements, millions of children purchased cigarettes and smoked heavily for many years while they were under age.

D. The Myth of Independent Health Research

1. The “Gentlemen’s Agreement”

42. Contrary to their public posture and statements, the Cigarette Companies had a "gentleman's agreement" -- so called by defendants themselves -- not to perform or commission internal research designed to investigate the relationship between smoking and health. They did not routinely employ or support scientists to conduct such research; and, in the rare instances that the companies did conduct such research internally, they did so in secret and suppressed the results, in some cases by destroying documents and in other cases by taking other steps to shield documents and materials from discovery.

43. Two components to this "gentleman's agreement" were: (1) any company discovering an innovation permitting the manufacture of an essentially "safe" cigarette would share the discovery with others in the industry; and (2) no domestic company would perform in-house biomedical research on animals. This latter element of the “agreement” applied to research on nicotine and addiction.

44. Although they recognized that research and testing were essential to evaluating the health risk posed by their products, defendants, pursuant to the "gentleman's agreement," generally did not perform biological research on smoking and health. In a secret internal communication in 1964, Philip Morris Research and Development Vice President Helmut Wakeham acknowledged the legal jeopardy inherent in defendants' joint agreement, when he (unsuccessfully) recommended that "[t]he industry should abandon its past reticence with respect to medical research. Indeed, failure to do such research could give rise to negligence charges." Despite Mr. Wakeham's warning, defendants persisted in their agreement.

45. By the late 1960s, individual companies were performing limited biological research in violation of the "gentleman's agreement." Nonetheless, the fundamental understanding and agreement remained intact: information and activities that would tend to establish the harmfulness of cigarettes would be restrained, suppressed, and concealed. This included restraining, concealing, and suppressing research on the adverse health effects of smoking, including the addictive qualities of cigarettes.

46. The biological research that the Cigarette Companies did perform was closely controlled to ensure that it would not become public or subject to discovery in court proceedings. This control included performing much of the research outside the United States in order to keep documents and witnesses hidden and out of the reach of State and Federal courts, and by taking other steps to shield documents and materials from discovery.

47. Philip Morris, for example, conducted in-house research in Europe in order to avoid disclosure of unfavorable results to the public. In 1970, Philip Morris purchased a research facility in

Cologne, Germany, known as INBIFO. One perceived value of INBIFO was that Philip Morris could control the research conducted there; therefore, overseas experiments could be terminated at will. Philip Morris took steps to conceal this arrangement. Company scientists shipped documents from locations in the United States to Cologne for storage in order to remove unfavorable or embarrassing research results from Philip Morris's files during and in advance of litigation and thereby to avoid discovery of adverse documents. Discussing how to handle records relating to the INBIFO arrangement, senior Philip Morris scientist Thomas Osdene characterized the arrangement as follows: "Ship all documents to Cologne Keep in Cologne If important letters have to be sent please send to home & I will act on them and destroy."

48. Brown & Williamson conducted some biological research in the United States in conjunction with its English parent company, BAT p.l.c. When the company sought to avoid discovery of these documents in a number of personal injury lawsuits, Brown & Williamson sent much of the American company's biological research to England so that it would not have to be produced. Brown & Williamson sent sensitive research documents to London to avoid production in litigation, stamped scientific documents "attorney/client, work product," and edited and suppressed the minutes of scientific meetings to remove references to topics that might be the subject of litigation.

49. Brown & Williamson also endeavored in litigation brought by smokers to prevent the disclosure of research documents created by its affiliate, BAT Co., which contained information contrary to Brown & Williamson's public positions that smoking did not cause disease and that cigarettes were not addictive. To further this effort, a Brown & Williamson research scientist received

scientific reports and designated documents harmful to Brown & Williamson as protected by the attorney work product privilege.

50. Defendants also enforced the conspiracy by stopping inconsistent research efforts by any member of the group. For example, in the 1960's Reynolds established a facility in Winston-Salem, North Carolina, to research the health effects of smoking using mice. In the facility that Reynolds nicknamed the "Mouse House," Reynolds scientists researched a number of specific areas, including studies of the actual mechanism whereby smoking causes emphysema. Internally, a Reynolds-commissioned report favorably described the Mouse House work as the most important of the smoking and health research efforts because it had come close to determining the underlying mechanism of emphysema.

51. In 1970, Philip Morris's president complained to Reynolds about the work going on in the Mouse House. Despite the progress made there, Reynolds responded to the complaint by closing the Mouse House -- disbanding in one day, without notice to the staff, the entire research division, firing all 26 scientists working there, and destroying years of smoking and health research.

52. Reynolds also sought to prevent documents containing research reports contrary to the company's public positions regarding smoking and health from being disclosed in smoking and health litigation in which Reynolds was a defendant or witness. In December 1969, the Reynolds Research Department reported that it did "not foresee any difficulty in the event a decision is reached to remove certain reports from Research files. Once it becomes clear that such action is necessary for the successful defense of our present and future suits, we will promptly remove all such reports from our

files As an alternative to invalidation [of adverse reports], we can have the authors rewrite those sections of the reports which appear objectionable."

2. The Lack of Independence of CTR

53. When researchers funded by TIRC/CTR reached conclusions that threatened to confirm the link between smoking and health, the companies, at times, terminated the research and concealed the results. For example, when Dr. Freddy Homburger concluded in 1974 that his study of smoke exposure on hamsters indicated that cigarettes were addictive and caused disease, CTR Scientific Director Robert Hockett and CTR lawyer Ed Jacob threatened to cut off Dr. Hornburger's funding if his paper were published without deleting the word "cancer."

E. Misrepresentations about Nicotine's Addictiveness and Manipulation of Nicotine Delivery

54. The primary factor that prevents cigarette smokers from quitting smoking is their addiction to nicotine, and their need to continue the intake of nicotine in order to avoid nicotine withdrawal. The addictive nature of nicotine is distinct from but related to the harm caused by cigarettes, because the health risks from smoking increase with prolonged use.

55. Defendants and their agents have long known that nicotine is an addictive drug and have sought to hide its addictive and pharmacological qualities. They also have long recognized that getting smokers addicted to nicotine is what preserves the market for cigarettes and ensures their profits. In contrast, the average consumer has not been fully aware of the addictive properties of

nicotine, and most beginning smokers -- particularly children -- either are unaware of the addictiveness of nicotine or falsely believe that they will be able to quit after smoking for a few years and thereby avoid the diseases caused by smoking. By hiding their knowledge of nicotine and making false and misleading statements concerning nicotine, defendants have induced existing smokers to continue using their products, and induced others to begin to smoke, particularly children, who believe, usually mistakenly, that they will be able to quit and avoid the diseases caused by smoking.

56. Defendants have understood nicotine's addictive properties since the early 1960s at the latest. For example, Philip Morris internally discussed methods for increasing the nicotine content of cigarettes as early as 1960. Sir Charles Ellis, scientific advisor to the board of directors of BAT Industries, asserted in a 1962 meeting attended by Brown & Williamson representatives that "smoking is a habit of addiction," and scientists in the Geneva laboratories of the International Division of the Battelle Memorial Institute reported to BAT Industries on the mechanics of nicotine addiction in 1963. BAT sponsored research at the Battelle Memorial Institute at Geneva to investigate the physiological aspects of smoking. B&W general counsel Addison Yeaman stated in 1963 that "nicotine is addictive" and that "we are . . . in the business of selling nicotine, an addictive drug[.]" Reynolds, understanding the importance of retaining sufficient nicotine to maintain dependence on its so-called "low tar/low nicotine" cigarettes, internally proposed in 1971 that the company undertake research into determining more exactly the "habituating level of nicotine."

