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13 **IN THE UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 TIMOTHY FORSYTH, individually and on
16 behalf of a class of similarly situated
17 individuals,

18 Plaintiff,

19 v.

20 MOTION PICTURE ASSOCIATION OF
21 AMERICA, INC., a New York corporation,
22 THE WALT DISNEY COMPANY, a
23 Delaware corporation, PARAMOUNT
24 PICTURES CORPORATION, a Delaware
25 corporation, SONY PICTURES
26 ENTERTAINMENT INC., a Delaware
27 corporation, TWENTIETH CENTURY FOX
28 FILM CORPORATION, a Delaware
corporation, UNIVERSAL CITY STUDIOS
LLC, a Delaware corporation, WARNER
BROS. ENTERTAINMENT INC., a
Delaware corporation, and NATIONAL
ASSOCIATION OF THEATRE OWNERS, a
New York corporation,

Defendants.

Case No:

CLASS ACTION

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 **CLASS ACTION COMPLAINT FOR**
2 **DECLARATORY JUDGEMENT, INJUNCTION AND OTHER RELIEF**

3 Plaintiff Timothy Forsyth, on behalf of himself and Classes and Sub-Classes of similarly
4 situated individuals, brings this class action against defendants Motion Picture Association of
5 America, Inc., The Walt Disney Company, Paramount Pictures Corporation, Sony Pictures
6 Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLC,
7 Warner Bros. Entertainment, Inc., and the National Association of Theatre Owners, and alleges
8 as follows upon personal knowledge as to himself and his own acts and experiences, and, as to
9 all other matters, upon information and belief, including investigation by his attorneys.

10 **I. NATURE OF THE CASE**

11 1. The major Hollywood studio defendants (The Walt Disney Company, Paramount
12 Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film
13 Corporation, Universal City Studios LLC, Warner Bros. Entertainment, Inc., or their
14 predecessors), together with defendant National Association of Theatre Owners (“NATO”),
15 created the film rating service of defendant Motion Picture Association of America (the
16 “MPAA”) to serve as the film industry’s guardian for the protection of parents and children
17 under the age of seventeen. As defendants themselves described it, and as they have operated it
18 since it was established in 1968, the role of the MPAA’s film rating service is to: a) advise and
19 warn parents regarding the content of the films it rates that the average parent in the United
20 States would find inappropriate or unsuitable for children under the age of seventeen
21 unaccompanied by a parent or guardian, and b) protect children under the age of seventeen by
22 prohibiting them from entering theatres and viewing films featuring conduct, imagery and
23 language that defendants determine is not suitable or appropriate for children under the age of
24 seventeen unless accompanied by a parent or guardian.

25 2. Since at least 2003, the MPAA and its members the major Hollywood studio
26 defendants and NATO have known that exposure to tobacco imagery in films rated “G,” “PG,”
27

1 and “PG-13,” that is, youth-rated films which are accessible and frequently marketed to attract
2 children and adolescents, is one of the major causes of children becoming addicted to nicotine.

3 3. Beginning as early as 2003, the defendants have repeatedly been provided with
4 recommendations from numerous and varied health experts from Harvard University, Johns
5 Hopkins University (including the senior scientific editor of three of the last five U.S. Surgeon
6 General's reports on tobacco and health), the University of California-San Francisco, Dartmouth
7 College, thirty-one state Attorneys General, the New York State Department of Health, the Los
8 Angeles County Department of Health Services, and the World Health Organization, and from
9 national organizations including the American Medical Association, the American Academy of
10 Pediatrics, the Truth Initiative (formerly American Legacy Foundation), the American Lung
11 Association, the American Heart Association, and the American Public Health Association,
12 among others -- to eliminate youth exposure to smoking in “G,” “PG,” and “PG-13” rated films
13 or, more specifically, to assign the “R” rating to future films with smoking so as to substantially
14 and permanently reduce the deadly physical harm these films pose to young audiences.

15 4. Defendants, however, have repeatedly assigned, and continue to assign, their seal of
16 approval and certification that films intended for children under the age of seventeen are suitable
17 and appropriate for children under the age of seventeen unaccompanied by a parent or guardian,
18 despite defendants’ knowledge of the authoritative, peer reviewed, scientific evidence that the
19 exposure to tobacco imagery in youth rated films has caused, and will continue to cause,
20 hundreds of thousands of children under the age of seventeen in the United States to become
21 addicted to tobacco every year. During the period 2012 through the present, defendants’ film
22 rating system – certified and rated thousands of films featuring tobacco imagery as suitable and
23 appropriate for children under the age of seventeen without a parent or guardian, causing over
24 1.1 million children under the age of seventeen to become addicted to nicotine and will cause the
25 eventual premature death of 360,000 of such nicotine addicts from tobacco caused diseases
26 including lung cancer, heart disease, stroke and emphysema.

27 5. From 2003 when the defendants were notified that exposure to tobacco imagery in
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1 films causes children and adolescents to smoke, through 2015, youth-rated movies recruited
2 approximately 4.6 million adolescents in the United States to smoke, of which approximately 1.5
3 million are expected to die from tobacco-induced diseases in years to come. And, at current
4 rates, if defendants continue their current practice of certifying and rating films with tobacco
5 imagery as suitable and appropriate for children and adolescents under the age of seventeen
6 unaccompanied by a parent or guardian, defendants' conduct will cause an additional 3.2 million
7 American children alive today to smoke, and one million of those children to die prematurely
8 from tobacco-related diseases including lung cancer, heart disease, stroke and emphysema.

9 6. This lawsuit seeks: a) a declaratory judgment that defendants' practice of providing
10 their seal of approval and certification that films with tobacco imagery are suitable and
11 appropriate for children under the age of seventeen unaccompanied by a parent or guardian is
12 negligent, false and misleading and a breach of defendants' fiduciary and statutory duties; b) an
13 injunction to stop defendants from continuing to rate films with tobacco imagery as "G," "PG,"
14 or "PG-13," that is, suitable and appropriate for children under the age of seventeen
15 unaccompanied by a parent or guardian, because defendants' conduct has caused, and if not
16 enjoined will continue to cause, hundreds of thousands of children and adolescents in the United
17 States, and millions of children and adolescents throughout the world, to become addicted
18 smokers, and to suffer tobacco-related disease, disability and premature death; c) damages for
19 consumers who purchased theatre tickets for films that were inaccurately, negligently and falsely
20 certified and rated by defendants as suitable and appropriate for children under the age of
21 seventeen unaccompanied by a parent or guardian despite the fact that the films featured tobacco
22 imagery; and d) disgorgement of defendants' ill-gotten financial gains resulting from their
23 breach of fiduciary duty and false and inaccurate youth ratings of films with tobacco imagery.

24 II. PARTIES

25 7. Plaintiff Timothy Forsyth ("Mr. Forsyth") is a citizen and resident of Hayward,
26 California. Mr. Forsyth is the parent of two children ages twelve and thirteen and Mr. Forsyth
27 has purchased theatre tickets for his children for films that featured tobacco imagery that were
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1 rated “PG-13” by the defendants.

2 8. Defendant Movie Picture Association of America, Inc., (“MPAA”) is a New York
3 corporation with its principal place of business in Washington, D.C. The MPAA is owned and
4 controlled by the six major Hollywood studio defendants (The Walt Disney Company,
5 Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film
6 Corporation, Universal City Studios LLC, and Warner Bros. Entertainment, Inc.).

7 9. Defendant The Walt Disney Company (“Disney”) is a Delaware corporation with its
8 principal place of business in California and its operations include the following: Walt Disney
9 Motion Pictures, Walt Disney Animation Studios, Pixar Animation Studios, Lucasfilm, Marvel
10 Studios, and Touchstone Pictures.

11 10. Defendant Paramount Pictures Corporation (“Paramount”) is a Delaware corporation
12 with its principal place of business in California and its operations include the following:
13 Paramount, Paramount Animation, Paramount Vantage, Comedy Central Films, Insurge, MTV
14 films, and Nickelodeon Movies.

15 11. Defendant Sony Pictures Entertainment Inc. (“Sony”) is a Delaware corporation with
16 its principal place of business in California and its operations include the following: Columbia
17 Pictures, Tristar Pictures, Screen Gems, Sony Pictures, Sony Pictures Animation, and Sony
18 Pictures Classics.

19 12. Defendant Twentieth Century Fox Film Corporation (“Fox”) is a Delaware corporation
20 with its principal place of business in California and its operations include the following:
21 Twentieth Century Fox, Fox 2000, Fox Searchlight, Fox Animation and Blue Sky Studios.

22 13. Defendant Universal City Studios LLC (“Universal”) is a Delaware Corporation with
23 its principal place of business in California and its operations include the following: Universal
24 Pictures and Focus Features.

25 14. Defendant Warner Bros. Entertainment, Inc., (“Warner Bros.”) is a Delaware
26 corporation with its principal place of business in California and its operations include the
27 following: Warner Bros. Pictures Inc., and New Line Cinema LLC.”

1 15. Disney, Paramount, Sony, Fox, Universal and Warner Brothers are collectively referred
2 to as the “major Hollywood studios” or “major Hollywood studio defendants”. The six major
3 Hollywood studio defendants (or their predecessors) have, at all relevant times, been the six
4 owner and member companies of the MPAA. Each company is represented on the MPAA Board
5 and each company has one vote. The major Hollywood studio defendants have de facto approval
6 and control over all of the MPAA’s activities including the MPAA’s film rating service.

7 16. Defendant National Association of Theatre Owners, Inc., (“NATO”) is a New York
8 corporation with its principal place of business in Washington, D.C. NATO is a national
9 association of theater owners who own and operate movie theaters in the United States.

10 17. The major Hollywood studios and NATO created the film rating service of the MPAA
11 and, at all relevant times, have operated, managed and controlled the MPAA’s film rating
12 service. At all relevant times, the defendant MPAA’s film rating service has acted as the agent
13 for the major Hollywood studios and NATO.

14 **III. JURISDICTION**

15 18. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
16 1332(d), because (a) at least one member of the putative class is a citizen of a State different
17 from at least one defendant; (b) the amount in controversy exceeds \$5,000,000, exclusive of
18 interest and costs; and (c) none of the exceptions under that subsection applies to this action.

19 **IV. VENUE**

20 19. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (b) and (c).

21 **V. THE PUBLIC HEALTH FACTS REGARDING TOBACCO AND CHILDREN**

22 20. Tobacco use is the largest single cause of preventable death in the United States. The
23 2014 U.S. Surgeon General’s report on tobacco states: “For the United States, the epidemic of
24 smoking-caused disease in the twentieth century ranks among the greatest public health
25 catastrophes of the century.... If smoking persists at the current rate among young adults in this
26 country, 5.6 million of today’s Americans younger than 18 years of age are projected to die
27 prematurely from a smoking-related illness.”

1 21. According to the Centers for Disease Control and Prevention (“CDC”), in the United
2 States alone, more than 480,000 people die prematurely each year from tobacco-related disease;
3 cigarette smoking reduces the life expectancy of smokers in the United States by an average of
4 12 years. Twenty-five million current smokers in the U.S. are expected to die from a tobacco-
5 caused disease. Deaths in the United States from tobacco related-diseases exceed the combined
6 death toll from AIDS, alcohol, car accidents, murders, suicides, drug abuse, and fires.

7 22. Nicotine is one of the most addictive substances known –comparable to heroin or
8 cocaine. Tobacco is the only legal consumer product that kills half of its regular customers when
9 used exactly as the manufacturer intended.

10 23. In the United States, direct medical costs for adult medical conditions caused by
11 tobacco approach \$170 billion each year and the average annual smoking-attributable
12 productivity losses exceed \$156 billion. The annual combined health and productivity cost to the
13 U.S. economy from tobacco consumption, more than \$325 billion, nearly equals two percent of
14 annual U.S. Gross Domestic Product.

15 24. Ninety percent (90%) of all adult smokers begin smoking by age eighteen. Early signs
16 of heart disease and stroke are found among adolescents who smoke. An adolescent’s lung
17 function may be permanently impaired. According to the U.S. Surgeon General, the earlier that
18 adolescents start smoking, the more likely they will become addicted.

19 25. Tobacco is the leading cause of preventable death globally. Smoking kills one in ten
20 adults around the world. Six million people worldwide die prematurely each year from tobacco
21 related-disease and the number of deaths due to tobacco use is projected to surpass 8 million in
22 2020. 650 million of the world’s current population of adolescents and adults are projected to
23 lose their lives to tobacco. According to the World Health Organization (“WHO”), if current
24 trends continue tobacco use may cause one billion deaths in the Twenty-First Century.

25 **VI. THE TOBACCO INDUSTRY'S USE OF FILMS TO RECRUIT ADOLESCENT**
26 **SMOKERS IN THE UNITED STATES AND THROUGHOUT THE WORLD**

27 26. Children are particularly vulnerable to various forms of marketing and advertising (both
28

1 direct and indirect) and presumptively less capable than adults to understand and appreciate the
2 health consequences and risks of smoking. Keeping children from becoming addicted to tobacco
3 during their adolescence is critical to protecting them from debilitating smoking related illnesses,
4 and premature death.

5 27. WHO described the seductive lure of film imagery on children in this way:

6 “Films are effective because they influence behavior and form social norms.
7 Films, especially those made in the United States, are a major source of
8 viewer identification with celebrities. They can encapsulate dreams, craft
9 hopes and help viewers escape the tedium of everyday life. For the tobacco
10 industry, films can provide an opportunity to convert a deadly consumer
11 product into a cool, glamorous and desirable lifestyle necessity. The
12 presentation of smoking in films does not reflect reality. In reality, smoking
13 tends to be highest among lower socioeconomic groups. In films, the
14 prevalence of smoking depicted by characters, in particular among the higher
15 socioeconomic characters frequently portrayed by lead actors, is higher than
16 the prevalence of smoking by comparable people in the general population.
17 The real health consequences of smoking are rarely shown. Because
18 smoking on screen is vivid and because young people see so many films so
19 often, films are the most effective method currently available for the tobacco
20 industry to recruit new smokers from children and adolescents in the United
21 States and throughout the world. The most vulnerable age group must not
22 continue to be exposed to the most powerful promotional channel for smoking
23 imagery in today's globalized economy.”

