

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	(
Plaintiff,	(
	(Civil Action No. 99-2496 (GK)
v.	(
	(
PHILIP MORRIS USA INC., et al.,	(
Defendants.	(
	(

DECLARATION OF KIM KLAUSNER, MA

1. My name is Kim Klausner, and I am over the age of 18.
2. I am the manager of the Legacy Tobacco Documents Library (LTDL) at the University of California, San Francisco (UCSF). I have held this position for four and a half years. I supervise 2.8 full-time equivalent staff members.
3. I have a Masters degree in history from San Francisco State University and have worked professionally as an archivist for 15 years. I was the treasurer for the Society of California Archivists from 2006 to 2008. I have presented scientific posters summarizing my and my colleagues' research at academic conferences, including "Preservation of and Access to Tobacco Control Resources" (Tobacco Related Disease Research Program, 2005); "Providing Public Access to Tobacco Industry Artifacts" (Flight Attendants Medical Research Institute, 2006); "Searching Tobacco Industry Documents" (National Conference on Tobacco or Health, 2007); "The Value of Tobacco Industry Documents for Scientific Research" (Flight Attendants Medical Research Institute, 2007); "The Value of Tobacco Industry Videos for the Tobacco Control Movement" (Tobacco

Related Disease Research Program, 2007); “Usage of the British American Tobacco Documents Archive” (Flight Attendants Medical Research Institute, 2008). I have also authored *Menthol Cigarettes and the Initiation of Smoking: A White Paper* (Food and Drug Administration, 2010), *Menthol cigarettes and smoking initiation: a tobacco industry perspective* (Tobacco Control, in press 2011), and co-authored *Tobacco Documents Research Methodology* with Stacey Anderson, Phylla M. McCandless, et. al. (Tobacco Control, in press 2011).

4. The UCSF Library began archiving tobacco company documents in 1994. In June 1995, the UCSF Library responded to intense public interest by publishing those initial documents on the World Wide Web. In January 2002, the UCSF Library launched the Legacy Tobacco Documents Library (LTDL), which is accessible at <http://legacy.library.ucsf.edu>.
5. The LTDL provides researchers and the public with uniform, free, instant Web access to available documents in a permanent, stable, user-friendly system. Once a document is added to the LTDL, it remains accessible through a permanent Internet address (pURL) unique to that document. At least one journal, *Tobacco Control*, requires authors citing tobacco industry documents to use LTDL pURLs for documents that are available in the LTDL collection. The LTDL permits users to search all industry collections in a consistent way with a single interface, instead of requiring users to navigate seven different company websites, each with different search interfaces.
6. As of March 9, 2011, the LTDL collection provides researchers with online access to over 13 million tobacco industry documents, totaling over 73 million pages.

7. One major source, but definitely not the only major source, of LTDL's documents are the tobacco company document websites. Those websites were created as a requirement under the 1998 State Attorney Generals' Master Settlement Agreement (MSA). In addition to the MSA-mandated documents, the LTDL contains other document collections: British American Tobacco, Liggett & Myers, UCSF Brown & Williamson, Mangini ("Joe Camel") Documents, a Multimedia Collection, the Pollay Advertising Collection, Research Collections, US Smokeless Tobacco, and the Tobacco Depositions and Trial Testimony Archive (DATTA).
8. As the manager of the LTDL since 2006, I have been responsible for maintaining and developing this digital collection of documents made available from tobacco litigation. My responsibilities include retrieving digital documents from tobacco company websites; obtaining non-digital tobacco industry materials (microfilm, audiotapes, videotapes, etc.) to digitize and make available; and reconciling records of documents between the Minnesota Depository, the industry websites and the LTDL.
9. This work has often required me and a staff member to consult with, obtain records from, and otherwise utilize the resources available at the Minnesota Depository.
10. Since its creation, the Minnesota Depository has been used by researchers, journalists, students, and activists interested in tobacco control issues and public health policies. My understanding is that the Depository continues to be used in this manner to this day, and based on my extensive experience in this field I expect that it will continue to be used for these purposes in the future.

11. Because of my particular perspective, I believe that I am well-positioned to say that the Minnesota Depository serves several unique roles that are not duplicated by any online resource, including both the LTDL website that I manage and the document websites maintained by the tobacco companies.
12. One of the critical roles that the Minnesota Depository plays is to foster accountability of the tobacco companies. The Depository contains tens of millions of pages of documents concerning tobacco industry advertising, manufacturing, marketing, sales, and scientific research activities, and will continue to collect additional such documents as they are produced in litigation in the future. The LTDL has sought to make as many of these documents as possible available through the Internet. This has proven a significant challenge. Our experience to date has been that there are many documents, and categories of documents, that are available at the Minnesota Depository but are not available on the Internet, through the Defendants' own tobacco document websites or otherwise.
13. Most recently, in its role to facilitate public access to the documents housed in the Minnesota Depository, the Depository staff provided us with a snapshot of the 4(b) Index as it existed in March 2010. The 4(b) Index (referring to paragraph 4(b) in the applicable court order from the Minnesota case) is a list of documents deposited in the Minnesota Depository, which I understand each party maintains in an ongoing manner. From the March 2010 snapshot, we compared the 4(b) Indices with the Defendant's online document lists and identified discrepancies involving well over 100,000 documents.

