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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

15  
16 ALICIA GWYNN, an individual; ANISHA  
GWYNN-JONES, an individual;  
17 ANTHONY GWYNN, JR., an individual

18 Plaintiffs,

19 v.

20 ALTRIA GROUP, INC., a corporation,  
successor-in-interest to UST Inc.; U.S.  
21 SMOKELESS TOBACCO COMPANY, LLC,  
a limited liability company; DOUG  
22 DERNER, an individual; ROB QUINN, an  
individual; DON FEBLOWITZ, an  
23 individual; YOUNG-WESTWOOD  
ENTERPRISES, INC., a corporation; EXOIL  
24 CORPORATION, a corporation; and DOES  
1-100

25 Defendants.  
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CASE NO. **37-2016-00017104-CU-PO-CTL**

**Complaint For Damages For Wrongful  
Death And Demand For Jury Trial**

- 1. Negligence
- 2. Negligent Product Liability
- 3. Strict Product Liability - Design Defect
- 4. Strict Product Liability - Failure to Warn of Defective Condition
- 5. Negligent Misrepresentation
- 6. Fraudulent Concealment

1 Come now the Plaintiffs, Alicia Gwynn, an individual; Anisha Gwynn-Jones, an  
2 individual; Anthony Gwynn, Jr., an individual, and for causes of action against the  
3 Defendants, and each of them, complain and allege as follows:

4 **Introduction**

5 1. Hall of famer Anthony (“Tony”) Gwynn was one of the greatest pure hitters  
6 the game of baseball has ever seen, along with being a father, husband, and philanthropist.  
7 He was also hopelessly addicted to Defendants’ tobacco products.

8 2. On June 16, 2014, that tobacco addiction claimed Tony Gwynn’s life. At the  
9 young age of 54, Gwynn died of cancer caused by addiction to and prolonged use of  
10 Defendants’ tobacco products.

11 3. Defendants in this case are Altria Group, Inc. (“Altria”), one of the world’s  
12 largest tobacco companies, and certain of its subsidiaries, employees, agents, co-  
13 conspirators, retailers, and independent contractors. In 2009, Altria, which used to be  
14 known as Philip Morris Companies, Inc., acquired UST, Inc. (also known as U.S. Tobacco)  
15 and its subsidiary, U.S. Smokeless Tobacco Company, LLC (“USSTC”). USSTC, which  
16 used to go by “United States Tobacco Company” is the self-proclaimed “world’s leading  
17 producer and marketer of moist smokeless tobacco products.” Its product brands include  
18 Skoal, Copenhagen, Happy Days (now discontinued), Red Seal, and Husky.

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# We put the pinch between the cheek and gum of America.

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Every day last year, U.S. Tobacco sold nearly one million cans of moist smokeless tobacco.

And this year sales will be bigger.

For one thing, we're the only advertisers on national network television. Our commercials run on virtually every major sports program across the country. And they feature powerful endorsements by superstar spokesmen—Walt Garrison, football hero Earl Campbell, recording artist Charlie Daniels and NASCAR driver Harry Gant.

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We do extensive coupon sampling through print advertising in consumer magazines.

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We sponsor the Skoal Bandit® on the NASCAR circuit, run a promotional merchandising program that covers every race on

that circuit, and have commercials on all national car racing radio networks.

We sponsor college rodeos across the country.

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We have a special sales force to handle one-on-one product sampling. And every point-of-sale display comes with a booklet explaining just how to use moist smokeless tobacco.

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With all this, it's no wonder that your customers ask for us by name—Skoal, Copenhagen and Happy Days.

To them, smokeless means U.S. Tobacco. And to you, U.S. Tobacco means profits.

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For more information write: U.S. Tobacco, 100 West Putnam Avenue, Greenwich, Conn. 06830.



2215399

U.S. Tobacco. The smokeless people.

1           4.       Collectively, the defendants are the companies and individuals that  
2 manufactured, adulterated, and pushed on the public the tobacco products that led to  
3 Gwynn's death, all while falsely denying the products were dangerous or addictive, and  
4 engaging in a world-wide campaign to continually recruit new under-age users. This case  
5 seeks to hold them responsible for killing a baseball legend and a wonderful human being.

6           5.       Smokeless tobacco includes a highly-processed ground or shredded moist  
7 tobacco product used by taking a pinch or a "dip" from a can or tin of tobacco and placing  
8 it between the lip or cheek and the gum. Colloquially, this is known as "dipping." Starting  
9 at age 17, Tony Gwynn "dipped" Defendants' tobacco products.

10          6.       At 17, Tony began dipping regularly as a freshman ballplayer at San Diego  
11 State University. Defendants continued to deluge Tony during his college years with  
12 countless free samples of "dip" tobacco products they purposely adulterated to make more  
13 addictive. All the while, they did not mention either the highly addictive nature of their  
14 products or their toxicity.

15          7.       Defendants wanted Tony and others like him to become tobacco addicts.  
16 Indeed, Defendants' marketing strategy hinged on using talented ballplayers like Tony to  
17 serve as unwitting role models for young kids and free national billboards.

18          8.       Tony Gwynn was the Defendants' marketing dream come true. He was not  
19 only one of the finest baseball talents ever, he was also a tremendously likeable person.  
20 Defendants could not have asked for better publicity. They knew youngsters looking up to  
21 Tony would hope to one day hit like Tony, and be like Tony, so they would also want to  
22 "dip" like Tony.

23          9.       Once Defendants got Tony addicted to their products, he became a self-  
24 described "tobacco junkie." He used 1 ½ to 2 cans or tins of Defendants' Skoal per day. He  
25 always dipped on the right side of his mouth between his lower lip/cheek and gum.  
26  
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1           10. Defendants manipulated Tony by getting him addicted to their tobacco  
2 products and exploited his addiction, using him as an involuntary marketing  
3 spokesperson. This came at a hefty cost: Tony’s health, and eventually his life. Tony  
4 developed salivary gland cancer in the same area where he dipped for most of his life.  
5 Defendants’ tobacco products, which contain a vast array of known carcinogens, caused  
6 that cancer.



19           11. Tony’s wife of thirty-three years, Alicia, and his two children, Anisha and  
20 Tony, Jr., now seek justice for their untimely loss.

21                           **Factual Allegations Common to All Causes of Action**

22           **A. Defendants Knew “Smokeless Tobacco” Was Addictive And Caused Oral Cancer**

23           12. Since the 1960s, medical professionals worldwide have known that smokeless  
24 tobacco products are dangerous and could cause oral cancer.

25           13. Indeed, Defendants, in conjunction with other members of the tobacco  
26 industry invented the term “smokeless tobacco” in the late 1960s in response to increasing  
27 public awareness of the dangers of smoking. Before the tobacco industry misleadingly re-  
28 branded it as “smokeless tobacco,” it was simply known as oral tobacco because it allowed

1 absorption of tobacco and nicotine through the lip and gums in the oral cavity.

2 14. At the same time as rebranding oral tobacco, Defendants helped create an  
3 organization called the Smokeless Tobacco Council. This Council served as a shill for the  
4 Defendants, acting as their propaganda arm and lobbying for the safety and consumption  
5 of oral tobacco products. (See ¶¶ 83-98.)

6 15. The United States Surgeon General advocates against the term “smokeless  
7 tobacco,” to combat the tobacco industry’s misleading and false suggestion that  
8 “smokeless” means “harmless.”<sup>1</sup>

9 16. Defendants’ smokeless<sup>2</sup> tobacco is not harmless. On the contrary, it is an  
10 extremely effective delivery mechanism for nicotine. Since the 1920s, the tobacco  
11 companies have known that nicotine is highly addictive. By 1969, internal documents  
12 show that Altria recognized nicotine was a drug, and feared regulation by the United  
13 States Food and Drug Administration should this knowledge become public.

14 17. The National Institutes of Health, National Institute of Dental and  
15 Craniofacial Research has concluded that “holding an average-size dip in the mouth for  
16 just 30 minutes can deliver as much nicotine as smoking three cigarettes.”<sup>3</sup>

17 18. Defendants created and used sophisticated schemes to trap consumers in an  
18 endless cycle of addiction. (See ¶¶ 41-52.)

19 19. But addiction is only the start. Once hooked, smokeless tobacco users are  
20 constantly exposed to a number of carcinogens and other harmful chemicals. Since the  
21 1970s, Defendants have known that their smokeless tobacco products contain carcinogens  
22 that cause oral cancer.

23 20. In 1974, researchers at the American Health Foundation, including pre-  
24 eminent tobacco scientist Dr. Dietrich Hoffmann and co-author Dr. Stephen Hecht,

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- 25
- 26 1. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC164901/>
  - 27 2. Despite being misleading, Plaintiffs refer to Defendants’ oral tobacco products as “smokeless  
28 tobacco” throughout this Complaint for the sake clarity, as many of Defendants’ documents  
and statements related to these products use this term.
  3. [http://www.nidcr.nih.gov/OralHealth/Topics/SmokelessTobacco/?\\_ga=1.200681254.928300990.1426701855](http://www.nidcr.nih.gov/OralHealth/Topics/SmokelessTobacco/?_ga=1.200681254.928300990.1426701855)

1 confirmed that smokeless tobacco contains an exceedingly large amount of the known  
2 carcinogen tobacco-specific nitrosamine (“TSNA”).

3 21. The health implications of the American Health Foundation’s results were so  
4 urgent that the U.S. Department of Agriculture notified Defendants that their tobacco  
5 products contain extreme amounts of carcinogens even before the study was published.<sup>4</sup>  
6 In the process, the U.S. Department of Agriculture stated that “additives may play a part in  
7 contributing” to the carcinogenic compounds found in the products.

8 22. The American Health Foundation’s findings of extreme levels of known  
9 carcinogens in Defendants’ tobacco products were then published in the journal *Science*, in  
10 October of 1974.

11 23. Rather than acknowledge these findings and address the dangers they  
12 revealed, Defendants instead tried to discredit the study and the esteemed scientists behind  
13 it.<sup>5</sup> They failed.

14 24. Unable to deny the findings any longer, Defendants’ own scientists verified  
15 the American Health Foundation’s results in 1975, confirming for themselves the presence  
16 of known carcinogens in their products.<sup>6</sup>

17 25. Defendants could have acted to reduce the risk of their tobacco products, but  
18 they did not. In the 1960s and 1970s, testing in Sweden demonstrated that the most  
19 abundant carcinogens in smokeless tobacco products, TSNA and Benzopyrene, can be  
20 effectively reduced through special tobacco storage and curing methods.

21 26. Following the Swedish testing, the Swedish smokeless tobacco industry  
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23 4. May 22, 1974 letter from Chief of the Tobacco Laboratory at the U.S. Department of  
24 Agriculture, T.C. Tso, to Vice President of the United States Tobacco Company, W.B. Bennett  
(United States Tobacco Company is the former name of Defendant USSTC).

25 5. *The Origin of NNN in Dark-Fired Tobacco*, by Defendant USSTC’s scientist Jeen-Lee Lin, Dec.  
26 1975, at 1.

26 6. *The Origin of NNN in Dark-Fired Tobacco*, by Defendant USSTC’s scientist Jeen-Lee Lin, Dec.  
27 1975, at 1 (“we did find that many snuffs do have a fair amount of NNN...”); *NNN in tobacco*  
28 – *Summary* by Defendant USSTC’s scientist Richard Manning, Sept. 1975, at 4 (Dr. Hoffman’s  
“results are compatible with ours.”); *N-Nitroso Nornicotine (NNN in Tobacco)* by Richard  
Manning, March 21, 1975, at 1 (“NNN has been unambiguously identified ... from extracts of  
Copenhagen and Skoal.”).

1 adopted these methods to reduce the most abundant carcinogens from smokeless tobacco  
2 products. As a result, oral cancer rates among Swedish smokeless tobacco users are much  
3 lower than among smokeless tobacco users in the United States.

4 27. But, Defendants chose not to adopt the tobacco storage and curing methods  
5 in the United States market despite having the ability and the knowledge that those  
6 methods could effectively remove the most abundant carcinogens, TSNA and  
7 Benzopyrene.

8 28. By 1977 at the latest, USSTC's upper management, including the president of  
9 the tobacco division and Chairman and Chief Executive Officer, Louis F. Bantle, was well  
10 aware of the carcinogens in its tobacco products.