57. Defendants concealed their research on the addictiveness of nicotine because they have known that revelation of that research might substantially change the market for cigarettes and result in

successful lawsuits against defendants. The Cigarette Companies thus performed much of their research clandestinely, and in at least one case threatened scientists who sought to publish their research on addiction. All of this constituted a comprehensive campaign by the Cigarette Companies to keep secret their knowledge of nicotine's addictive nature. For example,

- A 1977 Philip Morris study on the withdrawal effects of nicotine was permitted to proceed only if the results were what the Cigarette Companies wanted. If not, as a Philip Morris researcher explained, "we will want to bury it."
- An internal 1978 Brown & Williamson memo discussed addictiveness of nicotine and characterized nicotine as a poison, while noting that most consumers are unaware of this. "Very few consumers are aware of the effects of nicotine, i.e. its addictive nature and that nicotine is a poison ...hardly any consumers use nicotine numbers as a basis for their purchase."
- In March 1980, a Philip Morris scientist produced an internal memorandum discussing company research into the psychopharmacology of nicotine. The research was "aimed at understanding that specific action of nicotine which causes the smoker to repeatedly introduce nicotine into his body." The internal memorandum noted that it was "a highly vexatious topic" that company lawyers did not want to become public because nicotine's drug properties, if known, would support regulation of tobacco by the federal

Food and Drug Administration ("FDA"). Consequently, the memorandum observed, "[o]ur attorneys . . . will likely continue to insist on a clandestine effort in order to keep nicotine the drug in low profile."

- In the early 1980s, Philip Morris hired Victor DeNoble and Paul Mele to study the effects of nicotine on the behavior of rats and to research and test potential nicotine analogues. DeNoble and Mele's research demonstrated that nicotine was addictive and that in terms of addictiveness, "nicotine looked like heroin." In August 1983, Phillip Morris ordered DeNoble to withdraw a research paper on nicotine that had already been accepted for publication after a full peer review by the journal Psychopharmacology. Less than a year later, Philip Morris abruptly closed DeNoble's nicotine research lab. Philip Morris executives threatened DeNoble and Mele with legal action if they published or talked about their nicotine research. The animals were killed, the equipment was removed, and all traces of the former lab were eliminated.

58. As with the adverse health effects of smoking, defendants made false and misleading statements to the public about the addictive nature of nicotine and made false and misleading statements to the public and others about addiction. For example,

- In 1963, when the Surgeon General was preparing his first report on smoking and health, Brown & Williamson considered whether to provide its research indicating the

addictiveness of nicotine, but withheld this research from the Surgeon General. The Surgeon General's Report did not conclude that nicotine is addictive.

- In 1988, when the Surgeon General finally concluded, based on non-industry research, that nicotine is addictive, the Tobacco Institute, on behalf of the Cigarette Companies, attacked the report by saying that "claims that cigarettes are addictive contradict common sense The claim that cigarette smoking causes physical dependence is simply an unproven attempt to find some way to differentiate smoking from other behaviors."

Statements such as this, frequently repeated by the Cigarette Companies and their agents, were knowingly false and misleading when made.

59. Defendants' efforts to suppress information on the addictiveness of nicotine continue today. For example, in 1997, Liggett broke ranks and began placing a statement on the packs of cigarettes manufactured by it specifically warning that smoking is addictive. On or about January 12, 1999, Philip Morris entered into an agreement with Liggett to purchase certain brands of cigarettes previously manufactured by Liggett, including Lark, Chesterfield, and L&M, each of which, at the time of their sale to Philip Morris, contained the warning concerning the addictiveness of smoking. After it purchased these brands, Philip Morris altered the packaging of Lark, Chesterfield, and L&M cigarettes to eliminate the warning concerning addictiveness. These brands of cigarettes were no less addictive

after their purchase by Philip Morris than when they had been manufactured by Liggett. This alteration continued defendants' efforts to conceal from cigarette purchasers, and from the public in general, the addictive nature of cigarette smoking.

60. As a result of the defendant's false statements denying the addictive nature of cigarettes, and their suppression of information demonstrating the addictive nature of cigarettes, many people, including children, purchased cigarettes and some have become addicted or remained addicted to the product. In fact, among 12-17 year old smokers, 70% regret their decision to start smoking, and 66% want to quit. Similarly, over 70% of cigarette smokers would like to stop completely.

61. At the same time they were denying the addictiveness of nicotine, the Cigarette Companies were developing and using highly sophisticated technologies designed to deliver nicotine in precisely calculated ways that are more than sufficient to create and sustain addiction in the vast majority of individuals who smoke regularly. The Cigarette Companies control the nicotine content of their products through selective breeding and cultivation of plants for nicotine content and careful tobacco leaf purchasing and blending plans, and control nicotine delivery (i.e., the amount absorbed by the smoker) with various design and manufacturing techniques. For example, as explained in an internal 1973 Reynolds document:

Methods which may be used to increase smoke pH and/or nicotine "kick" include: (1) increasing the amount of (strong) burley in the blend, (2) reduction of casing sugar used on the burley and/or blend, (3;) use of alkaline additives, usually ammonia compounds, to the blend, (4) addition of nicotine to the blend,

(5) removal of acids from the blend, (6) special filter systems to remove acids from or add alkaline materials to the smoke, and (7) use of high air dilution filter systems. Methods 1-3, in combination, represent the Philip Morris approach, and are under active investigation [by Reynolds].

62. The Cigarette Companies have also investigated a wide variety of other additives, ingredients, and techniques aimed at improving their control of nicotine and thereby their ability to manipulate the addictiveness of cigarettes. Cigarette Companies' use of certain ingredients in their products has been predicated on the belief that they increase the potency, absorption, or effect of nicotine.

63. The Cigarette Companies have repeatedly (and falsely) denied that they manipulate the nicotine levels and nicotine delivery in their products.

64. For example, the Cigarette Companies have sought to mislead the public about whether they manipulate nicotine by maintaining that nicotine levels follow tar levels. In his 1994 testimony before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, United States House of Representatives ("Health Subcommittee"), the Vice Chairman and Chief Operating Officer of Lorillard, Dr. Alexander Spears, stated that "[nicotine follows the tar level," and the correlation between the two "is essentially perfect," and "shows that there is no manipulation of nicotine." In a 1981 study, however, Dr. Spears had previously stated explicitly that "low-tar" cigarettes use special blends of tobacco to keep the level of nicotine up while tar is reduced: "[The

lowest tar segment [of product categories) is composed of cigarettes utilizing a tobacco blend which is significantly higher in nicotine." Dr. Spears did not inform Congress of his earlier statement.

65. Reynolds, Lorillard, B&W, American, and TI have also 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. American told the Health Subcommittee in an October 14, 1994 letter that "nicotine follows 'tar' delivery, *i.e.*, high 'tar' -- high nicotine, low 'tar' -- low nicotine." Similarly, a 1994 Reynolds advertisement appearing after the Health Subcommittee hearings stated: "We do not increase the level of nicotine in our four 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." (emphasis in original). The ad further touted Reynolds' use of "various techniques that help us reduce the 'tar' (and consequently the nicotine) yields of our products."

66. By falsely denying that the Cigarette Companies manipulate the delivery of nicotine levels in cigarettes, defendants furthered their common efforts to deceive the public concerning the addictive nature of nicotine and consequently of cigarettes that contain nicotine.

F. Targeting the Youth Market

67. For most of this century, it has been illegal to sell cigarettes to children in most states. Currently, it is illegal to sell cigarettes to children under the age of 18 in all states.

