IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

JB & ASSOCIATES, INC., a Nebraska corporation; ALINE BAE TANNING, INC., a Nebraska corporation; MAPLE 110 TANNING LLC, a Nebraska limited liability company; TANNING HORIZONS LLC, a Nebraska limited liability company; WILSON BONN LLC, a Nebraska limited liability company; MAX TAN, INC., a Nebraska corporation, and CROISENED, LLC, a Nebraska limited liability company, Plaintiffs vs. NEBRASKA CANCER COALITION, INC., DR. ALAN G. THORSON, M.D., and DR. J. DAVID WATTS, M.D., Defendants.	)	Case No. _____ **COMPLAINT**

Plaintiffs JB & Associates, Inc., Aline Bae Tanning, Inc., Maple 110 Tanning LLC, Tanning Horizons LLC, Wilson Bonn LLC, Max Tan, Inc., and Croisened, LLC (collectively "Plaintiffs"), for their complaint against Defendants Nebraska Cancer Coalition, Inc., Dr. Alan G. Thorson, M.D. and Dr. David J. Watts, M.D. (collectively "Defendants"), state and allege as follows:

THE PARTIES

1. JB & Associates, Inc. ("JB & Associates") is a Nebraska corporation with its principal place of business located at 237 S. 70th Street, Suite 217, Lincoln, Nebraska 68510. JB & Associates, Inc. does business as Sun Tan City.

2. Aline Bae Tanning, Inc. ("ABT") is a Nebraska corporation with its principal place of business located at 4202 Dodge Street, Omaha, Nebraska 68131. ABT has indoor tanning salons at 407 North 78th Street, Omaha, Nebraska 68114; 16819 Q

Street, Omaha, Nebraska, 68135; 14142 West Center, Omaha, Nebraska, 68144; 407 North 78th Street, Omaha, Nebraska, 68114; 1403 Farnam Street Suite 124, Omaha, Nebraska, 68102; 5417 South 96th Street, Omaha, Nebraska, 68127; and 16811 Burke Street Bay 116, Omaha, Nebraska 68118. ABT does business as Palm Beach Tan.

3. Maple 110 Tanning LLC ("Maple 110") is a Nebraska corporation with its principal place of business located at 4202 Dodge Street, Omaha, Nebraska 68131. Maple 110 has indoor tanning salons at 5308 South 56th Street, Lincoln, Nebraska 68516; 2712 Cornhusker Highway, Lincoln, Nebraska 68504; and 5505 O Street, Lincoln, Nebraska 68510. Maple 110 does business as Palm Beach Tan.

4. Tanning Horizons LLC ("Tanning Horizons") is a Nebraska corporation with its principal place of business located at 4202 Dodge Street, Omaha, Nebraska 68131. Tanning Horizons has an indoor tanning salon at 201 Wilmar Avenue, Grand Island, Nebraska 68803. Tanning Horizons does business as Palm Beach Tan.

5. Wilson Bonn LLC ("Wilson Bonn") is a Nebraska corporation with its principal place of business located at 8017 South 83rd Street, La Vista, Nebraska 68128. Wilson Bonn does business as Palm Beach Tan.

6. Max Tan, Inc. ("Max Tan") is a Nebraska corporation with its principal place of business located at Suite Y, 233 N. 48th Street, Lincoln, Nebraska 68504.

7. Croisened, LLC ("Croisened") is a Nebraska limited liability company with its principal place of business located at 7889 S. 83rd Street, La Vista, Nebraska 68128. Croisened does business as Amber Rays.

8. Collectively, Plaintiffs account for 68% of the known tanning salons in the Omaha and Lincoln market areas and an estimated 84% of sales of tanning services in

those markets, as well as a very significant percentage of total sales of tanning services in the State of Nebraska.

9. The Nebraska Cancer Coalition, Inc. ("NCC") is a Nebraska corporation with its principal place of business at 233 S. 13th Street, Lincoln, Nebraska 68508.

10. Dr. Alan G. Thorson, M.D. is a physician specializing in colon and rectal surgery. Dr. Thorson practices in Omaha, Nebraska. Dr. Thorson is the President of the NCC and the Chairman of the NCC Board.

11. Dr. David J. Watts, M.D. is a dermatologist practicing in Omaha, Nebraska. Dr. Watts is the Vice President of the NCC.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to Neb. Rev. Stat. § 24-302.

13. Venue is proper in this Court pursuant to Neb. Rev. Stat. § 25-403.01 as the cause of action arose, in part, in Douglas County, Nebraska and one or more of Defendants reside in Douglas County, Nebraska.

FACTUAL ALLEGATIONS

14. The NCC engages in a variety of well-intentioned activities related to cancer education and prevention, and includes among its members a number of talented and dedicated professionals. Defendants, however, have veered badly off course into unlawful activities outside the bounds of education and prevention. Specifically, the NCC is the sponsor and originator in the State of Nebraska of an orchestrated campaign to destroy the businesses, reputations and livelihood of the Plaintiffs. This effort is known and publicized by Defendants as "The Bed is Dead" campaign. In fact, a review of NCC's recent activities indicates that NCC devotes a

substantially disproportionate percentage (nearly 40 percent) of its social media and community outreach efforts to anti-sunbed messaging—more than six times the volume dedicated to tobacco and lung cancer, the next most-common topic of content.

15. "Bed" refers to indoor tanning sunbeds through which Plaintiffs provide cosmetic tanning services, and to which some medical professionals refer clients for treatment of certain skin conditions, natural vitamin D production and treatment of Seasonal Affective Disorder.

16. As part of its campaign to destroy Plaintiffs' tanning businesses, Defendants maintain a public website located at www.thebedisdead.org. Defendants promote this website in multiple publications, social media outlets, and advertisements.

17. Defendants are active on Twitter under the username @NebCancer, and regularly promote and publish their false statements regarding Plaintiffs and Plaintiffs' services on Twitter, ending their posts with "#thebedisdead". Defendants also promoted and sponsored a "bed is dead" fashion contest to Nebraska teenagers on Twitter.

18. Multiple statements published and distributed to the public in Omaha and Lincoln and the state of Nebraska on the Defendants' website, Facebook account, Twitter account, and in print publications are false and scientifically unfounded, and are known by Defendants to be false or scientifically unfounded.

19. Defendants' statements are presented without any reference to conflicting, confounding or additional information, the omission of which constitutes defamation, deceptive trade practices, and academic fraud. Other statements are designed to intentionally mislead the public and damage Plaintiffs' reputations and businesses.

20. "The Bed is Dead" campaign is part of a concerted effort and coordinated plan to destroy Plaintiffs' legitimate businesses by means of deception and a pattern of

unlawful activity. Upon information and belief, this coordinated scheme is funded in part by individuals and commercial entities having a direct financial interest in generating negative publicity about indoor tanning salons, including the sunscreen and cosmetic industries and those providing UV light treatments in medical facilities. Likewise, Dr. Watts and other members of the NCC have a financial interest in destroying Plaintiffs' businesses, as Dr. Watts and others in his industry seek to offer cosmetic dermatology services to Plaintiffs' customers, in place of those services provided by Plaintiffs. The financial interest of Defendants was plainly evidenced by Defendants' activities at Omaha's Fashion Week in March 2015 (described in detail below). NCC was a corporate sponsor, had a booth at the event where its agents emblazoned with "the bed is dead" t-shirts handed out its propaganda, and bought ad space in the Omaha Fashion Magazine. The ad included the words "the bed is dead" in three lines out of the six total lines. In that very same publication, Dr. Watt's practice, Dermatology Specialists of Omaha, bought a full page ad promoting its cosmetic dermatology services. Defendants are waging a concerted, multi-front attack on Plaintiffs' businesses.

