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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SACRAMENTO

11 PEOPLE OF THE STATE OF CALIFORNIA ex) Case No.
12 rel. DANIEL E. LUNGREN, ATTORNEY)
GENERAL OF THE STATE OF CALIFORNIA;) COMPLAINT FOR RECOVERY OF
13 S. KIMBERLY BELSHÉ, DIRECTOR OF) MEDI-CAL COSTS AND CIVIL
HEALTH SERVICES OF THE STATE OF) PENALTIES AND INJUNCTIVE
14 CALIFORNIA,) RELIEF FOR VIOLATIONS OF THE
) CARTWRIGHT ACT; THE
15 Plaintiffs,) CALIFORNIA FALSE CLAIMS ACT;
) AND THE UNFAIR COMPETITION
16 v.) ACT
)
17 PHILIP MORRIS, INC.; R.J. REYNOLDS)
TOBACCO COMPANY; BROWN &)
18 WILLIAMSON TOBACCO CORPORATION;)
B.A.T. INDUSTRIES P.L.C.; LORILLARD)
19 TOBACCO COMPANY, INC.; AMERICAN)
TOBACCO COMPANY, INC.; UNITED STATES)
20 TOBACCO COMPANY; HILL & KNOWLTON,)
INC.; THE COUNCIL FOR TOBACCO)
21 RESEARCH-U.S.A., INC; TOBACCO)
INSTITUTE, INC.; SMOKELESS TOBACCO)
22 COUNCIL, INC. and DOES 1 through 200,)
inclusive,)
23)
Defendants.)
24)

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26 The People of the State of California, by and through Daniel E. Lungren, Attorney
27 General of the State of California, and S. Kimberly Belshé, in her official capacity as Director of
28 Health Services for the State of California, allege on information and belief as follows:

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PARTIES

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

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

3. Defendant Philip Morris, Inc. ("Philip Morris") is a Virginia corporation whose principal place of business is 120 Park Avenue, New York, New York 10017. Philip Morris

1 manufactures, advertises, promotes and sells Philip Morris, Merit, Cambridge, Marlboro, Benson
2 & Hedges, Virginia Slims, Alpine, Dunhill, English Ovals, Galaxy, Players, Saratoga, and
3 Parliament cigarettes and other tobacco products throughout the United States. Philip Morris
4 advertises, promotes and sells its tobacco products throughout the State of California.

5 4. Defendant Brown & Williamson Tobacco Corporation (“Brown &
6 Williamson”) is a Delaware corporation whose principal place of business is 1500 Brown &
7 Williamson Tower, Louisville, Kentucky 40202. Brown & Williamson manufactures, advertises,
8 promotes and sells Kool, Raleigh, Barclay, Belair, Capri, Richland, Loreda, Eli Cutter, and
9 Viceroy cigarettes and other tobacco products throughout the United States. Brown & Williamson
10 advertises, promotes and sells tobacco products throughout the State of California.

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

17 6. Defendant B.A.T. Industries, P.L.C. (“B.A.T. Industries”) is a British
18 corporation whose principal place of business is Windsor House, 50 Victoria Street, Town of
19 London. Through a succession of intermediary corporations and holding companies, B.A.T.
20 Industries is the sole shareholder of Brown & Williamson. B.A.T. Industries has placed cigarettes
21 and other tobacco products into the stream of commerce with the expectation that substantial sale
22 of cigarettes and other tobacco products would be made in the United States and in the State of
23 California. B.A.T. Industries has also, through its agents, subsidiaries, and/or associated
24 companies, participated in the conspiracy described below by, among other things, conducting
25 significant research for Brown & Williamson on the topic of smoking, disease and addiction and,
26 on information and belief, assisting Brown and Williamson in removing sensitive and exculpatory
27 documents from the United States.

28 7. Defendant Lorillard Tobacco Company, Inc. (“Lorillard”) is a Delaware

1 corporation whose principal place of business is One Park Avenue, New York, New York 10016.