68. Defendants used the Tobacco Institute to shield the Cigarette Companies' advertising to under age youths. In 1964, defendants publicized a voluntary "cigarette advertising code" that had been agreed to by all the major cigarette manufacturers. The code prohibited advertising directed at young

people or the use of celebrities or sports figures in advertisements for cigarettes. Over the next thirty years, defendants, primarily through publications of the Tobacco Institute and in congressional testimony, reiterated their pledge to avoid advertising directed at young people, while at the same time individual companies were aggressively marketing cigarettes to young people through advertising.

69. Despite the illegality of sales to children, and despite denying that they do so, the Cigarette Companies have engaged in a campaign to market cigarettes to children. The Cigarette Companies have long known that recruiting new smokers when they are teenagers ensures a stream of profits well into the future in part because many of these new smokers will become addicted and continue to smoke for many years, and the young smokers are "replacements" for older smokers who either reduce or cease smoking or die.

70. Recognizing the profits to be had from this illegal market, the Cigarette Companies researched how to target their marketing at children and actively marketed cigarettes to children. As a result of this research -- including research conducted in the 1950's into the smoking habits of 12-year-olds -- defendants have long known that young people tend to begin smoking for reasons unrelated to the presence of nicotine in cigarette smoke, but then become confirmed, long-term smokers because they become accustomed to nicotine. Defendants were further aware that although beginning smokers realize that there are some health risks associated with long-term smoking, beginning smokers almost universally failed to appreciate the addictive nature of cigarette smoking, and therefore failed to appreciate the risk that, by engaging in smoking while they are under age, they will become long-term

smokers because of the development of an addiction to nicotine. Moreover, the earlier a person begins to smoke, the more likely it is that he or she will develop a smoking related disease.

71. The Cigarette Companies have aggressively targeted their advertising campaigns to children. Cigarette Companies' advertising glamorizes smoking and its content is intended to entice young people to smoke, for example, as a rite of passage into adulthood or as a status symbol. Among the techniques used by the Cigarette Companies to attract underage smokers were advertising in stores near high schools, promoting brands heavily during spring and summer breaks, giving cigarettes away at places where young people are likely to be present in large numbers, paying motion picture producers for product placement in motion pictures designed to attract large youth audiences, placing advertisements in magazines commonly read by teenagers, and sponsoring sporting events and other activities likely to appeal to teenagers.

72. During the 1970s and 1980s, Reynolds's substantial market research indicated that Philip Morris, and particularly its Marlboro brand, was dominating the youth market. Reynolds recognized that, in order to maintain its profits over the long term, it was critically important to attract its own cadre of teen-age smokers. Internal Reynolds documents specifically cited the need to recruit youths as "replacement smokers." Thus, Reynolds developed the Joe Camel campaign -- based on a cartoon character -- to appeal to the youngest potential smokers. In 1988, Reynolds began a massive dissemination of products such as matchbooks, signs, clothing, mugs and drink can holders advertising Camel cigarettes. The advertising was effective in attracting adolescents and, as a result of the campaign, the number of teenage smokers who smoked Camel cigarettes rose dramatically.

73. Despite the overwhelming evidence that they have deliberately sought to target young people for the sale of cigarettes, defendants have denied such activities in false and misleading communications to the public, to legislative and regulatory bodies, and in judicial proceedings. For example, in 1981, Brown & Williamson denied that it geared its advertising to young people following criticism in a press report. Others have followed suit: Reynolds ran a series of advertisements in 1984 claiming that "We don't advertise to children."

74. To avoid full disclosure of its practices regarding Joe Camel, in 1991, while the Federal Trade Commission was investigating Reynolds' practices of advertising and marketing to children, Reynolds instructed its advertising agency to destroy documents in the advertising agency's possession related to the Joe Camel campaign.

75. The Cigarette Companies have long maintained that their expenditures on advertising and promotion -- more than \$68 billion between 1954 and 1997-- were directed solely at persuading current smokers to switch brands, not to attracting new smokers and not to attract children. These statements were false and misleading, and were intended to ensure that they could continue to entice young people to smoke and become addicted by defeating potential efforts by parents and governmental entities to stop such marketing efforts.

76. In July 1969, the Chairman of the Tobacco Institute, Joseph F. Cullman, testified before a Senate Commerce subcommittee: "It is the intention of the cigarette manufacturers to avoid advertising directed to young persons . . . to avoid advertising which represents that cigarette smoking is essential to social prominence, success, or sexual attraction; and to refrain from depicting smokers

engaged in sports or other activities requiring stamina or a conditioning beyond those required in normal recreation."

77. In 1983, the Tobacco Institute published a pamphlet entitled "Voluntary Initiatives of a Responsible Industry." The pamphlet noted that "in 1964, the industry adopted a cigarette advertising code; prohibiting advertising, marketing and sampling directed at young people." The pamphlet made the claim that "all companies continue to observe the principles of this code."

78. The Cigarette Companies actively targeted their marketing to children with full knowledge that sales to children were illegal, that children would not appreciate the dangers of the product or its addictiveness, that most of the children who began to smoke would become addicted, and that a significant percentage would develop smoking-related diseases or suffer premature death as a result. They denied doing so with full knowledge that such denials were false and misleading.

G. The Present and Continuing Threat

79. Defendants' conspiracy to deceive, mislead, and withhold information from the public, and from public legislative, regulatory, and judicial bodies about the adverse health effects of smoking, the addictiveness of nicotine, the manipulation of the delivery of nicotine, marketing to children, and the possibility of less hazardous designs has continued up through the present day.

80. In 1994, the chief executive officers of the Cigarette Companies testified under oath before the Health Subcommittee and once again repeated defendants' "party line." These executives knowingly provided misleading testimony regarding smoking, health, and addiction. In particular, Chief

Executives of the defendants testified expressly and directly that they did not believe that nicotine and cigarettes were addictive.

81. The Cigarette Company executives made these representations, among others, despite the substantial body of evidence, including information developed by the Cigarette Companies themselves dating back for many years prior to their testimony, indicating that nicotine is addictive and is the central reason why people continue to smoke, that the Cigarette Companies sought to ensure that smokers stayed addicted and that cigarettes are potentially lethal to smokers when used as intended by the Cigarette Companies.

82. In their public statements, the Cigarette Companies continued to deny that nicotine is addictive and, instead, used various misleading explanations for the role of nicotine, such as "enhances the taste of the smoke" and affects "the way it feels on the smoker's palate," and that it provides "satisfaction," "strength," "rich aroma," "mouth impact," and "pleasure," despite 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. According to the 1988 U.S. Surgeon General report: "The pharmacologic and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine."

83. In addition to their repetition of the same false and misleading statements discussed above, the Cigarette Companies also continued to suppress and conceal documents and information in their possession concerning, inter alia, smoking and health, addiction, the addictiveness of nicotine, the

health effects of low tar and low nicotine products, the potential availability of a less hazardous product, and their efforts to market to children.

84. In January 1998, as Congress was considering comprehensive legislation that might have limited the industry's liability, the Cigarette Companies finally acknowledged that smoking may cause disease. Philip Morris Companies admitted the existence of "a substantial body of evidence which supports the judgment that cigarette smoking plays a causal role in the development of lung cancer and other diseases in smokers." Similarly, the Chairman and CEO of RJR Nabisco, Reynolds' parent corporation, stated his belief that "smoking plays a role in causing cancer, lung cancer in some people."