11 29. In 1984, USSTC's own Research and Development Department advised one of  
12 its officers that the amount of TSNA in Defendants' smokeless tobacco products are "the  
13 highest levels of carcinogenic nitrosamines reported in a consumer product that is taken  
14 into the body."<sup>7</sup>

15 30. "The[] total level [of TSNA] in 1 g[ram] of moist snuff, of the types used by  
16 millions of snuff dippers in the USA, is up to 30,000 times higher than the regulated levels  
17 of nitrosamines in other products."<sup>8</sup>

18 31. Today, evidence that the Defendants' tobacco products cause human cancer is  
19 irrefutable. The World Health Organization's International Agency for Research on Cancer  
20 has concluded that "[s]mokeless tobacco causes cancers of the oral cavity," "[s]mokeless  
21 tobacco is *carcinogenic to humans*," and that "all of the currently recognized criteria to  
22 establish that a drug produces dependence are fulfilled in the case of smokeless tobacco  
23 products, which are psychoactive and induce a compulsive pattern of use. . . [A]ddiction  
24  
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26 7. July 18, 1984, Intra-Company Correspondence from Defendant USSTC's Director of Research  
27 & Development Services, Thomas I. Ito to Defendant USSTC's Senior Vice President of  
28 Manufacturing, Tim Cornel, at 2.

8. *Tobacco-specific nitrosamines, an important group of carcinogens in tobacco and tobacco smoke*, S. Hecht and D. Hoffman, at 876.



1 to smokeless tobacco is analogous to addiction to nicotine.”<sup>9</sup>

2 32. The United States Surgeon General has concluded that smokeless tobacco  
3 “can cause cancer and a number of noncancerous oral conditions and can lead to nicotine  
4 addiction and dependence.”<sup>10</sup>

5 33. According to the United States Centers for Disease Control and Prevention  
6 and the American Academy of Otolaryngology, smokeless tobacco products also contain  
7 cancer-causing radioactive polonium 210, formaldehyde, cyanide, and the toxic heavy  
8 metals mercury, lead, arsenic, cadmium, chromium, cobalt, nickel, and beryllium.<sup>11</sup>

9 34. According to the United States Food and Drug Administration, Defendants’  
10 smokeless tobacco products including Skoal, Copenhagen, and Happy Days, contain more  
11 than 30 known carcinogens. The most abundant of these carcinogens are TSNAs and  
12 Benzopyrene. Out of the various types of TSNAs, the most carcinogenic are  
13 N-nitrosornicotine (NNN) and nicotine-derived nitrosamine ketone (NNK), which are  
14 known to induce cancer through metabolism and chemical binding to DNA.

15 35. Users of smokeless tobacco products, including Defendants’ Skoal,  
16 Copenhagen, and Happy Days, are “five times as likely as nonusers to develop cancer of  
17 the salivary glands.”<sup>12</sup>

18 36. Users of smokeless tobacco products, including Defendants’ Skoal,  
19 Copenhagen, and Happy Days, face “11 times the risk of cancers of the mouth and gum as  
20 nonusers of any tobacco product.”<sup>13</sup>

21 37. Users of smokeless tobacco products, including Defendants’ Skoal,  
22 Copenhagen, and Happy Days, face “excess risk of cancers of the mouth and gum,  
23 oropharynx, larynx, and salivary glands. For each of these sites, the cancer risks

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25 9. *Smokeless Tobacco and Some Tobacco-specific N-Nitrosamines*, at 370, (2007) (emphasis in  
26 original); *Smokeless Tobacco and Some Tobacco-specific N-Nitrosamines*, at 368, (2007)

27 10. *Nicotine Addiction, A Report of the Surgeon General*, (1988); *The Health Consequences of Using  
28 Smokeless Tobacco* (1986)

11. [http://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/smokeless/health\\_effects/  
index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/smokeless/health_effects/index.htm); <http://www.entnet.org/content/smokeless-tobacco>

12. *Impact of Smoking and Smokeless Tobacco on the Risk of Cancer of the Head and Neck* (1986) at 107.

13. *Impact of Smoking and Smokeless Tobacco on the Risk of Cancer of the Head and Neck* (1986) at 107.

1 experienced by users of smokeless tobacco were greater than those observed among  
2 smokers of up to 20 cigarettes a day.”<sup>14</sup>

3 38. As a matter of corporate policy, Defendants have grudgingly now adopted  
4 the statements of public health authorities that smokeless tobacco products are addictive  
5 and cause serious diseases, including cancer.<sup>15</sup> However, they had not adopted these  
6 statements at the time when they exposed Tony Gwynn to their marketing and advertising  
7 as a minor, and inundated him with free samples as a college student, which is when he  
8 became addicted to their product.

9 39. Despite having now adopted these statements as a matter of corporate policy,  
10 Defendants continue to dispute the fact that smokeless tobacco products are addictive and  
11 cause cancer, as a matter of science, to this day. To appease government regulators and to  
12 gain a seat at the table, Defendants pretend to agree with public health authorities and the  
13 undisputable science. But when faced with the prospect of being held accountable for the  
14 deaths caused by their products, Defendants take the opposite position that nicotine is not  
15 addictive and tobacco does not cause cancer, just as they did in a now infamous 1994  
16 Congressional hearing.<sup>16</sup>

## 17 **B. Defendants Rely on Addiction to Ensure Continued Revenue**

18 40. Defendants’ business model is – and always has been – one of addiction.  
19 Once someone starts using one of their products, chances are that person will be a user for  
20 life. Not because the person doesn’t want to stop, but because he or she can’t.  
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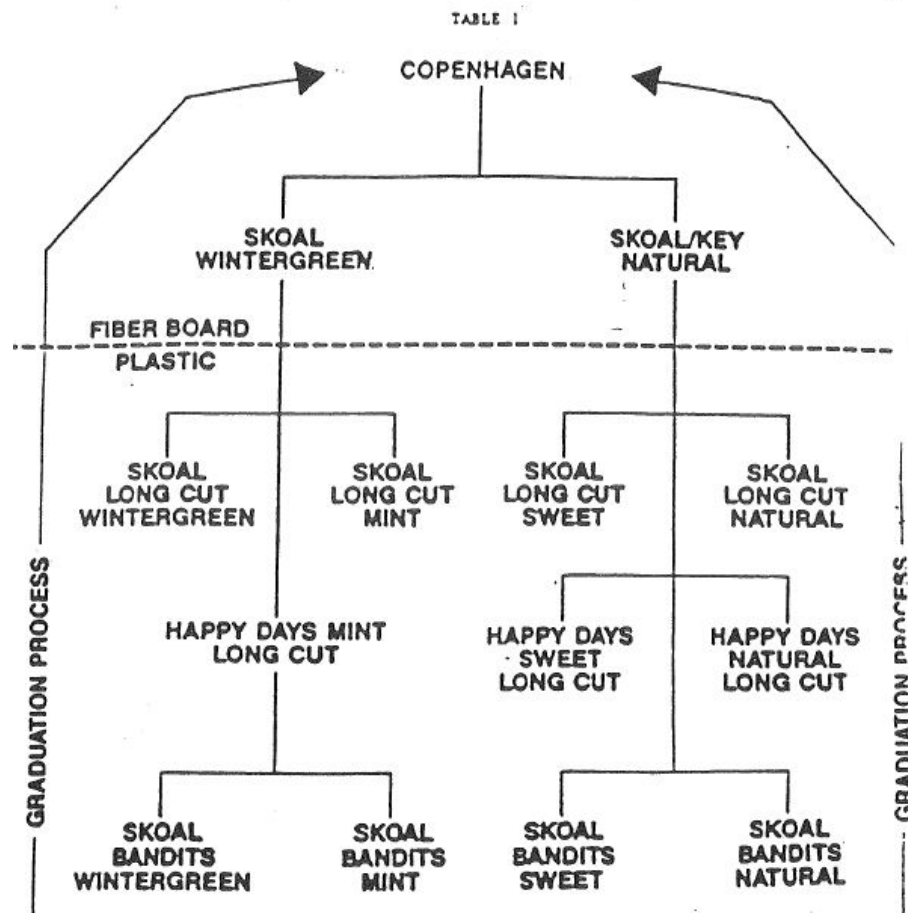
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26 14. *Impact of Smoking and Smokeless Tobacco on the Risk of Cancer of the Head and Neck* (1986) at 108.

27 15. <http://www.altria.com/our-companies/ussmokeless/smokeless-use-health-issues/Pages/default.aspx>

28 16. <http://www.nytimes.com/1994/04/15/us/tobacco-chiefs-say-cigarettes-aren-t-addictive.html?pagewanted=all>

41. Defendants shamelessly encouraged consumers to start using their smokeless tobacco products with lower nicotine levels, understanding that those consumers' inevitable nicotine dependence would force them to use products with higher and higher nicotine levels, trapping them in an endless cycle of addiction. Defendants' internal documents show they intended this all along. Their marketing strategy was called "graduation."

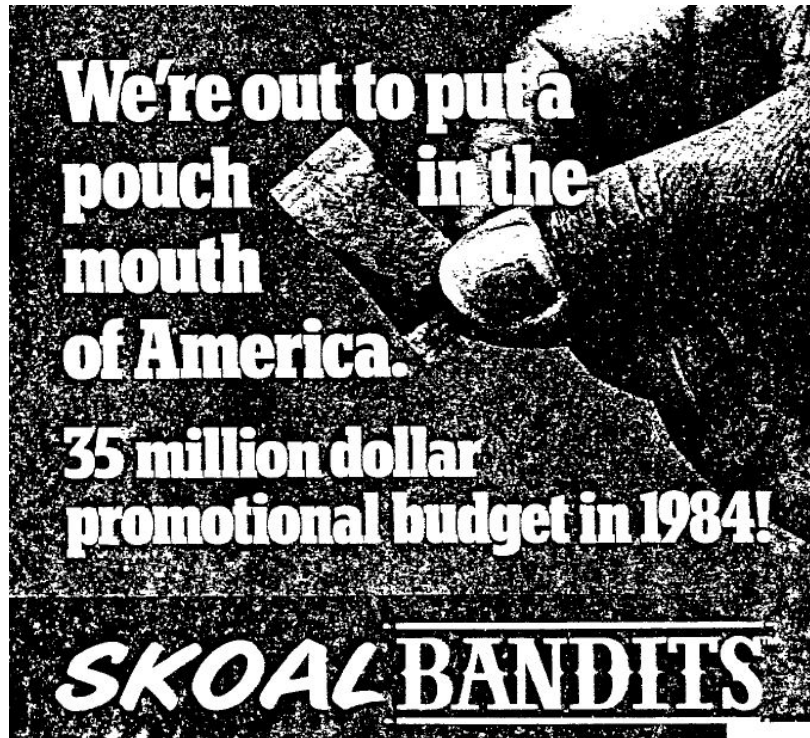


42. In support of their "graduation" strategy, Defendants developed and marketed more palatable varieties of moist smokeless tobacco, including mint and fruit flavored varieties with lower nicotine levels. Internal documents show Defendants developed and pushed these varieties, including Happy Days, on the public through free samples to advance the "graduation pleasure process."

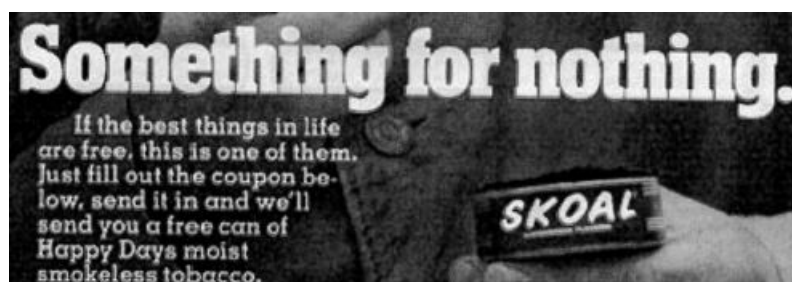
without sampling) is "dead". Second, it must be understood that Happy Days was not introduced in the early 1970's as anything but a brand that could begin the graduation pleasure process (Happy Days - to Skoal - to Copenhagen); and growth rates between it and Skoal in many, many areas prove the point. Third,

1 **Free.** Just fill out the coupon below, send it in  
2 and we'll send you a can of mild Happy  
3 Days, one of America's favorite "smokeless  
4 tobaccos." My brand is Skoal. But, if you're just  
starting out, I'd suggest easygoing Happy Days.

5 43. Defendants also developed and aggressively marketed Skoal Bandits, a line of  
6 pre-packaged and pre-moistened miniature pouches filled with individual portions of  
7 mint, fruit, or natural flavored smokeless tobacco of lower nicotine levels.



20 44. Defendants provided free samples of the more palatable varieties of their  
21 loose smokeless tobacco products and Skoal Bandits products through in-person or mail-in  
22 promotions. The varieties Defendants pushed as free samples were designed to have lower  
23 nicotine delivery levels, to avoid the problem of new users becoming sick and being turned  
24 off before becoming addicted.



1  
2 45. Defendants' internal documents show they planned on existing users, who  
3 they had gotten hooked on their more palatable varieties, developing nicotine resistance  
4 that would cause them to "graduate" up to the stronger and higher-nicotine varieties,  
5 including Copenhagen, to satisfy their addiction.

6 **Skoal. Same existing user need for**  
7 **additional product strenght will help**  
8 **Copenhagen to continue to grow.**

9 46. But, even normal addiction was not enough.