21. As part of its unlawful campaign to destroy Plaintiff's businesses, Defendants also have and continue to promote and distribute to the public in Nebraska, including the Omaha and Lincoln markets, posters containing false and misleading statements relating to tanning. Some of these statements are depicted below:

Aug. 1, 2014

Sept. 15, 2014

June 2015

22. Defendants also published and promoted a publication in Nebraska, including the Omaha and Lincoln markets, entitled "The Danger of Indoor Tanning" in which they made the following false and misleading statements:

a. "Evidence shows that exposure to artificial UV light before age 30 increases a person's risk of melanoma by 75%." (On October 31, 2013, the Center for Disease Control and Prevention (the "CDC") removed this statement from its website, acknowledging that it was false.)

b. "In a recent study, 76% of melanomas diagnosed in people aged 18-29 were caused by indoor tanning."

c. "Artificial sunlight- the kind found in tanning beds- . . . carries a significantly higher risk of skin cancer."

d. "Indoor tanning is thought to cause 170,000 skin cancers annually."

23. Defendants have also made numerous false, defamatory and misleading statements of fact to Nebraska residents, including those in the Omaha and Lincoln markets, on their website, print media, and Facebook and Twitter pages, all as part of

their campaign to destroy Plaintiffs' businesses. Among the false and misleading statements are the following:

STATEMENT 1

24. **Statement 1: "Tanning Causes More Cancers Than Cigarettes"** (Aug. 1, 2014), changed to "Tanning is Linked to More Cancers Than Cigarettes (Sept. 15, 2014), changed to "Tanning is Linked To More Skin Cancers Than Cigarettes to Lung Cancers" (June 2015).

25. On Aug. 1, 2014, the American Suntanning Association ("ASA"), an industry trade group in which Plaintiffs are members, asked the NCC to remove the statement "Tanning Causes More Cancers Than Cigarettes" from its materials, as it is both quantitatively and qualitatively inaccurate and represents a deliberate attempt to mislead the public.

26. Since receiving a cease and desist request dated Aug. 8, 2014 from the ASA and subsequent communication requesting a meeting to address this matter, NCC has changed the statement as used on www.thebedisdead.org twice in its communications. In each case, the change was made by NCC without alerting visitors to its site of the incorrect nature of its previous misstatement and, replaced with language making substantially similar and misleading comparisons.

27. The statement "Tanning Causes More Cancers Than Cigarettes" was published by NCC on www.thebedisdead.org without reference to obvious sources of conflicting and confounding material, was clearly designed to mislead, and is both qualitatively and quantitatively incorrect.

28. **Qualitatively Misleading:** In the United States, tobacco use is responsible for nearly 1 in 5 deaths; this equals about 480,000 early deaths each year.

(American Cancer Society Cancer Facts & Figures 2014 and US Surgeon General Report 2014). That number is approximately 37 times greater than the total number of skin cancer deaths in the United States annually (12,980) – the overwhelming majority of which occur in men over age 50 who never used a sunbed. (Source: National Cancer Institute SEER Data, accessible on-line).

29. Female smokers are 25.7 times (a 2,570% increase) more likely to develop lung cancer than women who never smoked. Male smokers are 25 times (a 2,500% increase) more likely to develop lung cancer than men who never smoked. (US Surgeon General Report 2014). In contrast, the World Health Organization ("WHO") says those who reported in surveys ever using a sunbed increased their risk of melanoma 0.15 times (15%), which is 166-170 times less of a relative increase than the number of lung cancers attributed by the Surgeon General to smoking. Additionally, WHO qualified its estimates with a very important caveat: "Epidemiologic studies to date give no consistent evidence that use of indoor tanning facilities in general is associated with the development of melanoma skin cancer."

30. Smoking, particularly of cigarettes, is by far the main contributor to lung cancer – injecting chemical carcinogens into the body that are foreign to the body's natural design. (Biesalski, HK; Bueno de Mesquita B, Chesson A et al. (1998). "European Consensus Statement on Lung Cancer: risk factors and prevention. Lung Cancer Panel". CA Cancer J Clin 48 (3): 167–176; discussion 164–166. doi:10.3322/canjclin.48.3.167. PMID 9594919.). Besides lung cancer, tobacco use also increases the risk for cancers of the mouth, lips, nose and sinuses, larynx, pharynx, esophagus, stomach, pancreas, kidney, bladder, uterus, cervix, colon/rectum,

ovary, and acute myeloid leukemia. (Cancer Facts and Figures. American Cancer Society, 2014).

31. Cigarette smoke contains over 60 unnatural known carcinogens that the body was never designed to process, including radioisotopes from the radon decay sequence, nitrosamine, and benzopyrene. (Hecht, S (October 2003). "Tobacco carcinogens, their biomarkers and tobacco-induced cancer". Nature Reviews. Cancer (Nature Publishing Group) 3 (10): 733–744. doi:10.1038/nrc1190. PMID 14570033). Additionally, nicotine appears to depress the immune system's response to malignant growths in exposed tissue. (Sopori, M (May 2002). "Effects of cigarette smoke on the immune system". (Nature Reviews. Immunology 2 (5): 372–7. doi:10.1038/nri803. PMID 12033743).

32. Across the developed world, almost 90% of lung cancer deaths are caused by smoking. (Peto, R; Lopez AD, Boreham J et al. (2006)). Mortality from smoking in developed countries 1950–2000: Indirect estimates from National Vital Statistics. Oxford University Press. ISBN 0-19-262535-7). In the United States, smoking is estimated to account for 87% of lung cancer cases (90% in men and 85% in women). (Samet, JM; Wiggins CL, Humble CG, Pathak DR (May 1988)). "Cigarette smoking and lung cancer in New Mexico." American Review of Respiratory Disease 137 (5): 1110–1113. PMID 3264122).

33. In contrast to the unnatural chemicals present in cigarette smoke, humans are naturally intended to interact with UV exposure as an essential element of life. (Surgeon General's 2014 Call to Action to Prevent Skin Cancer). Even the Surgeon General's Call to Action asserts that zero UV exposure is not optimal, and in fact presents risks that are equal to or even greater than overexposure.

34. In the face of this overwhelming information, the statements "Tanning Causes More Cancers Than Cigarettes" and "Tanning is Linked To More Cancers Than Cigarettes" are materially misleading and false.