85. The Cigarette Company executives also agreed that cigarettes are addictive, but only under some accepted definitions. In early 1998, Brown & Williamson and RJR Nabisco executives agreed that nicotine is addictive under the "man in the street's definition" and as "people use the term [addiction] today." Moreover, the CEO of Brown & Williamson admitted that his personal position -- that smoking is not addictive -- was at odds with "the rest of the world," and did not dispute the "rest of the world's" use of the word addiction in relation to cigarette smoking.

86. The Cigarette Companies' careful, semantic posturing was short-lived. In the spring of 1998, during the state of Minnesota's trial against the Cigarette Companies, defendants' officials returned to the same false and misleading statements that they have always made and denied the addictiveness of nicotine and the health effects of smoking.

87. The Cigarette Companies eventually settled their suits with the states in the fall of 1998. Despite the injunctive relief obtained by the states, defendants continue to market their products in many of the same ways they had before the settlement, and continue to keep secret research and other documents that would provide the public and regulators with a fuller understanding of the health effects of cigarettes, particularly the addictiveness of nicotine. In particular, the results of defendants' research overseas for the last few decades have not been made public.

88. Indeed, to this day, defendants are continuing to block disclosure of the very documents that reveal the deception in the Cigarette Companies' half-century false and misleading promotion of TIRC/CTR - in public, in the U.S. Congress, and in court --- as an independent organization designed to find out the truth about smoking and health.

89. The Cigarette Companies, who, for example, hold 99% of the market for cigarettes in the United States, pose a continuing threat to the health and well-being of the public and there is every reason to believe that they will continue with their fraudulent and unlawful conduct.

90. The effects of defendants' conspiracy will be felt for many years into the future, and the Cigarette Companies continue to benefit from their past and present fraudulent statements, and suppression of information. Smokers remain addicted and will be far into the foreseeable future, all while the tobacco companies continue to earn enormous profits from addicted smokers.

V. CLASS ALLEGATIONS

91. Plaintiffs bring this action on behalf of themselves and, under Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, as representatives of a finite, ascertainable class consisting of all natural persons under 22 years of age (i.e. persons who have not reached their 22nd birthday) as of the filing of this complaint who purchased cigarettes or other tobacco products manufactured by any of the defendants for their own use while under age and residing within the United States. For the purposes of this complaint, “under age” means below the legal age for the sale of such products. The class does not include defendants, their employees, directors, officers or agents.

92. This action satisfies the numerosity, commonality, adequacy and superiority requirements of Federal Rule of Civil Procedure 23(a) and (b).

93. Plaintiffs do not know the exact size of the Class but it undoubtedly comprises millions of smokers and former smokers. Due to the nature of trade and commerce involved, Plaintiffs believe that the total number of members of the Class is millions of individuals, and members of the class are so numerous and geographically dispersed worldwide that joinder of all members of the Class in this action is impracticable.

94. There are questions of law and fact common to all members of the Class, including but not limited to:

- i. whether defendants conspired to misrepresent and/or conceal the adverse health effects and true addictive nature of nicotine in their products;

- ii. whether defendants conspired to target under age people with their advertising and marketing programs; actually targeted them with their advertising and marketing programs; and profited from this misconduct;
- iii. whether defendants conspired to manipulate the nicotine-delivery properties of their cigarettes;
- iv. whether the contract, combination, conspiracy and common course of conduct among defendants was implemented;
- iv. whether Defendants' activities and the entities that they formed to assist in pursuing their objectives constitute an "Enterprise" within the meaning of 18 U.S.C. § 1961(4);
- v. the operative time period of the contract, combination, conspiracy and common course of conduct;
- vi. the illegal revenues that Defendants obtained from class members over the course of the conspiracy;
- vii. whether Defendants acted or refused to act on grounds generally applicable to the class and whether the association, combination, conspiracy and common course of conduct is continuing, thus entitling the Class to injunctive relief; and
- viii. whether the Defendants fraudulently concealed their conspiratorial activities.

These and other questions of law and fact are common to the Class and predominate over any question affecting only individual members of the Class.

95. Plaintiffs' claims are typical of the claims of all members of the Class in that Plaintiffs are persons who began purchasing defendants' cigarettes for their own use when they were under age. Plaintiffs' claims arise from the same conduct giving rise to the claims of the other members of the Class, and the relief sought is common to the Class.

96. Plaintiffs will fairly and adequately protect the interests of the Class in that plaintiffs are typical purchasers of cigarettes and have no significant conflict with any other members of the Class. Plaintiffs have retained competent counsel experienced in class action litigation.

97. This class action is superior to the alternatives, if any, for the fair and efficient adjudication of this controversy.

98. Defendants have acted or refused to act on grounds generally applicable to the class and whether the association, combination, conspiracy and common course of conduct is continuing, thus entitling the Class to injunctive relief;

VI. Defendants' LEGAL LIABILITY

A. Defendants' Liability for Fraud (Fraudulent Misrepresentation, Concealment, and Nondisclosure)

99. Defendants and their co-conspirators have engaged in a consistent course of conduct through which they have fraudulently misled past, present and prospective smokers, governmental authorities, and other members of the worldwide public about the adverse health effects and addictive nature of their products. Defendants and their co-conspirators have made affirmative material

misrepresentations, have omitted material facts, and have concealed material information concerning "light" or "low tar/ low nicotine" cigarettes; the addictiveness of nicotine; and their own manipulation of nicotine delivery in cigarettes. They also have falsely denied marketing cigarettes to children.

100. At the time that these false or misleading statements and representations were made, defendants and their co-conspirators knew or should have known that their statements were materially fraudulent, false or misleading, and they intentionally omitted or concealed material information with the purpose of inducing under age youths as well as other members of the public to purchase their products. Additionally or in the alternative, defendants and their co-conspirators made the statements recklessly with conscious disregard for the truth or falsity of their representations to the public.

101. Defendants and their co-conspirators had superior access to information about health effects of cigarettes, nicotine and addiction. Nevertheless, defendants and their co-conspirators intentionally or recklessly failed to disclose or deliberately concealed those material facts from the public worldwide, governmental agencies, smokers and under age youths.

102. Defendants and their co-conspirators committed hundreds, and perhaps thousands, of acts involving material fraudulent misrepresentations, fraudulent concealment, and fraudulent nondisclosures over the course of the last forty-five years. Defendants' and their co-conspirators' acts of concealment took a number of forms, many of which are unknown to Plaintiffs because such actions and concealment are within the exclusive knowledge of defendants. Plaintiffs are unable to allege in full the numerous advertisements, press releases, and other communications that defendants and their co-conspirators released over the past forty-five years because Plaintiffs do not have access to this

information. Indeed, it is defendants themselves who are in the best position to know the contents of each and every such misrepresentation and fraudulent statement. Specific examples of the material fraudulent misrepresentations, fraudulent concealment, and fraudulent nondisclosure of defendants and their co-conspirators include, but are not limited to, the acts set forth this in the Appendix to this Complaint, which are alleged and relied upon here as if fully set forth herein.

103. Defendants and their co-conspirators made these and other fraudulent misrepresentations and omissions intending to deceive consumers, including young people, and to induce members of the public and governmental agencies to believe that cigarettes are not addictive. By making the false and misleading representations and omissions, defendants and their co-conspirators intended to induce smokers and prospective smokers to buy and smoke cigarettes. Defendants and their co-co-conspirators also intended to discourage smokers from reducing their consumption of cigarettes and from trying to quit smoking.

104. Members of the public justifiably believed in the truth and completeness of the statements made by defendants and their co-conspirators. As a result, as a matter of law defendants have committed a fraud upon the market of actual and potential smokers by concealing the addictive qualities of their product and by asserting that nicotine was not addictive.

