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

10

11 RICHARD BOEKEN,	)	Case No.
12 Plaintiff,	)	
13 vs.	)	COMPLAINT FOR PERSONAL INJURIES
14 PHILIP MORRIS, INCORPORATED, a	)	(Negligence, Strict Liability, Enterprise
corporation; INTERNATIONAL HOUSE OF	)	Liability, False Representation
15 PANCAKES, INCORPORATED, a	)	[Restatement Section 402-B], Deceit/
corporation; DOES 1-100 inclusive	)	Fraudulent Concealment [Bus. & Prof. C.
16 Defendants.	)	sections 17200 et seq.], Breach of
17	)	Express Warranty, Negligent False and
18	)	Misleading Advertising, Intentional False
	)	and Misleading Advertising [Bus. & Prof.
	)	C. sections 17500-1572], Conspiracy
	)	Punitive Damages (Personal Injury)
	)	(Tobacco)

19 **GENERAL ALLEGATIONS**

20 PLAINTIFF RICHARD BOEKEN COMPLAINS OF DEFENDANTS, AND EACH OF  
21 THEM, AND ALLEGES:

- 22 1. The overwhelming scientific and medical evidence confirms that both tobacco  
23 additives and cigarette smoke contain many carcinogens and are toxic to the human system.  
24 Cigarette smoking is a substantial contributing force, if not the predominant factor, in the  
25 development of lung cancer, other cancers, heart disease, strokes, and other diseases. After  
26 years of study, it is uncontroverted that smoking-caused diseases are dose dependent; that  
27 is, each and every exposure to these carcinogens increases the risk of disease.
- 28 2. For years, cigarette manufacturers, including defendant, PHILIP MORRIS, INC.,



1 mentioned, defendant PHILIP MORRIS INCORPORATED; and DOES 1-100, inclusive; and  
2 cigarette manufacturers, R. J. REYNOLDS TOBACCO COMPANY; BROWN & WILLIAMSON  
3 TOBACCO CORPORATION individually and as successor to the entity formally known as  
4 THE AMERICAN TOBACCO COMPANY and its predecessors in interest; LORILLARD  
5 TOBACCO COMPANY as successor by merger to P. LORILLARD and/or LORILLARD INC.;  
6 BRITISH AMERICAN TOBACCO industries, plc; LIGGETT & MYERS, INC.; (hereinafter  
7 known as cigarette manufacturers) and defendant INTERNATIONAL HOUSE OF  
8 PANCAKES, INCORPORATED; are corporations organized and existing under and by virtue  
9 of the laws of the State of California, or the laws of some state or foreign jurisdiction as more  
10 specifically described below, and that said defendants were and are authorized to do and are  
11 doing business in the State of California, and that they all have regularly conducted business  
12 in, and have intentionally placed cigarette products in the stream of commerce whose  
13 destination have been and continue to be the County of Los Angeles, and other cities and  
14 counties in the State of California.

15         6. Plaintiff is informed and believes and thereon alleges that defendant PHILIP  
16 MORRIS, INC., is a Virginia corporation, engaged in the business of manufacturing cigarettes  
17 and tobacco products for sale and distribution in the United States, and in the State of  
18 California as more specifically outlined above. Defendant PHILIP MORRIS, INC.  
19 manufactures, promotes, advertises and sells *Philip Morris, Merit, Cambridge, Marlboro,*  
20 *Marlboro Light, Benson & Hedges, Virginia Slims, Alpine, Dunhill, English Ovals, Galaxy,*  
21 *Players, Saratoga and Parliament* cigarettes throughout the world, the United States and in  
22 the State of California as more specifically described above.

23         7. Plaintiff is informed and believes and thereon alleges that cigarette  
24 manufacturer BROWN & WILLIAMSON TOBACCO CORPORATION (hereinafter referred to  
25 as "B&W), individually and/ or as successor in interest to the entity formally known as the  
26 "American Tobacco Company" (hereinafter referred to as "ATC"), is either a Kentucky or a  
27 Delaware corporation engaged in the business of manufacturing cigarettes and tobacco  
28 products for sale and distribution in the world, the United States, and in the State of California

1 as more specifically described above. Said cigarette manufacturer manufactures, promotes,  
2 offers for sale, advertises, distributes and sells cigarettes whose brand names include without  
3 limitation, *Blue Pack, Hit Parade Filter King, Kool, Lucky Strike, Maryland 100, Montclair,*  
4 *Pall Mall (Red Pack), Pall Mall Gold, Silva Thins, Tareyton, Waterford, Pall Mall, Malibu,*  
5 *American Newport, Mystic, Barkley, Iceberg, Silk Cut, Sobriaina, Bull Durham. Carlton,*  
6 *Barclay, Bel Air, Capri, Raleigh, Richland, Loreda, Eli Cutter and Viceroy* cigarettes.

7         8. Plaintiff is informed and believes and thereon alleges that cigarette manufacturer  
8 BRITISH AMERICAN TOBACCO INDUSTRIES, plc (“BAT”), sued herein individually and as  
9 successor-in-interest to British American Tobacco Company Limited (“BatCo”), is a British  
10 corporation with its principal place of business at Windsor House, 50 Victoria Street, London,  
11 England. In or about 1976, through a complex scheme of corporate reorganization, cigarette  
12 manufacturer BAT became, and remains today, the successor-in-interest to BatCo, and  
13 acquirer of all BatCo’s assets, liabilities and corporate goodwill. Following the referenced  
14 corporate reorganization, all the former directors of BatCo became the directors of BAT and  
15 the Chief Executive Officer of BatCo became the Chief Executive Officer of BAT.

16         9. Plaintiff is informed and believes and thereon alleges that cigarette manufacturer  
17 BAT is either directly or indirectly the sole shareholder of cigarette manufacturer B&W.

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19         10. BAT: 1) actively participated, and participates, in the research and design of  
20 cigarettes sold by its subsidiaries including B&W; 2) conducted research jointly with B&W; 3)  
21 controlled and suppressed certain types of research conducted by B&W into the practicability  
22 of making safer cigarettes and research regarding the addictive qualities of nicotine, the  
23 health effects of toxins and poisons in cigarettes; 4) set guidelines and directed, in 1983  
24 specific research which if felt necessary to “maintain at a level sufficient to, at least, keep pace  
25 with major competitors;” 5) focused on longer term needs for fundamental research aimed at  
26 strategic defense. BAT has controlled, and is controlling, the research and design of  
27 cigarettes, not only those manufactured by B&W, but the entire BAT Group (the companies  
28 under the control of BAT). That research includes:

- 1 a. Documents from a BAT study called Project "Hippo" show that as far back as 1961,  
2 that BAT was actively studying the physiological and pharmacological effects of  
3 nicotine. Project Hippo reports were secretly circulated to other U.S. cigarette  
4 manufacturers and to the TIRC. BAT sent the reports to the officials of B&W.
- 5 b. In a decade long project, B&W and BAT secretly developed a genetically  
6 engineered tobacco plant ("Y-1") with a nicotine content more than twice the average  
7 found naturally in flue cured tobacco. B&W took out a Brazilian patent for the new  
8 plant, which was printed in Portugese.
- 9 c. At the direction of BAT through secret meetings of the Tobacco Strategy Review  
10 Team in London chaired by the Chairman and CEO of BAT Industries, B&W and a  
11 Brazilian sister company, Souza Cruz Overseas grew Y-1 in Brazil and shipped it to  
12 the United States where it was used in five B&W cigarette brands sold in California,  
13 including three labeled "light." When the company's deception was uncovered, BAT  
14 officials admitted that close to four million pounds of Y-1 were stored in company  
15 warehouses in the United States.
- 16 d. B&W researched the health effects of nicotine and were aware early on, as  
17 reported at a BAT Group Research Conference in November 1970, that "nicotine may  
18 be implicated in the aetiology (cause) of cardiovascular disease. . . ."
- 19 e. BAT encouraged an exchange of technology among its various subsidiaries, and  
20 controlled almost every aspect of the manufacture and design of cigarettes sold in the  
21 United States and California by B&W.
- 22 f. The research controlled by BAT included the design of filters, as well as  
23 manipulation of factors effective carcinogenicity of cigarettes sold in California.
- 24 11. BAT directs it's subsidiaries, including B&W, to deny the ill health effects of its  
25 cigarette products in California and it directed Brown and Williamson to send to England  
26 potentially damaging research conducted in an effort to deny discovery of said research to  
27 plaintiff in the United States and California. BAT employed its subsidiaries, including B&W,  
28 to commit the fraud alleged in this complaint and issued directives regarding specific brands

1 of cigarettes including "Kool."

2 12. Plaintiff is informed and believes and thereon alleges that cigarette  
3 manufacturer R.J. REYNOLDS TOBACCO COMPANY (hereinafter known as RJR) is a New  
4 Jersey corporation engaged in the business of manufacturing cigarettes and tobacco  
5 products for sale and distribution in the United States and in the world, including the State of  
6 California as more specifically described above. This cigarette manufacturer manufactures,  
7 promotes, offers for sale, distributes and sells *Camel, Kamel Red, Vantage, Now, Doral,*  
8 *Winston, Sterling, Magna, More, Century, Bright Rite and Salem* cigarettes throughout the  
9 United States, the world, and in the State of California as more specifically described herein.

10 13. Plaintiff is informed and believes and thereon alleges that cigarette manufac-  
11 turer LORILLARD TOBACCO COMPANY as successor in merger to P. Lorillard and  
12 Lorrillard, Inc. is a Delaware corporation engaged in the business of manufacturing cigarettes  
13 and tobacco products for sale and distribution in the United States and in the world, including  
14 the State of California as more specifically described above. This cigarette manufacturer  
15 manufactures, promotes, offers for sale, distributes and sells *Old Gold, Kent, Triumph, Satin,*  
16 *Max, Spring, Newport and True* cigarettes throughout the United States, the world, and in the  
17 State of California as more specifically described herein.

18 14. Plaintiff is informed and believes and thereon alleges that cigarette manufacturer  
19 LIGGETT & MYERS is a Delaware corporation engaged in the business of manufacturing  
20 cigarettes and tobacco products for sale and distribution in the United States and in the world,  
21 including the State of California as more specifically described above. This cigarette  
22 manufacturer manufactures, promotes, distributes, offers for sale, and sells *Chesterfield,*  
23 *Decade, L&M, Pyramid, Dorado, Eve, Stride, Generic and Lark* cigarettes throughout the  
24 United States, the world, and the State of California as more specifically described above.

25 15. At all times herein mentioned, Defendant THE INTERNATIONAL HOUSE OF  
26 PANCAKES, INC., owned a chain of restaurants selling food and distributing cigarettes in the  
27 County of Los Angeles, State of California.

28 16. Plaintiff is informed and believes, and thereon alleges, that defendants, and

1 each of them, are liable for the acts and omissions of their predecessor entities.

2 17. At all times herein mentioned, each of the defendants was the agent, servant,  
3 employee and/or joint venturer of its co-defendants, and each of them, and at all said times,  
4 each defendant was acting in the full course and scope of said agency, service, employment  
5 and/or joint venture.

6 18. The defendants and cigarette manufacturers listed above, and/or their  
7 predecessors and successors-in-interest, did business in the State of California; made  
8 contracts to be performed in whole or in part in California; and/or manufactured, tested, sold,  
9 offered for sale, supplied or placed in the stream of commerce, or, in the course of business,  
10 materially participated with others in so doing, cigarettes which the defendants knew or should  
11 have known to be defective, dangerous and hazardous, and which the defendants knew would  
12 be substantially certain to cause injury to the state, and to persons within the state, thereby  
13 causing injury to persons within the State of California, and as described herein, committed  
14 and continue to commit tortious and other unlawful acts in the State of California.

15 19. The defendants and/or their predecessors and successors in interest, performed  
16 such acts as were intended to, and did, result in the misrepresentation of the health effects of  
17 smoking their products to the cigarette purchasing public in California, and it directed specific  
18 marketing plans aimed at California among other locations in the United States and it actively  
19 developed high nicotine tobacco which caused the harm and injuries which are alleged herein.

20 20. Defendant PHILIP MORRIS, INC., and all other cigarette manufacturers have  
21 been a member of, or participant in, the conspiracy described herein, and each and every act  
22 of the conspiracy was directed toward, and accomplished in whole or in part in, the State of  
23 California. Each and every act of the conspiracy also had, and will continue to have, a  
24 substantial impact in the State of California. The cigarettes and tobacco products  
25 manufactured by these conspirators were intentionally placed in the stream of commerce  
26 whose destination has been, and continue to be, among others, defendant retailer  
27 INTERNATIONAL HOUSE OF PANCAKES, INC., and other retail entities in the County of Los  
28 Angeles and other cities and counties in California. One of the goals of the conspiracy

1 described herein was to create a false controversy regarding the health hazards of tobacco  
2 use and the addictive properties of nicotine in order to protect the market for cigarette sales  
3 and the profits of the cigarette manufacturers, including defendant PHILIP MORRIS, INC.

4         21. Plaintiff herein is a person with standing to bring claims pursuant to *California*  
5 *Unfair Competition Law, Business and Professions Code* section 17200, et seq and section  
6 17500-17572, who for a substantial length of time inhaled smoke from cigarettes  
7 manufactured by the cigarette manufacturers, including defendant PHILIP MORRIS, INC. He  
8 began smoking as a minor, in approximately 1957, having been influenced and induced to  
9 smoke, relying to his detriment upon the continuing aggressive campaign of advertisements,  
10 inducements, informational communications, and promotional items to hook youth smokers  
11 as hereinafter described in more detail. As a minor, he purchased many of the cigarettes he  
12 smoked at defendant INTERNATIONAL HOUSE OF PANCAKES, INC.

13         22. Plaintiff was not aware that smoking increased his risk of developing, and did  
14 cause him to develop, lung cancer, when he was induced by the pre-1969 public advertising  
15 and representations by the cigarette manufacturers, including defendant PHILIP MORRIS,  
16 INC., to smoke cigarettes as a minor, before any caution or warning labels were placed on  
17 cigarette packages by the cigarette manufacturers, including defendant PHILIP MORRIS,  
18 INC., pursuant to federal law.

19         23. Plaintiff was diagnosed with lung cancer in or about October, 1999.

20         24. Had plaintiff known the true facts concerning the magnitude of the health risks  
21 of smoking, the extent to which cigarettes contain “additives” whose effects on the human  
22 body, the addictive nature of nicotine, the intentional manipulation of nicotine levels in  
23 cigarettes by cigarette manufacturers, including defendant PHILIP MORRIS, INC., or the  
24 targeting of him and other youths like him to replace in the market those older cigarette  
25 smokers who were dying from smoking, plaintiff would never have started smoking. By the  
26 time plaintiff was aware that there were indeed deadly health risks associated with smoking,  
27 he was addicted, which addiction was maintained by the purposeful actions of the cigarette  
28 manufacturers, including defendant PHILIP MORRIS, INC., as described in more detail below.



