

**IN THE HIGH COURT OF LAGOS STATE  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS**

**SUIT NO:**

**BETWEEN:**

- |   |   |                  |
|---|---|------------------|
| <ol style="list-style-type: none"><li>1. THE ATTORNEY GENERAL OF LAGOS STATE</li><li>2. ENVIRONMENTAL RIGHTS ACTION</li></ol> | } | <b>CLAIMANTS</b> |
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**AND**

- |   |   |                   |
|---|---|-------------------|
| <ol style="list-style-type: none"><li>1. BRITISH AMERICAN TOBACCO (NIGERIA) LIMITED</li><li>2. INTERNATIONAL TOBACCO LIMITED</li><li>3. BRITISH AMERICAN TOBACCO PLC</li><li>4. BRITISH AMERICAN TOBACCO (INVESTMENT) LIMITED</li><li>5. PHILIP MORRIS INTERNATIONAL</li><li>6. THE TOBACCO INSTITUTE</li></ol> | } | <b>DEFENDANTS</b> |
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**WRITTEN STATEMENT ON OATH OF 2<sup>ND</sup> CLAIMANTS PURSUANT TO  
ORDER 3 RULE OF THE HIGH COURT OF LAGOS STATE (CIVIL  
PROCEDURE) RULES 2004**

I, Olufemi Akinbode, Program Manager, Environmental Rights Association, male, Nigerian Citizen of 1, Balogun Street, Ikeja, Lagos do hereby make oath and state as follows that:

1. I am the Program Manager of the Environmental Rights Action (ERA), a Non Governmental Organisation and the National Coordinator of the Nigeria Tobacco Control Alliance (NTCA), a coalition of NGOs and professionals working on tobacco control in Nigeria and that all the Statements made herein are of facts within my knowledge.
2. The facts stated herein constitute my testimony in this suit.
3. I know the 1<sup>st</sup> -5<sup>th</sup> Defendants in this suit: they are all involved in the manufacture, sale, and marketing of tobacco related products in Lagos, nationally and internationally.
4. I know the 6<sup>th</sup> Defendant as an industry research, and public relation creation of the tobacco industries, which include the 1<sup>st</sup> – 5<sup>th</sup> Defendants.

5. Apart from the 6<sup>th</sup> Defendant, the 1<sup>st</sup> – 5<sup>th</sup> Defendants established entities such as the Tobacco Documentation Centre (“TDC”) International Tobacco Information Center, Inc., (“INFOTAB”), International Committee on Smoking Issues (“ICOSI”) and the Tobacco Advisory Council of Nigeria (TACON) as their Public Relations and lobbying arms.
6. The organisation I work for is non-profit and is explicitly involved in the promotion of healthy norms among youths and the general population in Nigeria, and particularly in Lagos through dissuading the use of certain products such as tobacco and its related products.
7. I have worked for this organisation for seven years and as part of my official responsibilities, I have exerted myself along the following lines:
  - a. Conducting extensive statistical surveys on the incidence of tobacco smoking in Lagos State;
  - b. Studying the Tobacco Industry trend including marketing and advertising;
  - c. Studying the cost implications of the effects of smoking and the addiction to tobacco of the population in Lagos.
8. The 1<sup>st</sup> -5<sup>th</sup> Defendants have over the years engaged in overt and covert advertising campaigns, targeted towards the youth and children in Nigeria generally and Lagos State specifically.
9. The 1<sup>st</sup> -5<sup>th</sup> Defendants' advertising glamorises smoking and its content is intended to entice young people to smoke as it tends to encourage the seeming upscale aspirations of the youth to emulate adulthood, prosperity and the culture of the West. An instance of this was the St. Moritz advertisement of 1998 and 1999 with the *Lighthouse Family* soundtrack “*Ocean Drive*” that depicted a successful young man ending his day with a St. Moritz cigarette.
10. The Defendants have engaged in a campaign to market cigarettes to children. The Cigarette Companies have long known that recruiting new smokers when they are children ensures a stream of profits well into the future because these new smokers will become addicted and continue to smoke for many years, and the young smokers are "replacements" for older smokers who either reduce or cease smoking or die.
11. Recognizing the profits to be had from this youth market, the Cigarette Companies researched how to target their marketing at children and actively marketed cigarettes to children. As a result of this research -- including research conducted in the 1950's into the smoking habits of 12-year-olds -- defendants have long known that young people tend to begin smoking for reasons unrelated to the presence of nicotine in cigarette smoke, but then become confirmed, long-term smokers because they become addicted to nicotine. Defendants are further aware that although some beginning smokers may have heard that there are some health risks associated with long-term smoking, beginning smokers almost universally fail to appreciate the addictive nature of cigarette smoking, and therefore fail to appreciate the risk that, by engaging in smoking while they are adolescents, they will become long-term smokers because of the development of an addiction to nicotine. Moreover, the