14. At our request, the California Attorney General's Office contacted several of the Defendants in August and September of 2010 concerning the discrepancies between the records that had been identified as available at the Minnesota Depository, but not available through tobacco company document websites. Each letter was accompanied by a spreadsheet listing the specific, document-by-document, discrepancies that my staff and I had identified. The Attorney General's Office contacted Altria and Philip Morris about 96,674 documents and R.J. Reynolds about 228 of its own documents, as well as 41,211 American Tobacco documents and 26,989 Brown & Williamson documents. The number of discrepancies was smaller for Lorillard, but they have produced far fewer documents in litigation than the other companies. The Attorney General's Office did not contact BATCo because it is not required to maintain a 4(b) Index under the 1998 Minnesota Consent Judgment and does not have a publicly-available document website. True and correct copies of these letters are attached as Attachment 1.
15. After "an extensive search of the boxes at the Minnesota depository," Altria Client Services responded to the California Attorney General's Office on behalf of Philip Morris and Altria by describing the status of 120,583 documents (noticeably more than the 96,674 documents we had inquired about). A true and correct copy of a December 22, 2010 letter from Michael E. Klein to Jeanne Finberg is attached as Attachment 2. Altria Client Services reported that 9,761 of the 120,583 documents that it expanded the inquiry to include had been available on Philip Morris' document website at the time of the California Attorney General's initial inquiry in August 2010. Months later, in a February 7, 2011 letter, Altria Client Services reported that, of those 120,583 documents, 76,525

were now available on Philip Morris' document website. A true and accurate copy of the February 7, 2011 letter from Mr. Klein to Ms. Finberg is attached as Attachment 3.

(Altria Client Services also reported in the same letter that 43,621 were privileged or confidential and therefore not required to be made publicly accessible, and 437 were still being identified. Altria Client Services referred to all of these numbers as "Document IDs" rather than "documents," but because they total 120,583 documents, I believe there may have been a typo because the numbers labeled "Document IDs" in the February 7, 2011 letter actually correspond to "documents.") The marked increase of documents subject to our inquiry that Altria Client Services stated were available on the website—from 9,761 in December 2010 to 76,525 in February 2011—indicates that tens of thousands of documents that we asked about were apparently added to the Philip Morris website in direct response to our inquiry. As noted, we were able to make our inquiry only because we were able to access and use the Minnesota Depository's 4(b) Index.

16. Having access to the Minnesota Depository's 4(b) Index allowed us to facilitate the public's access to online documents, and in my view would not have been possible without using the 4(b) Index as a check on Philip Morris', R.J. Reynolds', American Tobacco's, and Brown & Williamson's obligations to post documents on their websites. Additionally, in my view, much of the value of the 4(b) Index is due to the Minnesota Depository's review of the contents of every box of documents as they arrive to ensure that their contents are accurately reflected on the 4(b) Index, and trying to make sure that the Depository actually receives a copy of every document listed in the 4(b) Index.

17. In response to the California Attorney General's Office's inquiries involving the other tobacco companies, R.J. Reynolds Tobacco Company acknowledged that *thousands* of documents available in the Depository were not available on any website. In one letter - a true and correct copy of which is attached as Attachment 4 - RAI, on behalf of R.J. Reynolds (which is responsible for posting American Tobacco documents, among others), acknowledged that "documents that should be on the public website are not" (p.2). In a January 5, 2011 letter - a true and correct copy of which is attached as Attachment 5 - Michael Leonard, an attorney for R.J. Reynolds, explained that, upon investigating the Attorney General's Office's concerns, "we have identified 32,164 documents that we plan to post" to appropriate websites (p.2). Again, these are all documents that have long been available to researchers at the Minnesota Depository but that - until we identified them, using the Minnesota Depository's 4(b) Index - have never been available through the Internet; and if the Minnesota Depository did not exist, the public would never have had access to these tens of thousands of documents, either at the Depository (because, by assumption, it would not exist) *or* on the companies' document websites.
18. The importance of the Minnesota Depository staff in sorting out document discrepancies between the 4(b) Index and the on-line documents is also clear. Mr. Leonard of R.J. Reynolds explained in his January 5, 2011 letter to Jeanne Finberg at the California Attorney General's Office that, with respect to these accountability issues, "[w]e are working through these issues which are fairly complex" (p.2). He further explained that in order to resolve these "complex" issues, "we will need to send personnel to

