

Essential Action, the City and County of San Francisco, the Asian-Pacific Islander American Health Forum, the San Francisco African American Tobacco Free Project (SFAATFP), and the Black Network In Children's Emotional Health (BNICEH) respectfully request that this Court grant them leave to appear as amici curiae in support of the position of plaintiff United States of America in *United States of America v. Philip Morris USA, Inc.*, No. 99-CV-02496 (GK) (D.D.C 1999). A description of the movants and the bases for granting them leave to appear as amici curiae are set forth below. The *Amicus* brief is attached hereto as Exhibit 1.

Essential Action is a project of the Washington, D.C.-based nonprofit organization Essential Information. Essential Action's Global Partnerships for Tobacco Control links tobacco control groups in the United States with partner organizations in developing countries and Eastern Europe and the former Soviet Union. More than 360 organizations worldwide participate in Essential Action's tobacco control partnership program, among them more than 100 U.S. organizations from 40 U.S. states. The purpose of Essential Action's Global Partnerships for Tobacco Control is to bring together tobacco control organizations across borders in support of joint efforts to reduce tobacco-related death and disease.

A key premise of Essential Action's tobacco control partnership program, is that because the tobacco industry is globalized, tobacco control efforts in the United States must take into account the international operations of the tobacco industry in order to be effective in the United States. Immigrant populations in the United States are exposed to deceptive tobacco industry overseas marketing campaigns while living in the United States, and as they travel back and forth to their

home countries. Misleading industry marketing practices are often tested in other markets before being introduced in the United States. The industry's efforts to distort science in other countries affects public attitudes and policymaking in this country. Industry efforts to influence international organizations affects standards that apply in the United States.

The City and County of San Francisco has long been a leader in tobacco control initiatives, and has had a comprehensive tobacco control program since 1990. The comprehensive program focuses on reducing exposure to second hand smoke, reducing tobacco access to youth, and countering pro-tobacco influences such as tobacco advertising, promotions and event sponsorships, as well as providing stop-smoking services in English, Chinese, Spanish and Russian to San Francisco residents. San Francisco has adopted several ordinances that have created environments that promote these goals, such as a ban on smoking in business establishments including restaurants, and unenclosed areas such as parks, gardens and squares under the jurisdiction of City and County Departments; a ban on tobacco self-service merchandising; a ban on cigarette vending machines, a ban on the sale of single cigarettes and the free distribution of tobacco products; bans on tobacco advertising on City and County property as well as outdoor tobacco advertising on private property; and regulation of tobacco sales through a local tobacco permitting process. Additionally, the San Francisco Board of Education adopted a ban on the wearing or carrying tobacco promotional items in schools. The Recreation and Park Department adopted a ban on tobacco company sponsorship of youth sports leagues through its athletic field permitting process. San Francisco City and County has also dedicated significant resources to the enforcement of California's ban on smoking in bars and

state laws that prohibit tobacco sales to minors.

According to *The Cost of Smoking in California, 1999*, prepared by the Institute for Health & Aging, School of Nursing, University of California at San Francisco for the California Department of Health Services, the annual cost of smoking in San Francisco was \$432 million in 1999, including \$242 million in health care expenditures and costs associated with lost productivity, illness and premature death. There were 1,095 deaths due to smoking in San Francisco in 1999, which represented 16.5 percent of all deaths.

According to the 2000 census data, 26.1 percent of San Francisco residents speak an Asian/Pacific Islander language and of this group 35 percent speak English less than very well. Twelve percent of San Francisco residents speak Spanish, with 25.7 percent of this group speaking English less than very well. An additional 6.7 percent of San Francisco residents speak another Indo-European language, with 16 percent of this group speaking English less than very well.

Given its very large immigrant community, San Francisco has an interest in reducing the impact of tobacco industry marketing, promotion and targeting practices overseas. The results of a 2000 random telephone survey of San Francisco's Chinatown residents provide an illustration of this impact. Eighty-five percent of those surveyed who had smoked had started smoking while living in another country. Immigrants who come to San Francisco continue to be exposed to deceptive industry practices following immigration to San Francisco. The continued exposure

takes place through cross-border advertising and marketing that reaches the United States such as through television coverage of international sporting and other events, and cable and satellite television. It also occurs through Internet marketing and advertising. And the exposure continues due to flow between countries and strong ongoing cultural connections. Research and data collection on youth in other countries can have direct application to sales and marketing strategies utilized in the United States, particularly in areas with populations of immigrants from those countries. International efforts by the tobacco industry to deceive the public on the hazards of second-hand smoke exposure also impacts San Francisco. Immigrants who have been exposed to these deceptive messages regarding second-hand smoke are often resistant to education campaigns to protect children from second-hand smoke in the home or co-workers in the workplace.