105. As a direct and proximate result of the illegal and fraudulent activities, misrepresentations, omissions, and concealment by defendants and their co-conspirators, members of the plaintiff class and other members of the public began to smoke and purchase cigarettes from defendants and continued smoking and, as a result, they suffered harm by expending funds for the

purchase of a product that they either would not have wished to purchase if they had had a full understanding of its harmful and addictive properties, or that they no longer wished to consumed, had they known.

B. Defendants' Liability for Civil Conspiracy

106. At all times material to this action, defendants participated in a civil conspiracy among themselves, and with other persons known and unknown, the purposes of which were, *inter alia*: (a) to mislead the general public, the medical and scientific community, and governmental authorities concerning the addictive properties of nicotine; (b) to mislead the general public, the medical and scientific community, and governmental bodies about the actual nicotine and tar delivery of supposedly "low tar" and "low nicotine" cigarettes as they are actually smoked, in order to mislead smokers into believing that switching to such cigarettes was a reasonable alternative to smoking cessation; (c) to market cigarettes to under age youth in order to ensure a lucrative future market for cigarettes; (d) to mislead the public concerning their efforts to market cigarettes to youths; (e) to conceal knowledge of the harmful effects of cigarette smoking from the public, the medical and scientific community, and governmental authorities; (f) to create an illusion of conducting scientific research on cigarettes and cigarette smoking so as to mislead the public concerning the health effects of smoking and the industry's knowledge of those health effects; (g) to create an illusion of a genuine scientific controversy concerning whether smoking was addictive and harmful to health, when no such genuine controversy actually existed; (h) to suppress research into smoking and health; and (i) to fraudulently maintain a market for their products.

107. During the course of the conspiracy, the conspirators, acting in concert, engaged in numerous concerted acts to further the purposes of the conspiracy, including but not limited to those described in the Appendix to this Complaint.

108. Each act of the conspiracy was ratified by the other co-conspirators, who acted as each other's agents in carrying out the conspiracy.

109. As a direct and proximate result of the conduct of defendants, numerous smokers have expended funds for the purchase of a product about whose adverse and addictive properties they had not been fully informed.

110. Each defendant is jointly and severally liable for the acts of the other members of the conspiracy which were committed in furtherance of the goals of the conspiracy.

**VII. Defendants' LIABILITY FOR VIOLATIONS OF THE RACKETEER
INFLUENCED AND CORRUPT ORGANIZATIONS STATUTE**

A. Violation of Title 18, United States Code, Section 1962(c)

Conducting the Affairs of the Enterprise

Through a Pattern of Racketeering Activity

111. Plaintiffs reallege and incorporate by reference in this Count the allegations contained above, and in the Appendix to this Complaint, as if fully set forth herein.

112. Defendants conduct, as set forth above, violated the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. section 1961, et seq., and specifically sections 1962(c) and 1962(d).

113. Plaintiffs claim for relief arises under 18 U.S.C. section 1964(c) of RICO) and seeks to recover actual and treble damages for defendants’ violation of 18 U.S.C. section 1963(c).

114. From at least the early 1950's and continuing up to and including the date of the filing of this complaint, there existed an “Enterprise” within the meaning of 18 U.S.C. sections 1961(4) and 1962(c) in the District of Columbia and elsewhere, described below. Defendants,

PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON,
LORILLARD, LIGGETT, AMERICAN, PHILIP MORRIS
COMPANIES, BAT PLC, COUNCIL FOR TOBACCO RESEARCH,
and TOBACCO INSTITUTE,

and others known and unknown, being persons employed by and associated with the Enterprise described below, did unlawfully, knowingly, and intentionally conduct and participate, directly and indirectly, in the conduct, management, and operation of the affairs of the aforementioned Enterprise, which was engaged in, and the activities of which affected, interstate and foreign commerce, through a pattern of racketeering activity consisting of numerous acts of racketeering in the District of Columbia

and elsewhere, indictable under 18 U.S.C. §§ 1341 (mail fraud) and 1343 (wire fraud), including, but not limited to, the acts of racketeering alleged in this Complaint in violation of 18 U. S. C. § 1962 (c).

B. The Enterprise:

115. From at least the early 1950s, and continuing up to and including the date of the filing of this complaint, in the District of Columbia and elsewhere, defendants

PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON,

LORILLARD, LIGGETT, AMERICAN, PHILIP MORRIS

COMPANIES, BAT PLC, COUNCIL FOR TOBACCO RESEARCH,

and TOBACCO INSTITUTE,

and others known and unknown, including agents and employees of defendants, collectively have constituted an "enterprise," as that term is defined in 18 U.S.C. § 1961(4), that is, a group of business entities and individuals associated in fact for a common purpose, which was engaged in, and the activities of which affected, interstate commerce and foreign commerce. Each defendant participated in the operation and management of the Enterprise.

116. The Enterprise functioned as a continuing unit for more than 45 years for the common purpose of achieving through unlawful means shared goals including the following: (1) to preserve and enhance the market for cigarettes and defendants' own profits, regardless of the truth, the law, or the health consequences to the consuming public; (2) to deceive under age youths and other consumers into purchasing cigarettes and starting and continuing to smoke by maintaining that there was an open question as to whether smoking is addictive and causes disease, despite the fact that defendants knew

otherwise; (3) to deceive under aged youth and other consumers into starting and continuing to smoke by undertaking an obligation to do everything in its power, including fund independent research, in order to determine if smoking is addictive and causes cancer or other diseases, while concealing and suppressing relevant research and funding biased or irrelevant research; (4) to deceive under age youth and other consumers into purchasing cigarettes by maintaining that nicotine is not addictive, despite the fact that defendants knew that nicotine is addictive; (5) to deceive under age youth and other consumers and induce them to purchase cigarettes by manipulating the design of cigarettes and the delivery of nicotine to smokers, while at the same time denying that they engaged in such manipulation; and (6) to deceive consumers, particularly parents and children, by claiming that they did not market to children, while engaging in marketing and advertising with the intent of inducing children to purchase cigarettes and to become lifetime smokers.

117. The Enterprise came into existence not later than December 15, 1953, at the above-described meeting at the Plaza Hotel in New York, New York. The defendant participants agreed at that meeting to conduct a false and misleading public relations and advertising campaign to deceive consumers and others about the health effects of cigarettes in order to protect the profits of Cigarette Companies. In furtherance of the Enterprise, the participants agreed to form TIRC (later CTR), a New York non-profit corporation that was falsely held out to the public as an independent research organization that would consider whether smoking caused disease. In reality, TIRC was created as the centerpiece of a public relations campaign to protect the cigarette market from the perceived threat posed by adverse medical reports.

118. The defendants have conducted the affairs of the Enterprise through a course of conduct of deceit and misrepresentation and conspiracy to defraud the public, to withhold from the public facts material to the decision to purchase and use tobacco products, to promote and maintain sales of tobacco products, and the profits derived therefrom, as well as to shield themselves from public, judicial, and governmental scrutiny. Defendants fraudulent, misleading and unlawful conduct of the affairs of the Enterprise have continued from its inception to the present and threaten to continue into the future.

119. Defendant participants in this Enterprise have repeatedly utilized advertisements and promotions, and have made numerous other public statements through the mails and in broadcasts and other media, U.S. Congressional hearings, and other public appearances as part of a concerted and coordinated campaign to reaffirm their January 1954 promise to put people's health before every other consideration in their business, and to support and reveal unbiased and trustworthy research to answer questions about smoking and health. Defendants and their co-conspirators used the Enterprise to make these material fraudulent representations to induce public acceptance of their representations, to avoid civil liability, and to conceal their efforts to misrepresent, suppress, distort, and confuse the facts about the health dangers of tobacco products, including nicotine addiction.