2 Lorillard manufactures, advertises, promotes and sells Old Gold, Kent, Triumph, Satin, Max,
3 Spring, Newport, and True cigarettes and other tobacco products throughout the United States.

4 Lorillard advertises, promotes and sells its tobacco products throughout the State of California.

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

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

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

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

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

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

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

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

27 15. All the defendants described in paragraphs 3 through and 9 -- Philip Morris,
28 Inc., Brown & Williamson, R. J. Reynolds, BAT Industries, Lorillard, American Tobacco and

1 U.S. Tobacco -- shall collectively be referred to as "Defendant Tobacco Companies" in this
2 complaint.

3 16. Whenever reference is made in this complaint to any act of defendants, such
4 allegation shall mean that each defendant acted individually and jointly with the other defendants
5 named in that cause of action.

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

10 18. At all relevant times, each of the defendants has acted as an agent,
11 representative, or employee of each of the other defendants and has acted within the course and
12 scope of said agency or representation or employment with respect to the causes of action in this
13 complaint.

14 19. At all relevant times, each defendant has committed the acts, caused others to
15 commit the acts, or permitted others to commit the acts referred to in this complaint and has made,
16 caused, or permitted others to make the deceptive statements referred to in this complaint.

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19 20. While not named as a defendant herein, Liggett & Myers, Inc.

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22 `Liggett'

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24 ') is a Delaware corporation whose principal place of business is Main and Fuller, Durham, North
25 Carolina. Liggett manufactures, advertises, promotes and sells Chesterfield, Decade, L&M,
26 Pyramid, Dorado, Eve, Stride, Generic, and Lark cigarettes and other tobacco products throughout
27 the United States. Liggett advertises, promotes, and sells its tobacco products throughout the State
28 of California.

1 were claimed to be safer for consumers. The Tobacco Companies introduced and promoted
2 filtered cigarettes, as being better for consumers' health. For example, in 1952 Lorillard
3 introduced the Kent micronite filter, which Lorillard represented removed seven times more tar
4 and nicotine than any other cigarette. Filtered cigarettes were very popular with consumers.

5 28. As demonstrated by the health-related advertising claims and the introduction
6 and promotion of filtered cigarettes, the Tobacco Companies understood that consumers were
7 concerned about their health and wanted safer products. During this period, the Tobacco
8 Companies competed vigorously on the basis of health and safety, in their advertising and
9 promotional material and in the products they marketed.

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

14 30. In December 1953, Hill organized a meeting of Philip Morris, Brown &
15 Williamson, Reynolds, Lorillard, American Tobacco, and U.S. Tobacco to discuss the effect of
16 these health studies. The attendees discussed forming an association specifically charged with a
17 public relations function of disinformation and chose Hill to hire the staff, disburse the funds, and
18 play a central role in this function. Shortly thereafter, Hill presented a detailed recommendation
19 which included the creation of the Tobacco Industry Research Committee

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21
22 'TIRC'

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24 ') which was to, and did, operate for the primary purpose of suppressing information from the
25 consuming public and from public health officials or others who may have taken steps to inform or
26 safeguard the public.

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

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Research

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`CTR'

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

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

33. Also in 1964, Liggett joined the TIRC/CTR.

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

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

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

1 and tobacco; and suppression of research, development, and marketing of safer cigarettes.

2 37. The purpose and effect of this conspiracy has been to unreasonably restrain and
3 to stabilize the market for cigarettes and other tobacco products.

4 38. Defendant TIRC placed an advertisement in the newspapers of the State of
5 California on January 4, 1954, which promised that the tobacco industry had undertaken a special
6 and continuing duty to protect the public health by representing that it would conduct and disclose
7 unbiased and authenticated research on the health risks of cigarette smoking. The issuance of this
8 publication was an integral step in the conspiracy to suppress and conceal information that might
9 reduce the sale of tobacco products.