1 INTERNATIONAL HOUSE OF PANCAKES, INC., and smoked by plaintiff were *Marlboro and*  
2 *Marlboro Lights*.

3 31. The cigarettes manufactured by defendant PHILIP MORRIS, INC. and other  
4 cigarette manufacturers, when used as intended, were highly likely to be a substantial  
5 contributing factor in causing the following human illnesses, injuries, and conditions:

- 6 a. bronchogenic carcinoma or lung cancer of all cell types;
- 7 b. chronic, obstructive pulmonary disease of all types, including emphy-  
8 sema, chronic bronchitis, and reversible airway obstruction;
- 9 c. cardiovascular disease including atherosclerosis and it's consequences,  
10 including myocardial infarction (heart attack), cerebrovascular accident (stroke),  
11 peripheral vascular disease, aneurysm, and other conditions;
- 12 d. cancers of the mouth, throat, larynx, esophagus, kidney, bladder, and  
13 other organs;
- 14 e. genetic damage to cells of the airways, lungs, and other organs;
- 15 f. impairment of lung function;
- 16 g. metastasis of cancer to other parts of the body; and
- 17 h. other types of injuries.

18 So highly likely were the serious health consequences of defendants' cigarettes, that  
19 over one in three foreseeable users would be expected to suffer premature death or serious  
20 impairment.

21 32. At times material, the ordinary consumer, including the plaintiff, did not in the  
22 exercise of ordinary diligence, know of the likelihood of, the severity of, or the extent of the  
23 risks from cigarettes manufactured and sold by defendant PHILIP MORRIS, INC., all other  
24 cigarette manufacturers, and defendant INTERNATIONAL HOUSE OF PANCAKES, INC.  
25 which are outlined above.

26 33. The cigarettes manufactured and sold by defendant PHILIP MORRIS, INC., and  
27 the other cigarette manufacturers, when used as intended, were highly likely to induce in  
28 foreseeable users a state of addiction, habituation, habit formation, and/or dependence,

1 characterized by users' inability to terminate or restrict their chronic use.

2       34. The risks of harm to foreseeable users as listed above would increase in any  
3 of the following circumstances:

- 4           a. greater cumulative consumption, including rate of consumption and  
5 length of time the product was consumed; and
- 6           b. beginning use at an early age in life.

7       35 At times material, and specifically prior to 1969, the cigarette manufacturers,  
8 including defendant PHILIP MORRIS, INC., conducted an aggressive marketing, promotional  
9 and advertising campaign intended to induce foreseeable users, particularly youths, to  
10 purchase their cigarettes. Such marketing and advertising occurred in printed media, on  
11 television, radio, on billboards and by other means. After 1969, the cigarette manufacturers,  
12 including defendant PHILIP MORRIS, INC. issued informational literature and other writings,  
13 as well as coupons-for-gifts and inducements intended to induce foreseeable users,  
14 particularly youths, to purchase their cigarettes.

15       36. Plaintiff purchased and consumed cigarettes manufactured and sold by  
16 defendant PHILIP MORRIS, INC. and sold by defendant INTERNATIONAL HOUSE OF  
17 PANCAKES, INC. within the State of California at times material to this complaint.

18       37. Plaintiff consumed defendant's cigarettes in the intended manner and without  
19 significant change in their condition from purchase.

20       38. Plaintiff was induced to purchase the cigarettes and impliedly or expressly  
21 instructed in their use by cigarette manufacturers, including defendant PHILIP MORRIS,  
22 INC.'S, advertising and promotion prior to 1969, and at all times material herein by cigarette  
23 manufacturers, including defendant PHILIP MORRIS, INC.'S, marketing, public statements,  
24 "informational" communications, sponsorship of athletic events, concerts, and other activities,  
25 and inducements such as coupon-for gifts and other efforts.

26       39. At times material to this action, defendant PHILIP MORRIS, INC. and cigarette  
27 manufacturers in the discharge of ordinary care should have known of the following:

- 28           a. that the harms listed above would or might occur if the cigarettes were

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- used as intended;
- b. that the harms listed above would more likely be experienced if users did not restrict their intake of defendants' cigarettes, or if they began to use the products at an early age.
- c. that use of the products as intended was likely to lead to addiction, habituation, and/or dependence, particularly if begun at an early age;
- d. that termination or limitation of use would be exceedingly difficult if consumption was initiated and that this difficulty would increase as cumulative consumption increased;
- e. that developing knowledge before and after 1970 demonstrated that previous users are at great risk of harm (as listed above) and should seek medical monitoring;
- f. that cigarette manufacturers, including defendant PHILIP MORRIS, INC., could establish a reasonably safe dose for foreseeable users;
- g. that there were feasible improvements in design, composition, or manufacture of cigarettes such as to materially decrease the foreseeable risk to user;
- h. that switching to the so-called "light" cigarette would not be less hazardous because the individual would compensate for the decreased nicotine levels by smoking more;
- i. that the FTC method of measuring "tar & nicotine" levels underestimated the levels of nicotine actually delivered;
- j. that adding ammonia, or otherwise altering the PH of the tobacco, enhanced the delivery of nicotine, thereby increasing addiction and/or dependence;
- k. that "menthol" cigarettes were no more healthy than regular cigarettes;
- l. that cigarettes contained numerous additives whose health effects were either unknown or detrimental.

- 1           40.    The cigarette manufacturers, including defendant PHILIP MORRIS, INC., at  
2 times material, had the following legal duties to users who consumed their cigarettes:
- 3           a.     prior to 1969, duty to foreseeable users of cigarette manufacturers'  
4 cigarettes to warn of the likelihood, probability, and/or foreseeability that the  
5 harms listed above would or might occur if the products were used as intended.
  - 6           b.     prior to 1969, a duty to foreseeable users to warn that the harms listed  
7 above would be more likely experienced if users did not restrict their intake of  
8 cigarette manufacturers' cigarettes and/or to provide some guidelines on  
9 reasonably safe dosage or amount of consumption, and a duty to warn that use  
10 of the cigarettes at an early age was most harmful;
  - 11          c.     prior to 1969, a duty to warn foreseeable users that use of the cigarettes  
12 as intended was likely to lead to addiction, habituation and/or dependence;
  - 13          d.     prior to 1969, a duty to warn users that termination or limitation of use of  
14 cigarettes would be extremely difficult if consumption was initiated, particularly  
15 at an early age and that this difficulty would increase as cumulative consumption  
16 increased;
  - 17          e.     a continuing duty to warn previous cigarette users of developing  
18 knowledge demonstrating that previous users are at great risk of harm (as  
19 listed above) and should seek medical monitoring;
  - 20          f.     a duty to establish a reasonable dose for foreseeable users;
  - 21          g.     a duty to design, manufacture, and sell cigarettes that when used as  
22 intended was reasonably safe for foreseeable users;
  - 23          h.     a duty to make such feasible improvements in design, composition, or  
24 manufacture of cigarettes such as to materially decrease the foreseeable risk  
25 to users;
  - 26          i.     a duty to disclose to consumers of cigarettes the results of their own and  
27 other scientific research known to them which indicated that use of cigarettes  
28 caused users a great risk of harm (as listed above);

- 1 j. a duty to warn previous users, users and foreseeable users of cigarettes  
2 through non-advertising or promotional communications of the dangers listed  
3 above;
- 4 k. a continuing legal duty to refrain from manufacturing, selling, and/or  
5 promoting the sale of cigarettes to minors and youths pursuant to Penal Code  
6 sections 272;
- 7 l. a duty to test the effects of “additives” used in cigarettes;
- 8 m. a duty not to allege healthful or harmless effects of smoking without  
9 proper scientific study;
- 10 n. a duty not to make misleading statements or suppress facts which  
11 materially qualify advertising or public statements made to the cigarette  
12 consuming public, including plaintiff;
- 13 o. the duty to reveal all material facts known concerning cigarettes in  
14 relation to human health to the cigarette consuming public and plaintiff who  
15 cigarette defendants knew were not aware of said facts.

16 41. Cigarette manufacturers, including defendant PHILIP MORRIS, INC., and  
17 defendant INTERNATIONAL HOUSE OF PANCAKES, INC., had a legal duty to refrain from  
18 selling, promoting, targeting, and inducing the sale of cigarettes to minors pursuant to but not  
19 limited to *California Penal Code* section 308.

20 42. Cigarette manufacturers, including defendant PHILIP MORRIS, INC., and  
21 defendant INTERNATIONAL HOUSE OF PANCAKES, INC., negligently breached one or  
22 more of the duties, including those mandated, *inter alia*, by *California Business and*  
23 *Professions Code* section 17200 *et seq.* and otherwise, to members of the general public,  
24 including cigarette users such as plaintiff, in one or more of the following ways:

- 25 a. prior to 1969, in failing to warn or warn adequately of the likelihood,  
26 probability, or foreseeability that the harms listed above would or might occur  
27 if the defendant’s cigarettes were used as intended;
- 28 b. prior to 1969, in failing to warn or warn adequately that the harms listed

1 above would be more likely experienced if users did not restrict their intake of  
2 defendants' cigarettes, and/or in failing to provide some guidelines on  
3 reasonably safe dosage or amount of cigarette consumption, and/or in failing  
4 to warn that use of their cigarettes at an early age was exceedingly harmful;

5 c. prior to 1969, in failing to warn or warn adequately that use of cigarettes  
6 as intended was likely to lead to addiction, habituation or dependence, particu-  
7 larly if begun at an early age;

8 d. prior to 1969, in failing to warn or warn adequately that termination or  
9 limitation of cigarette use would be exceedingly difficult if cigarette consumption  
10 was initiated and that this difficulty would increase as cumulative consumption  
11 increased;

12 e. prior to 1969, in failing to warn or warn adequately of developing knowl-  
13 edge demonstrating that previous users of cigarettes are at great risk of harm  
14 (as listed above) and should seek medical monitoring;

15 f. in failing to establish a reasonably safe dose for foreseeable users, of  
16 their cigarettes, if any such safe dose exists;

17 g. in designing, manufacturing, selling, and promoting the sale cigarettes  
18 that when used as intended were not reasonably safe for foreseeable users;

19 h. in failing to make such feasible improvements in design, composition or  
20 manufacture, of their cigarettes such as to materially decrease the foreseeable  
21 risk to users;

22 i. prior to 1969, in failing to disclose to plaintiff and other foreseeable  
23 users of their cigarettes of the defendants' own scientific and other scientific  
24 research known to them which disclosed that use of cigarettes as intended  
25 caused a great risk of harm as described above; and,

26 j. in concealing material, while simultaneously affirmatively  
27 misrepresenting to plaintiff and other members of the public, through continuing  
28 advertising campaigns in the print, radio, cinema and television media until

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1969, and prior and after 1969 in "informational" communications, sponsorship of sports activities, concerts, and other events, testimony and public statements by officers, agents and employees of the cigarette manufacturers, including defendant, PHILIP MORRIS, that the cigarettes manufactured, sold, or distributed by defendants were safe in their ordinary and foreseeable use, which induced plaintiff to unknowingly expose himself/herself to the hazards of cigarettes;

k. in targeting youths as young as under 10 to hook them early on their cigarettes to replace older, dying smokers;

l. in publishing literally thousands of advertisements and promotions prior to 1969, which were deceptive and fraudulent, and after 1969, "informational" communications and authorized public statements thereafter, the defendants used, defendant INTERNATIONAL HOUSE OF PANCAKES, INC. impliedly endorsed and authorized to use, and continue to use; some examples are:

(1) Beginning in 1952 and continuing for many years up to 1969, cigarette manufacturer Liggett & Meyers promised in their Chesterfield pre-1969 advertisements and post-1969 statements:  
. . .[P]roved by over 40 years of continuous use. . .as entirely safe for use in the mouth - chemically pure, far more costly glycerol and pure sugars which are natural to tobacco - **nothing else.** [bold emphasis added]

- - -

A medical specialist is making regular bi-monthly examinations of a group of people from various walks of life. 45 percent of this group have smoked Chesterfield for an average of over ten years. After eight months, the medical specialist reports that he observed no adverse effects on the nose, throat and sinuses of the group from

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smoking Chesterfield.

(2) Beginning in 1951 and continuing for many years up to 1969, cigarette manufacturer RJR advertised, and after 1969 stated, that it's Camel cigarettes were "tested" by "noted throat specialists":  
Not one single case of throat irritation due to smoking camels!

- - -

More doctors smoke Camels than any other cigarette.

(3) In 1962, the Tobacco Institute issued a press release promising:

(4) We in the tobacco industry recognize a special responsibility to help science determine the facts.

In 1972, James Bowling, a Vice President of defendant PHILIP MORRIS, INC., was quoted as saying:

If our product is harmful . . .we'll stop making it. We now know enough that we can take anything out of our product, but we don't know what ingredients to take out...

(5) In 1978, a Tobacco Institute informational pamphlet stated:

The flat assertion that smoking causes lung cancer and heart disease and that the case is proved is not supported by many of the world's leading scientists.

(6) In 1983,cigarette manufacturer RJR represented:

It has been stated so often that smoking causes cancer, it's no wonder most people believe this is an established fact. But, in fact, it is nothing of the kind. The truth is that almost three decades of research have failed to produce scientific proof for this claim . . . in our opinion, the issue of smoking and lung cancer is not a closed case. It's an

1 open controversy.

2 43. Plaintiff is unable to allege in full the thousands of statements that defendants  
3 have prepared and released over the last almost 50 years both because they do not have  
4 access to this information, and because to allege each and every such advertisement or  
5 point-of-sale enticement here would entail hundreds or even thousands of pages of pleading;  
6 indeed, it is the cigarette manufacturers, including defendant PHILIP MORRIS, INC., and co-  
7 conspirators which have this knowledge and information, and are in the best position to know  
8 the content of each and every such advertisement released in furtherance of their conspiracy,  
9 and to mislead the public and plaintiff, misrepresent the true hazards and addictive nature of  
10 smoking, and to conceal material facts from the public, the government, and plaintiff.

11 44. In furtherance of the conspiracy detailed above and below, the cigarette  
12 manufacturers, including defendant PHILIP MORRIS, INC., carried out an ongoing campaign  
13 of financial and other inducements and rebates offered to, and accepted by, co-conspirator  
14 supermarkets, convenience stores, and other point of sale retailers including but not limited  
15 to defendant INTERNATIONAL HOUSE OF PANCAKES, INC.. in return for said  
16 co-conspirators' agreement to place cigarettes prominently in areas at eye-level designed to  
17 entice, tempt, and induce consumers, particularly minors, including plaintiff, to purchase  
18 cigarettes at retail facilities. The profits from these sales, resulting from the targeting of  
19 minors to attract new smokers and repeat, already-addicted smokers, ranged to 15-20% to  
20 a high of 40-50% of overall profits gained by the co-conspirator point of sale retailers  
21 including, but not limited to defendant INTERNATIONAL HOUSE OF PANCAKES, INC..

22 45. As a direct, legal and proximate result thereof, plaintiff has suffered damages  
23 as more specifically set forth above.