earlier a person begins to smoke, the more likely it is that he or she will develop a smoking-related disease.

12. Tobacco advertising in Nigeria and similar countries tends to reflect the aspirations of the youth to emulate adulthood, prosperity and the culture of the West. As a 1993 Philip Morris (5<sup>th</sup> Defendant) report detailing the Nigerian market reveals, tobacco products are valued for their potential to incite images and/or feelings of regality and high class. Parliament cigarettes are praised for their ability to convey an air of “sophistication,” while the “bold inscription” on the pack further elevated the “air of... class” surrounding these cigarettes. Now shown to me is a copy of the Report: 'Parliament' Group Discussion dated June 1993; Exhibit 78.
13. Indeed, advertising correspondence from BAT Co conveys the importance of relating a “sophisticated,” international flavor to the Nigerian consumer. Now shown to me is a copy of the Internal document Memo: Menthol Research - Colombia, Kuwait, Nigeria; Exhibit 79;
14. Other techniques used by the Cigarette Companies to attract underage smokers are: giving away of cigarettes at places where young people are likely to be present in large numbers; paying motion picture producers for product placement in motion pictures designed to attract large youth audiences; placing advertisements in magazines commonly read by teenagers; and sponsoring sporting events and other activities likely to appeal to teenagers. In addition, Cigarette Companies have created a subtle and subliminal advertising campaign by sponsoring the recording of motion pictures, also know as “home videos,” which accentuate and place emphasis on a specific brand of cigarette while portraying the sophistication of smoking. The Nigerian home video (“Nollywood”) industry is highly rated worldwide and generally accepted to be next only to American Hollywood and Indian Bollywood. Its impact and ability to affect and shape opinion and/or behaviour of young people in Nigeria and other African countries is immense and immeasurable.
15. Indeed, in response to loss of market dominance and income in developed countries, tobacco companies are channeling their massive resources and promotional machinery to lure impressionable youths in the developing countries of Africa to long-term tobacco use. I hereby rely on and tender in evidence a copy of the document marked Exhibit 22.
16. The Defendants have actively endorsed and participated in musical concerts with recognized pop and other celebrated musicians to create an atmosphere that furthers their false deception. The 1<sup>st</sup> Defendant actively marketed its Benson and Hedges brand by putting on musical concerts dubbed with names like "Wild and Wicked" to attract Nigerian youths. At each BAT Nigeria musical concert, young people are provided with a supply of free Benson and Hedges cigarettes in order to get them addicted to cigarette smoking at a young age so as to make them lifelong consumers [Exhibit. 7-8]. Now shown to me is a copy of the World Bank document Tobacco Control Country Profiles; and Dateline Health Nigeria No. 4; They are respectively tagged Exhibits 7 and 8 in this Statement of Claim
17. In November 2003, the 1<sup>st</sup> Defendant launched a promotional campaign called "*Experience It*" in Nigeria, featuring five blockbuster Hollywood films: Ocean's Eleven, Matrix, ShowTime, Romeo Must Die, and Collateral Damage. The promotional campaign was

national, reaching six geopolitical regions. At "Experience It" events, young people were given free cigarettes and "starters", as they tend to be known among Defendants, were helped to light them. Now shown to me is a copy of "Nigeria: experience it, die from it", Exhibit 9;