10 47. Defendants knew that their market share was dependent on their products  
11 being able to deliver high levels of nicotine to users once they were hooked. The more  
12 nicotine, the greater the market share.

13 48. By 1975, Defendants also knew that nicotine was the probable source of the  
14 known carcinogenic TSNA's found in their products.<sup>17</sup>

15 49. As early as 1967, Defendants had the technical expertise and equipment to  
16 select tobacco leaves with lower nicotine content and to process their products to remove  
17 nicotine.<sup>18</sup> Nevertheless, even after concluding that the nicotine was the source of  
18 carcinogens in their products, they did not try to reduce nicotine to find out whether the  
19 carcinogenic TSNA's would also be reduced.<sup>19</sup>

20 50. Instead, Defendants focused on *increased* nicotine delivery. Defendants knew  
21 that the amount of nicotine absorbed through the lining of consumers' mouths and gums  
22 can be increased by raising the pH level of smokeless tobacco products, making them more  
23 alkaline. So, they purposefully adulterated their products by adding chemicals, including  
24 ammonium carbonate and sodium carbonate, to increase their pH level and alkalinity,  
25 increasing consumers' intake of addictive nicotine.

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26 17. *The Origin of NNN in Dark-Fired Tobacco*, by Defendant USSTC's scientist Jeen-Lee Lin, Dec.  
27 1975, at 4 ("nicotine is the probable source of NNN.").

28 18. U.S. Tobacco Co. Times, March 1967, Vol. 2, No. 11, at 5.

19. Deposition of Defendant USSTC's Vice President of R & D, Richard Manning, in *McMullin v. USSTC* at 116.

1           51.     And, sodium carbonate and ammonium carbonate are just two out of the 562  
2 additives that Defendants told Congress they add to their smokeless tobacco products.

3           52.     Defendants also purposefully adulterated their products to manipulate  
4 nicotine delivery through the cut of their tobacco products. Because nicotine is more  
5 quickly released from finely cut smokeless tobacco, Defendants purposefully engineered  
6 the cut of their products to manipulate nicotine delivery throughout their various product  
7 lines.

8           53.     Because the most abundant carcinogens in Defendants' smokeless tobacco  
9 products are found in the nicotine, by increasing the amount of nicotine delivered to their  
10 consumers through purposeful adulteration, Defendants also likely increased the amount  
11 of carcinogens delivered to their consumers in the process.

12          54.     Of course, for their addiction strategy to work, Defendants had to get people  
13 who would not otherwise try smokeless tobacco to sample it. And, while free samples  
14 were effective, Defendants saw a bigger marketing gimmick.

15          55.     By at least 1978, internal documents show that Defendants had started  
16 racially targeting "ethnic markets," including African Americans, as future nicotine addicts  
17 they could exploit as lifelong users of their tobacco products. Defendants purposefully  
18 used future Hall of Fame African-American running back Earl Campbell to push their  
19 smokeless tobacco products on African-American men through nationwide print  
20 advertising.

21           **Ethnic Markets**

**Campbell print ad will appear in Amsterdam  
22 News, Ebony, Army Times and Off Duty.  
23 Other ethnic publications are being  
            investigated.**

24          56.     By 1983, Defendants' racial targeting had grown into a full-blown national  
25 marketing campaign specifically targeting African-American men. Internal documents  
26 called this the ...

27                   **BLACK    MARKETING    PROGRAM**  
28

1 57. Defendants' identified the African-American community as an "untapped"  
2 market where significant numbers were likely to try and quickly become addicted to their  
3 dangerous smokeless tobacco products.

4 **Product Management feels this program is compatible with our over-all mass market tactics and can**  
5 **achieve significant levels of trial & product adoption in a relatively short period of time in this**  
6 **"untapped" market place.**

6 58. Defendants' "Black Marketing Program" included "Project Apollo," which  
7 used demographic data to identify and target the nine largest population centers of  
8 African-American men nationwide.

9

10 **PROJECT APOLLO MARKETS**

11 **% U.S. BLACK MEN**

12 **18-49**

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<b>NEW YORK</b>	<b>10.2</b>
<b>CHICAGO</b>	<b>5.6</b>
<b>LOS ANGELES</b>	<b>4.5</b>
<b>PHILADELPHIA</b>	<b>3.9</b>
<b>WASHINGTON</b>	<b>3.7</b>
<b>HOUSTON</b>	<b>2.7</b>
<b>ATLANTA</b>	<b>2.6</b>
<b>BALTIMORE</b>	<b>2.3</b>
<b>DETROIT</b>	<b>3.2</b>

21

22 59. Defendants blanketed these nine cities with a sophisticated multi-media and  
23 live marketing campaign including local radio, print, television, billboards, and sponsored  
24 talent shows all designed to target African-American men.

25 60. Defendants gave away up 1,600 free samples at each talent show they  
26 organized. They also created mobile sampling units to get their addictive tobacco products  
27 into the mouths of even more African-American men.

28

1           61. Defendants' "Black Marketing Program" targeted African-Americans whose  
2 work made smoking difficult, and those who were concerned about "the possible health  
3 hazards of smoking." This was indicative of Defendants' broader campaign of misleading  
4 consumers in general into thinking smokeless tobacco was harmless tobacco, despite  
5 knowing otherwise.

6           ● **MANY BLACK MALES ARE EMPLOYED IN URBAN BLUE COLLAR OCCUPATIONS WHERE**  
7           **SMOKING IS OFTEN PROHIBITED OR DIFFICULT.**

8           ● **THERE IS A GROWING PUBLIC AWARENESS OF THE POSSIBLE HEALTH HAZARDS OF**  
9           **SMOKING.**

10           62. Internal documents show that Defendants again used Earl Campbell to push  
11 their tobacco products on African-American men nationwide, as a part of "Project Apollo."

12                           **Utilize Earl Campbell in the 9 Apollo markets**

13  
14           63. Defendants were so successful in racially targeting African Americans, that  
15 their tactics were discussed in the scholarly publication *Business and Society Review*,  
16 describing that "the 'underclass' is the prey of the companies selling legal poisons."

17                           **The Marketing of Vices**

18  
19                           **by DJATA                           to Black Consumers**

20  
21  
22           64. In addition to targeting African-American men at large, Defendants also  
23 targeted athletes and minors.

24           65. Throughout the 1970s and 1980s, Defendants conducted massive advertising  
25 and marketing campaigns using professional sports figures to promote dipping. In just  
26 one year, Defendants spent \$12 million, hoping to reach 68 million men repetitively  
27 through network television and national magazines.

28           66. Defendants advertised during network television broadcasts of major



1 sporting events including the World Series, Monday Night Baseball, All Star Game,  
2 Baseball Playoffs, Monday Nite Football, Wide World of Sports, NCAA basketball and  
3 football, Boxing, the Olympics, the Kentucky Derby, and the syndicated Rodeo Superstars  
4 Championship.

5 67. Defendants placed advertisements in national magazines including Sports  
6 Illustrated, Sport, Sports Afield, Inside Sports, Sport National Enquirer, Sporting News,  
7 Texas Sports, People, Ebony, Rolling Stone, T.V. Guide, Parade, Outdoor Life, Outside,  
8 Field & Stream, National Lampoon, and Playboy.

9 68. Defendants' advertisements targeted male athletes and minors by featuring  
10 well recognized and widely respected professional sports figures including Carlton Fisk  
11 (baseball), Bobby Murcer (baseball), Earl Campbell (football), Walt Garrison (football and  
12 rodeo), Steve Towle (football), Harry Gant (NASCAR), and Shep Messing (soccer).

13 69. Defendants used athletes to extoll the "virtue" that smokeless tobacco  
14 allowed for hand-free tobacco use during games.

15 70. However, while Defendants expended millions and millions of marketing  
16 dollars on these advertisements, they chose not to spend one cent of their research and  
17 development budget on the health effects of their products.<sup>20</sup> Of course, they already knew  
18 how dangerous their products were.

19 71. Defendants used professional sports figures to spread the lie that the use of  
20 these products was consistent with good health and fitness, and that they are a healthy  
21 alternative to smoking. Their marketing staff wrote:

22 as well. This can be accomplished in several ways. By as-  
23 sociating it with familiar sports and sports figures one  
24 creates an image of fitness and the outdoors. It can also  
25 be used in reference to ones health as a substitute for smo-  
26 king (enclosed are several letters that emphasize this appeal).

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27  
28 20. Deposition of Defendant USSTC's Director of Research and Development Clifford Brown  
Bennett in *McMullin v. USSTC* at 100.

1           72.     Following the United States Surgeon General's first report linking smoking  
2 with cancer in 1964, anti-smoking campaigns from the American Cancer Society and others  
3 warned the public about the dangers of smoking tobacco.



1           73.     As the public became more aware of the dangers of smoking, Defendants not  
2 only rebranded their oral tobacco products as “smokeless” tobacco, but they created  
3 advertising and marketing campaigns targeting non-smokers and those concerned about  
4 the health effects of smoking, using professional sports figures to tell the public that  
5 “smokeless” tobacco was a safe alternative.

6  
7  
8  
9  
10           **Take a pouch**  
11           **instead of a puff.**<sup>TM</sup>



12  
13  
14           **How you can**  
15           **enjoy tobacco**  
16           **without smoking.**



1           74. Defendants instructed retailers and distributors on how to target non-  
2 smokers, reinforcing the notion that smokeless tobacco was a safe alternative to smoking.



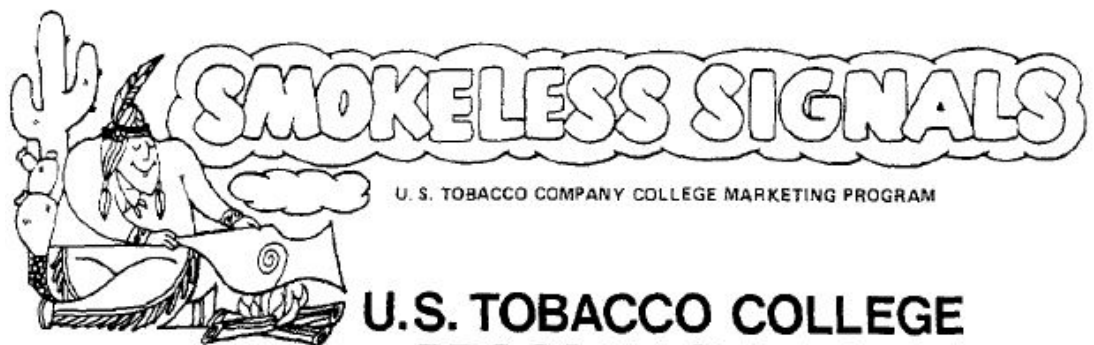
13           **How to sell tobacco**  
14           **to people**  
15           **who don't smoke.**

16           75. Defendants intentionally misled consumers into believing that their  
17 smokeless tobacco products were a safe means of quitting smoking. Their marketing staff  
18 wrote:

19           have met with fairly good response. One of the primary con-  
20           cerns appears to be the quitting of smoking and thusly should  
21           be emphasized.

22           76. The tobacco industry's attempts to mislead the public by claiming that  
23 smokeless tobacco is a safe alternative to smoking continue to this day. On May 11, 2015  
24 the United States Food and Drug Administration rejected the tobacco industry's petition to  
25 allow federally mandated warning labels claiming that smokeless tobacco is less dangerous  
26 than cigarettes. The FDA said that current scientific evidence does not support the  
27 industry's proposal, and that the proposed change would not promote greater public  
28 understanding of the products' health risks.

1           77. Throughout the 1970s and 1980s, Defendants' smokeless tobacco campaigns  
2 also targeted college students and athletes through a coordinated nationwide network of  
3 on-campus marketing programs. These programs used students as independent  
4 contractors to provide free samples of their smokeless tobacco products to their peers.  
5 These independent contractors instructed their fellow students on how to effectively use  
6 these products as nicotine drug-delivery devices, and organized special events on-campus  
7 around smokeless tobacco use. Defendants even distributed a regular newsletter touting  
8 the extent of their college program's nationwide infiltration.



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## U.S. TOBACCO COLLEGE PROGRAM SHINES FROM COAST TO COAST



1           78. Defendants' internal documents show that their on-campus college  
2 marketing programs were specifically designed to entice students, who they refer to as  
3 "future growth base," into becoming lifelong nicotine addicts by starting out with free  
4 samples and relying on peer pressure to promote smokeless tobacco use.

5           2. Develop new users of Skoal and  
6 Copenhagen in the young adult  
7 market (future growth base).

1. Continue sampling efforts.  
2. Develop peer group pressure and  
product acceptance among campus  
organizations towards the usage  
of Skoal and Copenhagen.

8  
9           79. Defendants shamelessly targeted kids. They developed sweet, fruit, and mint  
10 flavored product lines to appeal to minors, and used celebrity sports figures known to be  
11 their role models. Internal documents show that Defendants knew that many of their  
12 consumers were underage and intentionally placed advertisements to reach significant  
13 underage demographics. Defendants even provided free samples to children whose  
14 allowance could not support their addiction.