35. In early 2015, NCC began making the alternative statement on www.thebedisdead.org that "Tanning Is Linked To More Skin Cancers Than Cigarettes to Lung Cancer." This statement, like the previous two tobacco-related claims, is based solely on one paper: Wehner MR. Interioantla Prevalence of Indoor Tanning: A Systemic Review and Meta-Analysis. JAMA Dermatol. Published online Jan. 29, 2014 ("Wehner or the "Wehner paper"). In correspondence to NCC dated Aug. 8, 2014, ASA alerted NCC to many of the reasons why the Wehner paper is inherently incapable of providing support for such a claim. On Aug. 29, 2014, NCC replied to ASA, acknowledging that some changes to www.thebedisdead.org would be made and agreed to meet with ASA in a forum of ASA's choice to discuss the science. Unfortunately, NCC subsequently reneged on its commitment to meet, and did not cease from making these false and misleading statements.

36. The Wehner paper attempts to quantify the number of skin cancer cases the authors deem "attributable" annually to indoor tanning in the United States. To accomplish this, the authors attempt to extrapolate results from individuals who said they "ever had" one sunbed session in self-administered surveys (which would be less total UV than one would receive in 10-30 minutes outdoors in Nebraska in the summer in most cases), without confirming or accounting for that occurrence, other sun behavior or any relevant genetic factors. The assertion that such information can be used to project how many people will get skin cancer based on the author's own creation of Population Proportional Attributable Risk (PPAR) multipliers is not reliable and it cannot

establish causation. NCC's statements to the contrary show a reckless disregard for the truth.

37. Nevertheless, NCC uses the Wehner paper to allege that 419,264 cases of skin cancer are "linked" to indoor tanning in the United States annually and, from that figure, to base a comparison, originally, to all tobacco-related cancers, which is estimated at 442,400 cases per year, according to the National Institutes of Health. (Source: Decreasing trend in tobacco-related cancer incidence, United States 2005-2009. J Community Health. 2015 Jun;40(3):414-8. doi: 10.1007/s10900-014-9951-6). NCC later changed its claim to compare this figure to just lung cancers linked to cigarette smoking. A total of 221,200 cases of lung cancer are expected to be diagnosed in the United States in 2015 (American Cancer Society, 2015 Cancer Facts and Figures). Of those cases, 87 percent (192,444) are believed to be smoking-related. But using Wehner to make this comparison, like the previous two claims NCC made on this topic, fails to recognize the inherent limitations of the Wehner paper and makes this assertion either a deliberate misrepresentation or reckless disregard for the truth for the following reasons:

38. **The Numbers are Not Real.** Unlike the number of reported lung cancer cases, which involve pathologically confirmed tumors that are tracked by the National Cancer Institute's Surveillance, Epidemiology & End Results (SEER) program, there is no registry of any kind for Basal Cell Carcinoma (BCC) or Squamous Cell Carcinoma (SCC) skin cancers. Instead, the estimates relied upon by Wehner are based on mathematically created multipliers that do not involve pathologically confirmed cases of skin cancer or, in most cases, pathology of any kind. As reported in Rogers et al 2006 (the paper cited by Wehner for incidence data), "The exact incidence of non-melanoma

skin cancer is unknown because the condition is not typically reported to cancer registries."

39. **Apples-to-Oranges Comparison.** The BCC and SCC estimates used by Wehner include benign "pre-cancerous" and even non-cancerous lesions/procedures in their estimate calculations. That creates an "apples-to-oranges" comparison, because the National Cancer Institute's lung cancer estimates do not include benign or non-cancerous growths. To make a true "apples-to-apples" comparison between skin cancer data and lung cancer data, one would have to include in the lung cancer incidence number all cases of cysts, nodules or benign tissue diagnoses in the pulmonary system. According to published data, in lung cancer screening trials, 7% of CXR (Chest Roentgeragram) scans obtained from previously healthy individuals contain pulmonary nodules. CT scans to screen for lung cancer detect nodules in 8% to 51% of individuals screened. (Wahidi MM, Govert JA, Goudar RK, Gould MK, McCrory DC; American College of Chest Physicians. Evidence for the treatment of patients with pulmonary nodules: when is it lung cancer?: ACCP evidence-based clinical practice guidelines (2nd edition); Chest 2007; 132 (suppl 3):94-107S). Applying a comparable definition to lung cancer as Wehner does for skin cancer cases, it could be argued that up to 51 percent of smokers have some sort of abnormal tissue in their lungs, and that 87 percent of those are "attributable" to smoking. There are an estimated 42.1 million U.S. adults who are current smokers. ("Cigarette Smoking Among Adults in the United States", U.S. Centers for Disease Control and Prevention, 2015). Calculated in the same fashion that Wehner uses to estimate the number of "skin cancer" cases would result in an additional 18.6 million cases of "lung cancer" attributable to smoking – above and beyond the 221,200 cases in the current estimate.

40. **Unexplained Anomaly.** The calculation of estimated skin cancer incidence in the United States in Wehner, as compared to skin cancer incidence in Northern and Western Europe, contains an anomaly so large as to call the entire calculation into question. The United States and Northern and Western Europe have substantially similar mortality rates for Basal Cell Carcinoma (BCC), Squamous Cell Carcinoma (SCC) and Melanoma skin cancers, and have substantially similar incidence rates for melanoma skin cancer—all numbers that are counted in registries. But the non-registry-related estimate calculations for SCC and BCC are 30.7 and 18.4, respectively, times greater in the United States than for a similar population in Europe. There is no explanation capable of accounting for the United States to have an actual incidence of SCC and BCC 18-30 times greater than Europe. Given similar mortality rates in the two regions for the same cancers, it is clear that the disproportionately higher incidence rate in the U.S. results from the reporting of non-cancerous lesions removed by medical procedures in the U.S., often under the pretense of being "pre-cancerous." Such lesions generally are not removed nor reported in European countries, with no effect on mortality. This anomaly reinforces that the Wehner estimate is neither based in true science nor is it verifiable. Further, a more recent analysis of BCC incidence in the United States suggests that Wehner over-stated U.S. BCC incidence by 32 percent. (Trends of Basal Cell Carcinoma Incidence, Asgari MM et al, JAMA Dermatology, June 13, 2015).

41. **European Data Show The Opposite.** According to Wehner, sunbed usage in Europe is higher than it is in the United States (41.6 percent ever-exposure in Europe vs. 35.4 percent ever-exposure in the USA). Yet, according to Wehner, only 26,484 cases of skin cancer are attributable annually to sunbed usage in Northern and

Western Europe. That is significantly lower than lung cancer cases in Europe attributable to smoking (90 percent of 166,915 total cases, or 150,224); in fact, lung cancer cases linked to smoking in Europe are 567% greater than skin cancer cases "attributed" to sunbed usage. (Cancer Incidence and Mortality Patterns in Europe in 2012, World Health Organization's International Agency for Research on Cancer, European Journal of Cancer, 2013, 49, 1374-1403). Neither Wehner nor NCC address this very obvious opposite finding which is present in their own data. The failure by Defendants to even mention a divergent finding present in their own data is the textbook definition of "academic fraud" and also constitutes defamation and deceptive trade practices.