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

19 40. In 1964, in furtherance of the conspiracy, CTR formed a "Special Projects
20 Division" as a method to create an artificial attorney-client and attorney work product privilege
21 for projects of the Division, so that the Tobacco Companies could conceal unfavorable
22 information about tobacco products. A series of research grants designated as CTR "Special
23 Projects" were developed by defendants in a manner so as to artificially cloak this work with the
24 protection of the attorney-client or attorney work product privilege. Defendants have used the
25 CTR Special Projects Division to conceal accurate information that was harmful to the object of
26 the Tobacco Companies' conspiracy. Defendants shielded company documents with artificial
27 claims of attorney-client privilege and as attorney work product and made documents unavailable
28 by sending them out of the United States so that they would not be discovered in legal proceedings

1 in the United States. To this day the Tobacco Companies have kept research from the Special
2 Projects Division shielded from public scrutiny. The artificial attorney-client and attorney work
3 product privileges the Tobacco Company Defendants created were part of a scheme intended to
4 cover-up and conceal over forty years of misconduct and illegal actions.

5 41. In furtherance of this conspiracy, the Tobacco Companies agreed among
6 themselves to limit individual research.

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

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

24 44. Defendants have claimed nicotine is not addictive, when they knew that it was.
25 Defendants have assured the consuming public that they would disclose information concerning
26 the addictive nature of nicotine and although they have continually denied they have such
27 information, they have been in possession of such information. By way of example, researchers
28 working for Philip Morris confirmed the addictive nature of nicotine and attempted to develop a

1 synthetic form of nicotine that would avoid its cardiovascular complications. Philip Morris fired
2 the researchers, closed their laboratory, and threatened them with legal action if they published
3 their work.

4 45. In furtherance of selling their “lite” or “light” cigarettes, the defendants have
5 represented that these products are healthier and have less tar and nicotine than regular cigarettes.
6 In fact, the amount of nicotine in these cigarettes is higher than the amount set forth on the cigarette
7 package; the amount of nicotine in these cigarettes is equivalent to the amount of nicotine in
8 standard cigarettes; and such cigarettes are not healthier for consumers than are “regular”
9 cigarettes.

10 46. Defendants have manipulated the amount of nicotine in cigarettes and other
11 tobacco products, in order to maintain and increase their market for tobacco products. Defendants
12 have failed to disclose these facts.

13 47. The Tobacco Companies have specifically targeted minors through their
14 advertisement and marketing campaigns in order to induce minors to start smoking cigarettes and in
15 order to increase cigarette sales to minors. The Tobacco Companies need to induce minors to start
16 smoking in order to maintain their customer base. The Tobacco Companies have known for years
17 that most people who are addicted to smoking cigarettes begin smoking cigarettes as minors.
18 According to a 1994 U.S. Surgeon General's report, 3000 children become regular smokers each
19 day.

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

27 49. Several brands were repositioned in the market to appeal to young consumers.

28 50. The Tobacco Companies have developed advertising imagery intended to

1 appeal to children. The Tobacco Companies have employed various techniques to induce children
2 to smoke or to increase their consumption of cigarettes, including the give-away of T-shirts, caps
3 and other items with decals or graphics associated with tobacco products, promoting sporting
4 events and other activities associated with successful and/or healthy athletes, associating cigarette
5 smoking with independence and freedom from authority, with success, with risk-taking, with
6 sexual attractiveness, and with a healthful, athletic, youthful and glamorous lifestyle, and by
7 emphasizing girls' and young women's interests in slim and feminine products. Marlboro was
8 transformed from a red-tipped cigarette for women to the cigarette for manly cowboys, and Philip
9 Morris developed the "Joe Camel" cartoon character.

10 51. The Tobacco Companies further target children as consumers by the placement
11 of their advertising. For example, cigarette advertisements are conspicuous in youth-oriented
12 publications. As a further example, Reynolds ordered its employees to identify stores near high
13 schools so as to increase its marketing efforts in those locations. The California Department of
14 Health Services, in a July 1995 report, found that stores within 1,000 feet of a school had
15 significantly more tobacco advertising and promotion than the average store and that stores near
16 schools were more likely to have at least one tobacco advertisement placed next to a candy
17 display than were other stores.