120. Behind the shield of its public disinformation campaign and the false claims that TIRC/CTR would conduct unbiased research and publicly reveal all results thereof, defendants have conducted the Enterprise so as to repeatedly conceal, suppress, and/or misrepresent the material facts concerning that research. The Enterprise, through CTR and other entities supported by defendants,

suppressed negative health and addiction research results from the public. In some cases, members of the Enterprise shut down research before final data could be obtained and reported. The defendant participants in the Enterprise also funded research studies designed to buttress defendants' knowingly fraudulent claims that the causal links between smoking, addiction and disease remained an "open question."

121. The participants in the Enterprise have not disclosed, and have denied, contrary to fact, that the Cigarette Companies manipulate and control the content, delivery, and potency of nicotine in their products to create and sustain consumers' addiction to tobacco products.

122. Defendants formation and conduct of the affairs of the Enterprise were essential to the success of their campaign of deceit, concealment, and misinformation. The constituent members of the Enterprise were aware that, unless they agreed to act and acted as an enterprise, their sales of tobacco products would substantially decrease, and accordingly, the profits of the Cigarette Companies would substantially diminish. The participants were also aware that, if the truth about the health effects of smoking, the addictiveness of nicotine, and the Cigarette Companies' targeting of children became known, profits would have substantially decreased, and the future of the cigarette industry would have been threatened.

123. At all relevant times, the Enterprise has existed separate and apart from defendants' racketeering acts and their conspiracy to commit such acts. The Enterprise has an ascertainable structure and purpose beyond the scope and commission of defendants' predicate acts. It has a consensual decision making structure that is used to coordinate strategy, manipulate scientific data,

suppress the truth about the consequences of smoking, and otherwise further defendants' fraudulent scheme.

124. The Enterprise is an ongoing organization whose constituent elements function as a continuing unit in maximizing the sales of the products of all of the Cigarette Companies, misleading the public, the Congress, federal agencies, and the courts as to the health hazards of cigarettes, concealing and suppressing the truth concerning the addictive properties of nicotine and of the Cigarette Companies' control of nicotine delivery, marketing to children, and carrying out other elements of defendants' scheme. The Enterprise continues actively to disguise the nature of defendants' wrongdoing and to conceal defendants' participation in the conduct of the Enterprise in order to avoid and/or minimize their exposure to criminal and civil penalties and damages.

125. In order to further the conspiracy and as part of their Enterprise that was engaged in a pattern of racketeering activity, defendants formed the TIRC (later CTR) and the Tobacco Institute. Each of these organizations furthered the goals of the Enterprise in numerous ways:

- They served as a principal channel of communication among defendants to ensure that the companies continued to espouse the party line and to react to new threats to the industry.
- They served to provide a uniform voice to propagate defendants' and their co-conspirators' false and misleading material statements about smoking and health, defendants' commitment to research, and other issues.

- They provided an "independent" front for defendants' activities. CTR, for example, was used by defendants to claim falsely that they were funding independent research into smoking and health. Similarly, the Cigarette Companies were able to market to youth and to deny doing so under the cover of TI's print campaign which purported to discourage children from smoking.
- They were mechanisms for enforcing the conspiracy and ensuring that all defendants continued to participate in the Enterprise. Defendants and/or their attorneys were in constant contact with each other through CTR and TI. The numerous committees and boards that exercised control over TI and CTR provided regular opportunities for defendants' agents to meet and to ensure that defendants were continuing to act in concert.

126. At all times, CTR and TI were controlled by the Cigarette Companies and their agents and employees. Defendants controlled each organization directly and through the web of committees made up of representatives of the Cigarette Companies and outside counsel. Over time, defendants' in-house and outside counsel took on a greater role in controlling the activities of TIRC/CTR and TI.

Although CTR and TI have been or will be dissolved, on information and belief, the functions they have served continue to be served by the Companies' agents and employees.

127. TIRC/CTR's Board of Directors was comprised of the Presidents of the member Cigarette Companies. TIRC/CTR was funded by the member companies, and the TIRC/CTR Board of Directors approved the annual budget of the organization. The Board handled administrative matters and was responsible for ensuring the necessary funds were available to maintain TIRC/CTR. TIRC/CTR also had a Scientific Director and a scientific staff. The Scientific Director and the TIRC/CTR scientific staff were selected by representatives of defendants .

128. TIRC/CTR's Industry Technical Committee ("ITC"), made up of the Research Directors of the various member companies, and representatives of Hill & Knowlton, a public relations firm that apt various times represented both TIRC/CTR and TI, selected the first members of the SAB. Subsequent appointments were approved by TIRC/CTR's Chairman, a position that was usually filled by a retired tobacco company president or general counsel.

129. Defendants, through their attorneys and other agents, took an active role in controlling TIRC/CTR's research and other priorities. The Research Liaison Committee ("RLC"), formed in 1974, approved projects and monitored all phases of TIRC/CTR, including approving grants. The RLC had grant approval authority. The Cigarette Companies' in-house attorneys operated through the "Committee of Counsel," a group that included the General Counsel of each Cigarette Company, along with outside counsel who represented the Cigarette Companies. The Committee of Counsel also reviewed and controlled TIRC/CTR's research priorities. Outside counsel for the Cigarette Companies

even administered some of TIRC/CTR's research funds through Special Projects and Special Accounts, in order to funnel money to the development of expert witnesses.

130. The Tobacco Institute (TI) is or was a non-profit organization formed in January 1958 whose member companies were manufacturers of tobacco products, including, the five largest Cigarette Companies. TI was formed, at least in part, in response to a growing resentment by some SAB members of the public relations functions of the SAB and TIRC/CTR.

131. TI served as defendants' propaganda arm and was controlled by defendants. As part of the Enterprise, TI served to disseminate defendants' "party line" on issues such as smoking and health, regardless of what defendants knew.

132. TI was run by a variety of Committees, which were made up of representatives from the Cigarette Companies, each of whom initially had two members on TI's Executive Committee. The Executive Committee had the "final voice on TI matters" and TI's statements. TI's Management Committee met six to eight times per year to direct its activities, and its Communications Committee cleared TI's advertisements. Through these Committees, defendants, through their agents and attorneys, controlled TI and set policy, including the misleading and fraudulent statements about material matters made by TI. Over time, this structure changed somewhat, but defendants always maintained control over TI's activities.

133. The Cigarette Companies funded TI as well. The member companies paid dues to TI "based on a set membership fee and then an additional fee was added based on the number of cigarettes the member company had manufactured in the previous year."

134. The Cigarette Companies also exercised control over TI through the Committee of Counsel. The Committee of Counsel assisted TI in setting strategy, preparing witnesses on smoking and health issues, briefings, reviewing press releases, advertisements, and other public statements, and "follow-up" activities.

135. TI's stated goal was to bring "about a greater awareness that the cigarette controversy is not a closed question" -- *i.e.*, to provide misleading information on the issue of smoking and health. TI took an active role in designing, writing, and seeking the publication of advertisements for defendants' products and prepared literally hundreds of advertisements from 1958 to 1998 that advanced defendants' primary position that "the question of smoking and health is still a question." TI regularly issued public statements questioning or disputing statements from health organizations that smoking was addictive and caused disease, and reiterating defendants' positions on other issues.

136. TI produced scores of witnesses for testimony in the U.S. Congress, the courts, and state legislatures to advocate the false and misleading industry line -- often without noting sponsorship by the Cigarette Companies or TI. TI also sponsored radio and TV campaigns. TI lobbied on behalf of the Cigarette Companies to prevent the release of public information about the effect of cigarettes on public health. TI also furthered the Enterprise by coordinating the Cigarette Companies' position with those of tobacco companies throughout the world.