42. **Unexplained Assumptions.** Several other major statistical limitations undermine the validity of the meta-analysis by Wehner. These statistical challenges were published in The British Medical Journal (Kuehn, et al. Challenges to Indoor Tanning and Non-Melanoma Skin Cancer: Systematic Review and Meta-Analysis, British Medical Journal, Rapid Response, Feb. 17, 2015), and include those outlined herein. First, the authors combine varied data from diverse study populations into simple summaries that do not adequately capture large differences in results across studies. An average taken across disparate groups does not accurately describe all groups, and it may not even accurately describe any single group. Second, the authors inappropriately take information from narrowly defined study populations and generalize that information as if it applied to entire countries. Specially selected groups are not representative of the general population. Third, the authors do not properly account for the combined uncertainty of estimates that they use to calculate the number of skin

cancer cases attributable to indoor tanning. They ignore the margins of error around some estimates, thereby overestimating the precision of their calculations.

43. **Conflicting Information.** The U.S. Preventative Services Task Force in 2012 published material questioning the correctness of the relative-risk multipliers chosen by Wehner, suggesting nuance in sun care messaging not acknowledged by NCC or Wehner. (Counseling to Prevent Skin Cancer: Systematic Evidence Review to Update the 2003 USPSTF Recommendation. United States Preventative Services Task Force, May 2012). Failure to acknowledge known conflicting or confounding material in an academic paper is the textbook definition of academic fraud, and in this case, also constitutes defamation and deceptive trade practices. The U.S. Preventative Services Task Force report included the following statements:

> a. "Based on mainly case-control studies, it appears that both total and chronic sun exposure are not strongly associated with melanoma."
>
> b. "Occupational sun exposure is inversely associated with melanoma risk." (Regular exposure reduces risk)
>
> c. "Existing studies did not suggest a strong association between total or chronic sun exposure and squamous cell or basal cell carcinoma."

At a minimum, these statements suggest nuance to sun care messaging—that any relationship UV has with skin cancer is more complex than merely suggesting that any exposure reported on self-administered, retrospective questionnaires can be used to project absolute risk.

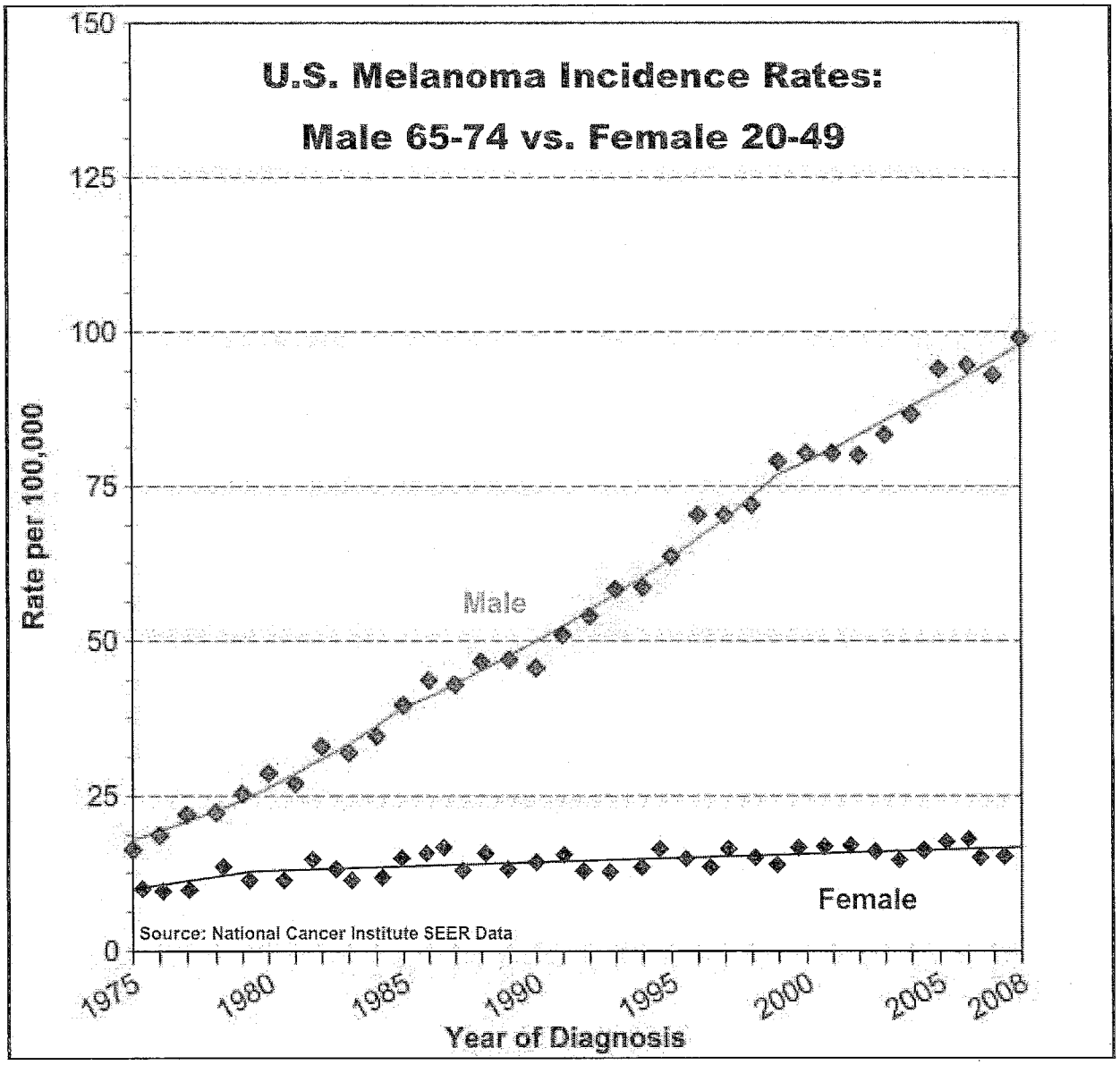
44. **Ignored Relevant Recent Information.** Wehner and NCC ignored the most recent meta-analysis of melanoma-sunbed survey data which produced a lower RR (Relative Risk) multiplier than the author used to make her projections and which described the totality of survey data available this way: "The quality of

evidence contributing to review results ranges from poor to mediocre." (Colantonio S. The association of indoor tanning and melanoma in adults: Systematic review and meta-analysis. JAAD. Published on-line March 12, 2014).

45. **Overestimated Sunbed Usage.** Finally, Wehner clearly over-estimated the number of people who use sunbeds. The paper claims there are 38.1 million Americans who visited a tanning salon last year. However, the CDC published a study in 2015 claiming just 9.7 million Americans used sunbeds in 2013, meaning Wehner's usage calculations are 393 percent too high. (Recent Changes in the Prevalence of and Factors Associated With Frequency of Indoor Tanning Among US Adults, JAMA Dermatology, July 2015).

STATEMENT 2

46. **Statement 2: "Young women are hit hardest. New cases of malignant melanoma have soared 8-FOLD in young women since 1970, TWICE AS FAST as in young men!"** The first sentence in Statement 2 is false. As indicated in the following chart, the National Cancer Institute's national SEER database shows that men over 50 are by far "hardest hit" by melanoma:



The second sentence is misleading and it is reckless to imply that it applies to the population as a whole. The statistic NCC cites came from one small county in Minnesota (Olmsted County), which went from approximately one reported case per year in 1970 to eight today. There is no credible way to apply this to Nebraska or the rest of the United States, especially since the National Cancer Institute's national SEER database does not replicate this finding, which shows that men over 50 are by far "hardest hit."