Minnesota” to review documents in person at the Minnesota Depository. (Attachment 5)

Similarly, Altria explained in its February 7, 2011 letter to the California Attorney

General’s Office their intention to seek “the support of the Minnesota depository staff” to resolve remaining issues. (Attachment 3)

19. These recent incidents demonstrate the vital role the Minnesota Depository plays in ensuring the ongoing transparency and accountability of the Defendants’ document disclosure obligations. Defendants do not dispute that there are tens of thousands of documents that the MSA required them to post on their document websites, but that they did so only after commencing investigations in response to written inquiries from the California Attorney General’s Office. If there was no Minnesota Depository, we would have had no mechanism to identify the records missing from the Defendants’ websites, and as a result researchers, academics and others would never have gained access to records that Defendants are required to publicly disclose—not at the Minnesota Depository, because it would not exist, and not on the Defendants’ document websites, because the problem was that the documents were required to be posted there but were not.
20. Another unique, related role that the Minnesota Depository plays that is not mirrored by the Defendants’ websites is the measures of accountability at the Depository itself. As described in Paragraph 18 above, the Defendants themselves rely upon and interact with the Depository staff to ensure the accuracy and completeness of both Minnesota Depository holdings, and of their tobacco website collections. It is my understanding that

when Depository staff have concerns about the completeness of materials deposited there, they similarly can and do interact with Defendants' representatives.

21. No similar mechanisms exist for Defendants' websites. Although Defendants have so far been generally responsive to the letters sent by the California Attorney General's Office last year, there are limited means for a researcher or academic who cannot locate records on a company's document website to communicate with the Defendants about their concerns. The Philip Morris website does have a "contact us" feature allowing users to pose queries; the other companies merely have the name of the vendor responsible for maintaining the site. I don't always receive a reply to my concerns when I have communicated them to either the vendor or the company. By contrast, researchers and others using the Minnesota Depository can not only access the helpful staff there, but when the staff cannot resolve an issue, they can and do communicate with Defendants' representatives to get a response.

22. I also understand that the Minnesota Depository contains a "secure area" where certain confidential documents are maintained. While these documents are not available to the public and are not posted on websites, they can be reviewed by plaintiffs' attorneys who agree to a protective order, according to a letter I received from Mr. Leonard of R.J. Reynolds, a true and correct copy of which is attached as Attachment 6. I am concerned that if the Depository is closed there is a chance that these documents may no longer be available to users who have the right to obtain access now or to the public should any of the documents be de-privileged by a court and be released for the public's view.

23. Finally, there is also a large body of materials available at the Minnesota Depository that Defendants have not put on their websites. This includes oversized paper documents; charts, graphs, and tables; drawings, ads and ad copy; articles, newsletter pamphlets, news articles, and reports; forms, promotional materials and maps; slides, videos, and DVDs, cassette audio and reel to reel tapes; and computer disks. Examples of other such materials include the INBIFO hard drive from Philip Morris' off-shore biological research facility in Cologne, Germany; Philip Morris' Prometheus/legislative handbook, which was on an IMAC computer; and ten boxes containing 576 rolls of microfilm from Philip Morris. No three-dimensional trial exhibits can be put online, nor have Defendants put online their important databases, such as the RJR Litigation database and the RJR Additives database. Closing the Minnesota Depository would mean losing access to this large body of materials which the Court previously ordered Defendants to continue to maintain for years to come.

I hereby declare under penalties of perjury pursuant to 28 U.S.C. § 1746.

March 24, 2011

Respectfully submitted,



Kim Klausner, M.A.
Manager, Legacy Tobacco Documents
Library
University of California, San Francisco
530 Parnassus Avenue
San Francisco, CA 94143



EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE

1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: (510) 622-2100
Telephone: (510) 622-2147
Facsimile: (510) 622-2121
E-Mail: Jeanne.Finberg@doj.ca.gov

August 30, 2010

Denise Keane
Executive Vice President and General Counsel
Altria Group, Inc.
6601 W. Broad Street
P.O. Box 85088
Richmond, VA 23285

RE: Philip Morris public document repository

Dear Ms. Keane:

As you know, the Master Settlement Agreement required the original participating manufacturers to maintain, at their expense, Internet document websites. (MSA §IV (c.)). This obligation expired June 30, 2010, but was extended by the court in the *United States v. Philip Morris USA Inc.* until September 1, 2016.

I am writing to you about a number of documents available in the Minnesota depository which appear to be missing from the Phillip Morris public document site. Could you please review the attached list of bates numbers of missing documents and post the documents to the website, or let us know why these documents cannot be posted?

I appreciate your assistance with this matter.