137. Despite the fact that TI was formed in order to distance TIRC/CTR from defendants' public relations activities, after TI was created, TIRC/CTR continued its public relations functions, and continued to retain public relations counsel.

138. Although CTR purported to be "independent," TI and TIRC/CTR often worked together to advance defendants' positions. TI used TIRC/CTR's research material to further the goal of maintaining defendants' "open controversy" position.

139. In furtherance of their common goals, including preserving, protecting, and enhancing the market for cigarettes, the Cigarette Companies jointly created and funded TIRC/CTR and TI. By the Cigarette Companies' frequent and continuous interaction as controlling participants on the boards, committees, and other structures within TIRC/CTR and TI, defendants and others have constituted an association-in-fact enterprise as defined in 18 U.S.C. § 1961(4).

140. On information and belief, by frequent and continuous communications among, and coordinated activities of, defendants and their agents that continue to the present day, defendants and others continue to constitute an association-in-fact enterprise as defined in 18 U.S.C. § 1961(4).

C. Violation of Title 18, United States Code, Section 1962(d); Conspiracy to Violate Title 18, United States Code, Section 1962(c)

**Conspiracy to Conduct the Affairs of the Enterprise
Through a Pattern of Racketeering Activity**

141. Plaintiffs reallege and incorporate by reference in this Count the allegations above, and in the Appendix to this Complaint, as if fully set forth herein.

142. From at least the early 1950s up to and including the date of the filing of this Complaint, in the District of Columbia and elsewhere, defendants,

PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON,
LORILLARD, LIGGETT, AMERICAN, PHILIP MORRIS
COMPANIES, BAT PLC, COUNCIL FOR TOBACCO RESEARCH,
and TOBACCO INSTITUTE,

and others known and unknown, being persons employed by and associated with the Enterprise described above, did unlawfully, knowingly and intentionally combine, conspire, confederate, and agree together with each other, and with others whose names are both known and unknown, to conduct and participate, directly and indirectly, in the conduct of the affairs of the aforementioned Enterprise, which was engaged in, and the activities of which affected, interstate and foreign commerce, through a pattern of racketeering activity consisting of multiple acts indictable under 18 U.S.C. §§ 1341 and 1343, in violation of 18 U.S.C. § 1962(d).

143. The allegations above regarding defendants formation and conduct of the affairs of the Enterprise are incorporated by reference and realleged as if fully set forth herein.

144. Each defendant agreed that at least two acts of racketeering activity would be committed by a member of the conspiracy in furtherance of the conduct of the Enterprise. It was part of the conspiracy that defendants and their co-conspirators would commit numerous acts of racketeering activity in the conduct of the affairs of the Enterprise, including, but not limited to, the acts of racketeering set forth in the Appendix to this Complaint, in the District of Columbia and elsewhere.

D. The Pattern of Racketeering Activity

145. The following sub-paragraphs a. through n. are re-alleged as a part of each of racketeering acts relating to mail fraud and wire fraud set forth in the Appendix to this Complaint.

a. From at least as early as December 1953, and continuing until the time of filing of this complaint, in the District of Columbia and elsewhere, defendants and others known and unknown did knowingly and intentionally devise and intend to devise a scheme and artifice to defraud, and obtain money and property from members of the public, including children, by means of material false and fraudulent pretenses, representations, and promises, and omissions of material facts concerning the harmful and addictive nature of their products, knowing that the pretenses, representations, and promises, were false when made.

b. It was part of said scheme and artifice that the Cigarette Companies would and did sell products for purchase that were represented not to be harmful and addictive, and that smoking was a matter of free choice, when in fact, defendants knew or should have known that cigarette smoking posed substantial health risks, that nicotine in cigarettes is highly addictive, and that the Cigarette Companies had targeted children as "replacement addicts" for adult smokers who either reduced or ceased smoking or had died.

c. It was further part of said scheme and artifice that defendants and their co-conspirators would and did maintain sales and profits of the Cigarette Companies, by concealing, and suppressing material information regarding the health consequences associated with smoking, including

that cigarette smoking posed substantial health risks, that nicotine in cigarettes is highly addictive, that they had the ability to manipulate and manipulated nicotine delivery, and that the Cigarette Companies had targeted children as "replacement smokers" for adult smokers who either reduced or ceased smoking or had died.

d. It was further part of said scheme and artifice that, in order to conceal the health risks of cigarette smoking and the addictiveness of nicotine, defendants and their co-conspirators would and did make false representations and misleading statements in worldwide publications; would and did falsely represent that defendants would fund and conduct objective, scientific research, and disclose the results of such research, to resolve concerns about tobacco-related diseases; would and did falsely represent that defendants did not target children for sales of cigarettes; would and did suppress and destroy documents to hide adverse research results; would and did misrepresent and fail to disclose their ability to manipulate and the manipulation of nicotine delivery and the addictive qualities of cigarettes; would and did conceal the availability of less hazardous and less addictive cigarettes; and would and did misrepresent their actions to government personnel and others and in judicial proceedings.

e. It was further part of said scheme and artifice that defendants and their co-conspirators would seek to impair, impede, and defeat government authorities' ability to understand the actual risks of cigarette smoking and the addictiveness of nicotine, and to impair, impede, and defeat governmental efforts to regulate and control the manufacture and distribution of cigarettes, and to impair, impede, and defeat parties in litigation from learning the adverse health effects and addictiveness

of cigarette smoking, in that defendants and their co-conspirators would and did attempt to cover up their knowledge of the adverse health risks of smoking, the addictiveness of nicotine, and their efforts to recruit children as smokers, and would and did misrepresent that adverse health effects of smoking and addictiveness were unknown or unproven and would and did attempt to prevent the public, United States Congress, courts and government officials from uncovering those activities.

f. It was further part of said scheme and artifice that defendants' communications directed toward government officials and courts would be and were designed to preserve and increase the market for cigarettes while concealing the deleterious health effects caused by smoking cigarettes. Examples of such communications include defendants' communications with government agencies, and communications with congressional subcommittees, members, and staff, as well as their communications among themselves regarding what should not be disclosed to government agencies and to courts and Congress.

g. It was further a part of said scheme and artifice that defendants communicated to the public nationwide in newspapers, magazines, and other periodicals that were distributed through the mails, as well as through the broadcast media, to deceive the public.

h. It was further part of said scheme and artifice that defendants would cause assurances and guarantees that the Cigarette Companies were seeking answers to public health issues to be disseminated by mail and by interstate wire transmissions.

i. It was further part of said scheme and artifice that defendants would take and receive and cause to be taken and received from the mails communications concerning research relating to the health effects of smoking.

j. It was further part of said scheme and artifice that defendants and their co-conspirators would mail and otherwise distribute press releases and other public statements addressing public health concerns and commenting on particular research issues.

k. It was a further part of said scheme and artifice that defendants and their co-conspirators would and did misrepresent, conceal, and hide and cause to be misrepresented, concealed, and hidden, the purpose of, and acts done in furtherance of, the scheme to defraud.

l. It was a further part of said scheme and artifice, and in furtherance thereof, that defendants would and did communicate with each other and with their co-conspirators and others, in person, by mail, and by telephone and other interstate and foreign wire facilities, regarding health effects of smoking, health research and research into the effects of nicotine, and ways to suppress such information, and regarding ways to identify and target children for the sale of cigarettes.

m. For the purpose of executing and attempting to execute the scheme and artifice described herein, defendants and their co-conspirators would and did: knowingly place and cause to be placed in any post office or authorized depository for mail matter, matters and things to be sent and delivered by the United States Postal Service (and its predecessor, the United States Post Office Department); took and received therefrom such matters and things; and knowingly caused to be delivered by mail according to the direction thereon, and at the place at which it is directed to be

delivered by the person to whom it is addressed, any such matter and thing, in violation of 18 U.S.C. § 1341, including, but not limited to, the instances set forth in the Appendix to this Complaint.

n. For purposes of executing and attempting to execute that scheme and artifice, defendants and their co-conspirators would and did knowingly transmit and cause to be transmitted in interstate and foreign commerce by means of wire, radio and television communication writings, signs, signals, pictures and sounds (collectively "transmissions") in violation of 18 U.S.C. § 1343, including, but not limited to, the transmissions set forth in the Appendix to this Complaint.