24 28. Historically, tobacco companies embraced Hollywood by including paid tobacco
25 endorsements beginning in 1927, the year of the first "talking picture." From the late
26 1930s through the 1940s, two out of three top movie stars advertised cigarette brands, for a fee,
27 in newspapers and magazines and on radio while also smoking on screen. In one year alone,
28 tobacco companies agreed to pay movie stars at least \$3.3 million (in today's dollars) for these
advertising "tie-in" services. Movie studios, including the predecessors of today's Columbia,
Fox, Paramount, Universal and Warner Bros., brokered and approved these tobacco endorsement
deals for their contract stars. The studios directly benefitted from national advertising campaigns
plugging the studios' stars and latest movies, paid for by the tobacco companies. In the early
1950s, tobacco companies shifted their marketing dollars to a new medium, television. But, in
April 1970, congress passed the Public Health Cigarette Smoking Act banning the advertising of
cigarettes on broadcast media, such as television and radio. Thus, commercial collaboration with

1 Hollywood movie producers surfaced again in the 1970s, after cigarette commercials were
2 banned from TV and radio. From 1970 to at least 1994, major U.S. tobacco companies paid
3 product placement agents millions of dollars to insert tobacco imagery depicting their brands in
4 mainstream Hollywood studio films, which included youth-rated movies, and provided valuable
5 consideration, including cars, cash and advertising deals to Hollywood producers and actors who
6 aided in the placement of tobacco imagery depicting the tobacco companies' brands in their
7 movies. In the late 1980s and early 1990s, at least two large U.S. tobacco companies failed to
8 report their product placement-related expenditures to the Federal Trade Commission, as
9 required by Congress (Federal Cigarette Labeling and Advertising Act, 5 U.S.C.A. § 1337(b)).

10 29. A 2009 WHO Framework Convention on Tobacco Control ("FCTC") policy
11 development handbook states: "Experience shows that whenever tobacco advertising and
12 promotion is restricted in one medium, it migrates to another...Any country seeking to ban or
13 restrict tobacco advertising and promotion must address the issue of smoking on screen or risk
14 having its public health efforts being severely compromised."

15 30. In the United States, because of the laws prohibiting tobacco companies from, among
16 other things, advertising in broadcast media, various tobacco settlements, strong anti-smoking
17 public health campaigns and heightened public health awareness of the consequences of smoking
18 (and the fact that tobacco kills half of its regular customers when used exactly as the
19 manufacturer intended), there has been a steady decline in the number of adults who smoke.

20 31. While smoking prevalence among adults in the United States and other developed
21 countries is falling, smoking prevalence in many countries in the developing world is climbing.
22 The tobacco industry targets its marketing efforts to the expanding markets - both children and
23 adults - in the developing countries of the world where public health awareness of the dangers of
24 smoking is more limited and the laws against tobacco advertising, and the enforcement of any
25 such laws, are less developed. At present, over 80% of the more than 1 billion smokers
26 worldwide live in developing countries.

27 32. The film industry has a global reach. Although the films produced in the U.S. represent
28

1 only a small portion of the films produced worldwide, the films produced and rated by
2 defendants represent approximately two-thirds of the film market outside the United States.

3 33. Consumer spending on filmed entertainment will likely surpass \$100 billion in 2017,
4 with emerging markets such as China growing more quickly than established markets such as
5 Japan, the United Kingdom, and the United States. The rapid spread of multiple media platforms
6 for viewing movies outside of theatres, across cultures and economies, means that exposure to
7 film content is vastly underestimated by movie theatre attendance data alone.

8 34. The use of tobacco imagery in films frequently marketed to children under the age of
9 seventeen and which defendants certify and rate as “G,” “PG,” and “PG-13” that is, as suitable
10 and appropriate for children under the age of seventeen unaccompanied by a parent or guardian,
11 provides the tobacco industry with one of the most effective marketing tools to recruit new
12 smokers and nicotine addicts from children and adolescents in the United States and throughout
13 the world, effectively overcoming and circumventing legal restrictions on tobacco industry
14 advertising in the United States.

15 **VII. TOBACCO USE IN YOUTH-RATED FILMS IS PERVASIVE**

16 35. Tobacco imagery in youth-rated films is pervasive. A “tobacco incident” is one
17 occurrence of smoking or other tobacco imagery in a movie. “Incidents” are a measure of the
18 number of occurrences of smoking or other tobacco imagery in a movie.

19 36. In the thirteen-year period from 2003 to 2015, the 1,870 first-run theatrical films in the
20 U.S. that ranked among the weekly top ten films in gross box office earnings (accounting for
21 about 95 percent of ticket sales in any given year) featured 34,600 tobacco incidents (an average
22 of 2,700 tobacco incidents per year). Fifty-eight percent of the tobacco incidents appeared in
23 films that defendants rated “R,” 38 percent appeared in films defendants rated “PG-13,” and the
24 remaining 4 percent appeared in films defendants rated “G” or “PG.”

25 37. Of the nearly 1,100 films with tobacco imagery (i.e., with one or more tobacco
26 incidents in the film), 46 percent were rated “R,” 45 percent were rated “PG-13,” and 9 percent
27 were rated “G” or “PG.” Altogether, more than half of films with tobacco imagery were rated so
28

1 as to be accessible to audiences under the age of seventeen.

2 38. In the four-year period 2012 to 2015, the 550 top grossing films in the U.S. featured
3 9,850 tobacco incidents (an average of 2,500 tobacco incidents per year). Sixty-two percent of
4 the tobacco incidents appeared in films that defendants rated "R," 37 percent appeared in films
5 defendants rated "PG-13," and the remaining 1 percent appeared in films defendants rated "G" or
6 "PG." Of the top grossing films rated "PG-13," that is, films for which defendants provided
7 their seal of approval and certification that the films were suitable and appropriate for children
8 under the age of seventeen unaccompanied by a parent or guardian, 46 percent (123 films)
9 featured tobacco imagery. The 123 youth-rated films with tobacco imagery had a total of 3,768
10 tobacco incidents. Youth-rated films with tobacco imagery had an average of 31 tobacco
11 incidents per film.

12 39. Marketing and advertising researchers use "impressions" as a measure of advertising
13 messages delivered. "Tobacco impressions" represent the number of tobacco incidents in a film
14 multiplied by the number of moviegoers in the theatre audience for that film. The result is used
15 as an index to estimate audiences' total exposure to tobacco imagery on screen. From 2003 to
16 2015, top-grossing films delivered some 267 billion in-theatre tobacco impressions to audiences
17 in the "domestic" film market, comprising the United States and English-speaking Canada.
18 Assuming that, in proportion to population, 92 percent of these impressions were delivered to
19 U.S. audiences, total tobacco impressions delivered in U.S. movie theatres can be estimated at
20 about 245 billion. Of these tobacco impressions, about 45 percent were delivered by films rated
21 "R" by defendants, 51 percent by "PG-13" films, and 4 percent by "G" and "PG" films. In all,
22 films that defendants rated accessible to audiences under the age of seventeen unaccompanied by
23 a parent or guardian accounted for more than half of the tobacco impressions delivered to U.S.
24 theatre audiences: 135 billion impressions over thirteen years — 10.3 billion impressions per
25 year, on average — not including repeated impressions delivered by these same films on
26 television, home video, and video-on-demand.

27 40. In the four-year period from 2012 to 2015, top grossing movies delivered 72 billion
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1 tobacco impressions to U.S. theater audiences. During this four-year period, 49 percent of
2 tobacco impressions were delivered by films defendants rated to be accessible to adolescents,
3 that is “PG-13,” and 1 percent by films defendants rated “PG.” All youth rated films delivered
4 approximately 36 billion tobacco impressions to US moviegoers — 9 billion tobacco impressions
5 per year, on average — not including impressions delivered by these same films on television,
6 home video, and video-on-demand.

7 41. Tobacco imagery was featured in half of all top grossing films released in the four years
8 2012-2015. During that period, approximately 72 percent of films intended for adult audiences,
9 that is, films defendants rated as “R,” contained depictions of tobacco use.

10 42. Within the four-year period from 2012 to 2015, average levels of tobacco incidents in
11 “PG-13” rated films with any tobacco imagery climbed to historic peaks, rivaling or exceeding
12 levels seen in “R” rated films. In fact, each of the major Hollywood studio defendants has
13 produced and distributed top-grossing feature films with substantial amounts of tobacco imagery
14 over the years 2012 to 2015; and through these youth-rated films, the defendants have delivered
15 substantial numbers of tobacco impressions to children under the age of seventeen in the United
16 States:

17 a. Disney released 46 films to theaters nationally, of which 6 films (13
18 percent) featured tobacco imagery. Of the company’s 15 films rated “PG-
19 13,” 33 percent featured tobacco imagery. Altogether, Disney’s films rated
20 “PG-13” (i) comprised 83 percent of the company’s films with tobacco
21 imagery, (ii) carried 99 percent of the company’s 290 tobacco incidents,
22 and (iii) delivered more than 99 percent of the company’s 5.7 billion
23 tobacco impressions to U.S. theatre audiences of all ages.

24 b. Fox released 73 films to theaters nationally, of which 32 films (44 percent)
25 featured tobacco imagery. Of the company’s 29 films rated “PG-13,” 41
26 percent featured tobacco imagery. Altogether, Fox’s films rated “PG-13”
27 (i) comprised 38 percent of the company’s films with tobacco imagery, (ii)
28

1 carried 43 percent of the company's 1,060 tobacco incidents, and (iii)
2 delivered 4.7 billion (49 percent) of the company's 9.5 billion tobacco
3 impressions to U.S. theater audiences of all ages.

4 c. Paramount released 38 films to theaters nationally, of which 18 films (47
5 percent) featured tobacco imagery. Of the company's 20 films rated "PG-
6 13," 35 percent featured tobacco imagery. Altogether, Paramount's films
7 rated "PG-13" (i) comprised 39 percent of the company's films with
8 tobacco imagery, (ii) included 28 percent of the company's 620 tobacco
9 incidents, and (iii) delivered 2.5 billion (35 percent) of the company's 7.1
10 billion tobacco impressions to U.S. theater audiences of all ages.

11 d. Sony released 69 films to theaters nationally, of which 43 films (62 percent)
12 featured tobacco imagery. Of the company's 30 films rated "PG-13," 60
13 percent featured tobacco imagery. Altogether, Sony's films rated "PG-13"
14 (i) comprised 42 percent of the company's films with tobacco imagery, (ii)
15 included 31 percent of the company's 1,280 tobacco incidents, and (iii)
16 delivered 4.2 billion (33 percent) of the company's 12.9 billion tobacco
17 impressions to U.S. theater audiences of all ages.

18 e. Universal released 79 films to theaters nationally, of which 42 films (53
19 percent) featured tobacco imagery. Of the company's 32 films rated "PG-
20 13," 44 percent featured tobacco imagery. Altogether, Universal's films
21 rated "PG-13" (i) comprised 33 percent of the company's films with
22 tobacco imagery, (ii) included 25 percent of the company's 1,110 tobacco
23 incidents, and (iii) delivered 2.0 billion (30 percent) of the company's 6.6
24 billion tobacco impressions to U.S. theater audiences of all ages.

25 f. Warner Bros. released 73 films to theaters nationally, of which 31 films (42
26 percent) featured tobacco imagery. Of the company's 36 films rated "PG-
27 13," 36 percent featured tobacco imagery. Altogether, Warner Bros.' films
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1 rated “PG-13” (i) comprised 42 percent of the company’s films with
2 tobacco imagery, (ii) included 35 percent of the company’s 1,790 tobacco
3 incidents, and (iii) delivered 10.3 billion (55 percent) of the company’s 18.7
4 billion tobacco impressions to U.S. theater audiences of all ages.

5 43. So-called “independent” film distributors, not members of the MPAA and with no
6 governance role in the MPAA, also released motion pictures with tobacco imagery that
7 contributed to audience exposure. However, during the period 2012 and 2015, the six major
8 Hollywood studio defendants, in their primary business role as creators, producers and
9 distributors of films, accounted for 62 percent of all top-grossing, youth-rated motion pictures
10 with tobacco imagery released to U.S. theaters; 62 percent of tobacco incidents in youth-rated
11 films; and 82 percent — 29.5 billion — of in-theater tobacco impressions delivered by youth-
12 rated films.

13 44. Over the entire period, 2003-2015, as the major Hollywood studio defendants were
14 informed repeatedly of the deadly consequences of their youth-rating of films with tobacco
15 imagery, the total number of tobacco incidents in youth-rated films per year, and the number of
16 tobacco incidents per top-grossing youth-rated films, has fluctuated but even at its lowest
17 historical levels has been pervasive. The total number of tobacco incidents per youth-rated films
18 ranged from a high of 1,985 (2005) to a low of 594 (2010). The total number of tobacco
19 incidents per youth-rated films over the last four years were: 1,186 (2012), 783 (2013), 1,192
20 (2014) and 607 (2015). The number of tobacco incidents per youth-rated film with tobacco
21 imagery ranged from a high of 38 in 2014 to a low of 20 in 2008. The number of tobacco
22 incidents per youth-rated films with tobacco imagery over the last four years were: 36 (2012), 28
23 (2013), 38 (2014) and 20 (2015). The annual tobacco impressions of youth-rated films has also
24 fluctuated based upon the fluctuations in the total number of tobacco incidents per year in youth-
25 rated films, the number of incidents per youth-rated film, and the relative commercial success of
26 individual films and the number of tobacco incidents in those particular films. While total
27 tobacco impressions in youth-rated films dropped to its historical low in 2015, this was largely
28

1 due to the relative commercial failure of the particular films with tobacco incidents.

2 **VIII. EXPOSURE TO TOBACCO IMAGERY IN FILMS CAUSES CHILDREN TO**
3 **BECOME SMOKERS**

4 45. Since 1996 scores of scientific studies in the United States and other nations have
5 concluded that exposure to tobacco imagery in films causes children to become smokers.
6 Numerous studies have also found a dose-response relationship between this exposure, and an
7 adolescent's progression to regular, addicted smoking, with attendant risks of tobacco-induced
8 disease and premature death. After controlling for other factors that influence tobacco initiation,
9 including such elements as age, friends and family who smoke, ethnicity, socio-economic status,
10 and psycho-social traits, the more tobacco imagery an adolescent watches on screen, the greater
11 the likelihood that child will become a smoker.