Sincerely yours,

A handwritten signature in dark ink, appearing to be "JF", is written over a rectangular area. Below the signature, the name "JEANNE FINBERG" and title "Deputy Attorney General" are printed.

JEANNE FINBERG
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

JF:td
Enclosure

SA2004101024
90158344.docx

From: Jeanne Finberg
[Jeanne.Finberg@doj.ca.gov]
Sent: Wednesday, September 29, 2010 10:30 AM
To: Klausner, Kim
Cc: William Lieblich
Subject: Fwd: Additional missing documents --
RJR and B
&W
Attachments: not Accounted For- RJR.xlsx; not Accounted
For -
BW.xlsx

>>> Jeanne Finberg 9/29/2010 10:28 AM >>>
Dear Mark,

I am writing to you as a follow up to my September 17, 2010 letter regarding tobacco documents missing from the Internet websites. I now have a list of documents relating to R.J. Reynolds and Brown & Williamson that do not appear on those company websites. The bates numbers are on spreadsheets that are attached to this email.

Can you please let me know what is the status of these documents and if they can be added to the public sites? I appreciate your cooperation in this matter.

I apologize for the informality of using email for this correspondence, but given the length of some of these spreadsheets, it seems like the best method of communication. Please let me know if you disagree and how you would like me to handle any future inquiries.

Thanks, Jeanne

Jeanne Finberg
Deputy Attorney General
California Department of Justice
Office of Attorney General
Tobacco Litigation and Enforcement Section
1515 Clay Street, Suite 2100
P.O. Box 70550
Oakland, CA 94612

510 622-2147

510 622-2121(fax)
Jeanne.Finberg@doj.ca.gov

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: (510) 622-2100
Telephone: (510) 622-2147
Facsimile: (510) 622-2121
E-Mail: Jeanne.Finberg@doj.ca.gov

September 17, 2010

Via U.S. Mail and e-mail

Martin L. Holton, III
Senior Vice President & General Counsel
R.J. Reynolds Tobacco Company
PO Box 2959
401 North Main Street
Winston-Salem, North Carolina 27102

RE: American Tobacco Co.

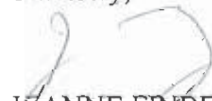
Dear Marc:

I understand that R. J. Reynolds Tobacco Co. is now responsible for American Tobacco. I am writing to you about documents missing from the Internet website. As you know, the Master Settlement Agreement required the original participating manufacturers to maintain, at their expense, Internet document websites. (MSA §IV (c.)). This obligation expired June 30, 2010, but was extended by the court in the *United States v. Philip Morris USA Inc.* until September 1, 2016.

I am writing to you about a number of documents available in the Minnesota depository which appear to be missing from the American Tobacco Co. public document site. I am attaching the list by email in an Excel spreadsheet. Could you please review the attached list of bates numbers of missing documents and post the documents to the website, or let us know why these documents cannot be posted?

I appreciate your assistance with this matter. Thank you.

Sincerely,


JEANNE FINBERG
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

JF:eg
Enclosure – By email only
SA2004101024
90160839.doc

Michael E. Klein
Assistant General Counsel



December 22, 2010

Ms. Jeanne Finberg
Deputy Attorney General
California Department of Justice
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612

Re: Philip Morris public document website

Dear Ms. Finberg:

I write in response to your August 30, 2010 letter to Denise Keane, and further to my November 3, 2010 email to you, regarding documents you identified as "available in the Minnesota depository" but purportedly missing from the Philip Morris USA public document website (www.pmdocs.com). Along with your letter to Ms. Keane, you sent a 2,055 page printout listing each of the documents in question. It was not until November 2, 2010 that you provided this list in digital, and thus computer-searchable, form.

Although we are still in the process of evaluating your list, we have determined that at least 95,343 of the 120,583 documents (almost 80%) you have identified as purportedly missing from the Philip Morris USA public document website were either: (i) in fact available on the website as of the date of your letter (9,761 documents), or (ii) not required to be posted on the website as of the date of your letter because they were classified as privileged or confidential documents (85,582 documents): these documents should not have been available to the public in the depository as of that date.¹

We anticipate completing our review of the 25,240 remaining documents and making any additional postings by the end of January 2011. We will contact you once we have completed this review.

¹ Since December 2009, Philip Morris USA has been conducting a confidentiality review to ensure timely compliance with paragraph 15 of Order 1015, issued in the case of *United States vs Philip Morris USA et al.*, ("Defendant shall review all trade secret assertions every three years to determine whether they still satisfy the definition of 'trade secret.' The first review shall be completed within one year of this Final Judgment and Remedial Order."). As a result of that ongoing review, Philip Morris USA anticipates posting to its public website additional documents originally withheld from the public site on grounds of confidentiality well in advance of Order 1015's one-year deadline.