24 WHEREFORE, plaintiff prays for judgment against the defendants as hereinafter set  
25 forth.

26 **SECOND CAUSE OF ACTION -- STRICT LIABILITY**  
27 **(ALL DEFENDANTS)**

28 46. Plaintiff repeats, repleads and realleges all of the foregoing paragraphs in this

1 Complaint as if fully stated herein.

2 47. The cigarettes manufactured by defendant PHILIP MORRIS, INC. and other  
3 cigarette manufacturers, and sold by defendant INTERNATIONAL HOUSE OF PANCAKES,  
4 when used as intended and without substantial change from the time of manufacture, were  
5 defective for foreseeable users and bystanders for the following reasons:

6 a. the cigarettes when used as intended caused or contributed to the  
7 illnesses listed in paragraph 31 above;

8 b. the cigarettes were addictive, habituating, habit-forming, and once used  
9 caused physical and psychological dependence;

10 c. the cigarettes failed to perform as safely as an ordinary consumer would  
11 expect when used as intended or in a manner reasonably foreseeable by the  
12 plaintiff;

13 d. the risk of danger from the design of defendants' cigarettes outweighed  
14 the benefits obtained with the use of the products; and,

15 e. prior to 1969, defendants' cigarettes did not contain sufficient warnings  
16 as previously alleged, or alternatively, were labeled with inadequate warnings.

17 48. Plaintiff's illness is a direct, legal and proximate result of the defects set forth  
18 above and the plaintiff has suffered damages more fully described above.

19 WHEREFORE, plaintiff prays for judgment against the defendants as hereinafter set  
20 forth.

21 **THIRD CAUSE OF ACTION -- FALSE REPRESENTATION**

22 **UNDER RESTATEMENT OF TORTS SEC. 402-B**

23 **(ALL DEFENDANTS)**

24 49. Plaintiff repeats, repleads and realleges all of the foregoing paragraphs in this  
25 Complaint as if fully stated herein.

26 50. At the aforementioned time when the cigarette manufacturers, including  
27 defendant PHILIP MORRIS, INC., manufactured and distributed, tested, designed, packaged,  
28 sold, and/or placed into the stream of commerce in and into the State of California numerous

1 brands of defective cigarettes, or other tobacco products, or, in the course of business,  
2 materially participated with, conspired with, and/or otherwise aided, abetted, and assisted  
3 others in so doing, the cigarette manufacturers, including defendant PHILIP MORRIS, INC.,  
4 expressly and impliedly represented to members of the general public, including the  
5 purchasers, users and bystanders of said product, and including the plaintiff herein, that  
6 cigarettes and other tobacco products were of merchantable quality, and safe for the use for  
7 which they were intended. The Cigarette manufacturers including defendant PHILIP MORRIS,  
8 INC., accomplished these representations and induced members of the public and  
9 government, including plaintiff, to rely thereon through, among other methods, an aggressive  
10 and continuing campaign up to 1969 of deceptive, erroneous, misleading, and false  
11 advertisements in the print, cinema, radio and television media designed to conceal the true  
12 health hazards and addictive nature of cigarettes and to lure new, especially youthful, users  
13 to replace the older ones who died. After 1969, the aforesaid cigarette manufacturers  
14 including defendant PHILIP MORRIS, INC., continued to disseminate deceptive, erroneous,  
15 misleading, and false statements concerning the state of the medical research concerning  
16 cigarettes and the diseases they cause, as well as the extent of health hazards and the  
17 addictive nature of cigarettes and continued to lure new, especially youthful smokers to  
18 replace the older ones who died via "informational" communications, the dissemination of  
19 coupons and gifts, the underwriting of sports, concerts, and other such events, and the  
20 "underwriting" of purportedly scientific research and studies.

21         51.         At the aforementioned time when retail entities, including defendant,  
22 INTERNATIONAL HOUSE OF PANCAKES, INC., distributed, sold, and/or placed into the  
23 stream of commerce in and into the State of California numerous brands of defective  
24 cigarettes, or other tobacco products, or, in the course of business, materially participated  
25 with, conspired with, and/or otherwise aided, abetted, and assisted others in so doing, the  
26 said defendants expressly and impliedly represented to members of the general public,  
27 including the purchasers, users and bystanders of said product, and including the plaintiff  
28 herein, that cigarettes and other tobacco products were of merchantable quality, and safe for

1 the use for which they were intended. Said defendants accomplished these representations  
2 and induced members of the public and government, including plaintiff, to rely thereon through,  
3 among other methods, an aggressive and continuing campaign up to 1969 of deceptive,  
4 erroneous, misleading, and false advertisements in print, cinema, radio and television media,  
5 and also in the retail shopping facilities. These advertisements were known by said  
6 defendants to be designed to conceal the true health hazards and addictive nature of  
7 cigarettes and to lure new, especially youthful, users to replace the older ones who had died.  
8 After 1969, the aforesaid cigarette manufacturer, including defendant, PHILIP MORRIS, INC.,  
9 continued to disseminate deceptive, erroneous, misleading, and false statements concerning  
10 the state of the medical research concerning cigarettes and the diseases they cause, as well  
11 as the health hazards and addictive nature of cigarettes and to continue to lure new, especially  
12 youthful smokers to replace the older ones who dies via “informational” communications, the  
13 dissemination of coupons and gifts, the underwriting of sports, concerts, and other such  
14 events, and the “underwriting” of purportedly scientific research and studies, and said  
15 defendant INTERNATIONAL HOUSE OF PANCAKES, INC. impliedly authorized and  
16 encouraged such conduct by continuing to allow communications concerning cigarette  
17 products and the cigarettes themselves in it’s facilities.

18       52. Plaintiff relied, to his detriment, upon the representations of the cigarette manu-  
19 facturers, including defendant PHILIP MORRIS, INC., in many of the literally thousands of  
20 pre-1969 advertisements and promotional activities, and pre- and post-1969 dissemination  
21 of free cigarettes, and informational communications aimed at members of the public and the  
22 California and federal government, and consumers, including plaintiff.

23       53. Said representations by the cigarette manufacturers, including defendant  
24 PHILIP MORRIS, INC., and other defendants, were false and untrue, in that cigarettes and  
25 other tobacco products were not safe for their intended use, nor were they of merchantable  
26 quality as represented by defendants, and each of them, in that cigarettes and tobacco  
27 products have very dangerous properties and defects whereby said products cause lung  
28 cancer and other lung disabilities, heart disease, and have other defects that cause injury and

1 damage to the users of said products and bystanders to those users, including plaintiff herein,  
2 thereby threatening the health and life of plaintiff.

3 54. As a direct, legal and proximate result of said false representations by  
4 defendants and each of them, the plaintiff sustained the injuries and damages herein above  
5 set forth. WHEREFORE, Plaintiff prays judgment against defendants, and each of them, as  
6 hereinafter set forth.

7 **FOURTH CAUSE OF ACTION -- DECEIT, FRAUDULENT CONCEALMENT**  
8 **(ALL DEFENDANTS)**

9 55. Plaintiff repeats, repleads and realleges all of the foregoing paragraphs in this  
10 Complaint as if fully stated herein.

11 56. Beginning at an exact time unknown to plaintiff, and continuing even today, the  
12 cigarette manufacturers, including defendant PHILIP MORRIS, INC., have carried, and  
13 continue today to carry out a campaign designed to deceive the public, plaintiff, the  
14 government, and others as to the health hazards of smoking, the addictive nature of smoking  
15 described more fully above, to conceal their knowledge concerning these things, the results  
16 of their own research, and to misrepresent their actual role in manipulating the addictive  
17 properties of cigarettes via ammonia and other additives and/or via the engineering of higher  
18 nicotine tobaccos.

19 57. The cigarette manufacturers, including defendant PHILIP MORRIS, INC., made  
20 literally hundreds of misrepresentations to plaintiff and others over the course of the last 40  
21 years. Plaintiff is unable to allege in full the thousands of pre-1969 advertisements, and the  
22 continuing press releases, "frank statements," testimony by tobacco manufacturers' officers  
23 and employees before Congress and other governmental entities, etc., that the cigarette  
24 manufacturers and their co-conspirators, the Tobacco Institute and TIRC, have prepared,  
25 participated in, given, and released over the last almost 50 years both because they do not  
26 have access to this information, and because to allege each and every such misrepresenta-  
27 tion, false statement, and concealment of material information here would entail hundreds or  
28 even thousands of pages of pleading; indeed, it is the cigarette manufacturers themselves

1 including defendant PHILIP MORRIS, INC., which have this knowledge and information, and  
2 are in the best position to know the contents of each and every such misrepresentation, false  
3 statement, and concealment of material information.

4       58. The cigarette manufacturers, including defendant PHILIP MORRIS, INC., carried  
5 out their campaign of fraud, false statements, misrepresentations, and concealment of  
6 material information in three ways:

7       **First**, they agreed falsely to represent to plaintiff and others that questions about  
8 smoking and health would be answered by a new, unbiased, and trustworthy source.

9       **Second**, they misrepresented, suppressed and confused the facts about the health  
10 dangers of smoking, including addiction. They concealed their actual knowledge concerning  
11 their own negative health and addiction research results and their manipulation and control of  
12 the nicotine content of their products to create and perpetuate smokers' addiction to  
13 cigarettes were critical to the conspiracy. The cigarette manufacturers claimed, falsely, that  
14 there is insufficient "objective" research to determine if cigarette smoking causes disease and  
15 that cigarettes are not addictive. The success of the conspiracy depended upon the  
16 concerted action of the cigarette manufacturers [in a so-called "gentleman's agreement"], for  
17 otherwise the revelation by one company of what it knew about the health consequences of  
18 smoking and/or the availability of a "safe(r)" cigarette and/or the addictive nature of the  
19 manufacturers' cigarettes would have thwarted the conspiracy.

20       **Third**, the cigarette manufacturers, including defendant PHILIP MORRIS, INC., used  
21 lawyers to misdirect what purported to be objective scientific research to create favorable, and  
22 to suppress and/or destroy unfavorable findings regarding the health consequences of  
23 smoking.

24       **Fourth**, to discourage meritorious litigation by plaintiffs injured due to tobacco, they  
25 engaged in "scorched earth" litigation tactics in combination with suppressing and distorting  
26 evidence in order to protect the cigarette manufacturers including defendant PHILIP MORRIS,  
27 INC.'S existence and profits.

28       59. The following allegations are a representative sample:

1 In January, 1954, when the cigarette manufacturers including defendant PHILIP  
2 MORRIS, INC. announced they were establishing a joint industry group known as the Tobacco  
3 Industry Research Committee, TIRC, they simultaneously pledged, through TIRC, aid and  
4 assistance to the research efforts into all phases of tobacco use and health, expressly  
5 undertaking an interest in health as their basic responsibility paramount to every other  
6 consideration. At the same time, the cigarette manufacturers, including defendant PHILIP  
7 MORRIS, INC., represented that there was no proof that cigarette smoking is one of the  
8 causes of lung cancer. When they made these representations, the cigarette manufacturers  
9 including defendant PHILIP MORRIS, INC. intended that the public, including plaintiff, would  
10 both believe in and rely upon this public announcement, and they knew or should have known  
11 that these pronouncements would permeate the public conscience and allow present and  
12 future smokers to believe that, despite what they may have heard elsewhere, the hazards of  
13 cigarette smoking had not been proven:

14 a. In 1962, The Tobacco Institute, Inc., an agent of the cigarette manufac-  
15 turers, including defendant PHILIP MORRIS, INC. ("Tobacco Institute"), issued  
16 a press release which stated, in pertinent part:

17 We in the tobacco industry recognize a special  
18 responsibility to help science determine the facts. And we  
19 believe we are fulfilling this responsibility through the Tobacco  
20 Industry Research Committee.

21 b. In 1971, the Tobacco Institute in a press release stated:

22 Any organization in a position to apply resources in the  
23 search for those keys -- and which fails to do so -- will continue  
24 to be guilty of cruel neglect of those whom it pretends to serve.

25 c. In a 1972 Wall Street Journal article, James Bowling, a Vice President  
26 of co-conspirator defendant PHILIP MORRIS, INC. was quoted as saying:

27 If our product is harmful. . .we'll stop making it. We now  
28 know enough that we can take anything out of our product, but we

1 don't know what ingredients to take out. . .

2 d. In 1982, the Tobacco Institute published a pamphlet in which it wrote:  
3 Since the first questions were raised about smoking as a possible health  
4 factor, the tobacco industry has believed that the American people deserve  
5 objective, scientific answers. The industry has committed itself to this task.

6 e. In 1990, a public relations employee of cigarette manufacturer RJR  
7 wrote a letter to a person by the name of Rock in Minnesota, apparently in  
8 response to a letter from Rock. The public relations employee asserted in that  
9 letter that ". . .scientists do not know the cause or causes of the chronic  
10 diseases reported to be associated with smoking." The letter went on: Our  
11 company intends, therefore, to continue to support [research] in a continuing  
12 search for answers.

13 60. On August 21, 1963, cigarette manufacturers, including including defendant  
14 PHILIP MORRIS, INC., and unnamed co-conspirators met to discuss their defense of the  
15 impending cancer litigation they expected in the wake of the Surgeon General's first report  
16 linking smoking and lung cancer. The September 3, 1963, minutes of that meeting reflect the  
17 fact that a Dr. Kotin, their own employee as the scientific adviser of the TIRC, would soon  
18 become the associate director of the National Cancer Institute. Additionally, the cigarette  
19 manufacturers, including defendant PHILIP MORRIS, INC., and co-conspirators "unanimously  
20 agreed" . . .if there was to be a statement after the Surgeon General's report, it should be an  
21 industry statement rather than separate statements by one or more companies. This would  
22 obviate the possibility that a statement by one company might be inconsistent with that made  
23 by another. The same method of procedure was recommended as well in the event of a  
24 Federal Trade Commission (FTC) or Congressional action."

25 61. The addictive effect of nicotine has long been known and concealed by the  
26 cigarette manufacturers, including defendant PHILIP MORRIS, INC. The intentional  
27 concealment of facts concerning nicotine, as well as the cigarette manufacturers' manipulation  
28 of both the nicotine content in cigarettes and the use of other chemicals to further enhance the

1 addictive qualities of nicotine have is shown by the following representative examples of  
2 misrepresentations alleged throughout this complaint and they are hereby incorporated by this  
3 reference as if fully set forth in this paragraph. The cigarette manufacturers including  
4 defendant PHILIP MORRIS, INC.'S efforts included B&W's rejection of its own general  
5 counsel's advice in 1963 to disclose to the U.S. Surgeon General what the company knew  
6 about the adverse effects of smoking on health and the addictiveness of nicotine. They  
7 included advice by another B&W general counsel in 1985 to remove documents and files and  
8 to ship documents out of the United States. Cigarette manufacturers, including defendant  
9 PHILIP MORRIS, INC., became aware that cigarette smoking is probably hazardous to the  
10 smoker, as reflected in excerpts from industry documents:

11 a. In 1959, an RJR scientist, Alan Rodgman, concluded that there is a  
12 "distinct possibility" that substances in cigarette smoke could have a  
13 carcinogenic effect.

14 b. In 1962, Rodgman wrote:  
15 The amount of evidence accumulated to indict cigarette smoke  
16 as a health hazard is overwhelming, [while] the evidence  
17 challenging the indictment is scant.