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

25 53. U.S. Tobacco aimed its smokeless tobacco sales campaigns at young people to
26 such an extent that the percentage of its advertising budget for "starter brands" such as Happy
27 Days, Skoal Bandits, and Skoal Long Cut was more than 20 times the percentage of sales for those
28 brands. The "starter brands" have low nicotine and are utilized to adjust the young user to

1 steps to increase or enhance this risk.

2 59. The Defendant Tobacco Companies' products were defective when they were
3 sold to California consumers and users, including Medi-Cal beneficiaries.

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

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

12 62. Welfare & Institutions Code section 14124.71(a) provides in pertinent part
13 that:

14 "When benefits are provided or will be provided to a beneficiary under this
15 chapter because of an injury for which another person is liable, . . . the director [of
16 the Department of Health Services] shall have a right to recover from such person
or carrier the reasonable value of benefits so provided."

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

20 64. For each of the past three years, Health Services has paid health care
21 providers hundreds of millions of dollars for treating tobacco-related illnesses of Medi-Cal
22 beneficiaries. In the 1995/96 fiscal year, Health Services paid approximately \$433 million
23 dollars for treatment of tobacco-related illnesses of Medi-Cal beneficiaries.

24 **SECOND CAUSE OF ACTION**

25 **Violation of the Cartwright Act**

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

27 65. Plaintiff People of the State of California ex rel. Daniel E. Lungren, Attorney
28 General, realleges and incorporates by reference paragraphs 1 through 45 inclusive as if fully set

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forth herein.

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

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

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

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

THIRD CAUSE OF ACTION

False Record Or Statement To Avoid Obligation

(Government Code section 12650 et seq.)

70. Plaintiff People of the State of California ex rel. Daniel E. Lungren, Attorney General, realleges and incorporates by reference paragraphs 1 through 54 inclusive as if fully set forth herein.

1 71. This is a claim under the California False Claims Act (Gov. Code, §
2 12651(a)(7)), which provides that a person shall not knowingly make, use, or cause to be made a
3 false record or statement to conceal, avoid, or decrease any obligation to pay money to the state or
4 to any political subdivision.

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

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

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

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

25 **FOURTH CAUSE OF ACTION**

26 Violation of the Unfair Competition Act

27 (Business and Professions Code Section 17200)

28 76. Plaintiff People of the State of California ex rel. Daniel E. Lungren, Attorney

1 General, realleges and incorporates by reference paragraphs 1 through 54 inclusive as if fully set
2 forth herein.

3 77. Defendants, and each of them, have engaged in and are still engaged in acts of
4 unfair competition, as defined in Business and Professions Code section 17200, including but not
5 limited to the following:

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

8 B. Defendants have violated and continue to violate Civil Code section
9 1770(a)(16), in that in furtherance of selling their cigarettes and other tobacco products they
10 represent that they are being supplied in accordance with previous representations, to wit, that
11 defendants would affirmatively disclose to the public complete and accurate information about
12 smoking and health, when in fact defendants have not made such disclosures.

13 C. Defendants have violated and continue to violate Civil Code section
14 1770(a)(16), in that in furtherance of selling their products they represent that they are being
15 supplied in accordance with previous representations, to wit, that defendants' products are not
16 addictive, when in fact they are addictive.

17 D. Defendants have violated and continue to violate Civil Code section
18 1770(a)(5), in that in furtherance of selling their products defendants have represented that
19 cigarettes and other tobacco products have uses or benefits which they do not have, in that:

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

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

26 E. Defendants have violated and continue to violate Civil Code section
27 1770(a)(5), in that in furtherance of selling their products they imply that their cigarettes can be
28 smoked and enjoyed and other tobacco products ingested without worry over health concerns,

1 when, in fact, defendants knew of the health hazards of using cigarettes and other tobacco products
2 and actively concealed the results of research and other information that demonstrated the dangers
3 of using cigarettes and other tobacco products.