Ms. Jeanne Finberg
December 22, 2010
Page 2

To date we have invested more than 525 hours, and will surely invest several hundred more hours, responding to your concerns – which predominantly addressed documents that were not required to be posted in the first place or were already available on the website. We have so far identified no document that should have been posted arising from a production that occurred in recent years. This is not surprising, as our productions over the past decade have increasingly involved electronic documents. While electronic documents do not require scanning into digital format for posting to the website, we are nonetheless required to print copies of all electronic documents for production to the Minnesota depository.

We recognize that in many cases you are merely passing on questions and comments from others. In fact, many of the documents on your 2,055-page listing were the subject of an inquiry from Kim Klausner in early 2009. We had multiple communications with Ms. Klausner and provided her with a CD containing more than 10,000 documents which she claimed to be missing from PM USA's public website, but which were in fact posted to the website. In April 2009, we asked her to recheck her list of purportedly missing documents but we never heard back from her or her colleagues.

We remain committed to meeting our public document website posting obligations but would like to discuss a more focused and reasonable approach that meets our respective goals.

Please contact me if you have additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael E. Klein".

Michael E. Klein
Assistant General Counsel

MK:pw

cc: Denise Keane

Michael E. Klein
Assistant General Counsel



February 7, 2011

Ms. Jeanne Finberg
Deputy Attorney General
California Department of Justice
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612

Re: Philip Morris public document website

Dear Ms. Finberg:

I write to follow up on my December 22, 2010 letter regarding documents you identified as purportedly "available in the Minnesota depository" but "missing" from the Philip Morris USA public document website (www.pmdocs.com). In that letter, I informed you that we identified 120,583 Document IDs on the list you provided to us.

After spending more than 750 hours since September 2010 researching the list of 120,583 Document IDs that you provided to us, which included an extensive search of the boxes at the Minnesota depository, we have now determined the status of 99.997% of those Document IDs:

- 1) 76,525 Document IDs representing 71,912 documents are available on www.pmdocs.com. See Bates number list (provided via email).
- 2) 43,621 Document IDs representing 33,066 documents are not required to be posted on the website because those documents are classified as confidential or privileged. See Bates number list (provided via email).

There remain 437 Document IDs (.003% of the 120,583 Document IDs) for which we are unable to identify a corresponding document. We believe that our inability to identify a document that corresponds to each of the Document IDs is due, in large part, to transposition and other transcription errors when these Document IDs were originally recorded in the 4B index, and that many of the Document IDs in question actually correspond to documents currently posted on PM USA's public document website.

To resolve the status of the remaining 437 Document IDs will require additional time as well as the support of the Minnesota depository staff to assist us in reconciling discrepancies between Document IDs as currently listed in the 4B index and the corresponding Document IDs affixed to the documents contained within the boxes at

Ms. Finberg
February 7, 2011
Page Two

the Minnesota depository. We have begun that process and will report on the results of our efforts when we are finished.

Please contact me if you have additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael E. Klein". The signature is fluid and cursive, with the first name "Michael" being more prominent than the last name "Klein".

Michael E. Klein
Assistant General Counsel

MK:pw

cc: Denise Keane



J. Jeffery Raborn
Vice President
Assistant General Counsel
336-741-7379
336-741-0671 Fax
raborni@irt.com

October 22, 2010

Jeanne Finberg, Esquire
Deputy Attorney General
California Department of Justice
Office of Attorney General
Tobacco Litigation and Enforcement Section
1515 Clay Street, Suite 2100
P. O. Box 70550
Oakland, CA 94612-0550

Re: Correspondence of September 17, 2010 and September 29, 2010

Dear Ms. Finberg:

Mark Holton asked me to address your letter dated September 17, 2010 and email dated September 29, 2010.

You provided extensive lists of documents that are purportedly "publicly available" at the Minnesota Depository but not available on the public website. We have done an initial review of a portion of the lists and have the following observations:

- (1) Some of the listed documents are on the public website. In the past, we have seen that researchers can be mistaken in compiling lists of documents claimed to be in the Minnesota Depository but not on the public website. We will provide a list of bates numbers of any documents from your lists that fit this description.
- (2) Some documents may not be on the public website nor should they be. Again, we have received inquiries in the past about particular documents that are not on the public website, and, after investigation, determined that the documents were actually not publicly available in the Minnesota Depository and therefore, not

Jeanne Finberg, Esquire
Deputy Attorney General
October 22, 2010
Page 2

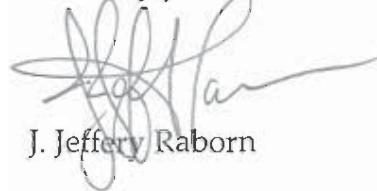
required to be posted at all. We will provide a list of the bates numbers of any documents from your lists that fit this description.

- (3) Some documents that should be on the public website are not. We expect to begin to post documents from your lists that fit into this category within the next month and will provide you with a bates number list once completed.