15           retailers indicated that they had turned down numerous consumers of smokeless  
16 tobacco products due to their present age. A lot of our consumers are under 18  
17 years of age and have been users of smokeless tobacco for years and now they are  
18 being turned down. I feel you should be informed of this matter. I pursued

19           Warwick Advertising since 1972:

20           - Marketing plan focused on weekend sports with an average of 8-10% teenage  
21 audience.

22           There are a lot of us that play  
23 High School sports & we don't have  
24 time for a job. All we get is  
25 about \$5.00 a week from our  
26 parents. So when you dip 7 or 8  
27 cans a week like me \$5.00 will  
28 not even cover the whole week.

80. Defendants' intentional targeting of children creates "a chemical time bomb

1 ticking in the mouths of hundreds of thousands of boys in this country.”<sup>21</sup>

2 81. According to the United States Surgeon General, the average age that a user  
3 starts using Defendants’ smokeless tobacco products is only 9 ½. This is no accident. As  
4 one tobacco executive explained, “once a kid’s hooked, he doesn’t leave.”<sup>22</sup>

5 82. So Defendants developed their sweet and fruit flavors to entice children.  
6 Defendants’ own sales staff put it best, “Cherry Skoal is for someone who likes the taste of  
7 candy, if you know what I mean.”<sup>23</sup>

### 8 **C. Defendants Lied To The Public About The Dangers Of Their Products**

9 83. Starting in the 1960s, Defendants engaged in a concerted campaign of  
10 disinformation through the Smokeless Tobacco Council, the Smokeless Tobacco Research  
11 Council, the California Distributors Association, and others to intentionally mislead and  
12 misinform the public about the risks associated with smokeless tobacco products, including  
13 Skoal, Copenhagen, and Happy Days.

14 84. The California Distributors Association was known as the California  
15 Association of Tobacco and Candy Distributors until the 1990s, making it a natural fit to  
16 advocate against regulation of Defendants’ candy flavored smokeless tobacco products,  
17 among others. This lobbying group advanced Defendants’ targeting of minors and other  
18 groups for use of their dangerous and addictive products.

19 85. The California Distributors Association proudly declares “We are experts in  
20 government, we are experts in advocacy, and we are experts in strategy development and  
21 execution.” It used that expertise to help Defendants conceal the known dangers of their  
22 smokeless tobacco products from California consumers for decades by advancing  
23 Defendants’ “interests before the legislative, administrative, regulatory and executive  
24  
25

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26 21. Wallis, *Into the Mouths of Babes*, TIME, July 15, 1985, at 68 (quoting Dr. Gregory Conolly,  
27 Director of the Dental Division of the Massachusetts Department of Public Health).

28 22. 132 CONG. REC. H243, H245 (daily ed. Feb. 3, 1986) (citing official industry statements and  
ad content).

23. *The Wall Street Journal*, Oct. 26, 1994, p. A1.

1 branches of government.”<sup>24</sup>

2 86. Defendants’ national lobbying arm, the Smokeless Tobacco Council, praised  
3 the California Distributors Association’s “unparalleled record of success” in protecting  
4 Defendants’ ongoing campaign of deception as to the danger of their products.

5 *The California Association has an unparalleled record of success in protecting our industry from the blatant attacks of the politically  
6 powerful minority who would like to tax us out of business, curtail our right to free speech and dictate the life styles of our customers.*

7 87. The California Distributors Association worked in “close cooperation” with  
8 the smokeless tobacco industry, of which Defendants were by far the dominant  
9 stakeholders. The California Distributors Association’s campaign of deception was at the  
10 forefront of the Defendants’ national propaganda battle, misleading and misinforming the  
11 public about the risks associated with smokeless tobacco products through opposition to  
12 consumer warnings of what Defendants knew at the time to be the dangerous, addictive,  
13 carcinogenic, and deadly properties of their products.

14 *In a very real sense, the industry takes its cues on many issues from what you do here. The close cooperation that exists between  
15 the industry and the Association assures that such ominous issues as the San Francisco point-of-sale warning ordinance don’t get  
out of hand, to set dangerous nationwide precedents.*

16 88. At least one of Defendants’ employees and executives held a leadership role,  
17 including the executive director position, within the California Distributors Association.

18 89. In May of 1968, a public relations firm named Prudential Public Relations,  
19 Inc. submitted “A Proposed Institutional Public Relations Program” that first coined the  
20 misleading term “smokeless tobacco.” This proposal suggested the creation of an  
21 organization called the Smokeless Tobacco Council to advocate for the safe consumption of  
22 smokeless tobacco products.

23 90. From 1970 to 1984, the very same person who headed the Smokeless Tobacco  
24 Council also ran Prudential Public Relations.

25 91. Until 1981, Defendants used the Smokeless Tobacco Council, which included  
26 an internal Scientific Research Committee, to fund biased research and studies of smokeless  
27

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28 24. <http://www.californiadistributorsassociation.com/about-us/>



1 tobacco usage and health effects as propaganda to create the illusion of scientific  
2 controversy where no legitimate controversy actually existed.

3 92. By 1981, the "scientific" function of the Smokeless Tobacco Council had  
4 become so massive that a new group called the Smokeless Tobacco Research Council was  
5 created for the sole purpose of funding bogus studies and debunking valid ones.  
6 Defendants continued to mislead the public regarding the scientific consensus that  
7 smokeless tobacco is addictive and dangerous through both of these organizations.

8 93. Throughout their existence, the Smokeless Tobacco Council and Smokeless  
9 Tobacco Research Council raised money for misleading "scientific" efforts by collecting  
10 dues from their smokeless tobacco industry member organizations, of which Defendants  
11 were the most prominent and profitable.

12 94. Throughout their existence, the Boards of Directors of the Smokeless Tobacco  
13 Council and Smokeless Tobacco Research Council were comprised of executives, officers,  
14 and scientists employed by their smokeless tobacco industry member organizations,  
15 including Defendants.

16 95. Throughout their existence, the Smokeless Tobacco Council and Smokeless  
17 Tobacco Research Council acted as the agents of Defendants, and each of them.

18 96. Having learned its lesson from past experience in the cigarette arena, internal  
19 documents show the Smokeless Tobacco Council and Smokeless Tobacco Research Council  
20 proactively aimed to sow doubt and confusion about whether Defendants' products cause  
21 disease and death.

22 that the Smokeless Tobacco Council would be well advised to  
23 look at the chain of cause and effect consequences (see  
24 Appendix--Exhibit C) which the cigarette industry had been  
25 challenged with by the Federal Government since 1955. Perhaps  
26 the present situation of the Council is close to that of the  
27 cigarette industry circa 1955. The question of cigarettes'  
28

1           97. Internal documents also show that the Smokeless Tobacco Council and  
2 Smokeless Tobacco Research Council took an “offensive posture” to purposefully exploit  
3 the scientific community and to hide the dangers of its smokeless tobacco products from  
4 the public. They aimed to be even more aggressive than the Tobacco Institute, the  
5 analogous propaganda arm of the cigarette industry that conspired with tobacco  
6 companies to mislead the public about the dangers of smoking for 40 years and was  
7 dubbed by Senator Ted Kennedy “the most effective lobby on Capitol Hill.”

8           responsibility of the President. The most serious threat to the  
9 industry could be in the products liability area, Federal  
10 labeling and/or via oppressive taxes. In order to avoid or  
11 mitigate such threats, strategies must be devised that are  
12 consistent with the internal strengths of the organizations.  
13 Beyond avoiding such threats, the STC strategic plan must  
14 identify opportunities to exploit. Unlike The Tobacco  
15 Institute which often finds itself in a defensive posture, the  
16 Smokeless Industry can position itself in an offensive  
17 posture. That is why I added the marketing function to the  
18 table of organization. I believe there are opportunities to  
19 exploit for the Smokeless Tobacco Industry from the securities  
20 analyst community to the health community.

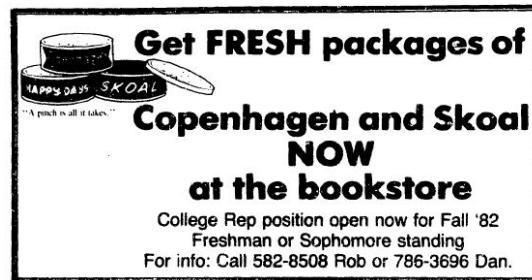
15           98. Internal documents show that the Smokeless Tobacco Council and Smokeless  
16 Tobacco Research Council prioritized finding “objective” scientists and medical  
17 professionals to undercut the prevailing “bad science” that smokeless tobacco is  
18 dangerous, and criticized studies released by the National Institutes of Health and others.

20           Identify "objective" scientists  
21 physicians, and dentists who will  
22 speak out against "bad science."

20           Critique NIH and other studies  
21 dealing with the ideology of  
22 advocacy (sic, bad) science.

1 **D. Defendants' Marketing And Advertising Scheme Reaches San Diego State**  
2 **University**

3 99. Altria and USSTC, collectively referred to as the "Manufacturer Defendants,"  
4 ran an on-campus marketing program at San Diego State University, Tony Gwynn's *alma*  
5 *mater*, during the time he was a student there, between 1977 and 1981. Defendants actively  
6 recruited students to work as independent contractors and promote the use of addictive  
7 and dangerous smokeless tobacco products to fellow students and athletes.



13 100. Between 1977 and 1981, defendants Doug Derner, Don Feblowitz, and Rob  
14 Quinn, acted as independent contractors of the Manufacturer Defendants conducting on-  
15 campus marketing of smokeless tobacco products at San Diego State. During this time,  
16 defendants Doug Derner, Don Feblowitz, and Rob Quinn organized and conducted special  
17 events on-campus at San Diego State to show students and athletes how to use Defendants'  
18 tobacco products as nicotine delivery devices and to distribute free samples of these  
19 addictive products to new consumers.

20 101. Defendants Doug Derner, Don Feblowitz, and Rob Quinn never warned  
21 others about the addictive properties of smokeless tobacco products or that these products  
22 are dangerous and cause cancer.

23 102. Furthermore, between 1977 and 1981, the packaging of Defendants'  
24 smokeless tobacco products included no warnings that they were purposefully adulterated,  
25 addictive, caused cancer, and were otherwise dangerous. Warnings did not appear on  
26 smokeless tobacco products until 1987, about ten years after Defendants' targeting of Tony  
27 had successfully gotten him addicted to their products by providing him free samples.  
28

1 103. Not only did Defendants fail to warn Tony, in 1980 they affirmatively  
2 instructed him and other users to dismiss signs of injury, including "irritation on the gum,"  
3 and to continue using the products because "learning is part of the fun and these things  
4 pass with practice."

5 **Q:** Does "Going Smokeless" take  
6 some getting used to?  
7 **A:** Sure. At first you could feel a slight  
8 irritation on the gum, and the tobacco  
9 *may move around your mouth more*  
10 *than it should; and you might work up*  
11 *too much talive. But learning is part of*  
12 *the fun and these things pass with prac-*  
13 *tice. Two weeks should make you a "pro."*

10 104. Defendants Don Feblowitz and Rob Quinn were so effective in achieving the  
11 college marketing program's goals of providing free addictive samples of smokeless  
12 tobacco products to students and athletes at San Diego State that they were recognized as  
13 among the top representatives in the entire nationwide program. San Diego State was the  
14 only college with two representatives recognized for this dubious honor.

15 HATS OFF!  
16 TO THE SKOALASTIC AWARD WINNERS  
17 Congratulations on a supreme effort on  
18 your college campus. Your hard work,  
19 enthusiam and achievement on your campus  
20 has exemplified the highest standards of  
21 excellence in our College Program. It is  
22 with congratulations and appreciation that  
23 you earn the merit of being placed on the  
24 College Marketing Program's Skoalastic  
25 Honor Roll. We salute all of you for an  
26 outstanding job as College Representatives.

20 Joe Augustus  
Western New England College

21 Barry Bender  
University of North Dakota

22 Don Feblowitz  
San Diego State University

23 Dave Garvey  
University of Rhode Island

24 Monte Hamilton  
Iowa State University

25 Gary Hazelitt  
California State at Fullerton

26 Tom LoBosco  
S.U.N.Y. Oneonta

27 Frank Nevins  
University of Connecticut

27 Dean Sanchez  
Chico State University

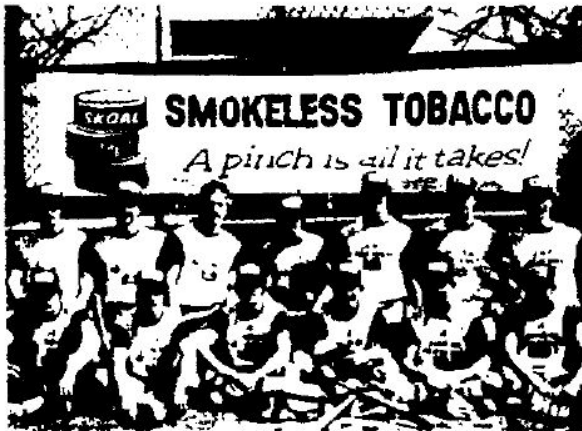
28 Rob Quinn  
San Diego State University

28 Joe Stokely  
University of Nebraska

28 Bob Volkman  
University of Wisconsin



1           105. Between 1977 and 1981, Defendants Don Feblowitz and Rob Quinn  
2 organized, and the Manufacturing Defendants sponsored, an intramural softball team  
3 named the "Skoal Brothers" at San Diego State. The Skoal Brothers specifically targeted  
4 students, athletes, and spectators by providing them with free samples of the purposefully  
5 adulterated and addictive smokeless tobacco products with no warnings they were  
6 dangerous.