The Asian & Pacific Islander American Health Forum (APIAHF) is a non-profit, national Asian Americans and Pacific Islander (AAPI) health and policy advocacy organization. Based in San Francisco, APIAHF's mission is to enable AAPIs to attain the highest possible level of health and well-being. APIAHF's tobacco control program has worked for more than a decade to advance tobacco-free activities and lifestyles in AAPI communities and to optimize the ability of anti-tobacco programs (both mainstream and AAPI) to serve AAPI communities in a culturally competent and linguistically appropriate manner. APIAHF has extensive expertise in tobacco control in the areas of media and policy advocacy, trainings and technical assistance, leadership development, convenings, advocacy campaigns, materials review, developing educational and advocacy materials. In 1999, APIAHF developed the AAPI Blueprint for Tobacco Control,

which was endorsed by more than 100 AAPI agencies and organizations.

APIAHF is extremely concerned about how deceptive international marketing by the tobacco industry has contributed to the disproportionately high smoking rates among Asian Americans and Pacific Islanders in the United States. (Smoking rates among Filipino-American youth in California, for example, are triple the statewide average.) Not only does overseas marketing have a continuing and direct effect on AAPIs now living in the United States, but the industry has drawn on its overseas experience to shape its misleading marketing targeted at AAPIs in the United States. An internal Philip Morris memo stated: “Asian smokers appear to be a key market to focus on -- since, according to Philip Morris International, smoking incidence in most Asian countries is considerably higher than that of the U.S.” (Rodriguez Y. US Asians. 20 October 1993. Philip Morris Inc. Bates No. 2042045100-5105 at 5100).

The San Francisco African American Tobacco Free Project (SFAATFP) is a project of Polaris Research and Development, Inc., a minority-owned consulting firm that has worked in the arena of tobacco control for 15 years. The SFAATFP is a local community capacity building project, funded through the San Francisco Department of Public Health's Bureau of Health Promotion. A primary goal of the SFAATFP is to empower and build capacity in the African American community to change norms around tobacco usage. SFATTFP is a member of Essential Action's Global Partnerships for Tobacco Control, and partnered with a tobacco control organization in Senegal. SFATTFP has found that focusing on industry marketing and advertising campaigns in Senegal and elsewhere in Africa has shed light on the industry's

marketing efforts directed at African Americans.

Black Network In Children's Emotional Health (BNICEH), is a global family-centered non-profit organization which organizes and trains in prevention issues, disability, child welfare, children's mental health, local government and entrepreneurship. A top priority of the organization is tobacco awareness. BNICEH combines community education, art, coalition building, community financial partnerships, and information technology to guide youth and their families toward self-sufficiency. The organization's priority populations are of African descent. It is based in Chicago and serves several Chicago communities through a network of partners. BNICEH is a member of Essential Action's Global Partnerships for Tobacco Control, with partner organizations in Ghana and Zimbabwe. Like SFATTFP, it has found that focusing on industry marketing and advertising campaigns in Africa has shed light on the industry's marketing efforts directed at African Americans, particularly African American youth.

The grounds for the movants' request for leave to appear as amici curiae regarding remedies relate to the ways in which the international activities of the tobacco industry have substantial impacts in the United States. Assuming a finding that the defendants have violated RICO, this case presents significant legal issues related to the fashioning of appropriate remedies that will restrain future violations. Among the numerous significant issues presented is how remedies should be devised to preclude defendants British American Tobacco and Altria and their subsidiaries from manipulating their multinational corporate form to escape from both prohibitions and affirmative duties imposed. These are issues about which the movants have

special expertise, drawing on their diverse, on-the-ground experience with domestic tobacco control efforts and their focus on how improper activities by the tobacco industry overseas -- ranging from misrepresentations to marketing to youth to deceitful support of purportedly independent scientific researchers who actually operate under the control of the industry -- affect domestic tobacco control efforts. Movants thus will provide substantial insight into how remedies designed by this Court should take into account the multinational character of certain the defendants and how certain remedies should be given explicit extraterritorial application, so as to avoid circumvention.

Pursuant to LCvR 7 (m), counsel for Essential Action, the City and County of San Francisco, the Asian-Pacific Islander American Health Forum, the San Francisco African American Tobacco Free Project (SFAATFP), and the Black Network In Children's Emotional Health (BNICEH) has discussed this Motion with counsel for the Joint Defendants, Liggett Group, Inc., the United States and the Intervenors. The United States and the Intervenors have stated that they will not oppose the Motion. Joint Defendants and Liggett have stated that they will oppose the motion.

CONCLUSION

For the foregoing reasons, Essential Action, the City and County of San Francisco, the Asian-Pacific Islander American Health Forum, the San Francisco African American Tobacco Free Project (SFAATFP), and the Black Network In Children's Emotional Health (BNICEH) respectfully request that they be granted leave to appear as amici curiae in this action.

Respectfully submitted,

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