STATEMENT 3

47. **Statement 3: "Tanning before age 35 raises your risk of melanoma by nearly 60%."** This statement, published in red color on the Defendants' website and in banner copy, is based on the now-discredited and superseded 2012 Boniol Report. On May 21, 2014, the CDC changed its website to drop the statement that "people who begin tanning younger than age 35 have a 59% increased risk of melanoma," an acknowledgment by the CDC that the statement is false.

48. As communicated to Defendants in previous correspondence, this statement is false because the studies that comprise the underlying statistics relied upon by Defendants are not all related to indoor tanning (some include medical phototherapy sunbeds in their data), nor do those statistics represent an attempt to use the latest and most comprehensive data available. Contrary to the statements published by Defendants, the risk of melanoma and other skin cancers from use of artificial UV lamps varies widely depending on the type of usage (typically at home), commercial use in tanning salons, and medical use in a doctor's office for treatment of skin conditions such as psoriasis. Additionally, there was a major change in the technology and emitted spectra of artificial UV lamps in the late 1970s, subsequent to some of the studies relied upon by NCC. Prior to the late 1970s, lamps emitted up to 25% UVB and even some UVC. This compares to 1-5% UVB and 95-99% UVA (mimicking the sun) after the late 1970s. Thus, these studies do not apply to today's commercial sunbed experience.

49. A review of the published studies reveals the source of misinformation being spread by Defendants and demonstrates why Defendants' publishing of this false information is reckless and malicious. In 2006, an International Agency for Research on

Cancer ("IARC") Working Group did a systematic review of the literature on all epidemiological studies then available having data on melanoma and sunbed use. "Sunbeds" as used by this Working Group included sunbeds used in commercial tanning salons, mostly in Europe, as well as sun lamps, sunbeds and other artificial UV devices used at home, in gyms, in beauty salons and in medical facilities. The conclusion from their meta-analysis of this data was that "first exposure to sunbeds before 35 years of age significantly increased the risk of melanoma, based on 7 informative studies." However, none of the seven studies had any data on burning versus non-burning sunbed exposure, so any conclusions about the proper usage of sunbeds were not possible.

50. There was also insufficient break-out of the data in the IARC study in terms of home use compared to commercial use and/or medical use to permit any general conclusions, although individual studies show higher risk from home use and medical use. Finally, there was insufficient break-out of the data according to pre-1970s use versus post-1970s use to permit any general conclusions separating the risk of pre-1970s use from post-1970s use; although one study showed that the risk for pre-1970s use was far higher. The IARC Working Group simply combined all the data from all the different locations of use, jurisdictions of use and year of use into a mixed pool of data.

51. Some of the seven studies did break out data according to location of use. In such studies, the risk of home use was found to be significantly greater than the risk of commercial tanning salon use. For example, Walter (1990) found that "home use is associated with a significant odds ratio of each sex, suggesting about a doubling of risk" but that "commercial sunbed/sunlamp use was more common in females, but their odds ratio is very close to 1" and "the commercial sunbed/sunlamp odds ratio for males is

elevated, but does not attain statistical significance either." (Walter SD et al. The association of cutaneous malignant melanoma with the use of sunbeds and sunlamps. Am J Epidemiol 1990;131:232-43, at page 237). Walter also found an elevated risk for medical use by females but not for men. The finding of higher risk from home use was confirmed by the Papas analysis of the IARC meta-analysis data set, which examined the location of use data in the four studies that had such data and found significantly higher risk from home use than for commercial tanning salon use. Those four studies are: (1) Walter SD et al. The association of cutaneous malignant melanoma with the use of sunbeds and sunlamps. Am J Epidemiol 1990;131:232-43; (2) Chen YT et al. Sunlamp use and the risk of cutaneous malignant melanoma: a population-based case-control study in Connecticut, USA. Int J Epidemiol 1998;27:758-65; (3) Westerdahl J et al. Risk of cutaneous malignant melanoma in relation to the use of sunbeds. Br J Cancer 2000;82:1593-9; and (4) Bataille V et al. A multicentre epidemiological study on sunbed use and cutaneous melanoma in Europe. Eur J Cancer 2005;41:2141-9.

52. Another problem with the IARC report, especially in attempting to apply it to US tanning salons, is that most of the data in the IARC meta-analysis came from studies in Scotland, Sweden, Norway, Belgium, France and The Netherlands (5 of the 7 studies). For many reasons, these studies cannot be applied to commercial sunbed usage in the United States.

53. The remaining two studies, one in Ontario, Canada, and the other in Connecticut, both had separate data for commercial tanning salon use of sunbeds and home and medical use of sunbeds. Both found no risk of melanoma associated with commercial tanning salon use. The Connecticut study, in fact, found a protective effect for persons under age 25 using commercial tanning salons. When use after 1970 was

separated from use before 1970, the Connecticut study found the protective effect for combined home and commercial tanning salon use for persons under age 25 after 1970 increased. The 2006 IARC report mistakenly cited the Connecticut study (Chen) as showing a Relative Risk (RR) of 1.38 instead of 0.54 and used this erroneous number in its forest plot in Figure 2 of the IARC report. Other mistakes in the IARC report include using RR=2.58 (for ages 20-29) instead of RR=1.55 (for ages 10-29) in the forest plot for Veierod and OR=1.82 (ages 0-14) instead of OR=0.9 (mean age of 24) in the forest plot for Bataille.

54. After being provided with this same information, the CDC removed statements from its website in which they had previously stated exposure to artificial UV light before age 30 increased the risk of melanoma by 75%, an acknowledgement that it was false.

55. The 2006 IARC meta-analysis was updated in 2012 by the Boniol meta-analysis, which was written by four of the members of the 2006 IARC Working Group. This update included data from six additional studies and lowered the estimated melanoma risk for combined home and commercial use for persons under age 35 from the 75% stated in the IARC meta-analysis to 59%.

56. The 2012 Boniol meta-analysis was updated in 2014 by the Colantonio meta-analysis to account for newer tanning equipment and to focus on persons younger than age 25. Colantonio, which analyzed data from 31 studies covering 248,000 persons, negated the 2012 Boniol meta-analysis by finding that there is no statistically significant correlation between use of indoor tanning at ages less than 25 years vs. more than 25 years and risk of melanoma.

57. A fair summary of all the foregoing is that studies have shown no statistically significant risk of melanoma from combined home and commercial tanning salon use of sunbeds for persons under age 25, and other studies have shown a much higher risk for home use than for commercial tanning salon use. Because none of the retrospective survey-based studies used to comprise any of these meta-analysis are capable of isolating non-burning exposures, nor reliably accounting for other genetic and environmental variables that are paramount to the correct evaluation of risk, no conclusions about the sensible use of commercial sunbeds can be made from the current science. The current state of the science shows no demonstrated melanoma risk from use of commercial tanning salons for persons under age 18.