18. Despite what was intended as a ban on tobacco advertisement, the 1<sup>st</sup> Defendant continues to place 'product' advertisement on its vans. It has also increased the number of posters pasted on street walls and at points of sale. In addition, the company continues to use billboards on major streets and newspapers for "non-product" advertisements. Now shown to me is a copy of the pictorial representation of one of these Billboards, Exhibit 60.
19. A March 31, 1981 report, titled "Young Smokers Prevalence, Trends, Implications, and Related Demographic Trends" explained the importance of this youth market, stating that: "today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens. . . .[I]t is during the teenage years that the initial brand choice is made." Now shown to me is a copy of "*Young Smokers Prevalence, Trends, Implications, and Related Demographics*" marked Exhibit 5.
20. Furthermore, a Philip Morris report detailing the Nigerian market since 1993 revealed, that tobacco products are valued for their potential to incite images and/or feelings of regality and high class. Parliament cigarettes are praised for their ability to convey an air of "sophistication," while the "bold inscription" on the pack further elevates the "air of... class" surrounding these cigarettes. Indeed, advertising correspondence from BAT Co conveys the importance of relating a "sophisticated," international flavor to the Nigerian consumer. I hereby rely and tender in evidence the 'Parliament' Group Discussion Report dated June 1993 marked as Exhibit 78 as well as the BAT Memo on the Global Argumentation Project dated Jan 19, 1990 marked as Exhibit 55.
21. Similarly, a Wall Street Journal study found that "sophistication is a theme running through [African] smoking ads." For example, a brand of cigarettes marketed in Nigeria during the 1980s named "Graduate" featured advertisements of a university student in his cap and gown, conveying an association between smoking and professional and economic success. I hereby rely on and tender as evidence the journal marked Exhibit 56.
22. The importance of the Youth market to the Defendants was clearly enunciated as far back as 1981 in a report, titled "Young Smokers Prevalence, Trends, Implications, and Related Demographic Trends" stating thus: "today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens. . . .[I]t is during the teenage years that the initial brand choice is made" I hereby rely and tender as evidence a copy of the Report: Young Smokers Prevalence, Trends, Implications, and Related Demographics dated March 16, 1981 now shown to me and marked as Exhibit 5.
23. The Defendants have admitted in a representation to the National Assembly that the consumption of tobacco smoke has adverse effects on the public health. I hereby rely and tender as evidence the Memo of BAT to the Joint House Committee on Health and Commerce on the amendment of Tobacco Smoking (Control) Amendment Bill. Now shown to me and marked as Exhibit 114

24. Furthermore, the 1<sup>st</sup> Defendant also admitted in several Newspaper publications in Nigeria that the consumption of its tobacco products is hazardous and dangerous to health. I hereby rely and tender as evidence the Certified True copy of The Punch newspaper publication of September 18<sup>th</sup> 2006 and This Day publication of September 18, 2006. now shown to me and marked as Exhibits 112& 113 respectively.
25. I am aware that over the years, the research conducted by the defendants and its various agents and subsidiary arms have shown that tobacco products are injurious and hazardous to health.
26. Surprisingly, the Defendants have jointly, willfully and fraudulently, at intermittent occasions conspired to conceal the true nature of the hazard of their product and its health implications.
27. I am also aware that over the years, the Defendants have known of the addictive nature of nicotine and have manipulated the levels of nicotine and bio- availability of nicotine in their cigarette products to maintain the addiction of the consuming public.
28. I have also become aware that the Defendants conducted secret research as to the manipulation of nicotine addiction and levels in cigarettes, including but not limited to, the utilization of portions and types of tobacco plants that contain the most nicotine to maximize the level of nicotine and addiction. I hereby rely on and tender as evidence a Certified true copy of a publication in The punch Newspaper of Monday September 4 2006 now shown to me and marked as Exhibit 115.
29. The Defendants are also directly accountable for the adverse health effects of passive smoking, also known as secondhand smoking, involuntary smoking, or exposure to environmental tobacco smoke - or ETS exposure on many citizens of Lagos in general and more particularly, members of ERA and the NTCA. This occurs when the smoke from one person's burning tobacco product or the smoker's exhalation is inhaled by others.
30. I am aware that the health effects of tobacco smoking are related to direct tobacco smoking, as well as passive smoking, inhalation of environmental or secondhand tobacco smoke and are gravely injurious to the general public health.
31. I have had cause on several occasions to accompany relations, friends and members of ERA and NTCA to both public and private hospitals for treatment of Tobacco related disease.
32. At no time has any of the defendants whose products caused the injury contributed to the Medicare of any of my members.
33. Consequent to the generality of the foregoing, I want the Court to jointly and severally enter judgment against the Defendants in the following terms:
  - a. An Order of mandatory injunction compelling the Defendants, their successors-in-title, privies and or agents to cease the marketing, promotion, distribution and sale of tobacco-related products to minors or under aged persons;