18 c. In 1967, G.F. Todd of the Tobacco Research Council wrote a letter to Mr.  
19 Addison Yeaman. Yeaman was the Vice President and general counsel of  
20 B&W. In his letter, Todd observed:

21 The only real difficulties that we encountered arose out of the unavoidable  
22 paradox at the center of our operations -- namely that, on the one hand the  
23 manufacturers control TRC's operations and do not accept that smoking has  
24 been proved to cause lung cancer while, on the other hand, TRC's research  
25 program is based on the working hypothesis that this has been sufficiently  
26 proved for research purposes. In addition, the Council senior scientists accept  
27 that causation theory . . . We have not yet found the best way of handling this  
28 paradox.

1 d. In 1979, P.N. Lee of cigarette manufacturer BAT expressed his  
2 impressions of a 1979 Surgeon General's report dated January 11, 1979. In  
3 this memorandum, Lee considered at length the Tobacco Institute publication  
4 entitled "The Continuing Controversy," also identified as TA73. Lee  
5 characterized that report as "misleading." He wrote that the report did not  
6 appear to understand what causation is. Lee wrote:

7 Discussion of the role of other factors can be particularly misleading when no  
8 discussion is made of relative magnitudes of effects. For example, heavy  
9 smokers are observed to have 20 or more times the lung cancer rates of  
10 non-smokers. Sure, this does not prove smoking causes lung cancer, but what  
11 it does mean, and TA73 never considers this, is that for any other factor to  
12 explain this association, it must have at least as strong an association with lung  
13 cancer as the observed association for smoking (and be highly correlated with  
14 the smoking habit).

15 \* \* \*

16 TA73 seems ready to accept evidence implicating factors other than smoking  
17 in the aetiology of smoking associated disease without requiring the same  
18 stringent standards of proof that it requires to accept evidence implicating  
19 smoking. This is blatantly unscientific.

20 e. In 1984, a paper written by Colin Grieg for cigarette manufacturer BAT  
21 describes a cigarette as "... a 'drug' administration system for public use ..." It  
22 further went on to state:

23 Within 10 seconds of starting to smoke, nicotine is available in the brain.  
24 Before this, impact is available giving an instantaneous catch or hit, signifying  
25 to the user that the cigarette is 'active.' Flavor, also, is immediately perceivable  
26 to add to the sensation.

27  
28 62. Joint industry research efforts undertaken by TIRC and CTR were neither  
disinterested nor objective. Industry documents, recently revealed, show that CTR functioned

1 not for the promotion of scientific goals, but for purposes of public relations, politics, and  
2 positioning for litigation. The TIRC and CTR were used to support an industry strategy of  
3 denying or creating doubt that smoking causes disease. When CTR-sponsored research  
4 produced results unfavorable to the industry strategy, the results were suppressed.

5 63. As recounted in recently revealed excerpts, lawyers, rather than scientists or  
6 researchers, handled the purported scientific research conducted by or for cigarette  
7 manufacturers, including defendant PHILIP MORRIS, INC.:

8 a. In 1978, Sheldon Sommers, M.D., who was then Chairman of the CTR  
9 Scientific Advisory Board, complained to William Gardner, who was then the  
10 Scientific Director for CTR, that he [Sommers] was unable to understand the  
11 legal counsel he was being given. The clear import of Sommers' letter was that  
12 the CTR lawyers were controlling tobacco research by CTR based upon legal  
13 considerations.

14 b. In 1970, Helmut Wakeham, head of Research and Development of  
15 defendant PHILIP MORRIS COMPANY, INC., wrote a memorandum to the  
16 president of Philip Morris, Joseph Cullman. In this memorandum, Wakeham  
17 discussed the raison d'etre of The counsel for Tobacco Research-U.S.A., Inc.  
18 ("CTR"). Wakeham wrote:

19 It has been stated that CTR is a program to find out the 'truth about  
20 smoking health.' What is truth to one is false to another. CTR and the  
21 industry have publicly and frequently denied what others find as 'truth.'  
22 Let's face it. We are interested in evidence which we believe denies the  
23 allegations that cigarette smoking causes disease.

24 c. A hand-written memorandum dated April 21, 1978, produced from the  
25 files of cigarette manufacturer Lorillard Tobacco Company ("Lorillard"),  
26 complains that:

27 We have again abdicated the scientific research directional  
28 management of the Industry to the 'Lawyers' with virtually no involvement

1 on the part of the scientific or business management side of the  
2 business.

3 d. A 1976 internal memo by a tobacco scientist at cigarette manufacturer  
4 BAT, S.J. Green, also discusses the extent to which "legal considerations"  
5 dominated scientific research:

6 The public position of tobacco companies with respect to causal  
7 explanations of the association of cigarette smoking and diseases is  
8 dominated by legal considerations. . . By repudiation of a causal role for  
9 cigarette smoking in general they [the companies] hope to avoid liability  
10 in particular cases. This domination by legal consideration thus leads  
11 to the industry into a public rejection in total of any causal relationship  
12 between smoking and disease and puts the industry in a peculiar  
13 position with respect to product safety discussions, safety evaluations,  
14 collaborative research, etc.

15 e. In November 1979, the corporate counsel for B&W, Kendrick Wells,  
16 wrote a memorandum to Ernest Pepples, B&W's vice president of law. In this  
17 memorandum, Wells outlined a plan to wrap scientific information in  
18 attorney-client privilege. Mr. Wells' proposal specifically provided that ". . .in the  
19 operational context BAT would send documents without attempting to  
20 distinguish which were and which were not litigation documents."

21 64. When cigarette manufacturers, including defendant PHILIP MORRIS, INC., were  
22 sued by persons claiming their or their decedents' lung cancer was caused by smoking, to  
23 avoid liability cigarette manufacturers, they denied that cigarettes are addictive and claimed  
24 that smoking was a matter of free choice and the claimant (or his or her decedent) could quit  
25 smoking if they chose.

26 65. Cigarette manufacturers, including defendant PHILIP MORRIS, INC., claimed  
27 attorney-client privilege for, and refused to produce, or ordered destroyed, documents which  
28 were scientific in nature and specifically related to health issues.



1           69. This action arises out of an ongoing conspiracy by the cigarette manufacturers,  
2 including defendant PHILIP MORRIS, INC., herein, and their trade associations, their lawyers,  
3 and persons and/or entities unknown to plaintiff at the present time which together control the  
4 cigarette industry for the following purposes:

5           a. to intentionally suppress and/or conceal knowledge of the extent of the  
6 harmful effects of cigarette smoking from the public, the press, the government,  
7 including from plaintiff;

8           b. to intentionally frustrate the flow of information from the medical and  
9 scientific community to the general public on the health risks and addictive  
10 nature of cigarettes;

11           c. to purposefully create an illusion of conducting scientific research on  
12 cigarettes so as to mislead the public into believing that cigarettes were safe  
13 to smoke, when in reality no such bona fide research was ever conducted;

14           d. to knowingly and intentionally lie to, deceive and improperly influence law  
15 and policy makers in local, state and national government in order to avoid  
16 and/or control regulation of the sale of cigarettes to the consumer, including  
17 plaintiff;

18           e. to knowingly and intentionally lie to, deceive and improperly influence law  
19 and policy makers in local, state and national government in order to  
20 "immunize" defendant from claims of false and misleading advertising and  
21 promotion;

22           f. to knowingly and intentionally sell cigarettes to minors to ensure a future  
23 lucrative market for cigarettes as older smokers died;

24           g. to induce and entice minors to smoke so as to hook another generation  
25 of smokers who by the age of majority were addicted or dependent and against  
26 whom defendants could now assert "adult free choice" defenses;

27           h. and to purposefully create the illusion that a medical and scientific  
28 "controversy" existed as to whether or not cigarettes were harmful to human

1 health when in truth and fact no such controversy existed so as to encourage the  
2 public to start or to continue smoking cigarettes.

3 These cigarette defendant co-conspirators and others have pursued a conspiracy of  
4 deceit and misrepresentation designed to amass enormous profits through the continued  
5 sales of cigarettes and tobacco products.

6 70. The cigarette manufacturers, including defendant PHILIP MORRIS, INC., have  
7 together controlled almost 100% of the cigarette market in the United States. These cigarette  
8 manufacturers including defendant PHILIP MORRIS INC., their trade associations, their  
9 attorneys, and other conspirators agreed and undertook the conspiracy described herein,  
10 which existed at all times material to this lawsuit, and continues to exist at the present time.  
11 They have agreed to carry out the purposes of the conspiracy, as listed above, and have  
12 participated in and cooperated with each other in the conspiracy. Each act of the conspiracy  
13 was ratified by the other co-conspirators, who acted as each other's agents.

14 71. The cigarette manufacturers, including defendant PHILIP MORRIS, INC., carried  
15 out their conspiracy in four ways:

16 **First**, they agreed falsely to represent to plaintiff and others that questions about  
17 smoking and health would be answered by a new, unbiased, and trustworthy source.

18 **Second**, they misrepresented, suppressed and confused the facts about the extent of  
19 the health dangers of smoking, including addiction and their manipulation of nicotine levels.  
20 Concealment of their actual knowledge concerning their own negative health and addiction  
21 research results and their manipulation and control of the nicotine content of their products to  
22 create and perpetuate smokers' addiction to cigarettes were critical to the conspiracy. The  
23 cigarette manufacturers claimed, falsely, that there is insufficient "objective" research to  
24 determine if cigarette smoking causes disease and that cigarettes are not addictive. The  
25 success of the conspiracy depended upon the concerted action of the cigarette  
26 manufacturers, for otherwise the revelation by one company of what it knew about the health  
27 consequences of smoking and the addictive nature of the manufacturers' cigarettes would  
28 have thwarted the conspiracy.

1           **Third**, defendants used lawyers to misdirect what purported to be objective scientific  
2 research to create favorable, and to suppress or destroy unfavorable, findings regarding the  
3 health consequences of smoking.

4           **Fourth**, to discourage meritorious litigation by plaintiffs injured due to tobacco, they  
5 engaged in "scorched earth" litigation tactics in combination with suppressing, destroying and  
6 distorting evidence.

7           72.     The conspiracy began at a time unknown to plaintiff, but at or about the time of  
8 the first scientific research by the cigarette manufacturers, including defendant PHILIP  
9 MORRIS, INC. Over the years the conspirators, acting in concert, performed numerous overt  
10 acts to further the purposes of the conspiracy. Because many of these acts were concealed,  
11 plaintiff is not able to state all overt acts, but allege the following representative acts as  
12 examples.

13           73.     Beginning as early as 1946, cigarette industry researchers reported a link  
14 between use of tobacco and cancer development. The cigarette manufacturers including  
15 defendant PHILIP MORRIS INC., knew and acknowledged internally these and other health  
16 hazards of smoking. Internal industry documents reveal knowledge of carcinogens in tobacco  
17 smoke, contribution of smoking to lung cancer, and that the irritation caused by smoking leads  
18 to chronic bronchitis and emphysema, among other health hazards caused by smoking.

19           74.     In the ensuing years, cigarette manufacturers, including defendant PHILIP  
20 MORRIS, INC., knew and acknowledged internally the health hazards of smoking. Internal  
21 industry documents reveal knowledge of carcinogens in tobacco smoke, contribution of  
22 smoking to lung cancer, and irritation caused by smoking leading to chronic bronchitis and  
23 emphysema, among other health hazards presented by smoking.

24           75.     In 1952, a British researcher, Dr. Richard Doll, published a statistical analysis  
25 showing that lung cancer was more common among people who smoked than among  
26 non-smokers, and that the risk of lung cancer was directly proportional to the number of  
27 cigarettes smoked. In December, 1953, Dr. Ernst L. Wynder of the Sloan-Kettering Institute  
28 published the results of a study definitively linking cigarette smoking and cancer. The

1 widespread reporting of these studies caused what cigarette company officials later called  
2 the "Big Scare."

3         76. In response to Dr. Wynder's definitive study in 1953, the chief executive officers  
4 of the leading cigarette manufacturers met and conspired to deal with the "health scare"  
5 presented by smoking. Acting in concert at an industry strategy meeting on December 15,  
6 1953, at the Plaza Hotel in New York, the participants, except cigarette manufacturer Liggett  
7 and Myers, agreed to orchestrate a public relations program to promote cigarettes and  
8 protect themselves from the perceived threat posed by these and other expected attacks.  
9 Participants agreed to have the public relations firm of Hill & Knowlton, which attended the  
10 meeting, serve as operating agency for all the companies.

11         77. Nine days after the December 15, 1953, meeting described above, Hill &  
12 Knowlton presented a detailed memorandum to the cigarette manufacturers. The memo-  
13 randum characterized the grave nature of recent reports on the health effects of cigarette  
14 smoking as a serious public relations problem, a situation of extensive delicacy, and  
15 recommended that the industry avoid appearing callous to health or to be belittling negative  
16 medical research.

17         78. Five of the six cigarette manufacturers attending the December 15, 1953,  
18 meeting agreed to form the Tobacco Industry Research Committee ("TIRC"). Cigarette  
19 manufacturer Liggett and Myers, which initially did not participate in the public relations effort,  
20 joined TIRC in 1964, the same year the Surgeon General issued his first report on smoking,  
21 in which he concluded that cigarette smoking was a cause of lung cancer. TIRC changed its  
22 name this same year to the Council for Tobacco Research ("CTR"). A second trade group,  
23 the Tobacco Institute, was formed in 1958 by cigarette manufacturers including defendant  
24 PHILIP MORRIS, INC. All cigarette manufacturer conspirators, including defendant PHILIP  
25 MORRIS, INC. and other co-conspirators were members and directors, with the purpose of  
26 providing a "voice to speak on behalf of the industry on all matters" and to provide  
27 disinformation to media and others on the dangers of cigarette use.

28         79. Cigarette manufacturers, including defendant PHILIP MORRIS, INC., and others

1 developed safer cigarettes by determining which parts of cigarette smoke caused disease.  
2 They did not market those cigarettes and they did not release the research that led to  
3 development of the safer cigarettes, because either move would be an admission that the  
4 existing cigarettes were not safe and that a safer alternative could be readily produced,  
5 undercutting the industry position to the contrary. Cigarette manufacturer conspirators,  
6 including defendant PHILIP MORRIS, INC., also internally recognized the validity of  
7 non-industry research efforts, such as animal smoke-inhaling and skin-painting with smoke  
8 ingredients, but publicly down-played the significance of that research. In fact, in furtherance  
9 of the conspiracy to conceal adverse scientific information, there was a longstanding  
10 "gentleman's agreement" among the cigarette manufacturers and co-conspirators to not  
11 conduct, i.e., to suppress, independent research on the issue of smoking and health, as  
12 referenced in a 1968 internal defendant PHILIP MORRIS, INC.'S draft memo which stated,  
13 "We have reason to believe that in spite of gentlemen's [sic] agreement from the tobacco  
14 industry in previous years that at least some of the major companies have been increasing  
15 biological studies within their own facilities."