It will be quite time-consuming to review the extensive lists that you have provided and check them against the public website and against documents that are not publicly available in the Minnesota Depository because they are confidential or privileged. As mentioned above, we will inform you as we post any documents from those lists on the public website.

If you have any questions, please feel free to contact me at 336/741-7379.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "J. Raborn", is written over a light gray rectangular background.

J. Jeffery Raborn



One West Fourth Street
Winston-Salem, NC 27101

Telephone: (336) 721-3600
Fax: (336) 721-3660
www.wcsr.com

R. Michael Leonard
Direct Dial: 336-721-3721
Fax: 336-733-8389
E-mail: MLeonard@wcsr.com

January 5, 2011

Jeanne Finberg, Esquire
Deputy Attorney General
California Department of Justice
Office of Attorney General
Tobacco Litigation and Enforcement Section
1515 Clay Street, Suite 2100
P.O. Box 70550
Oakland, CA 94612-0550

Re: Correspondence of September 17, 2010 and September 29, 2010

Dear Ms. Finberg:

Jeff Raborn of R. J. Reynolds Tobacco Company ("RJRT") has asked me to follow up on the telephone conversation that the three of us had on Friday, December 17. Therefore, I am writing this letter in further response to the correspondence that R. J. Reynolds Tobacco Company received from the California Attorney General on September 17, 2010 and September 29, 2010 concerning documents that are claimed to be in the hard copy depository of documents established in Minnesota (the "Minnesota Depository") but are claimed not be posted on the publicly available website of the documents. This letter is also a follow-up to the letter sent by Mr. Raborn on October 22.

The September 17 and September 29 correspondence included lists of bates numbers of documents that are claimed to be in the Minnesota Depository but not on the websites (hereinafter referred to as the "RJRT List", "B&W List" or "ATCO List"). As we mentioned on the telephone call on December 17, we have made progress in analyzing those lists and believe that we are in a position to quickly resolve a number of the documents listed and that we should be able to resolve the remainder by early March 2011.

As to the website containing documents produced by R. J. Reynolds Tobacco Company ("RJRT Website"), the original number of bates numbered documents that appeared on the RJRT List was 224 documents. One of those documents was actually on the RJRT Website. 214 of the remaining 223 documents have been added to the website. The other nine are privileged documents and are not required to be posted on the RJRT website. We are sending bates lists.

As to the lists of Brown & Williamson and the American Tobacco Company documents, the two lists together appear to contain a combined total of 68,200 documents with bates numbers. Our records indicate that 7,329 of these 68,200 are actually on the B&W and ATCO Websites. Our records also indicate that another 2,350 are confidential or privileged documents that are not required to be posted on the B&W and ATCO Websites.

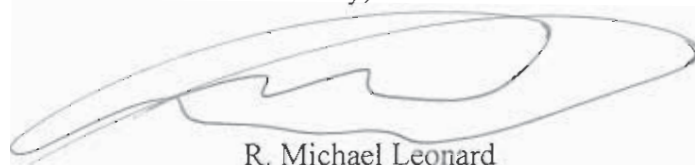
In some instances, the bates number on the B&W List provided with your correspondence is a number that was used to produce the document to the Minnesota Depository but is not the same number that appears on the website. Between now and January 31, we will develop and provide a list that shows both bates numbers for documents where this is an issue, thereby allowing you to confirm that the document represented by the bates number on the B&W List appears on the website under a different bates number.

As to the remainder of the documents, we have identified approximately 32,164 documents that we plan to post to the B&W and ATCO Websites by January 31, 2011, once we satisfy ourselves that the documents are not privileged or confidential. As shown by the fact that some of the documents shown on the RJRT List, B&W List and ATCO List are privileged and confidential, we need to perform some due diligence on the 32,164 documents before we post them to the public website.

The remaining documents present unique issues raised by the inability to electronically match the bates number on the Minnesota 4B Index to bates numbers of documents on other systems. We are working through these issues which are fairly complex. To resolve some of the issues, we will need to send personnel to Minnesota, and we expect this review in Minnesota to be completed by March 1, 2011. It may turn out that many of the documents in the Minnesota Depository are actually on the B&W and ATCO Websites but logged under different bates numbers than appear on the Minnesota 4B Index. Indeed, we have already determined that some documents that appear on the spreadsheets that were sent earlier appear on the public website under different bates numbers.

If you have any questions, please feel free to contact me at 336/721-3721 or Jeff Raborn at 336/741-7379.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Michael Leonard". The signature is fluid and cursive, with a long horizontal stroke at the end.

R. Michael Leonard

RML/abd

cc: Jeff Raborn, Esq.