58. After being provided with factual information, the CDC removed statements from its website in which they had previously stated exposure to artificial UV light before age 30 increased the risk of melanoma by 59%, an acknowledgement the statement was false.

59. Defendants' assertion that using tanning beds increases the risk of melanoma by 60% does not represent the latest science, and is based on demonstratively erroneous data analysis. In light of the other statements by Defendants on the NCC's website, Defendants being made aware of this information Aug. 8, 2014 and the Defendants' pattern of ignoring conflicting material, this statement is intentionally deceptive. This statement wrongfully harms Plaintiffs' tanning businesses based on false and intentionally misleading information. The statement is false and misleading and wrongfully disparages and harms the businesses intentionally targeted by Defendants.

STATEMENT 4

60. **Statement 4: "Tanning beds have been proven to cause skin cancer."** Causal statements cannot be legitimately made from epidemiological data on UV exposure and sunbeds, particularly given the complex, intended relationship UV light has with human life. Accurate information, however, is and has been available to Defendants.

61. A link to WHO's website, found right on the "Facts" page of www.thebedisdead.org, provides the following:

> "World Health Organization, Sunbeds, World Health Organization, 2010.
>
> Even though the causes of malignant melanoma are not fully understood, tumour development appears to be linked to occasional exposure to intense sunlight. Curiously, tumours are most frequent on body sites that are rarely exposed to the sun. Sunbeds subject their users to intermittent high exposures of UVA and UVB radiation – this may provide the ideal setting for the development of malignant skin cancer. However, the few epidemiological studies that have been carried out to date have not provided any consistent results."

(emphasis added).

62. Also contradicting Defendants' claim is this from the US Preventative Services Task Force report, "Behavioral Counseling to Prevent Skin Cancer" (2012):

> "We found very few studies that examined the relationship between exposure to indoor tanning devices and risk for squamous cell and basal cell carcinoma, after adjusting for all important confounders. Results generally suggest no association. However, a slightly larger body of

higher-quality evidence suggests that 'regular' or 'early' use of indoor tanning devices may increase the risk for developing melanoma (range OR, 1.55 to 2.3). Most of these studies used crude measures of indoor tanning exposure. (emphasis added)

Of the four studies that found a statistically significant association between indoor tanning exposure and melanoma, only two adjusted for both skin phenotype and some measure of sun exposure, while one adjusted for skin phenotype and number of sunburns and one adjusted for only skin phenotype. These studies suggest that regular or higher frequency indoor tanning or use at a younger age may increase risk for melanoma. The one study that examined sunlamp and tanning bed exposure separately found a statistically significant trend (p=0.02) for frequent sunlamp use (≥6 times) and melanoma risk (OR, 1.54 [CI, 0.93–2.57]), but not for frequent tanning bed use (≥10 times) and melanoma risk (OR, 1.25 [CI, 0.79–1.98]). However, the study investigators stated that while no association with tanning bed use was found, sufficient lag time may not have elapsed to assess a potential effect, given the more recent use of tanning beds."

63. Even the United States Surgeon General does not use the term "causes" in discussing UV exposure's relationship with skin cancer. In fact, when asked what might be causing the recent higher number of reported incidences of skin cancer in the United States, Acting Surgeon General Dr. Boris Lushniak said the following:

Lushniak: It's difficult to say. We've seen increases [in melanoma cases] – almost a tripling over the last 30 years. And of course, the question is, is it based upon ultraviolet exposure? Increased outdoor activities? The

indoor tanning industry and artificial sources of ultraviolet radiation? From our perspective, the real concern is that this is an increase, and we need to do something about it.

Washington Post: But we don't know for sure what's causing the increase?

Lushniak: In essence, we really don't. From the epidemiological surveillance perspective, we see the numbers increasing. But in terms of looking at specific [causes] of that, it's still difficult to determine.

The Washington Post, July 29, 2014.

64. The existence of this confounding material is conspicuous. It exists right in locations that "The Bed Is Dead" website cites as sources.

STATEMENT 5

65. **Statement 5: "Your skin remembers EACH tanning session. Just one indoor tanning session increases risk of melanoma by 20%, and each additional use during the same year boosts risk by another 2%."** These statements are false. They appear to be based on the Boniol 2012 meta-analysis, which as previously described has been discredited and superseded by the more comprehensive and more recent Colantonio 2014 meta-analysis of data from 31 prior studies covering 248,000 persons. In addition, the statement that "just one indoor tanning session increases risk of melanoma by 20%" is a gross exaggeration of Boniol 2012's statement that "every use" of indoor tanning (which includes everything from one session to dozens or hundreds of sessions) was associated with a 20% increased risk of melanoma." This study was not inherently capable of assigning causation, as is inferred by NCC.

STATEMENT 6

66. **Statement 6: "Malignant melanoma is now the most common cancer in young adults aged 25-29 years, second most common in young women aged 30-34 years and in teenagers."** This statement is both misleading and false. This statistic compares reported incidence rates, ignoring the fact that other cancers outpace melanoma in mortality in these age groups by a wide margin. Breast cancer, for instance, is 10 times more deadly in women in their 20s, according to the National Cancer Institute (Mortality Rate (MR) of 9.0/100,000 for breast cancer; MR of 0.9/100,000 for melanoma). This statement is also patently false for teenagers. Melanoma ranks 8th in incidence in teenage women, according to the American Cancer Society (Childhood and Adolescent Cancer Statistics 2014, Journal Cancer, 2014).

STATEMENT 7

67. **Statement 7: "Ultraviolet radiation and UV tanning devices are rated by the Food and Drug Administration (FDA) and the World Health Organization (WHO), among other agencies, as carcinogenic to humans (type-1 carcinogens), in the highest risk category alongside arsenic, radon, tobacco, and asbestos."**

68. This statement is designed to mislead. Being a carcinogen does not mean a substance is carcinogenic in its intended dose. UV exposure is critical to life and humans cannot survive without it. UV exposure, then, is the only item listed on the U.S. government's list of carcinogens that is also necessary for life. Defendants conveniently ignore the U.S. government's listing criteria for calling a substance or exposure circumstance a carcinogen. According to the National Institutes of Health's National Toxicology Program, the criteria to be on the list of carcinogens does not take into consideration the *dosage* required for a substance to be harmful. The listing

criteria, in relevant part, state: "The Report does not present quantitative assessments of carcinogenic risk. Listing of substances in the Report, therefore, does not establish that such substances present carcinogenic risks to individuals in their daily lives." (emphasis added). That is why red wine, salted fish, sawdust and birth control pills are also on the list of carcinogens—in the same category as arsenic, tobacco and plutonium. In short, being on the list doesn't mean all exposure is dangerous. And UV is the only exposure circumstance on the list that humans in fact need to live.

69. To suggest, as Defendants have, that UV is in a category with arsenic, radon, asbestos and tobacco without acknowledging that UV is also the only item in the category essential for life is intentionally misleading.

STATEMENT 8

70. **Statement 8: "One person dies of melanoma every hour in the U.S."** This statement is misleading because it fails to mention that the overwhelming majority of those who die from melanoma are men over age 50 who never once used a sunbed. Instead, when viewed in the context of the overall "The Bed is Dead" campaign, Defendants imply that sunbeds are the cause.