16 80. The gentleman's agreement described above notwithstanding, cigarette manu-  
17 facturer RJR conducted research in the 1960's to study the mechanism whereby smoking  
18 causes emphysema. This research was described as important because it came close to  
19 determining the underlying pathobiology of emphysema. In 1970, RJR closed down the  
20 project and fired the scientists working on it. None of the work done on the project has been  
21 disclosed to the public.

22 81. Publicly, the cigarette manufacturers, including defendant PHILIP MORRIS,  
23 INC., took another stance. They used counsel-sponsored studies, among others, to attempt  
24 to show pockets of high cancer incidence without relation to smoking, to find instances of  
25 cancer in nonsmokers, and to show that duration and amount of smoking have no relation to  
26 the age of peak incidence of lung cancer. Documents suggest as well that in 1984 the  
27 in-house lawyers for cigarette manufacturers, which formed a "Committee of Counsel,"  
28 thwarted industry scientists' desires to assure the safety of the product by testing ingredients

1 adequately and used their attorneys to perpetuate the fraudulent claims of cigarette safety.

2       82. Over the next 40 years, the cigarette manufacturers, including defendant PHILIP  
3 MORRIS, INC., continued this conspiracy to suppress the accumulating scientific and medical  
4 evidence of the health hazards of smoking by claiming to "help" science determine the true  
5 facts concerning smoking and disease and continuing to manipulate the nicotine level of  
6 cigarettes to keep smokers addicted and to lure and hook younger smokers.

7       83. Building on the efforts they launched in 1954 with the public announcement of  
8 TIRC, which became CTR, the cigarette manufacturers, including defendant PHILIP MORRIS,  
9 INC., through TIRC and the Tobacco Institute continued to state publicly in 1970 and thereafter,  
10 up through testimony to Congress in 1994, that they recognized a special responsibility to the  
11 public to help scientists determine the facts about tobacco use and health, and they supported  
12 CTR for independent research to that end.

13       84. In furtherance of the conspiracy to conceal relevant information regarding  
14 smoking and health, the cigarette manufacturers, including defendant PHILIP MORRIS, INC.,  
15 through CTR, The Tobacco Institute, and otherwise, continued to insist throughout 1970's,  
16 1980's, and 1990's that there still was a question about smoking and health and that cigarette  
17 smoking had not been established to cause chronic diseases such as cancer or emphysema,  
18 and claimed that studies showing smoking causes disease were flawed.

19       85. The nicotine in cigarettes is addictive, due to the pharmacological effect of  
20 nicotine. The cigarette manufacturers, including defendant PHILIP MORRIS, INC., and co-  
21 conspirators have known this since at least the early 1960's. As stated by defendant PHILIP  
22 MORRIS, INC. in a 1969 research report to the Philip Morris board of directors:

23               [...smoking a cigarette for a beginner is a symbolic act... "I am no longer my  
24 mother's child, I'm tough, I'm an adventurer, I'm not square...As the force from  
25 the psychological symbolisms subsides, the pharmacological effect takes over  
26 to sustain the habit..."

27       Nicotine is now recognized as an addictive substance by such major medical  
28 organizations as the Office of the U.S. Surgeon General, the World Health Organization, and

1 the American Medical Association. Each of these organizations now acknowledges tobacco  
2 use as a form of drug dependence or addiction with severe adverse health consequences.  
3 Cigarette manufacturers, including defendant PHILIP MORRIS, INC., continue to dispute this  
4 fact.

5         86. In furtherance of the conspiracy, cigarette manufacturers, including defendant  
6 PHILIP MORRIS, INC., have controlled, and continue now to control nicotine content of their  
7 cigarettes, including by developing high-nicotine tobacco and blending of tobacco, and  
8 engineer their cigarettes to control nicotine delivery to the smoker, through adding ammonia,  
9 and through the use of reconstituted tobacco. They then concealed their knowledge of the  
10 addictive nature of nicotine and of their manipulation of nicotine levels and delivery. The  
11 Cigarette manufacturers including defendant PHILIP MORRIS, INC., have denied, and  
12 continue to deny publicly that nicotine is addictive, or that they attempt to or do achieve levels  
13 of nicotine in their products to create or sustain addiction.

14         87. Cigarette manufacturers, including defendant PHILIP MORRIS, INC., have  
15 squelched and kept secret information they had about the hazards of smoking to health, and  
16 about the addictive nature of nicotine and their manipulation of nicotine levels and delivery.  
17 The March 1997 defection of Liggett and Myers from the conspiracy affirms its existence, for  
18 the cigarette manufacturers sought to suppress all Liggett and Myers documents relating to  
19 the conspiracy from the public.

20         88. In furtherance of the conspiracy, cigarette manufacturers, including defendant  
21 PHILIP MORRIS, INC., deliberately abused the litigation process, as described more fully  
22 above. They conspired to resist all discovery aimed at them, to force litigating plaintiffs to  
23 obtain a court hearing, and then demanded confidentiality orders once court rulings were  
24 obtained to prevent the rulings from becoming public knowledge. They have demanded  
25 extensive expert and plaintiffs depositions, and have at every juncture tried to force seriously  
26 ill plaintiffs to incur the massive costs associated with litigation while the co-conspirators  
27 pooled the costs of defense.

28         89. The combination of litigation tactics adopted by cigarette manufacturers,

1 including defendant PHILIP MORRIS, INC., and their suppression of the information available  
2 to them regarding the health hazards of tobacco, the addictive nature of nicotine, and their  
3 manipulation of nicotine levels and delivery, operated to discourage personal injury litigation  
4 against them, to the point where defendants could and did assert that they never paid a cent  
5 to a personal injury claimant on account of smoking.

6           90. The aforementioned conspiracy by the cigarette manufacturers conspirators,  
7 including PHILIP MORRIS, INC., and their co-conspirators resulted in plaintiff being unaware  
8 the extent to which smoking was a hazard to his health, that the nicotine therein would addict  
9 him to smoking, or that defendants manipulated nicotine levels and targeted youth so as to  
10 hook youth before majority and then assert adult free choice as a defense once so hooked.  
11 This conspiracy proximately and legally caused the injuries he has sustained and the  
12 damages plaintiff claims herein. As a result, plaintiff has now developed and will die in the  
13 future from cancer caused by plaintiff's addiction to smoking.

14           WHEREFORE plaintiff prays judgment against defendants as hereinafter set forth.

15 ///

16 ///

17 ///

18

19                           **SIXTH CAUSE OF ACTION - BREACH OF EXPRESS WARRANTY**

20   **(ALL DEFENDANTS)**

21           91. Plaintiff repeats, repleads and realleges all of the foregoing paragraphs in this  
22 Complaint as if fully stated herein.

23           92. At all times relevant herein, the cigarette manufacturers, including defendant  
24 PHILIP MORRIS, INC., pursued a more than 40-year campaign of advertising and  
25 communications, directed at government and the public, including plaintiff, designed to  
26 communicate to the consumer, including plaintiff, that smoking their brands of cigarettes was  
27 relaxing, healthy, satisfying, romantic, sexy, and in all ways desirable. Hundreds or even  
28 thousands of advertisements and communications were published by the cigarette

1 manufacturers including defendant PHILIP MORRIS, INC., in the various media, so many that  
2 it would be neither economically feasible nor practicable for plaintiff to identify each and every  
3 one of them herein.

4       93. At all times relevant herein, co-conspirator wholesale and retail entities  
5 including, but not limited to defendant INTERNATIONAL HOUSE OF PANCAKES, INC.  
6 enabled and encouraged the cigarette manufacturers, including defendant PHILIP MORRIS,  
7 INC., to pursue a more than 40-year campaign of advertising and communications, directed  
8 at government and the public, including plaintiff, designed to communicate to the consumer,  
9 including plaintiff, that smoking their brands of cigarettes was relaxing, healthy, satisfying,  
10 romantic, sexy, and in all ways desirable, by allowing prominent placement of the  
11 advertisements and communications by cigarette manufacturers including defendant PHILIP  
12 MORRIS, INC., in and around retail facilities including, but not limited to INTERNATIONAL  
13 HOUSE OF PANCAKES, INC. where consumers, including plaintiff, saw, read, and relied on  
14 the representations made therein. Hundreds or even thousands of advertisements and  
15 communications were published by the cigarette manufacturers, including defendant PHILIP  
16 MORRIS, INC. in the various media including in and around co-conspirator retail facilities  
17 including, but not limited to defendant INTERNATIONAL HOUSE OF PANCAKES, INC., so  
18 many that it would be neither economically feasible nor practicable for plaintiff to identify each  
19 and every one of them herein.

20       94. From the time plaintiff was a minor, he read, heard, and saw the aforementioned  
21 advertisements and communications. Beginning as a minor, when he purchased for his  
22 consumption his first of the thousands of packages of cigarettes he purchased and smoked,  
23 including, but not limited to *Marlboro* and *Marlboro Lights*, the aforementioned  
24 advertisements and communications were the basis of the bargain, and plaintiff relied upon  
25 the published advertisements and communications to his detriment.

26       95. Beginning at a time relevant herein, and continuing up into the present, cigarette  
27 manufacturers, including defendant PHILIP MORRIS, INC., warranted to government and the  
28 public, including plaintiff, that they had further "improved" the safety, taste, enjoyment, and

1 relaxation consumers, including plaintiff, would derive from smoking low-tar cigarettes,  
2 including *Marlboro* cigarettes by developing *Marlboro Light 100s*.

3 96. Beginning at a time relevant herein, and continuing up into the present,  
4 co-conspirator wholesale and retail entities including, but not limited to defendant  
5 INTERNATIONAL HOUSE OF PANCAKES, INC. impliedly warranted to government and the  
6 public, including plaintiff, the truth of the aforementioned representations by cigarette  
7 manufacturers, including defendant PHILIP MORRIS, INC., that they had further "improved" the  
8 safety, taste, enjoyment, and relaxation consumers, including plaintiff, would derive from  
9 smoking low-tar cigarettes, including *Marlboro* cigarettes by developing *Marlboro Light 100s*  
10 by allowing the placement of informational communications, etc., in and around its retail  
11 facilities, including, but not limited to defendant THE INTERNATIONAL HOUSE OF  
12 PANCAKES, INC. where plaintiff purchased his cigarettes.

13 97. Plaintiff heard, read, and saw the aforementioned advertisements and  
14 communications concerning the "improved" low-tar cigarettes, including *Marlboro Light 100's*  
15 cigarettes, which became the basis of the bargain when he purchased for his consumption  
16 the first and each consecutive of thousands of packages of *Marlboro Light 100's* after careful  
17 consideration of the lower risk these co-conspirator wholesale and retail entities including, but  
18 not limited to defendant THE INTERNATIONAL HOUSE OF PANCAKES, INC., and the  
19 cigarette manufacturers, including defendant PHILIP MORRIS, INC., warranted *Marlboro Light*  
20 *100's* and other low-tar cigarettes presented, and in reliance upon the aforementioned  
21 advertisements and communications.

22 98. The cigarette manufacturers, including defendant PHILIP MORRIS, INC., and  
23 co-conspirator wholesale and retail entities including, but not limited to defendant  
24 INTERNATIONAL HOUSE OF PANCAKES, INC. at all times pertinent herein failed to  
25 disclose to government and the consuming public, including plaintiff, that *Marlboro* cigarettes  
26 were addictive, that the cigarette manufacturers including defendant PHILIP MORRIS, INC.  
27 knew from their own secret research that they were addictive, and that they knew from their  
28 own secret research that the carcinogens contained in them would place plaintiff at increased

1 risk for the diseases and conditions described above.

2 99. The cigarette manufacturers, including defendant PHILIP MORRIS, INC., and  
3 co-conspirator wholesale and retail entities including defendant INTERNATIONAL HOUSE  
4 OF PANCAKES, INC. at all times pertinent herein failed to disclose to government and the  
5 consuming public, including plaintiff, that although the tar and nicotine content were lower in  
6 low-tar cigarettes, *Marlboro Light 100's*, than in the full-tar cigarettes plaintiff previously  
7 smoked, the lower nicotine delivery in these cigarettes would cause plaintiff and other  
8 cigarette consumers to smoke more such cigarettes to satisfy their nicotine addiction, thus  
9 negating, because of the dose dependent nature of the health risk of smoking, any health  
10 advantage Cigarette manufacturers, including defendant PHILIP MORRIS, INC. and  
11 co-conspirator wholesale and retail entities including, but not limited to defendant  
12 INTERNATIONAL HOUSE OF PANCAKES, INC. touted in low-tar cigarettes, including  
13 *Marlboro Light 100's*.

14 100. As a direct, legal and proximate cause of the breach of express warranty on the  
15 cigarettes, including but not limited to the brands listed above, by cigarette manufacturers,  
16 including defendant PHILIP MORRIS, INC., and co-conspirator wholesale and retail entities  
17 including defendant INTERNATIONAL HOUSE OF PANCAKES, INC. plaintiff has suffered,  
18 and will suffer until he likely dies therefrom, development of terminal lung cancer.

19 WHEREFORE, plaintiff prays for all consequential damages from defendants as  
20 hereinafter set forth.

21 **SEVENTH CAUSE OF ACTION - UNFAIR COMPETITION/UNLAWFUL BUSINESS PRACTICES**

22 **[BUSINESS & PROFESSIONS CODE SECTIONS 17200 ET SEQ.]**

23 **(ALL DEFENDANTS)**

24 101. Plaintiff repeats, repleads and realleges all of the foregoing paragraphs in this  
25 Complaint as if fully stated herein.

26 102. Plaintiff, at all times relevant herein, was a resident of the State of California and  
27 a member of the consuming public at whom cigarette manufacturers, including defendant  
28 PHILIP MORRIS, INC. and retailer defendant INTERNATIONAL HOUSE OF PANCAKES,

1 INC. aimed their advertisements and communications.

2 103. At all times relevant herein, the Cigarette manufacturers , including defendant  
3 PHILIP MORRIS, INC. engaged in an ongoing, sophisticated campaign of explicit and implied  
4 misrepresentation, concealment, and distortion, described above more fully in above, of the  
5 true state of the scientific research showing cigarette smoking causes cancer, the addictive  
6 nature of nicotine, and their manipulation of the nicotine levels to keep the smoking public  
7 addicted to cigarettes for the purpose of keeping addicted smokers hooked on their  
8 cigarettes, and inducing new, often minor smokers to purchase and smoke their cigarettes.

9 104. At all times relevant herein, defendant INTERNATIONAL HOUSE OF  
10 PANCAKES, INC. participated in, encouraged, and thereby allowed to flourish, the ongoing,  
11 sophisticated campaign of explicit and implied misrepresentation, concealment, and  
12 distortion, described above more fully in above, of the true state of the scientific research  
13 showing cigarette smoking causes cancer, the addictive nature of nicotine, and their  
14 manipulation of the nicotine levels to keep the smoking public addicted to cigarettes for the  
15 purpose of keeping addicted smokers hooked on their cigarettes, and inducing new, often  
16 youth (under age), smokers to purchase and smoke their cigarettes.