12 46. In 2008, the National Cancer Institute (NCI) of the U.S. National Institutes of Health, in
13 a comprehensive review of the global peer-reviewed scientific literature, concluded that exposure
14 to depiction of tobacco use in movies is not merely associated with children starting to smoke
15 but, in fact, *causes* children to start smoking: "The total weight of evidence from cross-sectional,
16 longitudinal, and experimental studies indicates a causal relationship between exposure to
17 depictions of smoking in movies and youth smoking initiation."

18 47. The NCI also ratified the scientific consensus -- based upon empirical evidence from
19 numerous studies in a variety of countries employing a range of methodologies -- of the
20 existence of a dose response between children's exposure to tobacco imagery in films and
21 smoking by children: the more a child is exposed to tobacco imagery on screen, the more likely it
22 is that a child will start smoking.

23 48. In 2012, based upon an even larger body of authoritative, peer reviewed scientific
24 evidence, the U.S. Surgeon General's 2012 report on smoking concluded that exposure to
25 smoking on screen causes kids to smoke: "The evidence is sufficient to conclude that there is a
26 casual relationship between depictions of smoking in the movies and the initiation of smoking
27 among young people."

1 49. In its subsequent 2014 Report, the U.S. Surgeon General concluded, based upon current
2 rates, that 5.6 million of all Americans younger than 18 years of age alive today can be expected
3 to die from smoking-related diseases such as lung cancer, stroke and emphysema. The 2014
4 Surgeon General Report concluded: “Actions that would eliminate depiction of tobacco use in
5 movies, which are produced and rated as appropriate for children and adolescents, could have a
6 significant effect on preventing youth from becoming tobacco users.”

7 50. According to the CDC August 22, 2014 fact sheet on Smoking in the Movies: “Giving
8 an R rating to future movies with smoking would be expected to reduce the number of teen
9 smokers by nearly 1 in 5 (18%) and prevent one million deaths from smoking among children
10 alive today.”

11 51. If defendants adopted an “R” rating for films featuring tobacco imagery today, they
12 would prevent one million children from dying from tobacco related diseases, that is, eighteen
13 percent of the 5.6 million projected future tobacco deaths among children alive today. And,
14 therefore, defendants’ continued certification and rating of films with tobacco imagery as
15 suitable and appropriate for children and adolescents under 17 years of age unaccompanied by a
16 parent or guardian will cause one million American children alive today to die from tobacco-
17 related diseases such as lung cancer, heart disease, stroke and emphysema. Despite defendants’
18 knowledge of the scientific evidence that defendants’ conduct will cause more than three million
19 children and adolescents alive today to become addicted to nicotine and one million to die
20 prematurely from tobacco related diseases, defendants continue to provide their seal of approval,
21 certification and rating that films featuring tobacco imagery are suitable and appropriate for
22 children under the age of seventeen unaccompanied by a parent or guardian.

23 52. In the four-year period from 2012 through 2015, a total of 3 million adolescents ages 12
24 to 17 started smoking cigarettes. Thus, as a result of defendants’ practice of assigning youth-
25 ratings of “G,” “PG,” and “PG-13” to films with tobacco imagery, defendants caused 1.1 million
26 adolescents to start smoking cigarettes during the 2012 – 2015 period (37% of the 3 million
27 adolescents that started smoking cigarettes during the four-year period). Of the 1.1 million
28

1 adolescents who started smoking cigarettes between 2012 and 2015 due to their exposure to
2 tobacco imagery in films that defendants rated "G," "PG," or "PG-13," 32 percent of them, that
3 is, 360,000, will eventually die from tobacco induced diseases.

4 53. Even assuming additional declines in smoking rates over the next three years, unless
5 and until defendants change their rating system for films with tobacco imagery and rate films
6 with tobacco imagery with an "R" rating, defendants' conduct will cause an additional 200,000
7 U.S. children under the age of seventeen to become new cigarette smokers every year. And each
8 year in the future that defendants refuse to rate films with tobacco imagery with the "R" rating,
9 defendants' conduct will cause an additional 64,000 deaths from tobacco induced diseases in
10 future years.

11 54. In California alone, a total of 700,000 children and adolescents under the age of
12 seventeen are projected to become smokers during their lifetime and 225,000 of them are
13 projected to become smokers due to their exposure to tobacco imagery in films, based upon the
14 defendants' current rating system. In California alone, if defendants continue to attach their seal
15 of approval, certification and rating to films with tobacco imagery as being suitable and
16 appropriate for children and adolescents unaccompanied by a parent or guardian, defendants will
17 cause approximately 80,000 deaths from tobacco related disease. In addition, if defendants
18 continue their current conduct, in California alone the estimated costs of treating tobacco related
19 diseases caused by defendants' conduct will total nearly \$2.5 billion.

20 **IX. THE MPAA RATING SYSTEM**

21 55. In 1968, the defendants adopted, with a few subsequent changes, the current rating
22 system used by the U.S. motion picture industry. According to defendants' descriptions, the
23 voluntary rating system was intended to function as the films industry's guardian for the
24 protection of parents and their children. As described, and in practice since it was established in
25 1968, the defendants have operated, advertised and held out to the film-going public that
26 MPAA's rating system fulfilled a special and vital function, that is, to: a) advise and warn
27 parents regarding film content that the average parent in the United States would find
28

1 inappropriate or unsuitable for their children unaccompanied by a parent or guardian, and b)
2 protect children under the age of seventeen by prohibiting them from entering theatres and
3 viewing films featuring conduct, imagery and language that defendants determine is not suitable
4 or appropriate for children under the age of seventeen unless accompanied by a parent or
5 guardian.

6 56. The defendants, together with the independent film creators, producers and distributors,
7 collectively operate an \$88 billion business in the United States and worldwide. Defendants
8 determined that it was in their collective financial interests to voluntarily create, own, finance
9 and operate the MPAA film rating system to function as their industry's guardian to protect
10 parents and children under the age of seventeen in the United States. The annual operating
11 budget of the MPAA is approximately \$70 million. The major Hollywood studio defendants
12 contribute approximately \$65 million (92%) of the MPAA's annual budget as their annual
13 membership dues. The remaining source of revenue for the MPAA's operations (approximately
14 \$5 million) are fees the MPAA charges the film producers for the film rating service and right to
15 display the MPAA's certificate and rating for each film submitted to the MPAA for rating (a
16 large portion of which is also paid by the major Hollywood studio defendants). Defendants
17 concluded it served their primary, independent commercial interests as creators, producers and
18 distributors and/or exhibitors of films to provide this film rating and advertising standards
19 service to assure parents and children under the age of seventeen that they could trust and repose
20 confidence in defendants that the products that the motion picture industry was selling, and
21 which parents and their children under the age of seventeen were consuming, were suitable and
22 appropriate for children and adolescents.

23 57. According to the defendants' written rules and the ratings board that administers the
24 rating system for defendants, the ratings are decided by a full-time Ratings Board located in Los
25 Angeles. There are 10-13 members of the Rating Board who serve for periods of varying length.
26 The MPAA and NATO rules establish the Rating Board — the Classification and Rating
27 Administration ("CARA"). CARA is controlled by defendants and is operated as a division of
28

1 the MPAA. There are no special qualifications for Rating Board membership, except that the
2 members must have a shared parenthood experience and have the capacity to put themselves in
3 the role of most American parents so they can view a film and apply a rating that most parents
4 would find suitable and helpful in aiding their decisions about their children and what films they
5 see. A copy of the written rating rules is attached as Exhibit 1.

6 58. Pertinent portions of the MPAA rules provide:

7 The Classification and Rating Administration ("CARA") and the
8 Classification and Rating Appeals Board were established by the Motion
9 Picture Association of America, Inc. ("MPAA") and the National
10 Association of Theatre Owners, Inc. ("NATO") as part of a voluntary
11 system to provide information to parents to aid them in determining the
12 suitability of individual motion pictures for viewing by their children.

13 The Rating Board does not determine the content that may be included in
14 motion pictures by filmmakers, nor does it evaluate the quality or social
15 value of motion pictures. By issuing a rating, it seeks to inform parents of
16 the level of certain content in a motion picture (violence, sex, drugs,
17 language, thematic material, adult activities, etc.) that parents may deem
18 inappropriate for viewing by their children. It is not CARA's purpose to
19 prescribe socially-appropriate values or to suggest any evolution of the
20 values held by American parents, but instead to reflect, as sensitively as
21 possible, the current values of the majority of American parents, so that
22 parents benefit from and feel fairly informed by the ratings system.

23 Each member of the Rating Board must be a parent and may not have any
24 other affiliation with the entertainment industry. The Chairperson and
25 Senior Raters may have children of any age. Raters must have children
26 between the ages of five and fifteen when they join the Rating Board and
27 must leave the Rating Board when all of their children have reached the
28 age of twenty-one.

The Chairperson of CARA will develop and maintain a curriculum of
relevant materials for the initial training of Raters and for periodic review
with them of the standards applied by the majority of American parents to
determine the motion picture content suitable for viewing by their
children.

59. According to defendants, the purpose of the rating system is as follows:

Ratings and rating descriptors issued by CARA are intended to be used by
parents to assist them in determining whether the motion picture is
appropriate for their children to see and whether their children should be
accompanied while seeing the motion picture. In rating a motion picture,
the Rating Board evaluates each motion picture in its entirety and
considers those aspects of the motion picture that most parents would

1 consider in determining whether that motion picture is suitable for viewing
2 by their children, including mature themes, language, depictions of
3 violence, nudity, sensuality, depictions of sexual activity, adult activities
(i.e. activities that adults, but not minors, may engage in legally), and drug
4 use.

5 CARA assigns a rating to each motion picture. CARA assigns the rating
6 the Rating Board believes would best reflect the opinion of most
7 American parents about the suitability of that motion picture for viewing
8 by their children. When CARA assigns a rating, it also provides a rating
9 descriptor for that rating in order to better inform parents of the elements
10 of the motion picture that caused the motion picture to be given that rating.

11 60. The rating system currently in use is described in the defendants' rules as follows:

12 CARA assigns one of the following ratings, with the following meanings,
13 to each picture:

14 (1) *G - General Audience. All Ages Admitted.*

15 A G-rated motion picture contains nothing in theme, language, nudity, sex,
16 violence or other matters that, in the view of the Rating Board, would
17 offend parents whose younger children view the motion picture. The G
18 rating is not a "certificate of approval," nor does it signify a "children's"
19 motion picture. Some snippets of language may go beyond polite
20 conversation but they are common everyday expressions. No stronger
21 words are present in G-rated motion pictures. Depictions of violence are
22 minimal. No nudity, sex scenes or drug use are present in the motion
23 picture.

24 (2) *PG - Parental Guidance Suggested. Some Material May Not Be
25 Suitable For Children.*

26 A PG-rated motion picture should be investigated by parents before they
27 let their young children attend. The PG rating indicates, in the view of the
28 Rating Board, that parents may consider some material unsuitable for their
children, and parents should make that decision.

The more mature themes in some PG-rated motion pictures may call for
parental guidance. There may be some profanity and some depictions of
violence or brief nudity. But these elements are not deemed so intense as
to require that parents be strongly cautioned beyond the suggestion of
parental guidance. There is no drug use content in a PG-rated motion
picture.

(2) *PG-13 - Parents Strongly Cautioned. Some Material May Be
Inappropriate For Children Under 13.*

1 A PG-13 rating is a sterner warning by the Rating Board to parents to
 2 determine whether their children under age 13 should view the motion
 3 picture, as some material might not be suited for them. A PG-13 motion
 4 picture may go beyond the PG rating in theme, violence, nudity,
 5 sensuality, language, adult activities or other elements, but does not reach
 6 the restricted R category. The theme of the motion picture by itself will
 7 not result in a rating greater than PG-13, although depictions of activities
 8 related to a mature theme may result in a restricted rating for the motion
 9 picture. Any drug use will initially require at least a PG-13 rating. More
 10 than brief nudity will require at least a PG-13 rating, but such nudity in a
 11 PG-13 rated motion picture generally will not be sexually oriented. There
 may be depictions of violence in a PG-13 movie but generally not both
 realistic and extreme or persistent violence. A motion picture's single use
 of one of the harsher sexually-derived words, though only as an expletive,
 initially requires at least a PG-13 rating. More than one such expletive
 requires an R rating, as must even one of those words used in a sexual
 context. The Rating Board nevertheless may rate such a motion picture
 PG-13 if, based on a special vote by a two-thirds majority, the Raters feel
 that most American parents would believe that a PG-13 rating is
 appropriate because of the context or manner in which the words are used
 or because the use of those words in the motion picture is inconspicuous.

12 (4) *R - Restricted. Children Under 17 Require Accompanying Parent*
 13 *or Adult Guardian.*

14 An R-rated motion picture, in the view of the Rating Board, contains some
 15 adult material. An R-rated motion picture may include adult themes, adult
 16 activity, hard language, intense or persistent violence, sexually-oriented
 17 nudity, drug abuse or other elements, so that parents are counseled to take
 18 this rating very seriously. Children under 17 are not allowed to attend R-
 19 rated motion pictures unaccompanied by a parent or adult guardian. Parents
 are strongly urged to find out more about R-rated motion pictures
 in determining their suitability for their children. Generally, it is not
 appropriate for parents to bring their young children with them to R-rated
 motion pictures.

20 * * * *

21 G. Every motion picture assigned a rating of PG, PG-13, R or NC-17
 22 by the Rating Board also is assigned a "rating descriptor." This rating
 23 descriptor helps guide parents on the type of content that resulted in the
 24 motion picture being assigned that rating; modifiers indicate the type and
 25 intensity of specific elements in the movie. The rating descriptor does not
 26 constitute an exhaustive list of the type of content in the motion picture
 27 but reflects only the type of content in the motion picture that is strong
 28 enough to merit the rating category assigned to the motion picture. (E.g., a
 motion picture rated R with a rating descriptor only for "sexual content"
 also may include language, depictions of violence or other rating relevant
 elements, but only at a PG-13 or lower level.) The rating descriptor for
 each rated motion picture is determined by the Chairperson of CARA or
 the Senior Rater, in conjunction with the Raters who viewed the motion
 picture, based on the elements of the motion picture identified in the
 ballots of the Raters who viewed the motion picture as elements that
 caused the motion picture to receive that rating.