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

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

10 ii. The amount of nicotine in these cigarettes is equivalent to the
11 amount of nicotine in standard cigarettes.

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

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

16 G. Defendants have violated and continue to violate Civil Code section
17 1770(a)(2) in that in furtherance of selling their products they have represented that cigarettes are
18 regarded as a safe product by CTR, successor in interest to TIRC, allegedly an independent
19 research group, without disclosing that CTR and TIRC are organizations funded and controlled by
20 the Defendant Tobacco Companies and are not independent organizations.

21 H. Defendants have violated and continue to violate Penal Code section
22 272, in that in furtherance of selling their products they market their products in such a way as to
23 attract, encourage, cause, or tend to cause minors to purchase, receive, or possess tobacco
24 products in violation of Penal Code section 308(b).

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

27 J. Defendants have violated and continue to violate Penal Code section
28 370, in that in furtherance of selling their products they market their products in such a way as to

1 attract, encourage, cause, or tend to cause minors to purchase and smoke their products even
2 though such products are addictive and otherwise injurious to health and the use, purchase, and
3 possession of such products by minors is contrary to public morals and in violation of Penal Code
4 section 308.

5 K. Defendants have failed to advise potential consumers of the addictive
6 qualities of nicotine.

7 L. Defendants have failed to advise potential consumers under the age of
8 18 years of the addictive qualities of nicotine.

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

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

14 i. Aid and assist research related to tobacco use and health, and
15 ii. Provide the public with information on the relationship between
16 tobacco use and health;

17 and defendants have failed to honor their commitment to inform the public about research showing
18 tobacco products to have adverse health effects.

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

22 P. Defendants have used or have directed the use of techniques or
23 processes in the growth of tobacco and the manufacture of tobacco products to control the level of
24 nicotine in tobacco and tobacco products and the effects of nicotine on users of tobacco products.
25 By way of example, defendants have increased the pH of tobacco or cigarette smoke in order to
26 boost the delivery and the pharmacological effects of nicotine.

27 //

28 Q. Defendants have misrepresented or failed to disclose that they have

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

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

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

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

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

20 WHEREFORE, plaintiffs pray for judgment against defendants, and each of them as
21 follows:

22 First Cause of Action

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

26 2. For costs of suit incurred herein;

27 3. For such other and further relief as the Court deems just and proper.

28 Second Cause of Action

1 1. For an order declaring that the defendants have conspired to and did engage in
2 conduct that is an unreasonable restraint of trade in violation of the Cartwright Act, Business and
3 Professions Code section 16720 et seq.

4 2. For a permanent injunction, enjoining defendants, and each of them, their agents,
5 servants, and employees, and all persons acting under, in concert with, or for them, from directly
6 or indirectly or in any other manner engaging in conduct as hereinabove alleged in violation of the
7 Cartwright Act, Business and Professions Code section 16720 et seq.;

8 3. For payment of plaintiff's reasonable attorneys' fees;

9 4. For costs of suit herein incurred; and

10 5. For such other and further relief as the court may deem proper.

11 Third Cause of Action

12 1. For civil penalties of \$10,000 for each violation of Government Code section
13 12651(a)(7).

14 2. For reasonable attorneys' fees;

15 3. For costs of suit incurred herein;

16 4. For such other and further relief as the court deems just and proper.

17 Fourth Cause of Action

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

23 2. Pursuant to Business and Professions Code section 17206, the Court assess a
24 civil penalty of two thousand five hundred dollars (\$2,500) against each defendant for each
25 violation of Business and Professions Code section 17200 alleged in the Fourth Cause of //
26 //

27 Action, and that the Court assess a total penalty of no less than five hundred million dollars
28 (\$500,000,000).

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3. For costs of suit incurred herein.

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

Dated: June ____, 1997

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