17 105. Defendant INTERNATIONAL HOUSE OF PANCAKES, INC. had a legal duty  
18 to refrain from selling, promoting, targeting, participating in the above ongoing campaign and  
19 conspiracy, and inducing the sale of cigarettes to minors pursuant to but not limited to the  
20 following, *California Penal Code* section 308.

21 106. Defendant INTERNATIONAL HOUSE OF PANCAKES, INC. at times material  
22 had the following legal duties:

- 23 a. a legal duty to refrain from selling cigarettes to minors pursuant to  
24 *California Penal Code* section 308;
- 25 b. a duty to warn previous users, users, and foreseeable users of the  
26 cigarettes it sold of the dangers listed in preceding paragraphs;
- 27 c. a duty to disclose to consumers of cigarettes the results of their own, if  
28 any, and other scientific research known to them which indicated that use of

1 cigarettes caused users a great risk of harm (as listed above); and  
2 d. a legal duty pursuant to *California Penal Code* section 272 to refrain  
3 from contributing to the delinquency of a minor.

4 107. At all times relevant herein, defendant INTERNATIONAL HOUSE OF  
5 PANCAKES, INC. assisted and enabled the cigarette manufacturers, including defendant  
6 PHILIP MORRIS, INC. to engage in the ongoing, sophisticated campaign of explicit and  
7 implied misrepresentation, concealment, and distortion, described more fully above by  
8 placing, and allowing defendants to place and publish, in and around its various retail facilities,  
9 including those of defendant INTERNATIONAL HOUSE OF PANCAKES, INC., advertising  
10 devises, communication, and other means of publication of information to the public  
11 (collectively referred to as "ADVERTISING"). The said misrepresentations, distortions,  
12 falsehoods and concealment targeting underage, minor smokers, and thereby impliedly  
13 warranted and represented to members of the general public, including the purchasers, users  
14 and bystanders of cigarettes, including the plaintiff herein, that cigarettes and other tobacco  
15 products were of merchantable quality, and safe for the use for which they were intended

16 108. Although the content of said ADVERTISING and communications changed  
17 regularly, they retained consistent untrue and/or misleading themes and misrepresentations,  
18 concealment, and distortions. Due to the sheer number and volume of ADVERTISING through  
19 the years (literally thousands) plaintiff is unable to recount specifically herein each and every  
20 one. Indeed, it is the defendants herein which have superior knowledge concerning the  
21 thousands of advertisements and communications. Said ADVERTISING was misleading and  
22 deceptive, and was intended to induce and induced the consuming smokers, including  
23 plaintiff, to rely to their detriment upon them. As a direct, legal and proximate cause of such  
24 ADVERTISING and communications, plaintiff has developed, and will likely die there from,  
25 inoperable, terminal lung cancer.

26 109. As a result of the point of sale targeting of youth and minor smokers, at least  
27 90% of adult smokers began purchasing the cigarettes to which they became addicted while  
28 under the age of 18. In reliance upon the representations and inducements of the point of sale

1 targeting of minor smokers by the Cigarette manufacturers, including defendant PHILIP  
2 MORRIS, INC., and retailers including defendant INTERNATIONAL HOUSE OF PANCAKES,  
3 INC., and each of them, as described above, plaintiff (while under the legal age for purchasing  
4 cigarettes) and countless other minor smokers like him, plaintiff purchased his first cigarettes  
5 at defendant INTERNATIONAL HOUSE OF PANCAKES, INC. retail facilities and became  
6 addicted to cigarettes, which he continued to smoke until developing lung cancer from which  
7 he now suffers and from which he in all likelihood will die in the near future.

8         110. The purchase by minors throughout the years relevant herein, including plaintiff,  
9 of cigarettes sold by the cigarette manufacturers, including defendant PHILIP MORRIS, INC.,  
10 and by retailers including defendant INTERNATIONAL HOUSE OF PANCAKES, INC. and  
11 each of them, and the development of the addiction of these smokers, including plaintiff,  
12 resulted in the defendants', and each of them, profiteering unjustly and unfairly from the illegal  
13 sale of cigarettes to the minors, including plaintiff in an amount presently unknown to plaintiff,  
14 who requests leave to amend this Complaint to conform to proof at trial when the true amount  
15 of illegal profit made by these sales of cigarettes to minors becomes known.

16         111. As a result of the continuing course of conduct of the defendants, and each of  
17 them, as outlined above, defendants have been unjustly enriched from the years-long illegal  
18 sale of addictive cigarettes, first to minors and youths, including plaintiff, to addict them and  
19 ensure to the said defendants, and each of them, an ongoing flow of profits throughout the  
20 years, as the addicted smokers continued to purchase cigarettes. The exact amount of this  
21 unjust enrichment gained from the ongoing and continuing purchase of cigarettes by addicted  
22 smokers who began smoking as minors is as yet unknown to plaintiff, who requests leave to  
23 amend this Complaint to conform to proof at the time of trial.

24         WHEREFORE, plaintiff prays for injunctive and other relief from defendants, according  
25 to proof, as hereinafter set forth.

26                 **EIGHTH CAUSE OF ACTION - NEGLIGENT FALSE AND MISLEADING ADVERTISING**

27                         **[BUSINESS AND PROFESSIONS CODE SECTIONS 17500-17572]**

28                                 **(ALL DEFENDANTS)**

1           112. Plaintiff repeats, repleads and realleges all of the foregoing paragraphs in this  
2 Complaint as if fully stated herein.

3           113. The cigarette manufacturers, including defendant PHILIP MORRIS, INC.,  
4 breached their duties of care as heretofore set out above by their ongoing campaign and  
5 conspiracy to deceive and mislead government and the public, including plaintiff, and to  
6 conceal and/or distort the true facts concerning the health hazards of smoking, the “additives”  
7 in cigarettes, the addictive nature of nicotine, and the cigarette manufacturers’ manipulation  
8 of the levels of nicotine in cigarettes to keep addicted smokers hooked on cigarettes by  
9 making or disseminating or causing to be made or disseminated in newspapers, magazines  
10 or other publications, at retail entities, including, but not limited to defendant INTERNATIONAL  
11 HOUSE OF PANCAKES, INC. or by any ADVERTISING or other misleading false statements  
12 and communications directed at the consuming public in the State of California, including  
13 plaintiff, with the intent directly or indirectly to sell cigarettes.

14           114. Co-conspirator retail entities, including, but not limited to defendant  
15 INTERNATIONAL HOUSE OF PANCAKES, INC. at times material had the following legal  
16 duties:

- 17           a. a legal duty to refrain from selling cigarettes to minors pursuant to
- 18           *California Penal Code* section 308;
- 19           b. a duty to warn previous users, users, and foreseeable users of the
- 20           cigarettes it sold of the dangers listed above;
- 21           c. a duty to disclose to consumers of cigarettes the results of their own, if
- 22           any, and other scientific research known to them which indicated that use of
- 23           cigarettes caused users a great risk of harm (as listed above); and
- 24           d. a legal duty pursuant to *California Penal Code* section 272 to refrain
- 25           from contributing to the delinquency of a minor.

26           115. These co-conspirator retail entities, including, but not limited to defendant  
27 INTERNATIONAL HOUSE OF PANCAKES, breached their duties of care above by their  
28 years-long course of conduct aiding, assisting, and enabling the cigarette manufacturers’

1 ongoing campaign and conspiracy to deceive and mislead government and the public,  
2 including plaintiff, and to conceal and/or distort the true facts concerning the health hazards  
3 of smoking, the addictive nature of nicotine, and the cigarette manufacturers' manipulation of  
4 the levels of nicotine in cigarettes to keep addicted smokers hooked on cigarettes via  
5 deceptive and false statements and communications directed at the consuming public in the  
6 State of California, including plaintiff, in that said defendants sold cigarettes to minors,  
7 including plaintiff and allowed minors easy access to cigarettes.

8       116. The statements and communications the cigarette manufacturers, including  
9 defendant PHILIP MORRIS, INC., presented to the public including plaintiff, and which the co-  
10 conspirator retail entities including, but not limited to defendant INTERNATIONAL HOUSE OF  
11 PANCAKES, INC. placed and allowed to be placed in and around their various retail facilities,  
12 were made with the intention of inducing the public, with youths and minors as the particular  
13 targets, to purchase the cigarettes, including but not limited to the brands listed herein.

14       117. The ADVERTISING that cigarette manufacturers, including defendant PHILIP  
15 MORRIS, INC'S presented to the public including Plaintiff through advertising devices or other  
16 publication of information to the public, and which retail entities including, but not limited to  
17 defendant INTERNATIONAL HOUSE OF PANCAKES, placed and allowed to be placed in  
18 and around its various retail facilities, were made with the intention of inducing the public, with  
19 youth, minors, addicted persons, and ethnic minorities to purchase the cigarettes, including  
20 but not limited to the brands listed herein. Said untrue and/or misleading advertising devices,  
21 statements and misrepresentations ("ADVERTISING"), changed frequently and were of such  
22 a large number that plaintiff is unable to allege in full the thousands of statements, advertising  
23 devices and other means used by the defendants and each of them for the reasons stated  
24 herein above. The said ADVERTISING set forth herein below and all other said  
25 misrepresentations by defendants not specifically pled herein were made by cigarette  
26 manufacturers, including defendant PHILIP MORRIS, INC'S at a point in time when by the  
27 exercise of reasonable care said defendants should have known that said misrepresentations  
28 and each them were untrue and/or misleading, and were made with the intent to induce the

1 public and the plaintiff herein and did in fact induce the public and the plaintiff herein to believe  
2 that for the reasons stated in said misrepresentations there was little or no risk of harm that  
3 would arise from smoking cigarettes. Said misrepresentations were intended inter alia to  
4 persuade the public and plaintiff to believe that there was no scientific proof that cigarettes  
5 sold by said defendants created a high risk of ill health effects, to cast doubt on contrary views  
6 including those of the government, to create an illusion that the cigarettes sold by said  
7 defendants and each of them were substantially "safer" than the competitor brands, and to  
8 persuade addicted persons that giving into said addiction did not create any significant  
9 additional risk of ill health affects.

10 118. Said ADVERTISING included, without limitation, the following specific untrue  
11 and or misleading statements:

12 a. . . . [P]roved by over 40 years of continuous use . . . as entirely safe for use in  
13 the mouth - chemically pure, far more costly glycerol and pure sugars which are  
14 natural to tobacco -- **nothing else** (emphasis added).

15 b. A medical specialist is making regular bimonthly examinations of a group of  
16 people from various walks of life. 45 percent of this group have smoked  
17 Chesterfield for an average of over ten years. After eight months, the medical  
18 specialist reports that he observed no adverse effects on the nose, throat and  
19 sinuses of the group from smoking Chesterfield.

20 c. Beginning in 1951 and continuing for many years up to 1969, R.J. Reynolds  
21 advertised, and after 1969 stated, that its Camel cigarettes were "tested" by  
22 "noted throat specialists":

23 Not one single case of throat irritation due to smoking camels!

24 - - -

25 d. More doctors smoke Camels than any other cigarette. In 1962, the Tobacco  
26 Institute issued a press release promising:

27 We in the tobacco industry recognize a special responsibility to  
28 help science determine the facts.

- 1 e. In 1972, James Bowling, a Vice President of co-conspirator defendant PHILIP  
2 MORRIS, INC., was quoted as saying:  
3 If our product is harmful... we'll stop making it. We now know enough that  
4 we can take anything out of our product, but we don't know what  
5 ingredients to take out . . .  
6
- 7 f. Clear sailing! Here's a cigarette of exceptionally fine flavor, plus a safe margin  
8 of protection! [Embassy cigarette ad, 1949]
- 9 g. ... for tobacco that's truly mild [Lucky Strike, 1952]
- 10 h. Smart young Americans are changing to PHILIP MORRIS ... made differently  
11 from any other leading brand ... your guarantee of tasty mildness ... You'll be  
12 glad tomorrow you smoked PHILIP MORRIS today! [Philip Morris 1952]
- 13 i. Guard Against Throat-Scratch ... Outstanding ... and they are mild! [Pall Mall  
14 1952]
- 15 j. Buy Chesterfield--Much Milder ... the worlds best tobaccos, pure ... from the  
16 report of a well known research organization--no unpleasant after taste [Liggett  
17 & Meyers 1952]
- 18 k. We don't try to scare you with medical claims ... We say boo to all those nose-  
19 and-throat tests ... with this reminder: No other leading cigarette is less irritating,  
20 or easier on the throat, or contains less nicotine than Old Gold. This conclusion  
21 was established on evidence by the U.S. Government. [Old Gold cigarettes,  
22 1952]
- 23 l. Look at this test before you smoke another cigarette you'll see how to get the  
24 health protection you definitely need ... and the smoking pleasure you want ...  
25 if you need the health protection that KENT has shown it gives you ... the  
26 greatest in cigarette history do smoke KENTS. You'll find how much more  
27 enjoyable smoking is when your not bothered by nicotine and tars... [P. Lorillard  
28 Company, 1953]

- 1 m. .... Freedom from cigarette cough-mouth and throat comfort ... that's why its time  
2 to change to PHILIP MORRIS. Your taste can tell ... your throat can tell that  
3 PHILIP MORRIS, King size or regular, America's finest cigarette. [Defendant  
4 Philip Morris Co. Ltd., 1953]
- 5 n. genuine mildness [RJR 1953]
- 6 o. And to the one out of every three smokers medical reports say is unusually  
7 sensitive to nicotine and tars ... Kent and Kent alone offers them the health  
8 protection they need.
- 9 p. ONLY VICEROY HAS A THINKING MAN'S FILTER ... This man thinks for  
10 himself. Knows the difference between fact and fancy. Trusts judgement, not  
11 opinion. Such a man usually smokes VICEROY. His reason?... He knows for  
12 a fact that only VICEROY has a thinking man's filter and a smoking man's taste.  
13 [B&W 1959]
- 14 q. ... patented filtering process makes L&M truly low in tar [Liggett & Meyers  
15 Tobacco Company, 1959]
- 16 r. The worlds most thoroughly tested filter [Kool cigarettes, B&W 1959]
- 17 s. FILTER-BLEND is a mighty good reason for you to switch to Winston, because  
18 it means tobaccos specially processed for filter smoking. [Winston Cigarettes,  
19 RJR 1959]
- 20 t. Kent has reduced tars and nicotine to the lowest level among all leading brands  
21 .... First with the finest cigarettes – through Lorillard research. [Kent cigarettes,  
22 P. Lorillard Company 1959]
- 23 u. Pall Mall's famous length travels and gentles the smoke naturally... [Pall Mall,  
24 The American Tobacco Company, 1959]
- 25 v. Filters the Tobacco before you smoke it... filters harshness out of the leaf before  
26 the cigarette is ever made ... filters the smoke before you taste it [King Sano  
27 cigarettes, United States Tobacco Company, 1962]
- 28 w. All of a sudden the United States has a flavor cigarette with a filter on the end...