1 “H. After the Rating Board assigns a rating to the motion picture,
2 CARA will inform the rating contact of that rating and the rating
3 descriptor. The rating contact will advise CARA whether the producer or
4 distributor accepts the rating and rating descriptor.”

5 “I. When the rating and rating descriptor for the motion picture are
6 accepted by the rating contact, CARA will issue a Certificate to the holder
7 of the distribution rights for the motion picture that identifies the producer
8 or distributor of the motion picture that submitted the motion picture for
9 rating, the rating of the motion picture, and the Certificate Number of the
10 rating.”

11 “Rated motion pictures must bear prominently on every copy exhibited or
12 distributed in the United States the number of the Rating Certificate and
13 the official Seal of the MPAA with the words "Certificate Number,"
14 followed by the number of the Rating Certificate and the symbol of the
15 rating assigned to the motion picture. To the extent possible, the Seal of
16 the MPAA, the rating and number must be displayed in uniform type, size
17 and prominence.”

18 “The G, PG, PG-13, and NC-17 rating symbols and legends are
19 Certification marks registered by the MPAA with the United States Patent
20 and Trademark Office. The rating symbols and legends may not be self-
21 applied and may only be used with the authorization of the MPAA in
22 connection with motion pictures that have been rated by CARA, in
23 accordance with the Rules set forth herein and the Advertising
24 Administration Rules.”

25 **X. IMPOSING A DUTY UPON DEFENDANTS TO INCLUDE DEPICTION OF**
26 **TOBACCO IMAGERY AS A CRITERIA REQUIRING THE ASSIGNMENT BY THE**
27 **MPAA OF AN "R" RATING IS FORESEEABLE**

28 61. At least as early as 2003, defendants were on notice that tobacco imagery in films was
not suitable or appropriate for children and adolescents. In 2006, at least partially in response to
four years of accelerating demands from public health and professional medical organizations,
parents groups, youth groups, state and municipal health agencies, numerous state attorneys
general, and members of the United States Senate that defendants take rapid and substantive
steps to eliminate tobacco imagery from films accessible to children and adolescents, and in an
apparent attempt to fulfill their responsibilities as the films industry's self appointed guardian,

1 defendants sought the recommendation of the country's leading public health experts for a
2 proper, reasonable, appropriate and rationally based rating for films with tobacco imagery.

3 62. In 2006, the MPAA's then Chairman and CEO, Dan Glickman, asked the Harvard
4 School of Public Health to review the issue, and to provide the MPAA with expert advice and
5 policy recommendations for a rationally based rating for tobacco imagery in films. A copy of
6 Mr. Glickman's October 5, 2006 letter to Attorney General Curran of Maryland is attached as
7 Exhibit 2.

8 63. In response to defendants' request, on February 23, 2007 in Los Angeles, Dr. Barry R.
9 Bloom, then Dean of the Harvard School of Public Health, with the assistance of Dr. Jonathan
10 Samet, at the time professor of epidemiology at Johns Hopkins and who had served as one of the
11 senior scientific editors of three of the U.S. Surgeon General's reports on tobacco and health,
12 reported to the defendants in a closed door meeting and provided this recommendation:

13 "Based on the compelling body of available scientific evidence, we make a
14 single, simple recommendation: Take substantive and effective action to
15 eliminate the depiction of tobacco smoking from films accessible to children
16 and youths, and take leadership and credit for doing so. Don't ignore the issue
17 or put a fig leaf on it, like a descriptor on DVDs, that would be the equivalent
18 of the tobacco industry cynically putting smoking warnings on cigarette
19 packages. For industry leadership to have real impact we would hope your
20 message would be clear, simple, and publicly accountable. And we ask all the
21 major studios and guilds to agree to use their leadership to make it their
22 policy."

23 64. Thereafter, on May 1, 2007, thirty-one state attorney generals followed up with letters
24 to the MPAA, NATO and major Hollywood studio defendants demanding they take immediate
25 action: "[E]ach time a member of the industry releases another movie that depicts smoking, it
26 does so with the full knowledge of the harm it will bring to children who watch it...[E]liminate
27 the depiction of tobacco smoking from films accessible to children and youth. There is simply no
28 justification for further delay." A copy of the letter from the state attorneys general to one of
29 defendants is attached as Exhibit 3.

30 65. On June 2, 2009, Vermont Attorney General William H. Sorrell, former president of the
31 National Association of Attorneys General then chair of its Tobacco Committee wrote

1 defendants to demand that defendants change the rating of films with tobacco imagery and
2 follow the recommendations of essentially the entire world's public health experts:

3 "This Office and Attorneys General from numerous states have repeatedly
4 called upon the motion picture industry to take a leadership role in protecting
5 the health and lives of our children by eliminating depictions of smoking in
6 movies rated G, PG and PG-13...As the Attorneys General said in their first
7 letter to [then MPAA chief] Jack Valenti in August 2003: 'The motion picture
8 industry is uniquely situated to bring about sweeping change to prevent youth
9 smoking....We are hopeful you will use your best efforts...to rally the motion
10 picture industry to move from being a source of the problem to being
11 recognized as a critically important force in solving the nation's deadly
12 problem of youth smoking....I urge all studios to fulfill the Harvard School of
13 Public Health's recommendation that studios *eliminate* [emphasis in original]
14 the depiction of tobacco use from films accessible to youth. The evidence of
15 its negative consequences is now inescapable. Moreover, as this evidence
16 grows, it is clear that every time the industry releases another movie that
17 depicts smoking, it does so with full knowledge of the deadly harm it will
18 bring to the children who watch it.'" A copy of the letter is attached as Exhibit
19 4."

20 66. On information and belief, the only scientific, medical, public health and evidence-
21 based advice and recommendations that defendants have ever sought or received with regard to
22 how to rate films with tobacco imagery have been recommendations substantively similar to
23 recommendations by the Harvard School of Public Health, (assisted by an expert in tobacco and
24 health at the School of Public Health at Johns Hopkins University and one of the senior scientific
25 editors of three of the U.S. Surgeon General Reports on Smoking), the attorneys general of
26 thirty-one states, the American Medical Association, the American Heart Association, the
27 American Academy of Pediatrics, the American Heart Association, the American Lung
28 Association, the American Public Health Association, the New York PTA, the WHO, Los
Angeles County Department of Health Services, New York State Department of Health, and
others who in turn rely upon independent, authoritative, peer-reviewed research on adolescents'
exposure to on-screen smoking and its observed impact. All of these recommendations have
consistently and continuously recommended that defendants include tobacco imagery as one of
the criteria requiring a film to be rated as "R" to protect children under the age of seventeen from
becoming addicted smokers and ultimately dying prematurely from a tobacco-induced disease.

67. The defendants formed the film rating system for the express purpose of serving as the

1 industry's guardian: to warn parents of foreseeable inappropriate and unsuitable content in the
2 films being rated and to prevent children under the age of seventeen from exposure to films that
3 in its role as the industry's guardian it foresees as inappropriate and not suitable for children
4 under the age of seventeen who are unaccompanied by a parent or guardian.

5 68. The entire stated purpose for which defendants created and have operated the MPAA
6 film rating system, as defendants themselves describe it and hold it out to the consuming public,
7 is to foresee and warn parents and children of content that is not appropriate or suitable for
8 children under the age of seventeen in the films it rates and to protect children under the age of
9 seventeen by prohibiting them from entering theatres and viewing films featuring conduct,
10 imagery and language that defendants determine is not suitable or appropriate for children under
11 seventeen years of age unless accompanied by a parent or guardian. Defendants created and
12 have operated the film rating service for the purpose of inducing consumers, and particularly
13 parents of children under the age of seventeen, to rely upon the defendants' film ratings.

14 69. Thus, it is foreseeable that a duty would be imposed upon defendants, and the rating
15 system they operate to exercise reasonable care in determining the rating to be assigned to
16 tobacco imagery in films intended for children and adolescents, to accurately assign ratings to
17 film featuring tobacco imagery and to refrain from falsely and misleadingly issuing their seal of
18 approval, certification and rating of films featuring tobacco imagery as suitable and appropriate
19 for children and adolescents unaccompanied by a parent or guardian and from failing to disclose
20 material information regarding the deadly risks of tobacco imagery in the films it rates.

21 **XI. THERE IS A COMPELLING STATE, NATIONAL AND GLOBAL INTEREST IN**
22 **PROTECTING CHILDREN AND ADOLESCENTS FROM BECOMING ADDICTED TO**
23 **TOBACCO**

24 70. There is a compelling parental interest, as well as a compelling state, federal, and global
25 public health interest, in preventing children and adolescents from smoking and becoming
26 addicted to tobacco, suffering from tobacco-induced diseases and premature death.

27 71. The compelling public health interest in protecting children and adolescents from
28 addiction to tobacco and consequent grave physical harm is reflected in, among other things: a)

1 federal law prohibiting tobacco companies from advertising tobacco products in broadcast
2 media; b) federal law prohibiting the sale and distribution of tobacco products to minors; c)
3 federal law prohibiting tobacco companies from sponsoring athletic, social or cultural event
4 using tobacco brand names; d) the Master Settlement Agreement prohibition on tobacco
5 marketing that targets youth and on paid tobacco product placement or branding in entertainment
6 media and venues accessible to young people; e) state laws making it illegal to sell tobacco to
7 minors, for minors to buy tobacco, or for minors to possess tobacco (such as California Civil
8 Code §§ 308), state laws prohibiting contributing to the delinquency of minors (such as
9 California Civil Code §§ 272, *et seq.*), and state laws prohibiting the maintenance of private and
10 public nuisances (such as California Civil Code § 3479, *et seq.*), state laws protecting the rights
11 of children and recognizing that until children reach the age of majority they are vulnerable to
12 undue influences and presumptively less able to make informed decisions including, without
13 limitation, state laws tolling the statute of limitations for any claims by children until they reach
14 the age of majority (such as California Civil Code §§ 352, 335 and 6500 *et seq.*); f) thirty-four
15 U.S. Surgeon General reports detailing the devastating personal and social costs of tobacco use
16 and second hand smoke; g) federal and state laws prohibiting smoking in certain public places;
17 h) the National Cancer Institute's *Smoking and Health Monograph 19*, which concludes that
18 exposure to on-screen tobacco imagery causes adolescents to start smoking; i) the implementing
19 guidelines for Article 13 of the global WHO Framework Convention on Tobacco Control
20 (FCTC) which list film as a promotional vehicle for tobacco, and the WHO advisory that FCTC
21 parties assign an adult rating to future films with tobacco imagery; j) the letters sent by attorneys
22 general of thirty-one states stating that defendants are knowingly harming young people when
23 they release youth-rated films with tobacco content, and their urgent demands that defendants
24 eliminate smoking from youth-rated films; k) the findings and recommendations of the U.S.
25 Surgeon General, American Medical Association, American Academy of Pediatrics, American
26 Heart Association, American Legacy Foundation, American Lung Association, American Public
27 Health Association, Campaign for Tobacco-Free Kids, the New York PTA, the Los Angeles
28

1 Department of Health, New York State Department of Health, and other local, national and
2 international authorities, based on independent research evidence, that defendants give an “R”
3 rating to future films with imagery, except films that depict actual historical persons who
4 actually smoked and films that unambiguously depict the dire health consequences of tobacco
5 use; and l) the 2014 CDC Fact Sheet on Smoking in the Movies concluding that defendants’
6 continued certification and rating of films featuring tobacco imagery as suitable and appropriate
7 for children and adolescents, if not changed, will cause one million premature deaths from
8 tobacco related disease in this generation of U.S. children.

9 **XII. IT IS REASONABLE TO IMPOSE A DUTY UPON DEFENDANTS TO ACT WITH**
10 **DUE CARE IN RATING FILMS DEPICTING TOBACCO USE FOR CHILDREN**
11 **UNDER SEVENTEEN YEARS OF AGE**

12 72. Since defendants created the film rating service in 1968, defendants have voluntarily
13 assumed responsibility for providing parents and children with advice and advance cautionary
14 warnings regarding film content that defendants determine is not suitable or appropriate for
15 children under seventeen years of age unaccompanied by a parent or guardian. In their self-
16 appointed role as advising parents of inappropriate and unsuitable film content, and prohibiting
17 the admission of children under the age of seventeen to theatres and exposure to film content that
18 the defendants determine is not suitable or appropriate for children and adolescents unless
19 accompanied by a parent or guardian, defendants hold themselves out as performing a vital and
20 important function of informing parents’ decisions and protecting children. The rating system
21 created and operated by defendants has contributed to the ongoing commercial success of the
22 U.S. film production, distribution and exhibition industry dominated by defendants.

23 73. Defendants’ film rating and certification system has never been, and is not now, merely
24 limited to providing information to parents to aid parents in their determination of what is
25 suitable or appropriate film content to be viewed by their children under seventeen years of age.
26 Defendants’ film rating system involves an evaluation and determination by defendants that
27 films featuring certain conduct, imagery and language is not appropriate or suitable for children
28 under the age of seventeen unless accompanied by a parent or guardian. Defendants do not

1 merely provide information to the film consumers and allow the film consumers to make their
2 own choices about what film content is or is not suitable and appropriate. Instead, defendants
3 determine, based upon standards they select, that certain conduct, imagery and language is not
4 suitable and appropriate for children under the age of seventeen and defendants *prohibit* children
5 under the age of seventeen who are not accompanied by a parent or guardian from admission to
6 theatres to see films featuring such conduct, imagery and language. Defendants have voluntarily
7 assumed the responsibility of prohibiting children under seventeen years of age from exposure to
8 film content that they determine is not suitable or appropriate for children under the age of
9 seventeen.

10 74. Thus, it is reasonable to impose a duty upon defendants to exercise due care, and to rate
11 films accurately and according to their own voluntarily adopted standards — standards which
12 they hold out to the public for the purpose of inducing the special trust, reliance and confidence
13 of children and adolescents and their parents.

14 75. Defendants have been operating the current rating system since 1968 and requiring
15 them to act with reasonable care with regard to rating films with tobacco imagery will not
16 impose any additional, material administrative burden upon defendants.