7  
8  
9  
10  
11  
12  
13  
14 *The champion Skoal Brothers Softball team from San Diego State University pose for a team picture.*

From: Rob Quinn, Don Feblowitz  
Of: San Diego State University

Intramural softball is real big here at San Diego State. Over the two month season our softball team, the Skoal Brothers played an eight game season, and then advanced to a double elimination tournament. There were over one hundred and twenty teams involved, and we are proud to say that we reigned above them and finished first.

It was a very big success because the team and players were very well known all over campus. We had the banner at each game, sampled each game, and definitely started new users of our products.

There were over one hundred spectators at the finals, and from the write up we got in the paper, the whole school knows of the "Skoal Brothers." This softball season will be remembered as the one when smokeless fever took the league by a storm.

15  
16  
17           106. Defendants Don Feblowitz and Rob Quinn organized, and the Manufacturing  
18 Defendants sponsored, an intramural Over-the-Line Tournament at San Diego State  
19 targeting ballplayers.

20           The Over-the-Line Tournament held  
21 Jan. 29-31 at San Diego State University  
22 was a complete success for all those  
23 involved. There were over 65 teams of 3  
24 participating in the three day event at the  
25 San Diego State Intramural Fields. As the  
26 tournament progressed, many spectators,  
27 joggers, and baseball players, convened in  
28 the area and all were sampled effectively  
one-on-one. College Reps Don Feblowitz and  
Rob Quinn coordinated the event, and were  
greatly assisted by Division Manager Laurie  
Siersema, College Coordinator Steve Africk,  
and Sales Reps Chris Bondorant and Buddy  
Rycoff. Over 800 cans of smokeless were  
sampled, and the area was smothered with  
bumper stickers, and Skoal Bandit posters.

27 **E. Defendants Sought To Make Tony Gwynn A Smokeless Tobacco Addict**

28           107. Tony was Defendants' marketing dream come true. As an athlete, college

1 student, minor, and African American, he was oblivious to the fact that he was squarely in  
2 the crosshairs of four different targeted marketing campaigns by Defendants.

3 108. Starting in the 1970s and continuing through the 1980s, Tony was  
4 continuously and repeatedly targeted by and exposed to Defendants' extensive marketing  
5 and advertising campaign, including television commercials, magazine advertisements,  
6 other forms of print and broadcast media, and live events involving sampling.

7 109. As an aspiring professional athlete, Tony was an avid follower of sports from  
8 a young age. He consistently watched televised sporting events, read sports magazines,  
9 and respected professional sports figures. Because of this, Tony was the perfect target for  
10 Defendants' advertisements, which he regularly viewed and relied upon. He also regularly  
11 clipped and mailed in Defendants' magazine coupon offers for free samples of their  
12 smokeless tobacco products.

13 110. Throughout the 1970s, California law prohibited smokeless tobacco sales to  
14 any person under the age of 18.

15 111. Tony attended college at San Diego State from 1977 to 1981, during which he  
16 was targeted by Defendants.

17 112. In 1977 and 1978 Tony was a 17-year-old freshman at San Diego State.

18 113. Tony played basketball for San Diego State during his freshman year and  
19 played baseball there during his sophomore, junior, and senior years.

20 114. Tony was a focused, dedicated, and hard-working athlete who valued his  
21 health and fitness. He specifically avoided drinking or smoking because they could hurt  
22 his performance on the field.

23 115. Yet, seizing on the opportunity to use him and neglecting his health and  
24 wellbeing, Defendant Doug Derner regularly provided Tony with free samples of the  
25 purposefully adulterated and addictive smokeless tobacco products with no warning they  
26 were dangerous, while acting as an independent contractor as a part of Defendants' college  
27 marketing program.

28 116. Defendant Doug Derner provided so many free samples and promotional

1 goods to the San Diego State baseball team that they specifically identified him as the  
2 “Skoal guy.”

3 117. In 1980, Tony proposed to his future wife, Alicia, who was also a student at  
4 San Diego State. They had first met in 1970, when Tony was just 10 years old.

5 118. In 1981, Tony was drafted in the third round by the San Diego Padres. He  
6 was also drafted by a professional basketball team, the San Diego Clippers, but he chose to  
7 pursue a professional baseball career. That same year, he and Alicia got married.

8 119. In 1982, Tony played in his first major league baseball game against the  
9 Philadelphia Phillies. This year Tony and Alicia also had their son, Tony Gwynn, Jr.

10 120. Beginning in 1982, Tony was regularly provided with multiple free sample  
11 cans of Defendants’ Skoal product packaged together in what is sometimes called a log, at  
12 the San Diego Padres’ clubhouse by Defendants’ employees or agents. He would return  
13 home with logs and logs of free Skoal dip.

14 121. In 1985, Tony and Alicia had their daughter, Anisha Gwynn. That year, Tony  
15 was a National League All-Star.

16 122. Tony was addicted to the nicotine in Defendants’ smokeless tobacco  
17 products. He started using and was sold Defendants’ smokeless tobacco products as a  
18 minor, was specifically targeted by and exposed to Defendants’ marketing and advertising  
19 campaigns, and was provided with countless free samples with no warning of their  
20 dangers.

21 123. Giving Tony free samples to turn him into a lifelong nicotine addict mirrors a  
22 well-known tactic used by dealers of any addictive substance. Dealers commonly hire  
23 “corner boys” to pass out “testers” or free samples of addictive products to users. Give a  
24 free taste, the thought goes, and the junkie that is created will surely come back for more.  
25 Here, Defendants hired independent contractors as their “corner boys” to push their  
26 products on young athletes like Tony until they were hooked. The only major difference  
27 between the marketing by Defendants and other dealers is that Defendants orchestrated  
28 their schemes from a boardroom instead of a street corner. The tactic is basically the same.

1 As a result of Defendants' conduct, Tony became a self-described "tobacco junkie." Sadly,  
2 the nicotine in the tobacco ultimately caused Tony's cancer and killed him.

3 124. Tony was a self-described "workaholic." And while he was working,  
4 whether during practices or games, he was dipping.

5 125. In 1986, nine years after Tony started using Defendants' smokeless tobacco  
6 products, the United States Congress enacted the Comprehensive Smokeless Tobacco  
7 Health Education Act of 1986 which required the first mandatory warnings on smokeless  
8 tobacco products including Skoal, Copenhagen, and Happy Days. That year, Tony won the  
9 Silver Slugger Award and was again a National League All-Star.

10 126. The mandatory warnings first appeared on smokeless tobacco products,  
11 including Skoal, Copenhagen, and Happy Days, in February of 1987, ten years after Tony  
12 started using Defendants' smokeless products. That year, Tony won another Silver Slugger  
13 Award and was again a National League All-Star.

14 127. Even after Defendants were required by law to place warnings on their  
15 smokeless tobacco products, they continued to dispute that the products are addictive and  
16 cause diseases including cancer.

17 128. Between 1988 and 2000, Tony played in 1,600 games, had 6,233 at-bats, and  
18 had a batting average ranging from .309 to .394.

19 129. In 2001, Tony retired from major league baseball. In 2002, Tony became the  
20 head of San Diego State's baseball program.

21 130. During his 20-year major league baseball career playing for the San Diego  
22 Padres, Tony earned the respect and admiration of his peers and established himself as a  
23 role model to legions of sports fans, aspiring athletes, and children nationwide. He won  
24 five Golden Glove Awards, and seven Silver Slugger Awards. He was tied with for the  
25 most batting titles in National League history with eight, had a career batting average of  
26 .338, and was a 15-time All-Star. He was inducted into the Baseball Hall of Fame in  
27 Cooperstown in 2007, his first year of eligibility.

28 131. Tony Gwynn was also respected and admired off the playing field, where he



1 was honored with the Lou Gehrig Memorial Award, the Roberto Clemente Award, the  
2 Branch Rickey Award – what USA Today dubbed “baseball’s Triple Crown of humanity  
3 and kindness” – and was inducted into the World Sports Humanitarian Hall of Fame for  
4 his altruism, character, leadership, sportsmanship, community service, compassion,  
5 dignity, and modesty.

6 132. Tony preferred to be viewed as a baseball player of exceptional  
7 accomplishments without regard to his race. Nevertheless, in his own humble way, he  
8 understood and acknowledged that he was a role model within the African-American  
9 community.

10 133. Tony established the Tony Gwynn Foundation and was actively involved in  
11 awarding scholarships to support children.

12 134. Throughout the entire duration of his professional baseball career,  
13 Defendants used Tony as an unwitting agent to market and advertise their purposefully  
14 adulterated, addictive, and dangerous smokeless tobacco products to the legions of fans,  
15 athletes, spectators, and kids who viewed him with admiration.



26 135. Throughout his playing days, Tony always had the distinctive dip of tobacco  
27 in his lower right cheek and the distinctive round can of dip in his back pocket.

28 136. Defendants’ strategy of getting Tony addicted to their smokeless tobacco

1 product Skoal turned him into the ultimate advertising juggernaut. He played in 2,440  
2 games throughout his professional career, standing at bat and at the center of attention  
3 9,288 times. Throughout his career, he was photographed and broadcast directly into  
4 countless homes across America, including in formats like baseball cards directed at  
5 children, complete with a distinctive dip visible in his lower right cheek and a distinctive  
6 round can of dip visible in his back pocket. Defendants received the benefit of this  
7 priceless advertising without Tony's knowledge, permission, or compensation.

8 137. Defendants used Tony's addiction to reach the legions of fans, athletes,  
9 spectators, and children who viewed him with admiration and respect, just as the  
10 Defendants' sports spokesmen during Tony's youth led him to try, use, and become  
11 addicted to their dangerous products. Ironically, at the same time Tony actively worked to  
12 improve the lives of his fans and children who saw him as a role model, Defendants' had  
13 turned him into an unwitting promoter of these dangerous and addictive products to those  
14 same fans and kids.

15 138. Fortunately for Tony's many fans after 1987, warnings of smokeless tobacco's  
16 dangers appeared on the packaging. Unfortunately for Tony, who received no warnings  
17 when he started dipping and when he received countless free samples from Defendants, he  
18 was already hopelessly addicted to their product which eventually caused his cancer and  
19 killed him.

20 139. From 1977 through 2008 (31 years), Tony regularly used 1 ½ to 2 cans per day  
21 of Defendants' smokeless tobacco products, particularly Skoal, as a nicotine delivery  
22 system by placing dip on the right side of his mouth between his lower lip/cheek and gum.  
23 He was so addicted that the first thing he did when he woke up each morning was to dip  
24 Skoal. And, he would routinely fall asleep at night with Skoal still in the same right  
25 lip/cheek area.

26 140. Based on the National Institutes of Health's figures, Tony's addiction to Skoal  
27 was equivalent to smoking 4 to 5 packs of cigarettes per day for 31 years.

28 141. Two AMPM convenience stores sold Tony cans of Defendants' purposefully

1 adulterated smokeless tobacco products. One was operated by Defendant Young-  
2 Westwood Enterprises, Inc. and located at 11891 Rancho Bernardo Road, San Diego,  
3 California 92128. (See ¶¶ 174-175.) The other was operated by Defendant Exoil  
4 Corporation and located at 12805 Poway Road, Poway, California 92064. (See ¶¶ 176-177.)

5 **F. Tony Started Getting Sick From Dipping Tobacco In 1991**

6 142. In 1991, the right side of Tony's neck swelled requiring surgery to remove  
7 what was later determined to be a benign tumor. But, he was so addicted to nicotine he  
8 continued to use Skoal. His addiction was so overpowering, that as soon as he got in the  
9 car after the surgery, he reached for his can of Skoal. That year, he would be a National  
10 League All-Star and win a Golden Glove.

11 143. In 1992, Tony developed a lesion on his right lower lip. But, again, he was so  
12 addicted to nicotine he continued to use Skoal. That year, he would again be a National  
13 League All-Star.

14 144. In 2007, the right side of Tony's neck swelled again. This time, surgery was  
15 required to remove a deep abscess. He was so addicted to nicotine he continued to dip  
16 Skoal. All he could do this time was reduce his once mammoth consumption of 1 ½ to 2  
17 cans per day to one can per week.