BATES LIST OF RJR DOCUMENT LOCATED ON PUBLIC WEBSITE

518620056-0121

BATES LIST OF RJR PRIVILEGED DOCUMENTS
WITHHELD FROM PUBLIC WEBSITE

504729369-9371
503035191-5191
507870341-0343
504809241-8245
502470056-0059
508232799-2802
520802170-2170
508843989-3990
521414946-4948

BATES LIST OF PAGES OF RJR DOCUMENTS ADDED TO PUBLIC WEBSITE

510625513-5516
512731268-1530
514804551-4554
514804555-4557
514804558-4560
514804561-4567
514804568-4618
514804619-4661
514804662-4673
514804674-4686
514804687-4703
514804704-4711
514804712-4729
514804740-4744
514804745-4747
514804748-4760
514804761-4768
514804769-4774
514804775-4797
514804798-4809
514804810-4813
514804814-4817
514804818-4821
514804822-4826
514804827-4832
514804833-4835
514804836-4838
514804839-4841
514804846-4848
514804849-4851
514804852-4854
514804860-4866
514804867-4872
514804873-4890
514804891-4894
514804895-4898
514804899-4902
514804903-4929
514804930-4933
514804934-5220

514805221-5235
514805236-5239
514805240-5250
514805251-5253
514805254-5258
514805259-5266
514805267-5271
514805272-5274
514805275-5277
514805278-5283
514805284-5288
514805289-5297
514805298-5316
514805317-5320
514805321-5326
514805327-5332
514805333-5337
514805338-5346
514805347-5350
514805351-5365
514805366-5371
514805372-5377
514805378-5382
514805383-5387
514805388-5393
514805394-5399
514805400-5406
514805407-5410
514805411-5415
514805416-5418
514805419-5421
514805422-5428
514805429-5432
514805433-5492
514805493-5497
514805498-5509
514805510-5514
514805515-5520
514805521-5528
514805529-5535
514805536-5541
514805542-5547
514805548-5580

514805581-5587
514805588-5591
514805592-5595
514805596-5599
514805600-5603
514805604-5606
514805607-5616
514805617-5620
514805621-5626
514805627-5629
514805630-5633
514805634-5640
514805641-5644
514805645-5648
514805649-5652
514805653-5659
514805660-5668
514805669-5673
514805674-5675
514805676-5722
514805723-5725
514805726-5728
514805729-5731
514805732-5734
514805735-5737
514805738-5747
514805748-5750
514805751-5753
514805754-5756
514805757-5759
514805760-5763
514805764-5767
514805768-5770
514805771-5775
514805776-5779
514805780-5786
514805787-5789
514805790-5792
514805793-5795
514805796-5800
514805801-5803
514805804-5806
514805807-5809

514805810-5827
514805828-6021
514806022-6024
514806025-6030
514806031-6033
514806034-6036
514806037-6039
514806040-6047
514806048-6071
514806072-6076
514806077-6083
514806084-6086
514806087-6092
514806093-6098
514806099-6103
514806104-6108
514806109-6112
514806113-6116
514806117-6119
514806120-6122
514806123-6126
514806127-6131
514806132-6135
514806136-6138
514806139-6141
514806142-6144
514806145-6150
514806151-6153
514806154-6157
514806158-6162
514806163-6165
514806166-6168
514806169-6171
514806172-6174
514806175-6177
514806178-6180
514806181-6187
514806190-6192
514806193-6195
514806196-6202
514806203-6205
514806206-6213
514806214-6216

514806217-6219
514806220-6223
514806224-6236
514806237-6239
514806240-6247
514806248-6252
514806253-6255
514806256-6258
514806259-6263
514806264-6270
514806271-6275
514806276-6281
514806282-6289
514806290-6293
514806294-6299
514806300-6304
514806305-6308
514806309-6313
514806314-6320
514806321-6329
514806330-6333
514806334-6338
514806339-6341
514806342-6344
514806345-6348
514806349-6361
514806362-6370
514806371-6376
514806377-6388
514806389-6401
514806402-6416
514806417-6424
514806425-6427
514806428-6432
514806433-6441
514806442-6445
514806446-6449
514806450-6463
521763308-3351
522479561-9584
501561415-1416
518138072-8075
525670215-0232

524558145-8150

531906655-6655

NOTE: EACH OF THE ABOVE PAGE RANGES MAY BE POSTED AS TWO OR MORE INDIVIDUAL DOCUMENTS. A "LOOK" SEARCH BASED ON THE FIRST 9 DIGIT NUMBER IN EACH RANGE SHOULD LOCATE THE DOCUMENTS. THE "LOOK" SEARCH TOOL IS DESCRIBED ON THE RJRT WEBSITE UNDER THE "INDEX TERMS" TAB OF THE "HELP" SECTION.