17 76. Imposing a duty upon defendants to act with due care in rating films with tobacco
18 imagery, is reasonable and necessary to serve the compelling public interests in protecting
19 vulnerable and impressionable children and adolescents from becoming addicted to nicotine, and
20 suffering debilitating tobacco related illnesses and premature death as adults, and in reducing the
21 enormous social costs (both direct medical costs and loss of productivity) resulting from
22 tobacco-induced disease.

23 77. The defendants operate the MPAA film rating service as a private organization and
24 participation in the ratings system operated by defendants is voluntary. The defendants are free
25 to change their rating system, rules and procedures, and to cease operations entirely. No
26 governmental authority has any involvement whatsoever in the operation of defendants' film
27 rating service. Any independent producer or distributor desirous of making and distributing a
28

1 film is free to do so without submitting the product to the MPAA for a rating. Thus, requiring
2 defendants to assign films with tobacco imagery an “R” rating involves no First Amendment
3 Constitutional issues.

4 78. Requiring defendants to assign films with tobacco imagery an “R” rating would not
5 result in any censorship whatsoever. Anyone is free to create, produce, distribute, or exhibit any
6 film containing as much tobacco imagery as he or she believes necessary for artistic, political or
7 other reason, or on a whim. Requiring defendants to assign films with tobacco imagery an “R”
8 rating will only ensure that films with tobacco imagery are appropriately and accurately rated
9 and certified as unsuitable and inappropriate for children under the age of seventeen unless
10 accompanied by a parent or guardian.

11 79. Defendants’ voluntary, self-imposed rating system has always influenced or restrained
12 the artistic or creative choices of writers, directors, editors and producers of films. From the
13 inception of defendants’ film rating system through the present, films have been and continue to
14 be conceived, written, directed and edited to obtain the rating that provides a film its best
15 opportunity for commercial success with its intended audiences. This development and
16 production process currently involves modifying or limiting strong language and images of
17 violence, sexual imagery, nudity, drug use, and minors in adult situations or encouraged to use
18 substances restricted to adults, for the purpose of obtaining a “PG-13” rating if the film’s
19 intended audience includes the lucrative under age seventeen market. For example, under the
20 current rating system, a film with certain expletives if used more than once (or once in a sexual
21 context) will be required to be assigned an "R" rating. As a result, if the film is intended for
22 distribution to the under-seventeen market, the film will be written and edited so that it does not
23 include more than one of the restricted expletives or none used in a sexual context. Thus,
24 requiring defendants to act with due care to assign films with tobacco imagery an "R" rating
25 would not result in any additional significant restriction upon artistic or creative freedoms
26 beyond the restrictions currently imposed by defendants’ voluntary, self-imposed existing rating
27 system. Requiring defendants to act with due care to assign films with tobacco imagery an “R”
28

1 rating would constitute no different restriction on artistic or creative freedom than the current
2 rating system which prohibits writers, directors, editors and producers from using certain
3 expletives more than once (or once in a sexual context) if the film is intended to be marketed to
4 children and adolescents.

5 80. Requiring defendants to act with due care to assign an “R” rating to films featuring
6 tobacco imagery would not impose any duties or liability of any kind whatsoever upon
7 defendants (or any other person) in their capacities or roles as writers, directors, creators,
8 producers, distributors or exhibitors of any Constitutionally protected speech in any film. The
9 claims asserted in this lawsuit relate to defendants’ conduct in their completely separate,
10 independent and voluntarily assumed role as the self-appointed guardian of the movie industry
11 for the benefit of parents and children, that is, for defendants’ negligent, and false and
12 misleading, certification, and rating of the films.

13 81. The claims asserted in this lawsuit relate to defendants’ film rating service, and only
14 defendants’ film rating service. Any involvement defendants may or may not have had in the
15 creation, production or distribution of any particular film is irrelevant to the conduct that is the
16 subject of this lawsuit (except to the extent that it demonstrates an improper financial motivation
17 for defendants’ conduct). Defendants are liable for the negligent and false and misleading
18 certification and rating of each and every film rated by defendants regardless of whether the film
19 was created, produced or distributed by one of the defendants or one of the independent
20 companies with no affiliation with the defendants’ film rating service.

21 82. The incremental restriction of artistic or creative freedom arising from requiring
22 defendants to act with due care and accurately in rating films with tobacco imagery – if any --
23 beyond the restrictions already resulting from the defendants’ operation of the current rating
24 system, would have a limited effect, would only apply to those films intended for unrestricted
25 viewing by children and adolescents unaccompanied by a parent or adult guardian, and would
26 have no effect on films intended for adult audiences. Moreover, any such restriction is not a
27 restriction on the artistic or creative freedom of anyone to create, produce, distribute or exhibit
28

1 any film with any tobacco imagery content — it is simply and solely a restriction necessary to
2 prevent the negligent and false and misleading certifying and rating of the content of films
3 intended for youth audiences. There is no social utility in negligent or false or misleading
4 certifying, rating or advertising of films that cause devastating physical harm and death to
5 children and adolescents.

6 83. Any slight burden upon defendants in their voluntary role as the self-appointed
7 guardians of the film industry for the special protection of minors and parents of minor children
8 for the purpose of preventing children under the age of seventeen becoming addicted to tobacco,
9 and suffering debilitating illnesses and premature deaths as adults, is reasonable and necessary to
10 ensure that the rating system accurately and truthfully certifies and rates films featuring tobacco
11 imagery as “R” and unsuitable and inappropriate for children and adolescents under the age of
12 seventeen unaccompanied by a parent or guardian.

13 84. It is reasonable to impose a duty upon defendants to act with due care and accurately in
14 rating films with tobacco imagery intended for children under the age of seventeen
15 unaccompanied by a parent or guardian because defendants have voluntarily assumed the duty
16 and responsibility to act as the guardians of the film industry for the benefit of parents and
17 children under the age of seventeen. Defendants have voluntarily created and operated the rating
18 system because they concluded it was in their commercial interests to do so. Defendants
19 voluntarily and deliberately solicited the trust and confidence of parents and children under the
20 age of seventeen by holding out their rating system as the guardian of the movie industry for the
21 special protection of parents and children, and defendants succeeded in obtaining the trust and
22 confidence of the parents and children for whose benefit and protection the defendants created
23 and have operated the rating system. Having assumed the duty and responsibility of providing
24 this service, it is reasonable to impose upon defendants the duty to act with due care and
25 accurately in assigning “R” ratings for films featuring tobacco imagery that are unsuitable and
26 inappropriate for children and adolescents under the age of seventeen unaccompanied by a parent
27 or guardian.

1 **XIII. DEFENDANTS' REFUSAL TO ASSIGN AN R-RATING TO FILMS WITH**
2 **TOBACCO IMAGERY IS NEGLIGENT AND A BREACH OF FIDUCIARY DUTY**

3 85. Defendants are directly responsible for and control the entire ratings system, including,
4 without limitation, creating and revising the rating system rules, the ratings classifications, the
5 general criteria or standards for determining whether any particular language, conduct or
6 imagery of a film requires that the film be assigned the "R," "PG-13," "PG," or "G" rating, and
7 the administration of the ratings system by CARA, a division of the defendant MPAA, as
8 described above.

9 86. Under defendants' explicit ratings rules if a film uses the word "F****" more than once,
10 or once in a sexual context, the film must be assigned the "R" rating and defendants prohibit
11 children and adolescents (without a parent or guardian) from entry into the movie theatre to view
12 the film because defendants have determined that the film is not suitable and appropriate for
13 viewing by children and adolescents. However, if the film contains tobacco imagery,
14 defendants' rating system assigns the film a youth rating and defendants certify and rate the film
15 as suitable and appropriate for viewing by children and adolescents unaccompanied by a parent
16 or guardian.

17 87. As alleged above, defendants sought and have been provided with the scientific
18 evidence that tobacco imagery in films causes children to become smokers, addicted to nicotine
19 and suffer tobacco related diseases and premature death. Defendants sought and have been
20 provided with recommendations from the world's leading public health scientists and numerous
21 public health professionals (including the U.S. Surgeon General's Reports on Tobacco, the
22 National Cancer Institute, Center for Disease Control, attorneys general of thirty-one states, the
23 American Medical Association, the American Heart Association, the American Academy of
24 Pediatrics, the American Lung Association, the American Public Health Association, and the
25 WHO), that because of the proven and deadly risk to children and adolescents of tobacco
26 imagery in films, that films with tobacco imagery should be rated "R." Despite the known,
27 deadly risk posed to children and adolescents by viewing tobacco imagery in films, the
28 defendants refuse to change the criteria for the rating system by requiring the "R" rating for any

1 film featuring tobacco imagery. Instead, defendants continue to certify and rate films with
2 tobacco imagery as suitable and appropriate for children and adolescents unaccompanied by a
3 parent or guardian.

4 88. No reasonable parent or, at the very least, most American parents, if provided with the
5 scientific evidence, and the advice and recommendations from the world's leading public health
6 scientists, the entire U.S. medical community, and the leading public health institutions in the
7 United States (the CDC, NCI, NIH, the U. S. Surgeon General, and the WHO) regarding the
8 devastating and deadly consequences of certifying and rating films featuring tobacco imagery as
9 suitable and appropriate for children — information known to the MPAA and defendants for
10 more than a decade — would consider certifying and rating such films as suitable and
11 appropriate for children and adolescents unaccompanied by a parent or guardian. An
12 independent national survey conducted in 2006 found that 70 percent of adults support R-rating
13 films that show smoking, unless the film clearly demonstrates the dangers of smoking or it is
14 necessary to represent smoking of a real historical figure. Any independent, reasonable parent,
15 or at the very least, a majority of independent American parents, provided the same scientific
16 evidence and the recommendations of the world's leading medical and public health
17 professionals and institutions that was provided to and known to the defendants, would assign an
18 "R" rating to films featuring tobacco imagery.

19 89. Defendants' rating system that assigns the "R" rating to films that use the word "F****"
20 more than once (or once in a sexual context) based upon a determination by defendants that it is
21 not suitable or appropriate for children and adolescents to hear the word "F****" more than once
22 (or once in a sexual context), while simultaneously certifying and rating films with tobacco
23 imagery as suitable and appropriate for children and adolescents unaccompanied by a parent or
24 guardian is grossly negligent, false and inaccurate, and a breach of defendants' statutory and
25 fiduciary duties.

26 90. Defendants' continued refusal to treat tobacco imagery in films as requiring an "R"
27 rating is grossly negligent, false and inaccurate, and a breach of defendants' statutory and
28

1 fiduciary duties.

2 91. By any measure or standard including a) defendants' stated purpose for creating and
3 operating the rating system, b) the known standards or criteria defendants have explicitly adopted
4 as the standards or criteria for classifying films by their content, or c) any rational or reasonable
5 standard, defendants' continued certification and rating of films featuring tobacco imagery as
6 suitable and appropriate for children and adolescents unaccompanied by a parent or guardian, is
7 grossly negligent, false and inaccurate, and a breach of defendants' statutory and fiduciary
8 duties.

9 **XIV. DEFENDANTS' RATING OF FILMS FEATURING TOBACCO IMAGERY AS**
10 **SUITABLE AND APPROPRIATE FOR CHILDREN AND ADOLESCENTS IS**
11 **KNOWINGLY AND INTENTIONALLY FALSE AND MISLEADING**

12 92. As alleged above, beginning no later than 2007, defendants' rating of films with
13 tobacco imagery as suitable and appropriate for children under the age of seventeen was false
14 unaccompanied by a parent or guardian, inaccurate and misleading because the scientific
15 evidence established that adolescents' viewing films featuring tobacco imagery caused them to
16 become smokers, and has caused and will continue to cause, hundreds of thousands of children
17 to suffer from tobacco related diseases and premature death as adults.

18 93. Beginning no later than 2007, defendants deliberately and intentionally and with total
19 disregard for the physical harm and deadly consequences of their conduct to hundreds of
20 thousands of children and adolescents in the United States and millions of children and
21 adolescents throughout the rest of the world, rated films with tobacco imagery as suitable and
22 appropriate for children and adolescents unaccompanied by a parent or guardian with full
23 knowledge that such ratings were false, inaccurate and misleading because defendants have
24 known, based upon the scientific evidence, that rating films featuring tobacco imagery as
25 suitable for youth audiences, causes adolescents to become smokers, and to suffer tobacco
26 related diseases and premature death as adults.

27 94. At various times over the last ten years, each of the major Hollywood studio defendants
28 publicly adopted corporate policies for the express purpose of reducing tobacco imagery in

1 youth-rated films as a result of: a) the scientific evidence that tobacco imagery in youth-rated
2 films was causing children to become smokers and causing them to die prematurely from
3 tobacco related diseases, and b) the repeated warnings of the state attorneys general, public
4 health scientists, medical associations, the CDC and the U.S. Surgeon General of the deadly
5 consequences of defendants' youth-rating system for films with tobacco imagery. Each of the
6 major Hollywood Studio defendants succeeded in nearly completely eliminating tobacco
7 imagery in youth-rated films for a limited one or two-year period following the adoption of these
8 corporate policies. However, these policies have many loopholes and exceptions (for example,
9 Disney's policy does not apply to films that Disney distributes under its Touchstone Pictures
10 label, such as the films produced by DreamWorks and distributed by Disney through Touchstone
11 under a seven-year agreement, during which Disney made available to Dream Works a revolving
12 credit facility of \$250 million), and despite a limited impact immediately following the adoption
13 of these separate policies, all of the major Hollywood studio defendants resumed production and
14 distribution of youth-rated films with tobacco imagery. As a result, tobacco imagery in youth-
15 rated films returned to historical levels.

16 95. The fact that the each of the major Hollywood studio defendants adopted corporate
17 policies to reduce tobacco imagery in youth-rated films demonstrates that each of the defendants
18 had full and complete knowledge: a) that tobacco imagery in youth-rated films causes
19 adolescents to become addicted to nicotine, and b) of the deadly consequences of defendants'
20 youth-rating of films with tobacco imagery. Defendants adoption of these corporate polities, and
21 the fact that these corporate policies were effective in eliminating tobacco imagery in films
22 produced by the major Hollywood studios for a brief period following the adoption of the
23 policies, demonstrates that the defendants are fully capable of eliminating tobacco imagery in
24 youth-rated films. It also demonstrates that defendants' claims that producers, directors, and
25 writers must be permitted to use tobacco imagery in youth-rated films for the sake of artistic
26 freedom are pretextual and plainly false. The collective failure of individual company policies to
27 permanently sustain reductions in tobacco imagery in youth-rated films demonstrates that
28

1 individual corporate policies will not eliminate tobacco imagery in youth-rated films. The only
2 effective way to eliminate tobacco imagery in youth-rated films is for defendants to stop
3 providing their seal of approval, certification and rating of “G,” “PG,” and “PG-13” to films with
4 tobacco imagery that are unsuitable and inappropriate for children and adolescents under the age
5 of seventeen unless accompanied by a parent or guardian and to assign the “R” rating to such
6 films.