18 145. Tony was so addicted to nicotine that he needed prescription drugs to  
19 counteract withdrawal symptoms including cravings, anxiety, insomnia, and depression  
20 when he cut his Skoal use.

21 146. In 2010, the right side of Tony's neck swelled, this time requiring surgery to  
22 remove what was later confirmed to be a malignant metastatic carcinoma.

23 147. Tony Gwynn, aside from his prodigious hitting, was perhaps best known for  
24 his infectious smile and laughter. But he suffered such facial nerve damage to the right  
25 side of his face from the tumor, that it prevented him from smiling or even closing his right  
26 eyelid. It is almost hard to imagine, but Tony Gwynn, of all people, was unable to smile.  
27 And Defendants' tobacco was the reason.

28 148. Tony also developed a neurological disorder because of this 2010 surgical

1 procedure.

2 149. In 2010, Tony was diagnosed with cancer of his right parotid salivary gland.  
3 The duct from Tony's cancerous right parotid salivary gland leads to the same location in  
4 his mouth where he placed Defendants' dip, day after day and year after year, for more  
5 than 30 years.

6 150. Sadly, despite undergoing debilitating radiation and chemotherapy  
7 treatments after being diagnosed with right parotid salivary gland cancer, Tony died of  
8 respiratory failure caused by this disease on June 16, 2014.

9 **Parties, Jurisdiction, And Venue**

10 151. This action seeks damages for Plaintiff Alicia Gwynn for the wrongful death  
11 of her husband, Tony Gwynn.

12 152. Plaintiff Alicia Gwynn was married to Tony Gwynn for 33 years by the time  
13 of his premature death.

14 153. Plaintiff Alicia Gwynn is the surviving widow of Tony Gwynn.

15 154. This action seeks damages for Plaintiffs Anisha Gwynn-Jones and Anthony  
16 Gwynn, Jr., for the wrongful death of their father, Tony Gwynn.

17 155. Plaintiffs Anisha Gwynn-Jones and Anthony Gwynn, Jr., are natural born  
18 children of Decedent Tony Gwynn.

19 156. Plaintiff Anisha Gwynn-Jones is the surviving adult daughter of Tony  
20 Gwynn.

21 157. Plaintiff Anthony Gwynn, Jr., is the surviving adult son of Tony Gwynn.

22 158. Plaintiffs assert wrongful death claims under California Code of Civil  
23 Procedure §377.60 et seq., or any other applicable laws, and claim all allowable wrongful  
24 death damages.

25 159. The relevant events giving rise to Plaintiffs' claims and the conduct of  
26 Defendants occurred in San Diego County. Venue is therefore proper under California  
27 Code of Civil Procedure section 395.

28 160. All facts and circumstances complained of herein occurred within the State of

1 California or under circumstances such that this Superior Court has jurisdiction.

2 161. At all times relevant, Plaintiff Alicia Gwynn was and is an individual residing  
3 in the County of San Diego, State of California.

4 162. At all times relevant, Plaintiff Anisha Gwynn-Jones was and is an individual  
5 residing in the County of San Diego, State of California.

6 163. At all times relevant, Plaintiff Anthony Gwynn, Jr., was and is an individual  
7 residing of the County of San Diego, State of California.

8 164. At all times relevant, Defendant Altria, which went by the name Philip  
9 Morris Companies, Inc., prior to January 27, 2003, was and is a corporation incorporated in  
10 the state of Virginia, headquartered in Richmond, Virginia, and doing business in the State  
11 of California.

12 165. At all times relevant, Defendant USSTC was and is an unincorporated  
13 manager-managed limited liability company organized in the State of Virginia and doing  
14 business in the State of California. The residency of its managers and members is not a  
15 matter of public record and is therefore unascertained at this time.

16 166. At all times relevant, Defendant USSTC, which went by the name of U.S.  
17 Tobacco Co. until 2001, was a subsidiary of UST Inc.

18 167. Defendant Altria, which went by the name Philip Morris Companies, Inc.  
19 prior to January 27, 2003, acquired UST Inc. and its subsidiary Defendant USSTC on  
20 January 6, 2009.

21 168. Defendant Altria is the successor-in-interest to UST Inc., a now defunct entity,  
22 having assumed UST Inc.'s assets, liabilities, debts, operations, subsidiaries, personnel,  
23 good will, customer lists, and products.

24 169. Defendant Altria expressly or impliedly agreed to assume the liabilities of  
25 UST Inc., the acquisition amounted to a consolidation or merger of the two entities, and  
26 Defendant Altria is merely a continuation of UST Inc.

27 170. Plaintiffs have no satisfactory remedy against UST Inc.; Defendant Altria  
28 continued to manufacture the same product lines as UST Inc.; Defendant Altria retained the

1 same personnel, used the same designs and customer lists, and/or did not indicate the  
2 change in ownership; and Defendant Altria had almost identical opportunities to evaluate  
3 production risks and pass on the costs of those risks.

4 171. At all times relevant, Defendant Doug Derner, was and is an individual  
5 residing in the State of California.

6 172. At all times relevant, Defendant Rob Quinn, was and is an individual residing  
7 in the State of California.

8 173. At all times relevant, Defendant Don Feblowitz, was and is an individual  
9 residing in the State of California.

10 174. From 2000 to the present, Young-Westwood Enterprises, Inc. operates the  
11 AMPM convenience store located at 11891 Rancho Bernardo Road, San Diego, California  
12 92128.

13 175. At all times relevant, Young-Westwood Enterprises, Inc. was and is a  
14 corporation incorporated in California, headquartered in San Diego, California, and doing  
15 business in the State of California.

16 176. From 2002 to the present, Exoil Corporation operates the AMPM convenience  
17 store located at 12805 Poway Road, Poway, California, 92064.

18 177. At all times relevant, Exoil Corporation was and is a corporation incorporated  
19 in California, headquartered in Poway, California, and doing business in the State of  
20 California.

21 178. The true names and capacities, whether individual, corporate, associate or  
22 otherwise of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who  
23 therefore, sue these defendants by such fictitious names under Code of Civil Procedure  
24 Section 474. Plaintiffs are informed and believe and thereon allege that each of the  
25 defendants herein designated as a DOE is responsible in some manner for the events and  
26 happenings alleged and legally caused the injuries and damages alleged.

27 179. Except as otherwise indicated, at all times herein mentioned, each defendant  
28 was acting in the course and scope of his employment with the other defendants.

1 Defendants are therefore vicariously liable for the acts of each of the remaining defendants  
2 herein.

3 180. In addition, each defendant was at all times acting as the ostensible agent of  
4 the remaining defendants, and was doing so at the behest of and with the approval of those  
5 defendants. At all times herein relevant, Plaintiffs reasonably and without negligence  
6 relied on the representations made by the Defendants about the agency and employment of  
7 each of the remaining defendants.

8 181. As used throughout, "Product" or "Products" refer to the smokeless tobacco  
9 products designed, manufactured, adulterated, produced, advertised, marketed, freely  
10 sampled, and sold by Defendants under the trademarks Skoal, Copenhagen, and Happy  
11 Days.

### 12 **Conspiracy Allegations**

13 182. This action arises out of an ongoing conspiracy by Altria, USSTC, their trade  
14 associations and lobbyists including the Smokeless Tobacco Council, the Smokeless  
15 Tobacco Research Council, the California Distributors Association, their lawyers, their  
16 retailers, and persons or entities presently unknown to Plaintiffs which together control the  
17 smokeless tobacco industry for purposes including but not limited to the following:

- 18 a. to intentionally suppress or conceal knowledge of the extent of the  
19 harmful effects of smokeless tobacco products from the public, the press,  
20 the government, Plaintiffs, Tony Gwynn, and others;
- 21 b. to intentionally frustrate the flow of information from the medical and  
22 scientific communities to the general public regarding the risks of  
23 smokeless tobacco products, including their addictive, carcinogenic, and  
24 deadly properties;
- 25 c. to purposefully create an illusion of conducting or supporting valid  
26 scientific research on smokeless tobacco products so as to mislead the  
27 public into believing that smokeless tobacco products are safe to use;
- 28 d. to knowingly and intentionally lie to, deceive, and improperly influence

1 law and policy makers in local, state, and national government in order to  
2 avoid or control regulation of the sampling or sale of smokeless tobacco  
3 products to consumers, including Tony Gwynn;

4 e. to knowingly and intentionally lie to, deceive, and improperly influence  
5 law and policy makers in local, state, and national government in order to  
6 avoid or control warning consumers, including Tony Gwynn, of the  
7 dangers associated with smokeless tobacco products;

8 f. to knowingly and intentionally target African-American men on the basis  
9 of race through a sophisticated and focused marketing, sampling, and  
10 sales program of smokeless tobacco products;

11 g. to knowingly and intentionally mislead and deceive consumers as to the  
12 health risks associated with oral tobacco by rebranding it as “smokeless”  
13 tobacco in response to the public’s increased awareness of the dangers of  
14 smoking;

15 h. to knowingly and intentionally market, sample, and sell smokeless  
16 tobacco products to minors to create and ensure a future lucrative market  
17 for smokeless tobacco products as older users died;

18 i. to induce and entice minors to use smokeless tobacco products so as to  
19 hook another generations of users who, by the age of majority, were  
20 addicted or dependent and against whom Defendants could then assert  
21 “adult free choice” defenses;

22 j. to knowingly and intentionally create an illusion of medical and scientific  
23 controversy as to whether the use of smokeless tobacco products was  
24 harmful to human health when no such controversy existed so as to  
25 encourage the public, including Tony Gwynn, to start or continue to use  
26 smokeless tobacco products;

27 k. to knowingly and intentionally cause consumers’ addiction to nicotine  
28 through a coordinated national campaign providing free samples of



1 smokeless tobacco products purposefully adulterated to be more  
2 addictive than tobacco would be in its unadulterated form;

- 3 1. to knowingly and intentionally engage in wrongful, misleading,  
4 deceptive, or unlawful practices.

5 183. Defendants conspired amongst themselves, and with other co-conspirators,  
6 to advance a campaign of deceit and misrepresentation designed to amass enormous  
7 profits through the continued sales of smokeless tobacco products.

8 184. At all times relevant, Defendants and their co-conspirators, and each of them,  
9 were aware that their co-conspirators planned to engage in the conspiracy consisting of the  
10 wrongful acts described herein.

11 185. At all times relevant, Defendants and their co-conspirators, and each of them,  
12 agreed to engage in the conspiracy consisting of the wrongful acts described herein.

13 186. At all times relevant, Defendants and their co-conspirators, and each of them,  
14 intended that the wrongful acts described herein be committed.

15 187. At all times relevant, Defendants and their co-conspirators, and each of them,  
16 cooperated or agreed to cooperate in the conspiracy consisting of the wrongful acts  
17 described herein.

18 188. Defendants and their co-conspirators, and each of them, performed numerous  
19 acts to further the purposes of the conspiracy described herein.

20 **FIRST CAUSE OF ACTION**

21 **Negligence**

22 **(As to all defendants)**

23 189. Plaintiffs incorporate each and every allegation above as though fully set  
24 forth herein.

25 190. Defendants' Products, when used as intended, were highly likely to be a  
26 substantial contributing factor in causing addiction, diseases including cancer, and death.

27 191. At all times relevant, recipients of free samples, purchasers, or users of the  
28 Product, including Plaintiffs' husband and father, Tony Gwynn, did not in the exercise of

1 ordinary diligence know of the likelihood of, the severity of, or the extent of the risks of  
2 addiction, diseases including cancer, and death from the Product.

3 192. Defendants' Products, when used as intended, were highly likely to induce in  
4 foreseeable users a state of addiction, habituation, habit formation, or dependence,  
5 characterized by the users' inability to terminate or restrict their chronic use.

6 193. The risks of harm to foreseeable users of the Product are increased by greater  
7 cumulative consumption including rate of consumption, length of time the product was  
8 consumed, and beginning use at an early age.

9 194. At all times relevant, Defendants conducted an aggressive marketing,  
10 promotion, and advertising campaign intended to induce foreseeable users, particularly  
11 minors, athletes, college students, and African-American men to use their Products. Such  
12 marketing, promotion, and advertising occurred in print and broadcast media, as well as in  
13 live promotions and other forms.

14 195. Plaintiffs' husband and father, Tony Gwynn, was provided free samples,  
15 purchased, and used Defendants' Products within the State of California, at all times  
16 relevant.

17 196. Plaintiffs' husband and father, Tony Gwynn, used Defendants' Products in  
18 the intended manner and without significant change in their condition from receipt of free  
19 samples or purchase.

20 197. Plaintiffs' husband and father, Tony Gwynn, was provided with free samples,  
21 was induced to request free samples or purchase Defendants' Products, and was impliedly  
22 or expressly instructed in their use by Defendants' marketing and advertising campaigns,  
23 public statements, sponsorship of athletic events and sports figures, promotional mail-in  
24 coupon offers, and other efforts.