WOMBLE
CARLYLE
SANDRIDGE
& RICE
A PROFESSIONAL LIMITED
LIABILITY COMPANY

One West Fourth Street
Winston-Salem, NC 27101

Telephone: (336) 721-3600
Fax: (336) 721-3660
Web site: www.wcsr.com

R. Michael Leonard
Direct Dial: 336-721-3721
Fax: 336-733-8389
E-mail: mleonard@wcsr.com

January 22, 2009

Ms. Kim Klausner
Tobacco Digital Library Manager
University of California, San Francisco
530 Parnassus Avenue, Room 512
San Francisco, CA 94143-0840

Dear Ms. Klausner:

With this letter, I am sending a list that gives you the website document numbers of 81 documents produced by R.J. Reynolds Tobacco Company ("RJRT") that appear on the list of documents that you claim appear on the Minnesota 4B Index but are not on the public website.

Further, we have determined that 1,009 documents on your list were ultimately determined to be confidential and are in a secure area of the Minnesota Depository. While these documents can be reviewed by plaintiffs' attorneys who will agree to a protective order, they are not available to the general public and are not required to be posted on the public website. Another 47 documents that appear on the 4B Index and not on your list were highly confidential documents that were produced directly to the plaintiffs' attorneys, who represented the State of Minnesota and were never placed in the depository. Those 47 documents are also not required to be posted on the public website.

We are also looking into other documents that appeared on your list and will provide information about those documents next week.

Sincerely,



R. Michael Leonard

RML/abd
Enclosure

<u>Original List</u>	<u>Website DocID(s)</u>
500108625 -8660	500108625 -8663
500108664 -8683	500108664 -8686
500150988 -0988	500150988 -0992
500174023 -4050	500174022 -4050
500339331 -9336	500339331 -9337
500450950 -0952	500450950 -0953
500459848 -9852	500459848 -9888
500472860 -2895	500472860 -2896
500548493 -8494	500548493 -8497
500590427 -0459	500590427 -0462
500603189 -3192	500603188 -3192
500611784 -1792	500611784 -1791
500712656 -2673	500712656 -2680
500967353 -7376	500967354 -7376
501246310 -6326	501246310 -6331
501288304 -8305	501288304 -8306
501341577 -1577	501341577 -1578
501393291 -3329	501393291 -3355
501425994 -6011	501425991 -6011
501632814 -2820	501632814 -2823
502605406 -5406	502605406 -5407
502605407 -5407	502605406 -5407
503794860 -4863	503794860 -4860
504132371 -2408	504132374 -2408
504795878 -5888	504795883 -5888
504797623 -7635	504797625 -7635
507514265 -4287	507514265 -4288
508089258A -9258A	508089258A-9258A
508460208 -0209	508460208 -0209A
510625513 -5516	510625513 -5514
510980443 -0452	510980443 -0450, 510980451 -0452
511427919 -7919	511427917 -7919
512663691 -4006	512663691 -4144
512664145 -4327	512664145 -4682
512664683 -4923	512664683 -4951
512664952 -5104	512664952 -5146
512666210 -6548	512666210 -6567
512670127 -0202	512670127 -0214
512671076 -1197	512671076 -1413
512672716 -2855	512672716 -2937
512673160 -3325	512673160 -3462
512673463 -3665	512673463 -3682
512674009 -4208	512674009 -4240
512674241 -4420	512674241 -4439
512674440 -4515	512674440 -4533
512731268 -1530	512731268 -1369, 512731372 -1530
513211008 -1132	513211008 -1008, 513211009 -1132
513662851 -5700	513662851 -5700
514677277 -7277	514677277 -7277
515311596 -1598	515311596 -1596
515540235A -0235A	515540235A -0235A

515683425 -3425	515683425 -3426
515745710 -5710	515745710 -5711
517502010 -2011	517502010 -2010, 517502011 -2012
517502012 -2012	517502011 -2012
518138072 -8075	518138072 -8074
518620056 0121	518620056 -0121
518757438 -7438	518757438 -7439
518757977 -8033	518757971 -7996, 518757997 -8033
520870700 -0715	520870699 -0715
520883128 -3134	520883128 -3138
521153861 -3863	521153861 -3861
521531953 -1956	521531953 -1953
521763308 -3351	521763309 -3351
522079032 -9032	522079031 -9032
522479561 -9584	522479561 -9583
522587282 -8432	522587282 -8432
522750077 -0078	522750077 -0077
522853169 -3170	522853169 -3169
522853171 -3172	522853171 -3171
522896952 -6959	522896952 -6968
523113164 -3173	523113164 -3183
523569390 -9390	523569390 -9391
524543774 -3774	524543774 -3775
524558145 -8150	524558147 -8150
525670215 -0232	525670215 -0231
526437060 -7060	526437059 -7060
526527236 -7368	526527236 -7363
531108067 -9822	531108067 -9822
531906655 -6655	531906650 -6650
531950454 -0953	531950454 -0953