- 1 Marlboro country – land of the filter cigarette with the unfiltered taste. [*Marlboro*  
2 cigarettes, 1962]
- 3 x. It's the rich-flavor leaf that gives you lots more! There's more rich flavored leaf  
4 in L&M than even in some unfiltered cigarettes. And L&M's filter is the modern  
5 filter ... [Liggett & Meyers, 1962]
- 6 y. Kent is lighter, cleaner, almost white in color! Ordinary filter cigarette smoke is  
7 heavy, yellowish in color ... this is your first cigarette with a filter that really works  
8 (unlike ordinary cotton or crepe-paper filters) ... we promise that KENT'S fine  
9 tobacco will give you more smoking satisfaction than you've ever known ... and  
10 at the same time you'll be enjoying the GREATEST HEALTH PROTECTION IN  
11 CIGARETTE HISTORY! [Lorillard Company, 1962]
- 12 z. Micronite filter, made of pure dust-free completely harmless material that is not  
13 only so effective, but SO SAFE that it actually is used to help filter the air in  
14 operating rooms of leading hospitals.
- 15 aa. Grown mild, aged mild, and blended mild. [Chesterfield King, Liggett & Meyers  
16 Tobacco Co. 1963, 1965]
- 17 bb. The smoke of a Chesterfield King mellows and softens as it flows through  
18 longer length ... becomes smooth and gentle to your taste [Liggett & Meyers  
19 1963]
- 20 cc. Chesterfield People: They like a mild smoke, but just don't like filters... grown  
21 mild, aged mild, blended mild. [Chesterfield, Liggett & Meyers Tobacco Co.  
22 1965]
- 23 dd. Only VICEROY 'S got the filter for the taste that's right! [B&W, 1966]
- 24 ee. Outstanding – and they are mild [Pall Mall, The American Tobacco Company.  
25 1966]
- 26 ff. Average yield per cigarette – 12.9 mgs. tar; 0. 8 mgs. nicotine, and just as  
27 important – TRUE has taste ... and easy draw [Lorillard Company, 1967]
- 28 gg. By now you should know that cigarette smoke is more than just "tar" and

- 1 nicotine. That all cigarette smoke contains gases as well. By now you should  
2 know that only Lark has the Gas-Trap filter and that Lark's unique filter actually  
3 reduces certain harsh gases more than any other filter on any other popular  
4 brand. [Lark cigarettes, 1968,1969,1971]
- 5 hh. Latest U.S. Government figures show PALL MALL 100s actually lower in tar  
6 than the best selling filter king. [Pall Mall, 1969, 1970]
- 7 ii. ... most of the smoke you smoke is gas. And certain of these gases are harsh.  
8 That's why we invented the Gas-Trap filter... The result? Our Gas-Trap filter is  
9 better at reducing certain gases than any run of the mill filter around [Lark, 1970]
- 10 jj. Lower in tar than 95% of all cigarettes sold New from Philip Morris research...  
11 MULTIFILTER a perfect balance of flavor and filtration. [Philip Morris 1970]
- 12 kk. Enjoy the mild taste of Tareyton with the Activated Charcoal Filter [Tareyton  
13 200s, 1971]
- 14 ll. The first low 'tar' cigarette that delivers full flavor [Lucky Ten, The American  
15 Tobacco Company, 1972]
- 16 mm. Two leading cigarettes are lower in both tar and nicotine than 99% of all other  
17 cigarettes sold. They are both named True. [Lorillard, 1972]
- 18 nn. Vantage gives you real flavor, like any high tar and nicotine. And since it's the  
19 high tar and nicotine than many critics of cigarettes seem most opposed to,  
20 even they should have some kind words for Vantage. [Vantage cigarettes,  
21 1972]
- 22 oo. Long, lean and burnished brown, *More* has more style ... more flavor. It has  
23 more. Over 50% more puffs than a 100mm cigarette ... more enjoyment more  
24 flavorful. Yet they're surprisingly mild. (R. J. Reynolds 1975)
- 25 pp. ... More menthol is the new 120mm menthol cigarette that starts with a blast,  
26 and cruises you through the longest, slowest-burning, coolest smoking menthol  
27 experience you've ever had. (RJR 1975)
- 28 qq. More looks as cool as it smokes. And looks don't lie.... (RJR 1988)

1           119.   Beginning at a time unknown exactly to plaintiff, but prior to plaintiff's first  
2 cigarette as a minor, and continuing thereafter due to plaintiff's addiction, plaintiff saw,  
3 believed, and relied on the cigarette manufacturers, including defendant PHILIP MORRIS,  
4 INC'S representations, including those placed in and around the retail facilities. In reliance  
5 on them, plaintiff purchased *Marlboro* and *Marlboro Light 100's*.

6           120.   Further, cigarette manufacturers, including defendant PHILIP MORRIS, INC'S  
7 utilized advertising techniques in addition to the entitling of their products as light or ultra-light  
8 or menthol. For example, Bowman Gray, the president of RJR, described a theme for the  
9 marketing campaign of Salem, one of the leading low-tar brands that competed against Merit  
10 and *Marlboro Light* as "Springtime".

11                   The delightful green of the Salem pack itself suggests that  
12                   perennial green buds that draw the whole of America outdoors.  
13                   It suggests gentle water lapping a shoreline, a breeze permeated  
14                   with pine scents, the aroma of apple blossoms, and the myrrh of  
15                   the first roses. In a word "Springtime."

16           According to Gray, the most important ingredient in a Salem advertising campaign was  
17 its emphasis on nature photographs to convey the "softness, mildness and freshness" of the  
18 brand. Such industry-wide advertising practices deceived California consumers including  
19 plaintiff as to true dangers of low-tar cigarettes.

20           121.   B.A.T., the international conglomerate that owns B&W, directed that low-tar  
21 cigarettes should be advertised as "health reassurance" products in order to alleviate  
22 consumer fears about the harmful effects of smoking.

23                   All work in this area should be directed toward providing  
24                   consumer reassurance about cigarettes and the smoking habit.  
25                   This can be provided in different ways, e.g. by claims of low  
26                   deliveries, by the perception of low deliveries and by the  
27                   perception of 'mildness'. Furthermore, advertising for low  
28                   delivery or traditional brands should be constructed in ways as

1           though not to provoke anxiety about health but to alleviate it, and  
2           enable a smoker to feel assured about the habit and confident in  
3           maintaining it over time.

4           122. B.A.T. executives were aware that marketing cigarettes as "health reassurance"  
5 products was standard practice within the industry:

6                     Manufacturers are concentrating on the low TPM (tar) and  
7                     nicotine segment in order to create brands... which aim, in one  
8                     way or another, to reassure the consumer that these brands are  
9                     relatively more "healthy" than orthodox blended cigarettes.

10           123. Tobacco industry attorneys admitted in a memorandum prepared in 1985 for  
11 the tobacco industry by the national law firm of Jones, Day, Reavis & Pogue, that the intent  
12 and effect of low-tar advertising was to belittle the health warnings that appeared on packs.

13                     BRAND ADVERTISING

14                     ... glamour was no longer personified in identifiable movie stars  
15                     or athletes but in the anonymous, young, healthy individuals  
16                     engaged in glamorous or strenuous activity. Safety claims were  
17                     no longer overt, but implied in ads for "safer" cigarettes, i.e., low  
18                     tar, low gas, charcoal filters, all natural or ultra low tar cigarettes.  
19                     The intent and effect was to derogate from the warning or  
20                     awareness of the health hazard and to reassure the smoker in his  
21                     decision to continue smoking."

22           A later section of the report noted the inconsistency with claims that cigarettes are not  
23 safe, yet making implied health claims in the advertisement of "light" products:

24                     Finally there is a tension between asserting that low tar and  
25                     nicotine cigarettes are not "safer" and the advertising campaigns  
26                     for those products which explicitly or implicitly communicate the  
27                     message that such cigarettes were "safer."

28           124. The first company that developed the "low-tar cigarette" was Lorillard, and that

1 company concluded that health concerns are the "usual" reason that smokers switch to low-tar  
2 brands:

3           Most smokers are highly ambivalent about their own smoking.  
4           They want (and in many cases they need) the important benefits  
5           and satisfaction cigarettes offer. Through the years, however,  
6           they have become more negative towards smoking, increasingly  
7           viewing as a dangerous, dirty, unattractive, addictive, offense  
8           and expensive habit... health concerns are the usual reasons for  
9           switching to a low tar brand.

10           125. Defendant PHILIP MORRIS, INC. actively sought to develop and "flavorful" low  
11 delivery cigarette to appeal to smokers concerned about their health:

12           If a low delivery cigarette with impact and flavor were developed,  
13           it may cause a segment of current regular filter smokers who are  
14           concerned about their health but demand a flavorful cigarette to  
15           voluntarily switch to the low delivery cigarette.

16           126. Defendant PHILIP MORRIS, INC. recognized that low delivery cigarettes were  
17 designed to initiate adolescents as well, in part because such brands were considered  
18 "safer":

19           Adolescents initiate smoking because of social factors -- low  
20           yield cigarettes may make it easier to start and thus encourage  
21           more "experimenters" to continue use until they graduate to  
22           stronger brands.

23           As low yield brands become more popular among adults (given  
24           they may) marketing behavior may lead adolescents to smoke  
25           them as well. Furthermore, such brands may be considered  
26           "safer" thus leading teenagers to pay less attention to public  
27           health campaigns designed to discourage inflation.

28           127. Cigarette manufacturers knowingly market menthol cigarettes as "healthy

1 cigarettes" as seen in a 1983 B&W internal correspondence:

2           Kool maintained a three share level for over 30 years (through  
3           mid-60's) while positioning itself as a specialty cigarette to be  
4           smoked only for remedial or medicinal purposes.

5  
6           128. In order to "fool" the FTC testing of contents of tar and nicotine, defendant  
7 PHILIP MORRIS, INC. among others, put tobacco in the cigarette past the end of the filter.  
8 This is called "filter overwrap". For a variety of reasons, the puff in the overwrap are highly  
9 concentrated, and therefore provide high dose of tar and nicotine because the FTC machine  
10 stops smoking 3 millimeters before the filter overwrap while actual smokers continue on,  
11 actual smokers get much higher amounts of tar and nicotine than the FTC testing machines.

12           129. Defendant PHILIP MORRIS, INC. among others, also places ventilation holes  
13 in the filters in order to allow air to dilute the smoke. Once again, the FTC testing machine  
14 comes up with lower tar and nicotine numbers because the machine does not cover up these  
15 airholes. In contrast, as defendant PHILIP MORRIS, INC. intends, smokers cover these  
16 ventilation holes with their lips and fingers and therefore obtain much higher amounts of tar  
17 and nicotine than do the FTC testing machines.

18           130. In addition to cigarette design, smokers smoking light and ultra-light cigarettes  
19 obtain comparable amounts of tar and nicotine because they compensate for any reduction  
20 in nicotine by changing their smoking behavior. The industry has long known about and  
21 referred to this practice as "compensation".

22           131. Nicotine addiction is so powerful that smokers have been found to  
23 "compensate" for lower levels of nicotine yield by smoking more frequently, by smoking more  
24 cigarettes, by smoking more deeply or increasing puff volume. Research regarding this  
25 phenomenon, known as "compensation" has been suppressed and concealed by the industry  
26 for years.

27           132. By September of 1970, defendant PHILIP MORRIS, INC., among others, should  
28 have been aware that its claims of "light" and "low-tar" were deceptive. Said defendant had

1 been advised by its research director, Helmut Wakeman, that:

2 Differences in smoke intake among smokers are much greater  
3 than is suggested by tar numbers and estimates of how many  
4 cigarettes are smoked each day and,...a smokers intake level is  
5 determined by the smoker himself, not by the manufacturer of the  
6 cigarette.

7 In September of 1970, defendant PHILIP MORRIS, INC.S' director of research wrote  
8 an internal memoranda to the company's president where he stated:

9 All these lines of evidence suggest that if the Federal Trade  
10 Commission presumes to protect the health of the public by  
11 requiring industry to publish tar and nicotine figures in their  
12 advertising the Commission is basically misleading the public  
13 with respect to the significance of this information.

14 Defendant PHILIP MORRIS, INC. among others, chose not to disclose this information  
15 to the public but continued its claims of greater safety by emphasizing the low tar and nicotine  
16 contents of its "light" cigarettes.

17 133. When defendant PHILIP MORRIS, INC. internal research in 1975 concluded  
18 that:

19 The smoker data collected in this study are in agreement with  
20 results found in other project studies ... in effect, the *Marlboro 85*  
21 smokers in this study did not achieve any reduction in smoke  
22 intake by smoking a cigarette (*Marlboro Lights*) normally  
23 considered lower in delivery.

24 134. Cigarette manufacturers, including defendant PHILIP MORRIS, INC. knew or  
25 should have known that consumers of cigarettes were aware of some degree of risk to  
26 smoking after the Surgeon General report of 1964, however, said defendants were also aware  
27 that said consumers underestimated said risk. In order to be competitive and to obtain sales  
28 to consumers who were concerned about the risk of cigarettes, said defendants aimed their

1 advertising at those who felt there was some risk, and began to play on the implied notion that  
2 "light" cigarettes and/or cigarettes with "lowest tar and nicotine" and/or menthol cigarettes  
3 were safer than "full flavor" or "regular" cigarettes. The decision to mislead the public about  
4 the relative risk of "light" cigarettes and "low tar and nicotine" cigarettes and/or "menthol"  
5 cigarettes was made deliberately to take advantage of those consumers who were concerned  
6 about the health risks of cigarettes, and according to surveys made by cigarette defendants  
7 were switching to said "light" and "low tar nicotine" and/or "menthol" because of said health  
8 concerns.

9           135. At the time the cigarette manufacturers, including defendant PHILIP MORRIS,  
10 INC. negligently made these misrepresentations as herein alleged and co-conspirator retail  
11 entities assisted, aided in, and enabled these representations and sold plaintiff cigarettes, the  
12 defendants and each of them had no reasonable grounds for believing the representations to  
13 be true.

14           136. As a direct, legal and proximate result of this conduct of the cigarette  
15 manufacturers', including defendant PHILIP MORRIS, INC.'s, and co-conspirator retail entities,  
16 including, but not limited to defendant INTERNATIONAL HOUSE OF PANCAKES, INC.'S  
17 negligent misrepresentations, plaintiff continued to smoke despite numerous attempts to quit  
18 and thereby developed terminal lung cancer, from which he will likely die in the near future.

19           WHEREFORE, plaintiff prays for relief as hereinafter set forth.

20           **NINTH CAUSE OF ACTION - INTENTIONAL FALSE AND MISLEADING ADVERTISING**

21           **[BUSINESS AND PROFESSIONS CODE SECTIONS 17500 ET SEQ.]**

22           **(ALL DEFENDANTS)**

23           137. Plaintiff repeats, repleads and realleges all of the foregoing paragraphs in this  
24 Complaint as if fully stated herein.

25           138. In a deliberate attempt to mislead, deceive, and confuse the public and the  
26 plaintiff, cigarette manufacturers including defendant PHILIP MORRIS, INC. constructed their  
27 advertising by aggressively marketing cigarettes as "light" or "ultra light" and/or "menthol" in  
28 a direct appeal to the health-conscious consumer. Cigarette manufacturers including

1 defendant PHILIP MORRIS, INC. used said terms “light and “ultra light” and/or “menthol” to  
2 convey the message that such products were healthier than regular cigarettes because they  
3 supposedly delivered a reduced yield of tar and nicotine.