25 198. At all times relevant, Defendants actually knew, or in the exercise of ordinary  
26 care should have known the following, including but not limited to:

- 27 a. that the Products cause addiction, diseases including cancer, and death,  
28 when used as intended;

- b. that addiction, diseases including cancer, and death would be more likely if users were provided free samples, did not restrict their usage in any way, or began to use the Products while minors;
- c. that termination or limitation of use would be exceedingly difficult if consumers began to use the Products, and that this difficulty would increase as consumers' cumulative consumption rose;
- d. that the foreseeable risk of addiction, diseases including cancer, and death posed by the Products could be materially decreased through technical expertise and equipment available to Defendants;
- e. that marketing strategies, including "graduation," Defendants' college marketing program, and targeting of African-Americans, minors, athletes, and college students, materially increased the foreseeable risk of addiction, diseases including cancer, and death posed by the Products;
- f. that adding chemicals, including ammonium carbonate and sodium carbonate, to alter the pH level of the Products, adding other additives and flavorings to the Products, adjusting the cut of the Products to increase nicotine delivery, and other purposeful adulteration of the Products heightens the risk of addiction, diseases including cancer, and death.

199. At all times relevant, Defendants Altria and USSTC owed duties to users of their Products, including Plaintiffs' husband and father, Tony Gwynn. These duties included but were not limited to the following:

- a. duty to warn of the likelihood, probability, and foreseeability that addiction, diseases including cancer, and death would or might occur if the Products were used or misused in an intended or reasonably foreseeable way;
- b. duty to warn that addiction, diseases including cancer, and death would be more likely if users accepted free samples, did not restrict their usage

- 1 in any way, or began to use the Products while minors;
- 2 c. duty to warn that termination or limitation of use would be exceedingly
- 3 difficult if consumers began to use the Products, and that this difficulty
- 4 would increase as consumers' cumulative consumption rose;
- 5 d. duty to reduce the danger of their Products for foreseeable users;
- 6 e. duty to design, process, formulate, manufacture, study, test, inspect,
- 7 deliver, label, advertise, market, distribute, and sell Products that were
- 8 reasonably safe for foreseeable users when used as intended;
- 9 g. duty to materially decrease the foreseeable risk of addiction, diseases
- 10 including cancer, and death posed by the Products through technical
- 11 expertise and available equipment;
- 12 h. duty not to materially increase the foreseeable risk of addiction, diseases
- 13 including cancer, and death posed by the Products through marketing
- 14 strategies, including "graduation," Defendants' college marketing
- 15 program, and targeting of African-Americans, minors, athletes, and
- 16 college students;
- 17 f. duty to disclose the results of their own and other scientific research
- 18 known to them that indicated that using their Products caused users great
- 19 risk of addiction, diseases including cancer, and death;
- 20 g. duty not to add chemicals, including ammonium carbonate and sodium
- 21 carbonate, to alter the pH level of the Products, add other additives or
- 22 flavorings, adjust the cut of the Product to increase the delivery of
- 23 nicotine, or otherwise purposefully adulterate the Products in ways that
- 24 heighten the risk of addiction, diseases including cancer, and death;
- 25 h. duty not to deceive or mislead users of the Products.

26 200. At all times relevant, Defendants Altria, and USSTC breached one or more of

27 the duties owed to users of their Products, including Plaintiffs' husband and father, Tony

28 Gwynn. These breaches included but were not limited to the following:

- a. failing to warn foreseeable users of the likelihood, probability, and foreseeability that addiction, diseases including cancer, and death would or might occur if the Products were used or misused in an intended or reasonably foreseeable way;
- b. failing to warn foreseeable users that addiction, diseases including cancer, and death would be more likely if users accepted free samples, did not restrict their usage in any way, or began to use the Products while minors;
- c. failing to warn foreseeable users that termination or limitation of use would be exceedingly difficult if consumers began to use the Products, and that this difficulty would increase as consumers' cumulative consumption rose;
- d. failing to reduce the danger of their Products for foreseeable users;
- e. failing to design, process, formulate, manufacture, study, test, inspect, deliver, label, advertise, market, distribute, and sell Products that were reasonably safe for foreseeable users when used as intended;
- i. failing to materially decrease the foreseeable risk of addiction, diseases including cancer, and death posed by the Products through technical expertise and available equipment;
- j. materially increasing the foreseeable risk of addiction, diseases including cancer, and death posed by the Products through marketing strategies, including "graduation," Defendants' college marketing program, and targeting of African-Americans, minors, athletes, and college students;
- f. failing to disclose the results of their own and other scientific research known to them that indicated that using their Products caused users great risk of addiction, diseases including cancer, and death;
- g. adding chemicals, including ammonium carbonate and sodium carbonate, to alter the pH level of the Products, adding other additives or

1 flavorings, adjusting the cut of the Product to increase the delivery of  
2 nicotine, or otherwise purposefully adulterating the Products in ways  
3 that heightened the risk of addiction, diseases including cancer, and  
4 death;

5 h. deceiving and misleading users of the Products.

6 201. At all times relevant, Defendants Doug Derner, Rob Quinn, Don Feblowitz  
7 Young-Westwood Enterprises, Inc., and Exoil Corporation owed the following duties to  
8 users of the Products, including Plaintiffs' husband and father, Tony Gwynn. These duties  
9 included but were not limited to the following:

- 10 a. duty to investigate, examine, or otherwise become informed about the  
11 foreseeable risks of addiction, diseases including cancer, and death  
12 associated with the Products prior to providing free samples of the  
13 Products, and instructing on the use of the Products as nicotine delivery  
14 devices, and before selling the Products;
- 15 b. duty to warn of the likelihood, probability, and foreseeability that  
16 addiction, diseases including cancer, and death would or might occur if  
17 the Products were used as intended or foreseeably misused;
- 18 c. duty to warn that addiction, diseases including cancer, and death would  
19 be more likely if users accepted free samples, purchased, did not restrict  
20 their usage in any way, or began to use the Products while minors;
- 21 d. duty to warn that termination or limitation of use would be exceedingly  
22 difficult if consumers began to use the Products and continued to use the  
23 Products, and that this difficulty would increase as their cumulative  
24 consumption rose;
- 25 e. duty to only sell or provide free samples of Products that were not  
26 purposefully adulterated through the use of chemicals, additives, or  
27 flavorings, by adjusting the cut of the Products, or by other means, which  
28 increased their inherent dangers;

- 1 f. duty not to materially increase the foreseeable risk of addiction, diseases  
2 including cancer, and death posed by the Products through targeting of  
3 African-Americans, minors, college students, and athletes, and through  
4 selling and providing free samples of highly addictive Products.

5 202. At all times relevant, Defendants Doug Derner, Rob Quinn, Don Feblowitz,  
6 Young-Westwood Enterprises, Inc., and Exoil Corporation breached one or more of the  
7 duties owed to users of the Products, including Plaintiffs' husband and father, Tony  
8 Gwynn. These breaches included but were not limited to the following:

- 9 a. failing to investigate, examine, or otherwise become informed about the  
10 foreseeable risks of addiction, diseases including cancer, and death  
11 associated with the Products prior to providing free samples of the  
12 Products, and instructing on the use of the Products as nicotine delivery  
13 devices, and before selling the Products;
- 14 b. failing to warn of the likelihood, probability, and foreseeability that  
15 addiction, diseases including cancer, and death would or might occur if  
16 the Products were used as intended or foreseeably misused;
- 17 c. failing to warn that addiction, diseases including cancer, and death  
18 would be more likely if users accepted free samples, purchased, did not  
19 restrict their usage in any way, or began to use the Products while  
20 minors;
- 21 d. failing to warn that termination or limitation of use would be exceedingly  
22 difficult if consumers began to use the Products and continued to use the  
23 Products, and that this difficulty would increase as their cumulative  
24 consumption rose;
- 25 e. selling and providing free samples of Products that were purposefully  
26 adulterated through the use of chemicals, additives, or flavorings, by  
27 adjusting the cut of the Products, or by other means, which increased  
28 their inherent dangers;

1 k. materially increasing the foreseeable risk of addiction, diseases including  
2 cancer, and death posed by the Products through targeting of African-  
3 Americans, minors, college students, and athletes, and through selling  
4 and providing free samples of highly addictive Products.

5 203. As a direct and legal result of the negligence and carelessness of the  
6 Defendants, and each of them, Plaintiffs' husband and father, Tony Gwynn, suffered  
7 serious disease and death.

8 204. As a further direct and legal result of the negligence and carelessness of the  
9 Defendants, and each of them, Plaintiffs have been deprived of the love, care, comfort,  
10 society, companionship, affection, assistance, protection, moral support, training, and  
11 guidance of their husband and father, Tony Gwynn, all to their damage in an amount to be  
12 proven at the time of trial.

13 205. As a further direct and legal result of the negligence and carelessness of the  
14 Defendants, and each of them, Plaintiffs have incurred funeral and burial expenses in an  
15 amount to be proven at the time of trial.

16 206. As a further direct and legal result of the negligence and carelessness of the  
17 Defendants, and each of them, Plaintiffs have suffered loss of economic support,  
18 inheritance, gifts, or benefits that Plaintiffs would have expected to receive from their  
19 husband and father, Tony Gwynn, and the reasonable value of household services that he  
20 would have provided, the exact amount of said losses to be proven at the time of trial.

21 207. The negligence and carelessness of Defendants, and each of them, was a  
22 substantial factor in causing the injuries and damages alleged above.

23 **SECOND CAUSE OF ACTION**

24 **Negligent Product Liability**

25 **(As to all defendants)**

26 208. Plaintiffs incorporate each and every allegation above as though fully set  
27 forth herein.

28 209. Defendants were engaged in the design, formulation, manufacturing,



1 adulteration, testing, producing, inspecting, vending, distributing, introducing into  
2 interstate commerce, transporting in interstate commerce, advertising, marketing, free  
3 sampling, selling, and recommending for use to the general public the Product.

4 210. Defendants owed duties of care to actual and potential customers and  
5 consumers with respect to the Product. Such duties included but were not limited to:  
6 designing, not adulterating, processing, formulating, manufacturing, advertising,  
7 marketing, distributing, and selling Products that were as safe as possible; packaging the  
8 Product safely to reasonably minimize the potential for injury; labeling the Product to  
9 reasonably warn consumers of the potential for danger; and reasonably applying  
10 knowledge and information from past incidents, complaints, studies, tests, observations,  
11 reports, experience, or investigation to provide for the safety of consumers with respect to  
12 the Product.

13 211. Defendants knew or should have known that if the Product was not properly  
14 and carefully designed, unadulterated, processed, formulated, manufactured, studied,  
15 tested, inspected, delivered, labeled, advertised, and marketed prior to sale, or distributed  
16 as safely as possible, it would, if used by any member of the general public, be a substantial  
17 factor in causing serious and permanent injury or death.

18 212. Defendants negligently and carelessly designed, adulterated, processed,  
19 formulated, manufactured, studied, tested, inspected, delivered, labeled, advertised,  
20 marketed, distributed, sold, and provided free samples of the Product so it was in a  
21 dangerous and defective condition and unsafe for the use and purposes for which it was  
22 intended or for reasonably foreseeable misuse.

23 213. The defective condition caused by Defendants' purposeful adulteration of the  
24 Product was known to Defendants, and each of them, or should have been discovered by  
25 them through exercising ordinary care and reasonable diligence, but was not disclosed or  
26 made known to recipients of free samples, purchasers, or users of the Product, including  
27 Plaintiffs' husband and father, Tony Gwynn.

28 214. At all times relevant, recipients of free samples, purchasers, or users of the

1 Product, including Plaintiffs' husband and father, Tony Gwynn, did not know of the  
2 defective condition of the Product.

3 215. At all times relevant, recipients of free samples, purchasers, or users of the  
4 Product, including Plaintiffs' husband and father, Tony Gwynn, did not in the exercise of  
5 ordinary diligence know of the likelihood of, the severity of, or the extent of the risks of  
6 addiction, disease, and death from the Product.

7 216. The negligence and carelessness of Defendants, and each of them, was a  
8 substantial factor in causing Plaintiffs' husband and father to die, and in causing Plaintiffs'  
9 damages alleged above.

### 10 **THIRD CAUSE OF ACTION**

#### 11 **Strict Product Liability - Design Defect**

#### 12 **(As against all defendants)**

13 217. Plaintiffs hereby incorporate by reference each and every allegation  
14 articulated above as though fully set forth herein.

15 218. At the time that the Product left the control of Defendants, the Product was  
16 dangerous and defective as a result of design, adulteration, processing, formulation,  
17 manufacturing, studying, testing, inspecting, delivering, labeling, advertising, marketing,  
18 distribution, selling, free sampling, alteration, or modification by Defendants. The defects  
19 included, but were not limited to, the Products' highly addictive, carcinogenic, and deadly  
20 characteristics.