STATEMENT 9

71. **Statement 9: "Malignant melanoma is increasing more rapidly than any other cancer."** Defendants fail to mention that the reported incidence of melanoma has been increasing steadily since 1935, half a century before the advent of the indoor tanning industry in the 1980s, but that mortality rates for melanoma have been declining since the 1970s, according to the National Cancer Institute. Further, according to the American Cancer Society, "During the 1970's, the incidence rate of melanoma increased rapidly by about 6% per year. However, from 1981-2000, the rate

of increase slowed to 3% per year and since 2000 melanoma incidence has been stable . . . The death rate for melanoma has been decreasing rapidly in whites younger than 50, by 3% per year since 1991 in men and by 2.3% per year since 1985 in women." (The American Cancer Society "Cancer Facts & Figures, 2008"). This makes Defendants' statement false and misleading.

STATEMENT 10

72. Statement 10: **"Tanning is addictive. One study produced withdrawal symptoms in frequent tanners with narcotic antagonists such as are used in emergency rooms. Studies find higher rates of alcohol, tobacco, and drug use in females that tan."** This statement is designed to be misleading, as it infers that the body's natural attraction to UV exposure is a harmful addiction, and that tanning causes people to engage in other potentially harmful activities. UV exposure to the skin causes the human body to produce endorphins, in addition to other helpful substances such as vitamin D and nitric oxide. Endorphins trigger a feel-good response, reinforcing a natural attraction to sunlight in the same manner that hunger and thirst reinforce a natural attraction to food and water. Indoor tanning is no different than the sun; to call this natural attraction "addictive" is misleading. The same could be said for jogging or breathing, which also trigger the production of endorphins.

73. This statement also ignores a very obvious truth: human beings naturally are attracted to sunlight, as they are to air and water. The statement that alcohol, tobacco and drug usage are higher in females who tan suggests that tanning caused those other activities. The study referenced does not purport to establish such causation. Failure to mention these caveats shows intent to mislead.

STATEMENT 11

74. Statement 11: **"Of melanoma cases among patients under 30 who had tanned indoors, 76 percent were attributable to tanning bed use in a recent well-designed and conducted study."** This statement is not based on any reliable scientific evidence. The referenced survey study was conducted in Australia and is not capable of showing causation, nor can it be applied to sunbed usage in the United States. Also, the study should be identified by Defendants as a statistical outlier, as it was not replicated in other findings.

STATEMENT 12

75. Statement 12: **"Vitamin D is important, but exposure to UV more than about 10 minutes actually starts to break down the pre-vitamin D in the skin."** This statement is designed to mislead. When the body has produced all the vitamin D it needs from UV exposure, the body stabilizes its vitamin D level by breaking down as much as it produces, thereby eliminating the possibility of overdosing on vitamin D produced from UV exposure. Defendants have misrepresented the essence of this natural regulatory process. What's more, the skin of an African American needs up to 10 times as much UV exposure as the skin of a fair-skinned Caucasian person to make the same amount of vitamin D (the darker one's skin, the more UV required to make the same amount of vitamin D). Further, as UV intensity varies greatly by time, location, elevation and climate, there is no way to quantify what "10 minutes" means. For all these reasons, Defendants' statement is false and misleading.

76. While indoor tanning is promoted in the United States as a cosmetic service, sunbeds were first introduced in light-deprived Northern European countries to induce vitamin D production. Peer-reviewed studies have established that sunbed users typically have vitamin D blood levels in what most vitamin D researchers identify

as the target range, 40-60 ng/ml. (Tangpricha et al. Tanning is associated with optimal vitamin D status and higher bone mineral density. Am J Clin Nutr 2004;80:1645–9). One Canadian study showed that sunbed users in Canada have the highest vitamin D levels in that country, and that most Canadians are vitamin D deficient. (Schwalfenberg GK, et al., Addressing vitamin D deficiency in Canada: A public health innovation whose time has come, Public Health (2010), doi:10.1016/j.puhe.2010.03.003). Because the science is clear that sunbed users have higher vitamin D levels as compared to the general public, NCC's statement is false.

STATEMENT 13

77. **Statement 13: "There is no such thing as a 'safe tan.' Any color the skin develops is a direct result of DNA damage to the skin cells."** This statement is false and misleading. A tan is not the result of DNA damage; rather, a tan is the result of melanin production in the skin, as triggered by UV exposure, which is a separate process from DNA "damage" induced by UV exposure. UV exposure to the skin triggers DNA damage from the very first photon that strikes the skin. But the skin is designed to repair that damage, much in the same way that exercise "damages" muscle tissue, which is how the body is designed to build stronger muscle tissue. Skin cells in the epidermis have a 30-day life cycle and shed off naturally. Defendants' implication is that all UV exposure is harmful, which fails to acknowledge the accepted fact that humans need UV exposure to live and that human interaction with UV light is intended.

CORRESPONDENCE WITH DEFENDANTS

78. On August 8, 2014, a 15-page letter was sent to Defendants refuting fifteen false and misleading statements contained on "The Bed is Dead" website. This letter contained a demand to Defendants to cease and desist from making, distributing

and publishing the false, misleading and defamatory statements. A true and correct copy of this letter is attached hereto as Exhibit A.

79. On September 2, 2014, Defendants replied that "minor modifications" had been made to the website in response to the August 8 letter. However, Defendants also maintained that the content of the NCC website was otherwise "supported by well-accepted basic research and epidemiologic literature." Defendants' letter concluded by offering to "engage in a civilized public dialogue . . . in the forum of your choice, on the scientific basis of the statements made on [the website]." A true and correct copy of this letter is attached hereto as Exhibit B.

80. By letter dated November 14, 2014, the ASA accepted Defendants' offer for a "scientific dialogue regarding indoor tanning/UV exposure" and proposed a moderated forum at the University of Nebraska Medical Center on the scientific basis for the statements made by Defendants on "The Bed is Dead" website. A true and correct copy of this letter is attached hereto as Exhibit C.

81. On December 22, 2014, a follow up letter was sent to Defendants demanding an answer by year-end regarding the public forum on the statements contained on their website. A true and correct copy of this letter is attached hereto as Exhibit D.

82. On December 31, 2014, counsel for Defendant NCC called and promised a response regarding the proposed forum on the website was forthcoming. This promise was then repeated on January 15, 2015. However, no substantive response ever came.

83. On February 10, 2015, counsel for Defendant NCC communicated the NCC's refusal to engage in any discussion of the statements on their website without a

full release of liability. NCC further demanded any discussion be conducted in secret and with signed non-disclosure agreements.

ADDITIONAL FALSE STATEMENTS BY DEFENDANTS

84. In March 2015, Defendants participated in activities at Omaha Fashion Week, the nation's fifth largest event of its type. NCC was a corporate sponsor, had a booth at the event where its agents emblazoned with "the bed is dead" t-shirts handed out its propaganda, and bought ad space in the Omaha Fashion Magazine. The ad included the words "the bed is dead" in three lines out of the six total lines. In that very same publication, Dr. Watt's practice, Dermatology Specialists of Omaha, bought a full page ad promoting its cosmetic dermatology services.