- b. An Order of mandatory injunction restraining the Defendants from representing or portraying to minors or persons under the age of eighteen (18), any alluring and/ or misleading image regarding tobacco related products whether by direct depictions, pictorials, advertorials, images, words, messages, sponsorships, branding and/or through overt or covert and/or subliminal means.
- c. An Order of mandatory injunction restraining the Defendants from marketing, distributing, selling, or putting into the stream of commerce either by themselves or through their distributors, agents, resellers, trade partners, marketers, and/or any other person, any tobacco related products of whatever make or brand within a one thousand (1000) metre radius of any schools, hospitals, cinemas, playhouses or locations, children’s shopping areas, childcare facilities or such other public places in Lagos State that are predominantly a location for minors and young persons under eighteen (18) years old to “hang out”, play, assemble, congregate for any purpose whatsoever including but not limited to educational, recreational, social, religious, sports or any other purposes;
- d. An Order of mandatory injunction compelling the Defendants to fund a tobacco control programme to be administered and controlled by an independent third party to be appointed by the Lagos State Government, targeted at minors and young persons under eighteen (18) years old whose objectives include:
  - i. non-access to tobacco products within the 1,000 (one thousand) metre radius of such facilities, locations or area as designated by this Court in the event of an order being granted as specified in subparagraph c hereinbefore;
  - ii. a formulation and implementation of a procedure for the verification of age at all points of sale of tobacco related products;
  - iii. the implementation of an effective awareness campaign on smoking and its health implications, including extensive disclosures of components of tobacco related products, potential associated diseases and other relevant information;
- e. An Order of mandatory injunction restraining the Defendants from marketing, distributing, selling, or putting into the stream of commerce either by themselves or through their distributors, agents, resellers, trade partners and/or marketers, any tobacco related products of whatever make or brand within Lagos State;
- f. An Order of Mandatory Injunction compelling the Defendants to fund a corrective public awareness campaign relating to the issue of smoking and health, to be administered and controlled by an independent third party to be appointed by the Lagos State Government;

- g. A Declaration of this Honourable Court that the tobacco related products as manufactured, marketed, promoted, distributed and sold by the Defendants are addictive;
- h. An Order of Mandatory Injunction compelling the Defendants to have printed on each stick of tobacco related product manufactured by them, the following disclosures:
  - i. the tar/ nicotine quotient;
  - ii. the relevant age bar requirement;
  - iii. the addictiveness and narcotic qualities of nicotine; and
  - iv. the relevant mandatory health warning prescribed by the Federal Ministry of Health;
- i. A Declaration of this Honourable Court that the tobacco related products as manufactured, marketed, promoted, distributed and sold by the Defendants are hazardous and injurious to the public health;
- j. A Declaration of this Honourable Court that the Defendants' conduct as specified herein in this Complaint/ Statement of Claim, in relation to its misrepresentation and concealment of material facts and other such acts, are unlawful;
- k. An Order of perpetual injunction restraining the Defendants and their officers, agents, servants and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect with the subject matter of this complaint/ Statement of Claim;
- l. An Order of Mandatory Injunction compelling the Defendants to publicly disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, parent or subsidiary companies, affiliates, servants, officers, directors, employees, and all persons acting in concert with or for them, that relates to the issue of smoking and health;
- m. The sum of **₦221, 720,861,295.15** (Two Hundred and Twenty One Billion Seven Hundred and Twenty Million Eight Hundred and Sixty One Thousand Two Hundred and Ninety Five Naira Fifteen Kobo) being special damages for Negligence occasioned by the Defendants;
- n. The sum of **₦ 2, 008, 759, 013, 056.87** (Two Trillion Eight Billion Seven Hundred and Fifty Nine Million Thirteen Thousand and Fifty Six Naira Eighty Seven Kobo) being anticipatory damages for the future expenses to be borne by the Claimant in paying for the injuries created and caused by tobacco smoking to the public health;
- o. The sum of **₦100,000,000,000** (One Hundred Billion Naira) as punitive damages for the Defendants wrongful conduct;



England.

**4<sup>th</sup> Defendant**

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