E. Plaintiffs Were Injured in Their Property By Reason of Defendants' Violation of Section 1962 of RICO.

146. By means of the wrongful course of conduct targeted broadly at a broad portion of the public as alleged herein in violation of 18 U.S.C. 1962, defendants intended to induce and did induce plaintiffs, while they were under age to purchase defendants' harmful and addictive products.

147. Defendants' wrongful conduct alleged herein directly and proximately injured plaintiffs and each class member in an amount equal to the aggregate purchase price paid by plaintiffs and the class members for defendants' harmful and addictive products while they were under age..

148. By reason of defendant's wrongful conduct in violation of 18 U.S.C. 1962, plaintiffs and each class member were injured by the amount of money plaintiffs paid to defendants and by which defendants were unjustly enriched.

**F. Equitable Relief Is Necessary to Prevent and Restrain Defendants' Unlawful
Conduct in the Future**

149. Defendants' affirmative and intentional acts of fraudulent concealment, suppression, and denial of the facts as alleged above has continued unabated over a span of many decades. Defendants have maintained a unified scheme to thwart public awareness of adverse scientific and medical information concerning the health risks of cigarette smoking by suppressing and subverting medical and scientific research. They have concealed and denied the addictive properties of nicotine and the Cigarette Companies' manipulation of the levels of nicotine in their products. They have misrepresented the tobacco industry's targeting of youth smokers and their endeavors to exploit the addictive properties of nicotine to maintain a market for cigarettes -- all through an uninterrupted pattern of fraudulent and deceitful conduct aimed at maintaining an addicted market for their products and increasing industry profits at the expense of the smokers they endeavored to deceive.

150. The pattern of defendants' conduct reflects an unwillingness to concede, and affirmative efforts to conceal from the public, from courts, and from regulatory bodies, pertinent and properly available information concerning the dangers of their products. After a span of more than forty-five years of deception and fraud, it would be unreasonable to believe that defendants will voluntarily cease their unlawful conduct, or that their pattern of racketeering activity will cease without intervention by this Court.

151. Unless restrained, defendants will continue their attempts to keep internal information from public disclosure. They will refuse to admit, continue to conceal, and confuse the fact that the nicotine in their products is addictive. Affirmative relief is required to ensure that defendants fulfill their duty to disclose non-public information over which defendants have had exclusive control, and which is crucial to the consuming public in making informed purchasing decisions. Equitable relief is necessary to ensure an end to defendants' continued efforts to confuse and mislead the public concerning the addictive nature of nicotine, and to end their deceptive campaign to induce under age young people to become addicted and subject to a high risk of disease.

152. Defendants' violations of 18 U.S.C. § 1962, and their continuing pattern of racketeering acts will continue in connection with the affairs of the Enterprise unless this Court implements the relief requested below.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment against all defendants jointly and severally, as follows:

Pursuant to the provisions of 18 U.S.C. § 1964, that this Court issue an Order and Judgment, jointly and severally, against defendants, providing the following relief:

1. That this Court certify a class of plaintiffs as defined in Section V. above, under Rule 23(b)(2) and/or 23(b)(3) of the Federal Rules of Civil Procedure.

2. That this Court order all defendants who are found to have violated 18 U.S.C. section 1962 to pay to plaintiffs treble damages suffered by reason of such violations.

3. That, alternatively, this Court order that all of the defendants who are found to have violated 18 U.S.C. §1962, disgorge the unjust enrichment derived from any violation of 18 U.S.C. § 1962.

4. That this Court order process for the disbursement to class members of the treble damage award or the disgorgement fund, any unclaimed portion of which will be used to fund a court approved and supervised educational campaign devoted to the prevention of smoking by under age youths and young adults and encouraging cessation of smoking by those in the class who already smoke, over which defendants shall have no influence, control or decision-making authority.

5. That this Court order such further equitable relief as is just and reasonable including enjoining each defendant from engaging in marketing or advertising campaigns that target and/or encourage under age youth to purchase and consume cigarettes and other tobacco products; enjoining each defendant from making false, misleading or deceptive statements or representations concerning the health effects and addictive nature of cigarettes and other tobacco products; and ordering each defendant to make corrective statements regarding the health risks of cigarette smoking and the addictive properties of nicotine in future advertising, marketing, and promotion of their tobacco products.

6. That this Court award plaintiffs the costs of this suit, including attorneys and experts fees, together with such other and further relief as may be necessary and appropriate to prevent and

restrain further violations of 18 U.S.C. § 1962, and to end the ongoing wrongful conduct of defendants.

VIII. DEMAND FOR JURY TRIAL

153. Plaintiffs demand a trial by jury on all counts so triable.

Dated: May 22, 2001

Michael D. Hausfeld, Esq.
Stephen D. Annand, Esq.
Paul T. Gallagher, Esq.
Margaret G. Farrell, Esq.
COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, D.C. 20004-3964
Telephone: (202) 408-4600
Fax: (202) 408-4699

Johnnie Cochran, Esq.
J. Keith Givens, Esq.
Samuel Cherry, Esq.
COCHRAN, CHERRY, GIVENS & SMITH, P.C.
163 W. Main Street
Dothan, AL 36301
Telephone: (334) 793-1555
Fax: (334) 793-8280

Peter Nordberg
David F. Sorensen
BERGER & MONTAGUE, P.C.
1622 Locust St.
Philadelphia, PA 19103
215-875-3000

Gordon Ball, Esq.
LAW OFFICE OF GORDON BALL
Bank of America Center
Suite 750
550 Main Avenue
Knoxville, Tennessee 37902
Telephone: (865) 525-7028
Fax: (865) 525-4679

Anthony Bolognese, Esq.
BOLOGNESE & ASSOCIATES, LLC
Two Penn Center Plaza
Suite 200
Philadelphia, PA 19103
Telephone: (215) 854-4057
Fax: (215) 564-2013

Jon P. Ferguson, Esq.
CHANDLER FRANKLIN & O'BRYAN
The Parfitt Bldg. At Wharfside
175 Parfitt Way, S.W.
Suite 140
Bainbridge Island, WA 98110
Telephone: (206) 855-0838
Fax: (206) 855-0840

Samuel D. Heins, Esq.

HEINS MILLS & OLSON
700 Northstar East
608 2nd Avenue South
Minneapolis, MN55402
Telephone: (612) 338-4605
Fax: (612) 338-4692

Robert N. Kaplan, Esq.
KAPLAN, KILSHEIMER & FOX, LLP
805 Third Avenue, 22nd Floor
New York, NY 10022
Telephone: (212) 687-1980
Fax: (212) 687-7714

Ken Kudon, Esq.
KUDON LAW FIRM
2 Old Creek Court
Potomac, MD 20854
Telephone: (301) 279-5634
Fax: (301) 294-6407

5.22.01.102043.1