7 96. In 2006, as alleged in paragraphs 62 through 63, above, defendants solicited and
8 obtained expert advice and recommendations from the leading public health scientists regarding
9 the public health consequences of youth-ratings of films featuring tobacco imagery and how
10 films with tobacco imagery should be rated. The recommendation, as alleged above, was to
11 eliminate tobacco imagery in films accessible to children and youths. In fact, the
12 recommendation also explicitly advised defendants: “Don’t ignore the issue or put a fig leaf on
13 it, like a descriptor on DVDs, that would be the equivalent of the tobacco industry cynically
14 putting smoking warnings on cigarette packages.” The defendants with full knowledge of the
15 deadly consequences of their youth-rating of films with tobacco imagery, not only refused to
16 follow the expert advice they had sought by refusing to change the rating system to require the
17 “R” rating for films that included tobacco imagery, but they actually chose to do exactly what the
18 expert advise cautioned them against doing. Starting in 2007, defendants changed the MPAA
19 film rating system purportedly to include smoking imagery as one of the “descriptors” utilized in
20 conjunction with the “G,” “PG,” “PG-13,” and “R” certification or rating. The descriptors
21 include additional information e.g., “violence/disturbing images,” “strong sexual content
22 including dialogue,” “non-stop action violence,” or “brooding, dark violence.” Defendants
23 purported to include smoking imagery as one of the descriptors to be included with the rating so
24 as to warn and advise parents and other consumers that the film contained tobacco imagery. See,
25 May 10, 2007 letter from Dan Glickman to thirty-one State Attorneys General a copy of which is
26 attached as Exhibit 5.

27 97. However, since the adoption of the additional smoking descriptors as part of the rating
28

1 system, the MPAA refused to include a smoking descriptor in the ratings it issued in almost 9 out
2 of every 10 (88%) youth-rated, top grossing films with tobacco imagery. And, in those rare
3 instances where the MPAA actually included a smoking descriptor in a youth-rated film with
4 tobacco imagery, they did so more frequently to films that were produced and/or distributed by
5 the independent film producers compared with the films produced and/or distributed by the
6 major Hollywood studio defendants. Moreover, even in those rare instances in which defendants
7 included a smoking descriptor in youth-rated films, defendants never disclosed in the rating or
8 rating descriptors that defendants knew that exposure to tobacco imagery in films causes a
9 serious increased risk that children and adolescents will become addicted to nicotine, suffer
10 tobacco related diseases and die prematurely.

11 98. Defendants' failure, nearly 90% of the time, to disclose to parents of children under the
12 age of seventeen that youth-rated films contained tobacco imagery and defendants failure, 100%
13 of the time, to disclose to parents of children under the age of seventeen that exposure to tobacco
14 imagery in films causes a serious increased risk that children and adolescents will become
15 addicted to nicotine, suffer tobacco related diseases and die prematurely, is grossly negligent,
16 false and inaccurate, and a breach of defendants' statutory and fiduciary duties.

17 99. Defendants rating films with tobacco imagery as "G," "PG," and "PG-13" is also false
18 and misleading because defendants falsely hold out the rating system as an accurate rating
19 system utilizing specially selected, trained and informed raters acting separately and
20 independently from defendants' control. Defendants assert that ratings are assigned by raters
21 specially selected based upon, among other things, their independence from defendants and the
22 movie industry, and specially trained and informed by relevant material developed and
23 maintained by defendants. As defendants stated: "Ratings are assigned by an independent board
24 of parents with no past affiliation to the movie business. Their job is to rate each film as they
25 believe a majority of American parents would rate it, considering relevant themes and content."
26 www.filmratings.com (website 2010).

27 100. The ratings assigned to films under defendants' rating system are falsely and
28

1 misleadingly described as accurate and assigned by an independently operated rating system and
2 assigned by properly trained and informed independent raters. Contrary to defendants' claims,
3 however, defendants exercise complete control over the entire rating system, including the rules
4 of the rating system, the criteria to be used — or not used — by the CARA Raters when rating
5 individual films, the training of the raters and the scientific information and expert
6 recommendations pertinent to the raters' task that are provided to, or withheld from, the raters.

7 101. Defendants use their control over the entire rating system and process to refuse to: a)
8 include tobacco imagery as one of the explicit criteria requiring the CARA Raters to assign an
9 "R" rating to films featuring tobacco imagery for the purpose of ensuring that films featuring
10 tobacco imagery are not assigned the "R" rating, and b) to disclose that youth-rated films contain
11 tobacco imagery and that that exposure to tobacco imagery in films causes a serious increased
12 risk that children and adolescents will become addicted to nicotine, suffer tobacco related
13 diseases and die prematurely.

14 102. Defendants refuse to include tobacco imagery as one of the explicit criteria in
15 defendants' general standards requiring the CARA Raters to assign an "R" rating, for the
16 improper purpose of obtaining inaccurate and deadly "PG-13" ratings for films featuring tobacco
17 imagery for no apparent reason or purpose other than defendants' financial gain. Defendants
18 approve, adopt and ratify the inaccurate and false "G," "PG," and "PG-13" rating of every film
19 with tobacco imagery by affixing the defendants' MPAA "G," "PG," or "PG-13," seal or
20 certificate, to every film produced or distributed by each of the Hollywood studio defendants, by
21 expending millions of dollars in marketing and advertising each such film as being suitable and
22 appropriate for youth audiences unaccompanied by a parent or guardian, and by profiting from
23 the improper youth-ratings, with full knowledge of the deadly consequences of such inaccurate
24 and false youth-ratings.

25 103. Defendants, in their primary, but separate and independent businesses as the creators,
26 producers, distributors and exhibitors of a majority of the films that are rated by defendants' film
27 rating service, generate substantially more revenue from "PG-13" ratings than from films with
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1 "R" ratings, on average. Defendants have significant financial incentives to use their control of
2 the film rating service to improperly, negligently, and falsely issue the MPAA seal of approval,
3 certification and rating that films are suitable and appropriate for children under the age of
4 seventeen unaccompanied by a parent or guardian despite the fact that such films feature
5 unsuitable and inappropriate tobacco imagery.

6 104. On information and belief, from at least 2007 through the present, Defendants have
7 knowingly and falsely used and controlled the rating system to rate films featuring tobacco
8 imagery as suitable and appropriate for children under seventeen years of age unaccompanied by
9 a parent or guardian because youth-rated films, in contrast to "R" rated films, are substantially
10 more lucrative to defendants in their separate roles and capacities as the creators, producers,
11 distributors and exhibitors of those films.

12 **XV. DEFENDANTS' NEGLIGENCE, INTENTIONAL CONDUCT AND BREACH OF**
13 **STATUTORY AND FIDUCIARY DUTIES IS CONTINUING TO CAUSE CHILDREN**
14 **UNDER THE AGE OF SEVENTEEN TO SUFFER IRREPARABLE PHYSICAL**
15 **INJURY AND PREMATURE DEATHS AS ADULTS**

16 105. Defendants' refusal to assign films with tobacco imagery an "R" rating has caused, and
17 if not changed will continue to cause, millions of children in the United States and throughout
18 the world to become smokers and addicted to tobacco, and to suffer immediate and irreparable
19 physical injury and premature death as adults. Defendants' conduct is ongoing and, in the
20 absence of declaratory and injunctive relief is likely to continue.

21 **XVI. PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF IS NECESSARY TO**
22 **PREVENT CONTINUING IMMEDIATE AND IRREPARABLE PHYSICAL INJURY**
23 **AND PREMATURE DEATH TO CHILDREN UNDER THE AGE OF SEVENTEEN**

24 106. A preliminary and permanent injunction requiring defendants to assign an "R" rating to
25 films with tobacco imagery is necessary to prevent continuing immediate and irreparable
26 physical injury and premature death for millions of children in the United States and throughout
27 the world and to prevent plaintiff's and Class members' children from viewing films with
28 tobacco imagery that defendants continue to rate and certify as suitable and appropriate for
children and adolescents under the age of seventeen unaccompanied by a parent or guardian.

1 **XVII. THE FACTS RELATING TO NAMED PLAINTIFF TIMOTHY FORSYTH**

2 107. Mr. Forsyth is the parent of two minor children. In the last four years Mr. Forsyth has
3 purchased theatre tickets to take his two sons, aged twelve and thirteen, to numerous live action
4 first run films assigned youth-ratings by defendants, including the following films containing
5 tobacco imagery:

- 6 a. Spectre, on December 24, 2015 for \$24.75, bearing defendants' MPAA
7 rating "PG-13 for intense sequences of action and violence, some
8 disturbing images, sensuality and language" certificate, or seal of
9 approval, number 49732;
- 10 b. Dumb And Dumber To, on November 16, 2014 for \$43.00, bearing
11 defendants' MPAA rating "PG-13 for crude and sexual humor, partial
12 nudity, language and some drug references" certificate, or seal of
13 approval, number 49175,;
- 14 c. Transformers: Age of Extinction, on July 15, 2015 for \$44.00, bearing
15 defendants' MPAA rating "PG-13 for intense sequences of sci-fi
16 violence and action, language and brief innuendo" certificate, or seal of
17 approval, number 49153;
- 18 d. X-Men: Days of Future Past, on May 26, 2014 for \$20.75, bearing
19 defendants' MPAA rating "PG-13 for sequences of intense sci-fi
20 violence and action, some suggestive material, nudity and language"
21 certificate, or seal of approval, number 48698;
- 22 e. The Amazing Spider Man 2, on May 4, 2014 for \$29.25, bearing
23 defendants' MPAA rating "PG-13 for sequences of sci-fi
24 action/violence" certificate, or seal of approval, number 46601;
- 25 f. The Hobbit: The Desolation of Smaug, on December 15, 2013 for
26 \$52.50, bearing defendants' MPAA rating "PG-13 for extended
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1 sequences of intense fantasy action violence, and frightening images”
2 certificate, or seal of approval, number 48745;

3 g. Iron Man 3, on May 25, 2013 for \$26.50, bearing defendants’ MPAA
4 rating “PG-13 for sequences of intense sci-fi action and violence
5 throughout, and brief suggestive content” certificate, or seal of approval,
6 number 48254;

7 h. The Hobbit: An Unexpected Journey, on December 14, 2012 for \$40.75,
8 bearing defendants’ MPAA rating “PG-13 for extended sequences of
9 intense fantasy action violence, and frightening images” certificate, or
10 seal of approval, number 47983,;

11 i. Men In Black 3, on June 3, 2012 for \$36.00, bearing defendants’ MPAA
12 rating “PG-13 for sci-fi action violence, and brief suggestive content”
13 certificate, or seal of approval, number 46600; and

14 j. The Woman in Black, on February 17, 2012 for \$23.75, bearing
15 defendants’ MPAA rating “PG-13 for thematic material and
16 violence/disturbing images” certificate, or seal of approval, number
17 47187.

18 108. Mr. Forsyth relied upon defendants’ seal of approval, certification and rating of “PG-
19 13” that the forgoing films were suitable and appropriate for children under the age of seventeen
20 unaccompanied by a parent or guardian when he purchased tickets for the films listed above.

21 109. If the defendants had not negligently, falsely and misleadingly and in breach of their
22 statutory and fiduciary duties, assigned youth ratings of “PG-13” to films featuring tobacco
23 imagery, and had not deliberately failed to disclose that the films contained tobacco imagery and
24 the fact that exposure to films with tobacco imagery results in a serious increased risk that
25 children and adolescents will become addicted to nicotine, suffer tobacco related diseases and die
26 prematurely, Mr. Forsyth would not have purchased theatre tickets for those youth-rated films
27 featuring tobacco imagery, his children would not have been exposed to the tobacco imagery in
28

1 those films and he would not have been exposed to an increased risk of his children becoming
2 addicted to nicotine, developing tobacco related diseases and dying prematurely as a result of the
3 exposure to the tobacco imagery in those films.

4 110. As a result of defendants' improper conduct, defendants have been enriched and
5 plaintiff has been injured and suffered damage in the amount of the purchase price for the theatre
6 tickets purchased in the four years prior to the filing of this complaint and the risk of his children
7 becoming addicted to nicotine, developing tobacco related diseases and dying prematurely as a
8 result of the exposure to tobacco imagery in those films.

9 **XVIII. CLASS ALLEGATIONS**

10 111. Plaintiff Mr. Forsyth brings this action pursuant to the Federal Rules of Civil Procedure
11 23 (b)(2), on his behalf and on behalf of the following Class:

12 All parents and legal guardians of children under the age of seventeen
13 in the United States whose children have seen or may see films
14 featuring tobacco imagery but assigned a youth rating, that is, "G",
15 "PG" or "PG-13" rating by defendants (the "Nationwide Injunctive
And Declaratory Class").

16 112. Plaintiff Mr. Forsyth brings this action pursuant to the Federal Rules of Civil
17 Procedure 23 (b)(3), on his own behalf and on behalf of the following Class:

18 All parents and legal guardians of children in the United States who,
19 within the last four years, have paid for theatre tickets for their
20 children under the age of seventeen for films featuring tobacco
21 imagery but assigned a youth rating, that is, "G", "PG" or "PG-13"
22 rating by defendants (the "Nationwide Ticket Purchase Class").