4 139. Cigarette manufacturers, including defendant PHILIP MORRIS, INC., adopted  
5 this strategy of using said terms “light” and “ultra light” and menthol cigarettes after reaching  
6 the decision that the most important trend and factor in the cigarette market was one of health  
7 concerns and that advertising thereby in order to be effective had to address said health  
8 concerns and in addition had to mislead the consumers regarding their concerns over the risk  
9 of cigarette smoking.

10 140. Defendant PHILIP MORRIS, INC. concluded that ‘the very fact, then that a  
11 smoker had decided to switch from a full flavored cigarette to a low delivery cigarette tells us  
12 something very important about him: he is concerned about his health, and is willing to do  
13 something about it.’ Said defendant PHILIP MORRIS, INC. developed cigarettes that they  
14 entitled *Marlboro Light*, Merit, Cambridge, Super Slims and other products and they were a  
15 huge success in the market taking an ever increasing percentage of the cigarette market as  
16 a result of the said misleading and untrue representations by said defendant PHILIP MORRIS,  
17 INC. and the other cigarette manufacturers regarding light cigarettes.

18 141. Cigarette manufacturers, including defendant PHILIP MORRIS, INC., as early  
19 as 1946 recognized that consumers of their products were driven by a continuous effort to  
20 mitigate the perceived dangers of smoking. Cigarette manufacturers, including defendant  
21 PHILIP MORRIS, INC. became alarmed at a substantial reduction in total cigarette  
22 consumption which began in the early 1950s. Cigarette manufacturers, including defendant  
23 PHILIP MORRIS, INC. conversion of the advertising to the misleading and deceiving message  
24 of the “light” and “ultra light” (low tar and nicotine) and “menthol” was directly aimed at  
25 reversing this decline in cigarette sales which was directly related to consumer concerns with  
26 the perceived dangers of smoking. Cigarette manufacturers, including defendant PHILIP  
27 MORRIS, INC. through their said misrepresentations attempted to and did persuade  
28 consumers including plaintiff that either the risk of cigarette smoking was nil, far less that was

1 being reported, or that the cigarettes sold as “light,” “ultra light” or “menthol” were substantially  
2 safer than other products on the market.

3           142. Cigarette manufacturers, including defendant PHILIP MORRIS, INC., in  
4 choosing to use an implied safety message within the said terms of “light,” “ultra light” and  
5 “menthol” knew that said cigarettes did not deliver any less tar or nicotine than any other  
6 cigarette on the market and further cigarette manufacturers, including defendant PHILIP  
7 MORRIS, INC., through their own research learned that FDC ratings of cigarette nicotine and  
8 tar content were substantially understated.

9           143. Cigarette manufacturers, including defendant PHILIP MORRIS, INC., knew that  
10 far from providing health benefits as their misrepresentations and the FDC ratings suggested,  
11 the “light” and/or “menthol” cigarettes were as destructive as their full flavored cousins.  
12 Cigarette manufacturers, including defendant PHILIP MORRIS, INC., knew that in fact “light”  
13 and/or “menthol” cigarettes, because they were inhaled more deeply than “regular” cigarettes,  
14 the carcinogens reach deeper in the area of the lungs and were causing a dramatic increase  
15 in lung cancer.

16           144. Cigarette manufacturers, including defendant PHILIP MORRIS, INC., chose not  
17 to communicate the truth concerning the “light” and/or “menthol” cigarette because the brands  
18 they sold under said term were the fast growing segment of the cigarette market and the  
19 source of immense profit to cigarette manufacturers, including defendant PHILIP MORRIS,  
20 INC., and each of them.

21           145. The marketing and advertising of light and ultra lights and menthol products is  
22 a deceptive practice from which plaintiffs and members of the public have been damaged by  
23 the amount paid for the product and by the ill health effects of said smoking. Further, cigarette  
24 manufacturers, including defendant PHILIP MORRIS, INC., have become unjustly enriched by  
25 making a profit from the sale of products that were not in fact “light” as implied by the said  
26 misrepresentations.

27           146. Between 1970 and 1981, sale of low tar cigarettes by the entire industry rose  
28 rapidly, reaching nearly 55% of the market in 1981, which is approximately the same level that

1 they command on the date the complaint is filed.

2 147. Cigarette manufacturers, including defendant PHILIP MORRIS, INC. , spend a  
3 disproportionately high percentage of their marketing budget in promoting low tar brands. In  
4 1991, the cigarette industry spent \$2.94 billion promoting low tar brands, 64% of the total \$6.4  
5 billion spent on advertising cigarettes.

6 148. Although cigarette manufacturers, including defendant PHILIP MORRIS, INC.,  
7 advertised the light and ultra light and menthol products without explicit health claims, they  
8 were marketed and advertised with the implied suggestion that they are healthier. Cigarette  
9 manufacturers, including defendant PHILIP MORRIS, INC., knew that in violation of *California*  
10 *Business and Professions Code* Section 17500, said defendants and each of them were  
11 marketing their cigarette products in California in the way which misled the public and the  
12 plaintiff herein as to the proposed performance of its cigarette products.

13 149. In the early 1970s the cigarette manufacturers, including defendant PHILIP  
14 MORRIS, INC. brought out special products aimed at deceiving health conscious consumers  
15 including plaintiff. These products included *Marlboro Lights*, Merit, Carlton, More, More  
16 Menthol, Benson & Hedges Menthol and other products. These brands succeeded and by  
17 1979, for example, a 9 mg. Merit accounted for one in every five cigarettes sold by defendant  
18 PHILIP MORRIS, INC. nationwide and was the leading low tar cigarette in the nation.  
19 Between 1970 and 1981 sales of low tar cigarettes by cigarette manufacturers and defendant  
20 PHILIP MORRIS, INC. rose rapidly, reaching nearly 55% of the market in 1981, approximately  
21 the same level that they command today.

22 150. Cigarette manufacturers, including defendant PHILIP MORRIS, INC., used  
23 overpowering graphics – bold imagery, lush landscapes and vivid coloration – that have made  
24 the “lights” and/or “menthol” the most popular cigarettes in the nation, including among minors.  
25 For example, “the spirit of *Marlboro* in a low tar cigarette” appears on the well known cowboy  
26 advertisement that evokes images of rugged and capable individuals bound up with nature  
27 itself. The crisp healthy wilderness air of the advertisements stands in sharp contrast to the  
28 diseased lungs of the *Marlboro Light* smokers, including the cowboys who were the models

1 for said ads. The cigarette manufacturers, including defendant PHILIP MORRIS, INC., implied  
2 health claims of these advertisements constitute intentionally untrue and misleading  
3 advertisements under *California Business and Professions Code* Section 17500.

4 151. Cigarette manufacturers, including defendant PHILIP MORRIS, INC., have  
5 further deliberately deceived and misled the public and plaintiff by claiming that it successfully  
6 filtered out the tar but kept the taste. Said claim became commonplace among cigarette  
7 manufacturers, including defendant PHILIP MORRIS, INC. in their quest to maintain and even  
8 increase their profit levels from the sale of their deadly product. For example, defendant  
9 PHILIP MORRIS'S advertisement reads as follows:

10 The result is Merit. A cigarette with so much extra flavor it  
11 delivers as much – or more – taste than brands having all the way  
12 up to 60% more tar, yet Merit has only 9 mg. of tar. One of the  
13 lowest tar levels in smoking today.

14 152. At the time the cigarette manufacturers, including defendant PHILIP MORRIS,  
15 INC., made point of sale targeting using the representations herein alleged, they knew the  
16 representations were false.

17 153. Beginning at some time unknown to plaintiff, co-conspirator retail entities,  
18 including, but not limited to defendant INTERNATIONAL HOUSE OF PANCAKES, INC. knew  
19 the representations herein alleged were false.

20 154. The cigarette manufacturers, including defendant PHILIP MORRIS, INC., made  
21 the representations herein with the intention of depriving the public who smoked, including  
22 plaintiff, of their health in order to maintain and/or increase their profits and induce new, often  
23 minor smokers, to buy their cigarettes.

24 155. As a direct, legal and proximate result of the intentional misrepresentations of the  
25 cigarette manufacturers, including defendant PHILIP MORRIS, INC., and defendant  
26 INTERNATIONAL HOUSE OF PANCAKES' as heretofore described, plaintiff was initially  
27 induced, and then forced by his ongoing addiction to spend a total sum currently unknown to  
28 him on cigarettes manufactured by the cigarette manufacturers, including defendant PHILIP

1 MORRIS, INC., and sold by, among others, co-conspirator retail entities, including, but not  
2 limited to defendant INTERNATIONAL HOUSE OF PANCAKES, INC. Plaintiff requests leave  
3 to amend this Complaint at trial when the exact amount becomes known.

4 156. As a further direct, legal and proximate result of defendants' intentional  
5 misrepresentations, plaintiff developed terminal lung cancer from which he will likely die in the  
6 near future. Plaintiff seeks leave to amend this Complaint to conform to proof at trial.

7 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

8 **TENTH CAUSE OF ACTION -- PUNITIVE DAMAGES**  
9 **(ALL DEFENDANTS)**

10 157. Plaintiff repeats, repleads and realleges all of the foregoing paragraphs in this  
11 Complaint as if fully stated herein.

12 158. The cigarette manufacturers, including defendant PHILIP MORRIS, INC., as  
13 described in the preceding paragraphs and causes of action detailed above manufactured,  
14 distributed, tested, designed, promoted, marketed, packaged, sold, and/or placed into the  
15 stream of commerce in and into the State of California numerous brands of defective,  
16 unreasonably dangerous and hazardous cigarettes, or other tobacco products, without  
17 informing and/or warning the public, consumers, the government, or plaintiff in order to  
18 continue to amass millions of dollars in profits from the sale and consumption of these  
19 dangerous tobacco products.

20 159. Further, the cigarette manufacturers, including defendant PHILIP MORRIS, INC.,  
21 manufactured, distributed, tested, designed, marketed, packaged, sold, and/or placed into  
22 the stream of commerce in and into the State of California numerous brands of defective,  
23 unreasonably dangerous and hazardous cigarettes, or other tobacco products, whose nicotine  
24 content they had manipulated in order to increase the addictive effect on consumers in order  
25 to ensure that the public, consumers, and plaintiff remained addicted to cigarettes and other  
26 tobacco products and unable to stop purchasing and using them. Prior to 1969, these same  
27 Cigarette manufacturers, including defendant PHILIP MORRIS, INC., also used aggressive  
28 campaigns of advertisements and promotional activities to further ensure that the public,

1 consumers, including plaintiffs would purchase their cigarettes, become addicted, and  
2 become unable to stop purchasing and using them.

3 160. After 1969, these same cigarette manufacturers, including defendant PHILIP  
4 MORRIS, INC., continued to use aggressive campaigns of public statements and  
5 communications, and underwriting of sports and musical events, and giveaways of free  
6 coupons redeemable for gifts, to further ensure that the public, consumers, including plaintiffs  
7 would purchase their cigarettes, become addicted, and become unable to stop purchasing  
8 and using them.

9 161. The cigarette manufacturers, including defendant PHILIP MORRIS, INC., did  
10 and continue to conspire with one another and with other, known and unknown conspirators  
11 in order to continue to control the market for cigarettes and tobacco products, mislead and  
12 deceive the public and the government as to the health hazards of smoking and the addictive  
13 nature of tobacco products, and prevent injured persons and governments from making claims  
14 or litigating against them.

15 162. The acts and conduct of the cigarette manufacturers, including defendant PHILIP  
16 MORRIS, INC., as summarized above and described in detail in the foregoing paragraphs  
17 inclusive, were motivated by the financial interests of the cigarette manufacturers in the  
18 continuing, uninterrupted distribution and marketing of cigarettes and tobacco products and  
19 the acquisition of new, youthful consumers. In pursuance of said financial motivation, the  
20 cigarette manufacturers including defendant PHILIP MORRIS, INC. consciously disregarded  
21 the safety of the users of, and persons exposed to the smoke of, cigarettes and other tobacco  
22 products, and were in fact, consciously willing to permit cigarettes and tobacco products to  
23 cause injury to smokers and bystanders exposed to the smoke, including plaintiffs.

24 163. The conduct of the cigarette manufacturers, including defendant PHILIP  
25 MORRIS, INC., as described herein was and is willful, malicious, outrageous, and in  
26 conscious disregard and indifference to the safety and health of the public, including plaintiffs  
27 resulting in more than 400,000 cigarette related deaths in the United States per year for over  
28 forty years.

1 For the sake of example, and by way of punishing the defendants, plaintiff seeks  
2 punitive damages according to proof.

3 **PRAYER**

4 WHEREFORE, RICHARD BOEKEN prays judgment against defendants, and each of  
5 them, as follows:

- 6 b. For plaintiff's general damages according to proof;
- 7 c. For plaintiff's loss of income, wages and earning potential according to proof;
- 8 d. For plaintiff's medical and related expenses according to proof;
- 9 e. For plaintiff's prejudgment interest according to proof, pursuant to *California*  
10 *Civil Code* section 3288;
- 11 f. For plaintiff's costs of suit herein;
- 12 g. For exemplary or punitive damages according to proof;
- 13 h. For redress and restitution for past and continuing acts of unfair competition  
14 and illegal conduct;
- 15 i. For a permanent injunction enjoining defendants, and each of them, from  
16 making any express or implied misrepresentations or untrue or misleading claims  
17 regarding cigarettes, especially "light" cigarettes;
- 18 j. For a permanent injunction enjoining the defendants, and each of them, from  
19 selling any more cigarettes to minors and youths;
- 20 k. For disgorgement of all profits unjustly gained from the illegal sale of ~~cigarettes~~  
21 to minors;
- 22 l. For disgorgement of all profits unjustly gained from the continuing and  
23 ongoing sale of cigarettes to those consumers, including plaintiff, whom the  
24 defendants addicted to cigarettes as minors, and who, including plaintiff, continued  
25 to purchase them because of their addiction;
- 26 m. For disgorgement of all profits unjustly gained from express or implied  
27 misrepresentations and/or untrue or misleading claims regarding cigarettes, especially  
28 "light" cigarettes;

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- m. For reasonable attorney's fees; and
- n. For such other and further relief as this Court deems just and proper.

DATED: March 15, 2000

LAW OFFICES OF MICHAEL J. PIUZE

BY: \_\_\_\_\_  
Michael J. Piuze  
Attorneys for Plaintiff

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 11755 Wilshire Boulevard, Suite 1170, Los Angeles, California 90025-1517.

On August 20, 2001, served the foregoing document described as **COMPLAINT FOR PERSONAL INJURIES** on the interested parties in this action by placing:

       the original to the propounding party and a true copy to all other parties; or

XX a true copy thereof enclosed in a sealed envelope addressed as follows:

( X ) By Mail: As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

( ) By Personal Service: I delivered such envelope(s) by hand to the addressee(s) above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 20, 2001, at Los Angeles, California.

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