21 219. At all times relevant, Defendants, and each of them, knew and intended that  
22 the Product would be used, sampled, or purchased by members of the general public who  
23 would rely on Defendants to safely design, not adulterate, process, formulate,  
24 manufacture, study, test, inspect, deliver, label, advertise, market, distribute, sell, sample,  
25 alter, or modify the Product in as safe a manner as possible, and to transmit any relevant  
26 warnings about the Product.

27 220. At all times relevant, the Product was being used in a manner and fashion  
28 foreseeable by Defendants, and each of them, and in a manner in which the Product was

1 intended or reasonably foreseeable to be used.

2 221. Defendants designed, adulterated, processed, formulated, manufactured,  
3 studied, tested, inspected, delivered, labeled, advertised, marketed, distributed, sold, freely  
4 sampled, altered, or modified the Product or knew its design, adulteration, processing,  
5 formulation, manufacturing, studying, testing, inspection, delivery, labelling, advertising,  
6 marketing, distribution, sale, free sampling, altering, or modification was defective, or  
7 both, causing the Product to fail to perform as safely as an ordinary consumer would  
8 expect when used in an intended or reasonably foreseeable manner.

9 222. Defendants increased the danger of the Product through purposeful  
10 adulteration by adding chemicals, additives, flavorings, adjusting the cut of the Product,  
11 and other means, to make it more addictive. Defendants' purposeful adulteration of the  
12 Product was the direct and legal cause of the disease and death of Plaintiffs' husband and  
13 father, Tony Gwynn.

14 223. In addition, the risks inherent in the design of the Product outweigh any  
15 benefits of that design.

16 224. As a legal result of the dangerous and defective condition caused by  
17 Defendants' purposeful adulteration of the Product, and failures by the Defendants to  
18 warn, Plaintiffs' husband and father, Tony Gwynn, died, and Plaintiffs were injured and  
19 suffered damages as alleged above.

#### 20 **FOURTH CAUSE OF ACTION**

#### 21 **Strict Product Liability - Failure to Warn of Defective Condition**

#### 22 **(As against all defendants)**

23 225. Plaintiffs hereby incorporate by reference each and every allegation  
24 articulated above as though fully set forth herein.

25 226. The Product was in a dangerous, defective and adulterated condition when  
26 introduced into the stream of commerce by Defendants, and each of them. The Product  
27 was so defective that when used or misused in an intended or reasonably foreseeable way,  
28 the potential risks of the Product created a substantial danger to users of the Product and

1 others, and could and would cause serious disease and death.

2 227. The Product had potential risks known or knowable by scientific knowledge  
3 available at the time of design, adulteration, processing, formulation, manufacturing,  
4 studying, testing, inspection, delivery, labelling, advertising, marketing, distribution, sale,  
5 free sampling, altering, and modification of the Product. Defendants knew, or in the  
6 exercise of reasonable care should have known, that the potential or inherent risks  
7 presented a substantial danger to users of the Product because Defendants possessed  
8 special knowledge of the ingredients, design, adulteration, processing, formulation,  
9 manufacturing, studying, testing, inspection, delivery, labelling, advertising, marketing,  
10 distribution, sale, free sampling, altering, modification, and character of the Product.  
11 Plaintiffs' husband and father, Tony Gwynn, and ordinary consumers would not recognize,  
12 nor have knowledge that the Product was dangerous and defective.

13 228. Although possessed of special knowledge of the potential risks and  
14 substantial danger to users of the Product and others, Defendants failed to adequately  
15 warn or instruct of the potential risks and dangerous and defective conditions of the  
16 Product.

17 229. Plaintiffs' husband and father, Tony Gwynn, was killed and Plaintiffs  
18 suffered the injuries and damages alleged above as a result of Defendants' failure to  
19 adequately warn. The lack of sufficient warning or instructions was a substantial factor in  
20 causing Tony Gwynn's death, and in causing Plaintiffs' harm.

21 **FIFTH CAUSE OF ACTION**

22 **Negligent Misrepresentation**

23 **(As against Altria Group, Inc.; U.S. Smokeless Tobacco Company, LLC; Doug Derner;**  
24 **Rob Quinn; Don Febowitz; and Does 1-100)**

25 230. Plaintiffs hereby incorporate by reference each and every allegation  
26 articulated above as though fully set forth herein.

27 231. At all times relevant, when Defendants, and each of them, designed,  
28 adulterated, processed, formulated, manufactured, studied, tested, inspected, delivered,

1 labeled, advertised, marketed, distributed, sold, freely sampled, or placed the Products into  
2 the stream of commerce, Defendants, and each of them, expressly and impliedly  
3 represented to members of the general public, recipients of free samples, purchasers, and  
4 users of the Products, including Tony Gwynn, that the Products were of merchantable  
5 quality and safe for their intended or reasonably foreseeable use.

6 232. Defendants, and each of them, made these representations and induced  
7 members of the public, including Tony Gwynn, to rely on these representations through,  
8 among other methods, an aggressive and continuous marketing campaign using deceptive,  
9 erroneous, misleading, and false advertisements and free sampling programs. This  
10 campaign was designed to conceal the true risks of the Products including addiction,  
11 diseases including cancer, and death, and to target and lure new users, especially African-  
12 Americans, minors, college students, and athletes, including Tony Gwynn. The campaign  
13 disseminated deceptive, erroneous, misleading, and false statements concerning the state of  
14 scientific and medical research regarding the Products and the addiction, diseases, and  
15 death they cause.

16 233. The representations by Defendants, and each of them, were false and untrue  
17 in that the Products were not safe for their intended use. The representations by  
18 Defendants, and each of them, were also false and untrue in that the Products were not of  
19 merchantable quality and instead have very dangerous properties and defects which  
20 include being highly addictive, causing diseases including cancer, and causing death, and  
21 having other defects that cause injury and damage to the users of the Products, including  
22 Tony Gwynn.

23 234. Defendants, and each of them, made these representations of their Products'  
24 merchantable quality and safety for intended or reasonably foreseeable use without  
25 reasonable grounds for believing these representations to be true.

26 235. Defendants, and each of them, made these representations of their Products'  
27 merchantable quality and safety for intended or reasonably foreseeable use with the intent  
28 to induce reliance on these representations by the general public, and particularly minors,

1 college students, athletes, and African-American men, including Tony Gwynn.

2 236. Defendants misrepresentations regarding their Products related to matters  
3 that a reasonable person would find important in determining whether to use their  
4 Products.

5 237. At all times relevant, Plaintiffs' husband and father, Tony Gwynn, relied to  
6 his detriment on the Defendants' material misrepresentations in many of the countless  
7 advertising, marketing, and promotional materials targeted at minors, college students,  
8 athletes, and African-American men, including Tony Gwynn.

9 238. Plaintiffs' husband and father, Tony Gwynn, was killed and Plaintiffs  
10 suffered the injuries and damages alleged as a result of Defendants' misrepresentations.  
11 The misrepresentations were a substantial factor in causing Tony Gwynn's death, and in  
12 causing Plaintiffs' harm.

### 13 SIXTH CAUSE OF ACTION

#### 14 **Fraudulent Concealment**

15 **(As against Altria Group, Inc.; U.S. Smokeless Tobacco Company, LLC; and Does 1-100)**

16 239. Plaintiffs hereby incorporate by reference each and every allegation  
17 articulated above as though fully set forth herein.

18 240. Beginning at an exact time unknown to Plaintiffs, and continuing even today,  
19 Defendants have carried out, and continue to carry out a campaign designed to conceal  
20 from Tony Gwynn, the public, Plaintiffs, the government, and others, their Products'  
21 addictive quality, its likelihood to cause diseases including cancer, its likelihood to cause  
22 death, their knowledge concerning these things, the results of their own research, and to  
23 conceal and misrepresent their own role in manipulating the addictive properties of their  
24 products by adding chemicals, additives, and flavorings, adjusting the cut of the Products,  
25 and other means, to increase nicotine delivery and addiction, and in designing and  
26 advancing their scheme of "graduation" to trap users in an endless cycle of addiction.

27 241. Defendants, and each of them, carried out their campaign of fraud,  
28 misrepresentations, and concealment of material information by purposefully suppressing

1 and confusing the facts about the health dangers of smokeless tobacco, including addiction,  
2 diseases including cancer, and death. They concealed their actual knowledge concerning  
3 their own negative health and addiction research results along with their manipulation and  
4 control of the nicotine delivery and addictive qualities of their Products and “graduation”  
5 strategy to create and perpetuate addiction.

6 242. Defendants, and each of them, owed Plaintiffs’ husband and father, Tony  
7 Gwynn, a duty to disclose the facts about their Products’ likelihood to cause addiction,  
8 diseases including cancer, and death.

9 243. At all times relevant, the facts about Defendants’ Products, including their  
10 addictive quality, likelihood to cause diseases including cancer, likelihood to cause death,  
11 Defendants’ knowledge concerning these things, the results of their own research, their  
12 own role in manipulating the nicotine delivery and addictive properties of their Products,  
13 and their scheme of “graduation” to trap users in an endless cycle of addiction, were  
14 known or accessible to Defendants, and each of them, and Defendants, each of them, knew  
15 that these facts were not known to or reasonably discoverable by Plaintiffs’ husband and  
16 father, Tony Gwynn.

17 244. At all times relevant, Defendants, and each of them, actively concealed  
18 discovery of material facts about their Products from Tony Gwynn, the public, Plaintiffs,  
19 the government, and others, including their Products’ addictive quality, likelihood to cause  
20 diseases including cancer, likelihood to cause death, their knowledge concerning these  
21 things, the results of their own research, their own role in manipulating the nicotine  
22 delivery and addictive properties of their Products, and their scheme of “graduation” to  
23 trap users in an endless cycle of addiction.

24 245. The Defendants, and each of them, made factual representations to Tony  
25 Gwynn, the public, Plaintiffs, the government, and others, about their Products, but did not  
26 disclose facts that materially qualify these representations, or that rendered these  
27 representations likely to mislead, including facts regarding their Products’ likelihood to  
28 cause addiction, diseases including cancer, and death, their knowledge concerning these

1 things, the results of their own research, their own role in manipulating the nicotine  
2 delivery and addictive properties of their Products, and their scheme of “graduation” to  
3 trap users in an endless cycle of addiction.

4 246. Defendants, and each of them, intended to defraud Tony Gwynn, the public,  
5 Plaintiffs, the government, and others, by carrying out their campaign of fraud,  
6 misrepresentations, suppressions, and concealment of material information including that  
7 their Products’ cause addiction, diseases including cancer, and death, their knowledge  
8 concerning these things, the results of their own research, their own role in manipulating  
9 the nicotine delivery and addictive properties of their Products, and their scheme of  
10 “graduation” to trap users in an endless cycle of addiction.

11 247. Defendants’ intentional acts described above resulted in Plaintiffs’ husband  
12 and father, Tony Gwynn, being unaware of the extent to which the Products presented a  
13 serious hazard to his health, that the nicotine in the Products would addict him to those  
14 Products, or that Defendant had adulterated and manipulated the delivery of nicotine to  
15 increase the likelihood of his addiction which would cause him to have greater cumulative  
16 exposure to those carcinogenic Products, develop cancer and die, as he did. Had Tony  
17 Gwynn known the true dangers of the Product, or the extent of the health risk the Product  
18 posed, that he was being targeted as a minor, college student, athlete, and African-  
19 American man, and the deliberate adulteration of nicotine delivery and the addictive  
20 nature of the Products, he would not have used the Product.

21 248. Plaintiffs’ husband and father, Tony Gwynn, was killed and Plaintiffs  
22 suffered the injuries and damages alleged as a result of Defendants’ concealments. The  
23 concealments were a substantial factor in causing Tony Gwynn’s death, and in causing  
24 Plaintiffs’ harm.

25 WHEREFORE, Plaintiffs pray for judgment against the Defendants, and each of  
26 them, as follows:

27 249. For wrongful death general and special damages according to proof;

28 250. For loss of love, care, comfort, society, companionship, affection, assistance,



1 protection, moral support, training, and guidance according to proof;

2 251. For loss of economic support, inheritance, gifts, benefits, and services  
3 according to proof;

4 252. For funeral, burial, and incidental expenses according to proof;

5 253. For interest from the date of incident to the time of judgment;

6 254. For costs of suit incurred herein; and

7 255. For such other and further relief as the Court deems proper.

8 **DEMAND FOR JURY TRIAL**

9 NOTICE IS HEREBY GIVEN that Plaintiffs hereby demand trial by jury in the  
10 above-captioned matter.

11 Dated: May 23, 2016

CASEY GERRY SCHENK  
FRANCAVILLA BLATT & PENFIELD, LLP

12  
13 By:  \_\_\_\_\_

14 DAVID S. CASEY, JR.  
15 Attorneys for Plaintiffs  
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