23 113. Plaintiff Mr. Forsyth brings this action pursuant to the Federal Rules of Civil
24 Procedure 23(b)(2) on his own behalf and on behalf of the following state-wide Sub-Class:

25 All parents and legal guardians of children under the age of seventeen in
26 California whose children have seen or may see films featuring tobacco imagery
27 but assigned a youth rating, that is, "G", "PG" or "PG-13" rating by defendants
28 (the "California Injunctive and Declaratory Sub-Class")

1 114. Plaintiff Mr. Forsyth brings this action pursuant to the Federal Rules of Civil
2 Procedure 23(b)(3) on his own behalf and on behalf of the following state-wide Sub-Class:

3
4 All parents and legal guardians of children in California who, within the last four
5 years, have paid for theatre tickets for their children under the age of seventeen
6 for films featuring tobacco imagery but assigned a youth rating, that is, “G”, “PG”
or “PG-13” rating by defendants (the “California Ticket Purchase Sub-Class).

7 115. Excluded from the foregoing Classes and Sub-Classes are defendants, and their
8 officers and directors.

9 116. The Classes and Sub-Classes consist of thousands of individuals, making joinder
10 impractical.

11 117. The claims of plaintiff are typical of the claims of the respective Classes. The claims
12 of the plaintiff and the respective Classes are based on the same legal theories and arise from the
13 same improper conduct, resulting in the same injury to the plaintiff and the respective Classes.

14 118. The respective Classes have a well-defined community of interest. The defendants
15 have acted and failed to act on grounds generally applicable to the plaintiff and the respective
16 Classes, requiring the Court’s imposition of uniform relief to ensure compatible standards of
17 conduct toward the respective Classes.

18 119. There are many questions of law and fact common to the claims of plaintiff and the
19 respective Class members, and those questions predominate over any questions that may affect
20 only individual class members within the meaning of Federal Rules of Civil Procedure and
21 23(b)(2) and 23(b)(3).

22 120. Common questions of fact and law affecting members of the Classes include, but are
23 not limited to, the following:

- 24 k. Whether defendants owe a legal duty to the Classes when rating films
25 with tobacco imagery to exercise reasonable care, to assign accurate
26 ratings and a fiduciary duty.
27

- 1 l. Whether defendants are breaching their duties to the Classes by
2 continuing to rate films with tobacco imagery as suitable for children
3 under seventeen years of age unaccompanied by a parent or guardian.
- 4 m. Whether defendants rating of films with tobacco imagery as suitable for
5 children under seventeen years of age unaccompanied by a parent or
6 guardian is false and misleading.
- 7 n. Whether defendants knowingly and intentionally assigned false and
8 misleading youth-ratings, that is, “G”, “PG” and/or “PG-13” ratings, to
9 films featuring tobacco imagery.
- 10 o. Whether defendants’ breach of duty by rating films with tobacco
11 imagery as suitable and appropriate for children under seventeen years
12 of age unaccompanied by a parent or guardian has caused injury to the
13 plaintiff and Classes.
- 14 p. Whether a preliminary and permanent injunction should be entered to
15 stop defendants from continuing to rate films with tobacco imagery as
16 suitable and appropriate for children under seventeen years of age
17 unaccompanied by a parent or guardian.
- 18 q. Whether additional equitable relief is appropriate as a remedy for
19 defendants’ practice of certifying that films containing tobacco imagery
20 are suitable and appropriate for children under seventeen years of age
21 unaccompanied by a parent or guardian.

22 121. Common questions of fact and law affecting members of the Sub-Classes include, but
23 are not limited to, the following:

- 24 a. Whether defendants’ conduct described herein constitutes an unlawful,
25 unfair or fraudulent business practice in violation of California Business
26 and Professions Code §§ 17200, et seq.

- 1 b. Whether defendants' conduct described herein constitutes false
2 advertising in violation of California Business and Professions Code §§
3 17500, et seq.
- 4 c. Whether defendants' conduct described herein is a private and/or public
5 nuisance in violation of California Civil Code §§ 3479, et seq.
- 6 d. Whether defendants owe a legal duty to the Sub-Classes when rating
7 films with tobacco imagery to exercise reasonable care, to assign
8 accurate ratings and a fiduciary duty.
- 9 e. Whether defendants are breaching their duties to the Sub-Classes by
10 continuing to rate films with tobacco imagery as suitable for children
11 under seventeen years of age unaccompanied by a parent or guardian.
- 12 f. Whether defendants rating of films with tobacco imagery as suitable for
13 children under seventeen years of age unaccompanied by a parent or
14 guardian is false and misleading.
- 15 g. Whether defendants knowingly and intentionally assigned false and
16 misleading youth-ratings to films featuring tobacco imagery.
- 17 h. Whether defendants' breach of duty by rating films with tobacco
18 imagery as suitable and appropriate for children under seventeen years
19 of age unaccompanied by a parent or guardian has caused injury to the
20 plaintiff and Sub-Classes.
- 21 i. Whether a preliminary and permanent injunction should be entered to
22 stop defendants from continuing to rate films with tobacco imagery as
23 suitable and appropriate for children under seventeen years of age
24 unaccompanied by a parent or guardian.
- 25 j. Whether additional equitable relief is appropriate as a remedy for
26 defendants' practice of certifying that films containing tobacco imagery
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1 are suitable and appropriate for children under seventeen years of age
2 unaccompanied by a parent or guardian.

3 122. Absent a class action, most of the respective class members of the Class and Sub-
4 Classes would find the cost of litigating their claims to be prohibitive, and will have no effective
5 remedy. The class treatment of common questions of law and fact is also superior to multiple
6 individual actions or piecemeal litigation in that it conserves the resources of the courts and the
7 litigants, and promotes consistency and efficiency of adjudication.

8 123. There is a compelling national and global public health interest in obtaining class-wide
9 relief.

10 124. Plaintiff will fairly and adequately represent and protect the interests of the members
11 of the respective Classes and Sub-Classes. Plaintiff has retained counsel with substantial
12 experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are
13 committed to vigorously prosecuting this action on behalf of the other respective Class and Sub-
14 Class members, and have the financial resources to do so. Neither plaintiff nor his counsel have
15 any interest adverse to those of the other respective Class and Sub-Class members.

16 **COUNT I**
17 **(Negligence)**

18 **Rating and Certifying Films With Tobacco Imagery**
19 **As Suitable and Appropriate for Children Under The Age of Seventeen Is Negligent**

20 125. Plaintiff incorporates by reference all of the above allegations as if fully set forth
21 herein.

22 126. As alleged herein, defendants had a duty to use due care in rating and certifying films
23 with tobacco imagery and in properly disclosing material facts relating to those films.

24 127. As alleged herein, defendants rating and certifying films featuring tobacco imagery as
25 suitable and appropriate for children under the age of seventeen unaccompanied by a parent or
26 guardian and failing to disclose that youth-rated films contained tobacco imagery and that
27 exposure to tobacco imagery in youth-rated films causes a serious increased risk that children
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1 and adolescents will become addicted to nicotine, suffer tobacco related diseases and die
2 prematurely is negligent.

3 128. As alleged herein, as a proximate result of defendants' negligent rating and
4 certification of films with tobacco imagery as suitable and appropriate for children under the age
5 of seventeen unaccompanied by a parent or guardian, plaintiff and the Nationwide Injunctive
6 And Declaratory Judgment Class, Nationwide Ticket Purchase Class, California Injunctive and
7 Declaratory Judgment Sub-Class, and California Ticket Purchase Sub-Class members have been
8 injured and suffered damage including purchasing theatre tickets and having been exposed to an
9 increased risk of their children becoming addicted to nicotine, developing tobacco related
10 diseases and dying prematurely.

11 **COUNT II**
12 **(Negligence – Voluntary Undertaking)**

13 **Defendants Breached Their Duty, Voluntarily Undertaken,**
14 **To Exercise Reasonable Care In Rating and Certifying Films With Tobacco Imagery**
15 **As Suitable and Appropriate For Children Under The Age of Seventeen**

16 129. Plaintiff incorporates by reference all of the above allegations as if fully set forth
17 herein.

18 130. As alleged herein, defendants had a duty to use due care in rating and certifying films
19 with tobacco imagery and in properly disclosing material facts relating to those films.

20 131. As alleged herein, defendants breached their duty, voluntarily undertaken, to use due
21 care in rating and certifying films with tobacco imagery as suitable and appropriate for children
22 under the age of seventeen unaccompanied by a parent or guardian.

23 132. As alleged herein, as a proximate result of defendants' negligent certification and
24 rating of films with tobacco imagery as suitable and appropriate for children under the age of
25 seventeen unaccompanied by a parent or guardian, plaintiff and the Nationwide Injunctive And
26 Declaratory Judgment Class, Nationwide Ticket Purchase Class, California Injunctive and
27 Declaratory Judgment Sub-Class, and California Ticket Purchase Sub-Class members have been
28

1 injured and suffered damage including purchasing theatre tickets and having been exposed to an
2 increased risk of their children becoming addicted to nicotine, developing tobacco related
3 diseases and dying prematurely.

4 **COUNT III**
5 **(Fiduciary Duty)**

6 **Defendants Breached Their Fiduciary Duty By Rating and**
7 **Certifying Films With Tobacco Imagery As**
8 **Suitable and Appropriate For Children Under The Age of Seventeen**

9 133. Plaintiff incorporates by reference all of the above allegations as if fully set forth
10 herein.

11 134. As alleged above, including paragraphs 56, 67, 68, 72 and 84, defendants have
12 expended millions of dollars to create, maintain, market and advertise the film rating service to
13 serve as the guardian of their \$88 billion dollar film business. Defendants have deliberately
14 attempted and succeeded in encouraging the film going public and particularly the parents of
15 children under the age of seventeen to depend upon, to trust, and to rely upon defendants' film
16 rating service, as an accurate, reliable, and trustworthy source for critically important
17 information regarding the content of films and the health and safety of their children.
18 Defendants assure the public, and particularly parents of children under the age of seventeen, that
19 they can trust the rating service because the ratings are performed by raters that are independent
20 of the film industry and, on an ongoing basis, specially trained, educated and informed about any
21 issues that a reasonable parent would consider important. Defendants adopted a film rating
22 system where defendants determine whether children under the age of seventeen without a parent
23 or guardian are *permitted* or *prohibited* from viewing the film. Defendants know that consumers,
24 and particularly parents of children under the age of seventeen, rely solely upon the defendants'
25 film rating service as the source of critical information regarding the content of films and
26 whether to allow their children to view films with or without a parent or guardian.

27 135. Defendants owe the public, and particularly the parents of children under the age of
28 seventeen, a fiduciary duty with regard to the rating of films with tobacco imagery.

1 136. As alleged herein, defendants breached their fiduciary duty in rating and certifying
2 films with tobacco imagery as suitable and appropriate for children under the age of seventeen
3 unaccompanied by a parent or guardian and by failing to disclose that youth-rated films
4 contained tobacco imagery and that exposure to tobacco imagery in youth-rated films causes a
5 serious increased risk that children and adolescents will become addicted to nicotine, suffer
6 tobacco related diseases and die prematurely.

7 137. As alleged herein, as a result of defendants' breach of fiduciary duty by rating and
8 certifying films with tobacco imagery as suitable and appropriate for children under the age of
9 seventeen unaccompanied by a parent or guardian, plaintiff and the Nationwide Injunctive And
10 Declaratory Judgment Class, Nationwide Ticket Purchase Class, California Injunctive and
11 Declaratory Judgment Sub-Class, and California Ticket Purchase Sub-Class members have been
12 injured and suffered damage including purchasing theatre tickets and having been exposed to an
13 increased risk of their children becoming addicted to nicotine, developing tobacco related
14 diseases and dying prematurely.

15 **COUNT IV**
16 **(Fraudulent Misrepresentation)**

17 **Defendants Deliberately and Intentionally Falsely and Misleadingly Rated and Certified**
18 **Films Featuring Tobacco Imagery As Suitable and Appropriate For Children Under The**
19 **Age of Seventeen**

20 138. Plaintiff incorporates by reference all of the above allegations as if fully set forth
21 herein.

22 139. As alleged herein, defendants deliberately and intentionally falsely rated and certified
23 films featuring tobacco imagery as suitable and appropriate for children under the age of
24 seventeen unaccompanied by a parent or guardian.

25 140. Plaintiff and the Class members justifiably relied upon defendants' ratings and
26 certifications in purchasing theatre tickets. If defendants had accurately, and not falsely and
27 misleadingly rated and certified films with tobacco imagery with youth ratings, and if defendants
28 had not failed to disclose that youth-rated films contained tobacco imagery and that exposure to

1 tobacco imagery in youth-rated films causes a serious increased risk that children and
2 adolescents will become addicted to nicotine, suffer tobacco related diseases and die
3 prematurely, plaintiff and the Class members would not have purchased theatre tickets and
4 would not have been exposed to an increased risk of their children becoming addicted to
5 nicotine, developing tobacco related diseases and dying prematurely.

6 141. As alleged herein, as a result of defendants' false and misleading rating and
7 certification of films with tobacco imagery as suitable and appropriate for children under the age
8 of seventeen unaccompanied by a parent or guardian, plaintiff and the Nationwide Injunctive
9 And Declaratory Judgment Class, Nationwide Ticket Purchase Class, California Injunctive and
10 Declaratory Judgment Sub-Class, and California Ticket Purchase Sub-Class members have been
11 injured and suffered damage including purchasing theatre tickets and having been exposed to an
12 increased risk of their children becoming addicted to nicotine, developing tobacco related
13 diseases and dying prematurely.

14 **COUNT V**
15 **(Unfair Competition)**

16 **Violation of California Business & Professions Code § 17200, et seq. on behalf of the**
17 **California Sub-Classes**

18 142. Plaintiff incorporates by reference all of the above allegations as if fully set forth
19 herein.

20 143. The Unfair Business Practices Act proscribes unfair business competition and defines
21 the same to include any "unfair," "unlawful," or "fraudulent" business act or practice. California
22 Business & Professions Code §§17200, et seq.

23 144. Defendants violated, and continue to violate this proscription as set forth above
24 including, without limitation, by violating California Penal Code §§ 272 and 308, California
25 Civil Code § 3479 and California Business & Professions Code § 17500, et seq.

26 145. Plaintiff justifiably relied upon defendants' ratings and certifications in purchasing
27 theatre tickets and allowed his children to view films with tobacco imagery. If defendants had
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1 accurately, and not falsely and misleadingly rated and certified films with tobacco imagery, and
2 if defendants had not failed to disclose that youth-rated films contained tobacco imagery and that
3 exposure to tobacco imagery in youth-rated films causes a serious increased risk that children
4 and adolescents will become addicted to nicotine, suffer tobacco related diseases and die
5 prematurely, plaintiff would not have purchased theatre tickets, nor would he have allowed his
6 children to view those youth-rated films featuring tobacco imagery, nor would he have suffered
7 an increased risk of his children becoming addicted to nicotine and developing tobacco related
8 diseases. Sub-Class members were also likely to be deceived by defendants' ratings and
9 certifications and, but for defendants' ratings and certifications, and defendants' failure to
10 disclose that youth-rated films contained tobacco imagery and that exposure to tobacco imagery
11 in youth-rated films causes a serious increased risk that children and adolescents will become
12 addicted to nicotine, suffer tobacco related diseases and die prematurely, Sub-Class members
13 would not have purchased theatre tickets, nor would they have allowed their children to view
14 those youth-rated films featuring tobacco imagery, nor would they have suffered an increased
15 risk of their children becoming addicted to nicotine and developing tobacco related diseases.

16 146. Defendants, through their acts of unfair competition, have injured and obtained money
17 from Plaintiff and members of the proposed Sub-Classes. Plaintiff has been injured by
18 Defendants' conduct, as have members of the Sub-Classes. If defendants had not unfairly,
19 unlawfully and fraudulently rated and certified films with tobacco imagery with a youth-rating,
20 plaintiff and Sub-Classes would not have purchased theatre tickets to those youth-rated films
21 featuring tobacco imagery. If defendants had not unfairly, unlawfully and fraudulently rated and
22 certified films with tobacco imagery with a youth-rating, plaintiff and the Sub-Class members
23 would not have viewed those youth-rated films featuring tobacco imagery and suffered an
24 increased risk of becoming addicted to nicotine, suffering tobacco related diseases and dying
25 prematurely. Plaintiff and the members of the Sub-Classes request that the Court permanently
26 enjoin defendants from continuing their improper practice of rating and certifying films with
27 tobacco imagery as suitable and appropriate for children under the age of seventeen
28

1 unaccompanied by a parent or guardian.

2 147. Defendants' conduct, as set forth above, is likely to deceive members of the public
3 and is immoral, unethical, oppressive, unscrupulous and substantially injurious to consumers.
4 Defendants' conduct is ongoing and, in the absence of declaratory and injunctive relief is likely
5 to continue.

6 148. Plaintiff and members of the Sub-Classes have also lost money or property from their
7 purchase of movie tickets in an amount to be proven at trial as a result of defendants' unlawful,
8 unfair, and fraudulent conduct.

9 149. Plaintiff and the California Injunctive and Declaratory Sub-Class and California Ticket
10 Purchase Sub-Class members ask that this Court restore the money improperly taken from them
11 by defendants, enjoin defendants from continuing their illegal practices as set forth herein, and
12 pay attorneys' fees and costs pursuant to, inter alia, Cal. Civ. Proc. § 1021.5.

13 **COUNT VI**
14 **(False Advertising)**

15 **Violation of California Business & Professions Code § 17500, et seq. on behalf of the**
16 **California Sub-Classes**

17 150. Plaintiff incorporates by reference all of the above allegations as if fully set forth
18 herein.

19 151. As alleged herein, defendants have assigned false and misleading youth ratings to
20 films featuring tobacco imagery and have falsely rated and certified such films as suitable and
21 appropriate for children under the age of seventeen unaccompanied by a parent or guardian.

22 152. Plaintiff justifiably relied upon defendants' ratings and certifications in purchasing
23 theatre tickets and allowed his children to view films with tobacco imagery and, if defendants
24 had accurately, and not falsely and misleadingly rated and certified films with tobacco imagery,
25 and if defendants had not failed to disclose that youth-rated films contained tobacco imagery and
26 that exposure to tobacco imagery in youth-rated films causes a serious increased risk that
27 children and adolescents will become addicted to nicotine, suffer tobacco related diseases and die
28

1 prematurely, plaintiff would not have purchased theatre tickets, nor would have allowed his
2 children to view those youth-rated films featuring tobacco imagery, nor would he have suffered
3 an increased risk of his children becoming addicted to nicotine and developing tobacco related
4 diseases. Sub-Class members were also likely to be deceived by defendants' ratings and
5 certifications and, but for defendants' ratings and certifications, and defendants' failure to
6 disclose that youth-rated films contained tobacco imagery and that exposure to tobacco imagery
7 in youth-rated films causes a serious increased risk that children and adolescents will become
8 addicted to nicotine, suffer tobacco related diseases and die prematurely, Sub-Class members
9 would not have purchased theatre tickets, nor would have allowed their children to view those
10 youth-rated films featuring tobacco imagery, nor would they have suffered an increased risk of
11 their children becoming addicted to nicotine, developing tobacco related diseases and dying
12 prematurely.

13 153. Plaintiff and Sub-Class members of the Class have lost money or property from their
14 purchase of movie tickets in an amount to be proven at trial as a result of defendants' unlawful,
15 unfair, and fraudulent conduct.

16 154. Plaintiff and the California Injunctive and Declaratory Sub-Class and California
17 Ticket Purchase Sub-Class members ask that this Court restore the money improperly taken from
18 them by defendants, enjoin defendants from continuing their illegal practices as set forth herein,
19 and pay attorneys' fees and costs pursuant to, inter alia, Cal. Civ. Proc. § 1021.5.

20 **COUNT VII**
21 **(Negligent Misrepresentation)**

22 **Defendants Breached Their Duty**
23 **To Exercise Reasonable Care In Rating and Certifying Films With Tobacco Imagery**
24 **As Suitable and Appropriate For Children Under The Age Of Seventeen**

25 155. Plaintiff incorporates by reference all of the above allegations as if fully set forth
26 herein.

27 156. As alleged herein, defendants had a duty to use due care in rating and certifying films
28

1 with tobacco imagery and in properly disclosing material facts relating to those films.

2 157. As alleged herein, defendants breached their duty to use due care in rating and
3 certifying films with tobacco imagery as suitable and appropriate for children under the age of
4 seventeen unaccompanied by a parent or guardian.

5 158. As alleged herein, and according to defendants' own written rules, defendants issued
6 their ratings and certifications with the intent and purpose of informing, guiding and inducing
7 plaintiff and the class to act in reliance upon defendants' ratings and certifications in determining
8 whether to purchase tickets and to view films for their children under the age of seventeen.

9 159. Plaintiff and the Class members justifiably relied upon defendants' ratings and
10 certifications in purchasing theatre tickets and viewing films with tobacco imagery and, if
11 defendants had accurately, and not falsely and misleadingly rated films with tobacco imagery, and
12 if defendants had not failed to disclose that youth-rated films contained tobacco imagery and that
13 exposure to tobacco imagery in youth-rated films causes a serious increased risk that children
14 and adolescents will become addicted to nicotine, suffer tobacco related diseases and die
15 prematurely, plaintiff and the Class members would not have purchased theatre tickets, nor
16 would have allowed their children to view those youth-rated films featuring tobacco imagery, nor
17 would they have suffered an increased risk of their children becoming addicted to nicotine,
18 developing tobacco related diseases and dying prematurely.

19 160. As a result of defendants' negligent certification and rating of films with tobacco
20 imagery as suitable and appropriate for children under the age of seventeen unaccompanied by a
21 parent or guardian, plaintiff and the Nationwide Injunctive and Declaratory Class, Nationwide
22 Ticket Purchase Class, California Injunctive and Declaratory Sub-Class, and California Ticket
23 Purchase Sub-Class members have been injured and suffered damage.

24 **COUNT VIII**
25 **(Private and Public Nuisance)**

26 **Violation of California Civil Code § 3479, et seq. on behalf of the Sub-Classes**
27
28

1 161. Plaintiff incorporates by reference all of the above allegations as if fully set forth
2 herein.

3 162. According to the scientific evidence, if defendants continue their current rating of
4 films with tobacco imagery, defendants' conduct will kill approximately one million children.

5 163. Defendants' certification and rating of films featuring tobacco imagery as suitable and
6 appropriate for children under the age of seventeen unaccompanied by a parent or guardian, and
7 defendants' continuing failure to disclose that youth-rated films contained tobacco imagery and
8 that exposure to tobacco imagery in youth-rated films causes a serious increased risk that
9 children and adolescents will become addicted to nicotine, suffer tobacco related diseases and die
10 prematurely is a public nuisance under §§ 3480 *et seq* and a private nuisance under §§ 3481 *et*
11 *seq*.

12 164. Plaintiff has been injured by defendants' conduct, as have members of the Classes. If
13 defendants had not rated films with tobacco imagery with a youth-rating, and if defendants had
14 not failed to disclose that youth-rated films contained tobacco imagery and that exposure to
15 tobacco imagery in youth-rated films causes a serious increased risk that children and
16 adolescents will become addicted to nicotine, suffer tobacco related diseases and die
17 prematurely, plaintiff and the Sub-Class members would not have purchased theatre tickets to
18 those youth-rated films featuring tobacco imagery. If defendants had not rated films with
19 tobacco imagery with a youth-rating, and if defendants had not failed to disclose that youth-rated
20 films contained tobacco imagery and that exposure to tobacco imagery in youth-rated films
21 causes a serious increased risk that children and adolescents will become addicted to nicotine,
22 suffer tobacco related diseases and die prematurely, plaintiff and the Sub-Class members would
23 not have purchased theatre tickets, nor would have allowed their children to view those youth-
24 rated films featuring tobacco imagery, nor would they have suffered an increased risk of their
25 children becoming addicted to nicotine, developing tobacco related diseases and dying
26 prematurely. Plaintiff and the members of the California Injunctive and Declaratory Sub-Class
27 and the California Ticket Purchase Sub-Class members request that the Court permanently enjoin
28

1 defendants from continuing their improper practice of rating and certifying films with tobacco
2 imagery as suitable and appropriate for children under the age of seventeen unaccompanied by a
3 parent or guardian, and that this Court award such other and further relief as the Court
4 determines is appropriate.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff and the Classes and Sub-Classes, request the following relief:

- 7 1. That the Court enter an order certifying the Classes, appointing plaintiff as the
8 representative of the Classes, and appointing counsel for Plaintiff as counsel for
9 the Classes;
- 10 2. That the Court enter an order declaring that the actions of defendants, as set out
11 above, as well as in other respects, constitutes a breach of defendants' duties and
12 violates the law in the respects alleged;
- 13 3. That the Court enter a judgment declaring that defendants' failure to assign films
14 with tobacco imagery an "R" rating, except if the presentation of tobacco clearly
15 and unambiguously reflects the dangers and consequences of tobacco use or is
16 necessary to represent the smoking of a real historical figure who actually used
17 tobacco, is negligent, false and misleading, and a breach of fiduciary duty;
- 18 4. That the Court enter an order declaring that the actions of defendants, as set forth
19 above, violate California Business and Professions Code § 17200, et seq.
- 20 5. That the Court enter an order declaring that the actions of defendants, as set forth
21 above, violate California Business and Professions Code § 17500, et seq.
- 22 6. That the Court enter a preliminary and permanent injunction requiring defendants:
- 23 (a) to assign new films with tobacco imagery released to theaters an "R" rating,
24 except if the presentation of tobacco clearly and unambiguously reflects the
25 dangers and consequences of tobacco use or is necessary to represent the
26 smoking of a real historical figure who actually used tobacco;
- 27 (b) to certify that nobody associated with the production received anything of
28 value from anyone in exchange for using or displaying any tobacco
products;

- 1 (c) to include evidence-based anti-smoking ads before any film with smoking
2 exhibited or distributed in any medium;
- 3 (d) to end identification of any tobacco brands in non-documentary films;
- 4 (e) to prohibit tobacco imagery in any advertisement for any film;
- 5 (f) such other and further relief that the Court deems appropriate;

6 7. That the Court enter a judgment for the members of the Federal Rules of Civil
7 Procedure 23(b)(3) Class and Sub-Class members against defendants, jointly and
8 severally, as follows:

- 9 (a) Damages in an amount, in excess of \$5 million, to compensate Plaintiff and
10 the Class and Sub-Class members for the amount paid to purchase theatre
11 tickets for admission to films with youth ratings that featured tobacco
12 imagery from 2012 through the date of trial;
- 13 (b) Damages in an amount, in excess of \$5 million, as warranted by the
14 evidence as the unjust financial benefit obtained by defendants resulting
15 from defendants' breach of fiduciary duty and false and misleading rating of
16 films featuring tobacco imagery;
- 17 (c) Punitive damages in an amount in excess of \$5 million sufficient to punish
18 defendants for their long standing and continuing practice of certifying and
19 rating films with tobacco imagery as suitable and appropriate for children
20 under the age of seventeen unaccompanied by a parent or guardian despite
21 defendants' knowledge of the deadly consequences of such certification and
22 rating to hundreds of thousands of children and adolescents who became
23 nicotine addicts and have or will suffer the devastating effects of tobacco-
24 related diseases including lung cancer, heart disease, stroke and emphysema
25 and premature death as a result of defendants' false and misleading
26 certification and rating of films and breach of fiduciary duty;
- 27 (d) Such other and further remedial relief for the Class members as the Court
28 determines is necessary and appropriate as a result of the 1.1 million
children and adolescents whose addiction to nicotine was caused by
defendants' negligent, false and misleading and improper rating and
certification of films with tobacco imagery as suitable and appropriate for
children under the age of seventeen unaccompanied by a parent or guardian;
and
- (e) Restitution, in an amount in excess of \$5 million, to Plaintiff and the Sub-
Class members pursuant to Business and Professions Code §§ 17200, et seq.
and 17500, et seq.

- 1 8. That the Court award plaintiff and the Class and Sub-Classes their costs and
2 expenses, as well as reasonable attorneys' fees, in prosecuting this action;
3 9. That the Court award such other and further relief as may be necessary or
4 appropriate.

5
6 Dated: February 25, 2016

KELLER GROVER LLP

7 By: /s/Jeffrey F. Keller
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11 and the Putative Class

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**CLASS ACTION COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTION AND OTHER RELIEF**

JURY DEMAND

Plaintiff demands a trial by jury on all counts for which a jury trial is permitted.

Dated: February 25, 2016

KELLER GROVER LLP

By: /s/ Jeffrey F. Keller
JEFFREY F. KELLER

One of the Attorneys for Plaintiff
TIMOTHY FORSYTH
and the Putative Class