85. On March 18, 2015, Dr. Watts published an article on the Omaha World Herald's online LiveWell Nebraska blog, which article was featured on and linked to the front page of Omaha.com. The article was entitled "Parents must keep teenagers out of tanning beds, Nebraska docs say." Many of the same or similar false and misleading statements found on Defendants' website are repeated in the article, including but not limited to the following:

- "Worse, to get a fast tan, many tanning beds emit ultraviolet (UV) radiation that far exceeds UV in natural sunlight. Human evolution has not equipped even tanned skin to withstand such extreme UV exposures without injury."
- "You may be thinking that just a few indoor tanning sessions won't hurt—that they can't really be that harmful. But science shows that indoor tanning is much more dangerous than previously assumed, especially for

young people. A single indoor UV tanning exposure as a young person is linked to an alarming 34-59 percent increase in the risk of melanoma."

- "Not only that, the skin remembers every single tanning session. Melanoma risk increases almost 2 percent for each additional indoor tanning exposure in a given year."
- "Melanoma is now the number one cancer in the U.S. among young adults aged 25-29 years, and is one of the most common cancers of teenagers."
- "Young women make up 70 percent of the 1 million people who tan indoors every day in the United States. So it is not surprising that a Mayo Clinic study showed that in recent years melanoma has increased twice as fast in young women as in young men."

86. Defendants have regularly promoted and published their false statements in media in Nebraska, including newspapers of wide circulation in Omaha and Lincoln, other print publications, the internet, and social media outlets.

COUNT I

DECEPTIVE TRADE PRACTICES AND BUSINESS DISPARAGEMENT

87. Plaintiffs incorporate the allegations contained in all preceding paragraphs as though set forth here in full.

88. The Deceptive Trade Practices Act, Neb. Rev. Stat § 87-302(8), provides in part as follows:

87-302. Deceptive trade practices; enumerated.

(a) A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, he or she:

. . . .

(b) Disparages the goods, services or business of another by false or misleading representations of fact.

89. Defendants are persons for purposes of the Deceptive Trade Practices Act as Defendants are a corporation and two individuals.

90. Defendants have disparaged the services and goods of Plaintiffs through numerous specific, documented false and misleading representations of fact as set out herein.

91. Defendants disparaged the services and goods of Plaintiffs in the course of their business, vocation or occupation. Defendants engaged in the business, vocation or occupation of promoting the professional services of themselves as well as their financial contributors and members, including numerous dermatologists and providers of therapeutic UV light treatment and equipment who are competitors of Plaintiffs. Defendants further engaged in the business, vocation or occupation of the Nebraska Cancer Coalition, Inc. as set forth in its organizational documents and policies.

92. Plaintiffs are persons likely to be damaged by deceptive acts of Defendants in the future.

93. The false representations of fact by Defendants constitute violations of the aforesaid sections of the Deceptive Trade Practices Act and should be enjoined.

94. Plaintiffs have brought this claim within four years of the violations by Defendants and have served the Nebraska Attorney General with a copy of this Complaint by certified mail.

95. The deceptive trade practices of Defendants were conducted in whole or in part within the State of Nebraska against residents or nonresidents of this state.

96. Plaintiffs are entitled to costs and attorneys' fees as provided under the Deceptive Trade Practices Act.

97. Unless Defendants are restrained or enjoined, Defendants will continue to engage in deceptive trade practices as alleged above.

98. Plaintiffs do not have an adequate remedy at law. Unless injunctive relief is granted, as requested herein, the damage caused by Defendants will be irreparable.

COUNT II

DEFAMATION

99. Plaintiffs incorporate the allegations contained in all preceding paragraphs as though set forth here in full.

100. Defendants made false and defamatory statements regarding Plaintiffs as specifically outlined in all preceding paragraphs.

101. These statements were published in the Omaha and Lincoln markets and throughout Nebraska to numerous third parties and the general public, including readers and visitors of Defendants' website.

102. Defendants' false and defamatory statements were intentionally published to targeted demographic groups in an effort to reach Plaintiffs' customers.

103. Defendants' publication of such statements was not privileged.

104. Defendants were at fault in making the statements alleged in all preceding paragraphs as Defendants' actions were malicious and/or reckless and/or negligent.

105. Defendants' communications tended to harm the reputation of Plaintiffs so as to lower them in the esteem of the community and/or to deter third persons from associating or dealing with them.

106. The statements made by Defendants are defamatory per se as they prejudice Plaintiffs in their profession and trade and they falsely impute Plaintiffs' services as responsible for death and disease using shocking and false allegations.

107. Defendants have refused repeated requests to cease and desist from defaming Plaintiffs.

108. As a direct and proximate result of the statements made by Defendants, the reputation and standing of Plaintiffs in the community has been damaged, as has their ability to fairly compete in the marketplace.

109. Unless Defendants are restrained or enjoined, Defendants will continue to publish defamatory statements as alleged above.

110. Plaintiffs do not have an adequate remedy at law. Unless injunctive relief is granted, as requested herein, the damage caused by Defendants will be irreparable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for:

1. An order in favor Plaintiffs and against Defendants on Plaintiffs' claim under the Deceptive Trade Practices Act;

2. The issuance of temporary and permanent injunctions, restraining and enjoining Defendants from further deceptive trade practices and defamatory statements, including removal of all of the false and/or misleading statements identified in this Complaint from NCC's website and any materials distributed to the public;

3. An order compelling Defendants to cease the use of the domain name "thebedisdead.org" and "thebedisdead" on print publications;

4. An order compelling Defendants to print and publish a public retraction of their defamatory and deceptive statements in a manner designed to reach the general

public and those audiences previously targeted by Defendants, including on Twitter and Facebook;

5. An order compelling Defendants to pay Plaintiffs' costs, including attorneys' fees under the Deceptive Trade Practices Act;

6. An order in favor of Plaintiffs and against Defendants on Plaintiffs' defamation claim, including injunctive relief and general damages as provided by law; and

7. An order granting such other and further relief as justice and equity may require.

Dated this 22nd day of July, 2015.

JB & ASSOCIATES, INC., a Nebraska corporation; ALINE BAE TANNING, INC., a Nebraska corporation; MAPLE 110 TANNING LLC, a Nebraska limited liability company; TANNING HORIZONS LLC, a Nebraska limited liability company; WILSON BONN LLC, a Nebraska limited liability company; MAX TAN, INC., a Nebraska corporation; and CROISENED, LLC, a Nebraska limited liability company,

Plaintiffs,

By: _____

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August 8, 2014

The Nebraska Cancer Coalition
233 South 13th Street
Lincoln, Nebraska 68508

Re: "The Bed is Dead Campaign"

Dear Nebraska Cancer Coalition:

This letter concerns "The Bed is Dead Campaign" and statements published by your organization or with your participation and/or support on the web site located at www.thebedisdead.org. Multiple statements published and distributed to the public on this site are false and scientifically unfounded. Others are clearly designed to mislead the public and damage specific businesses. Several of these statements constitute business disparagement, deceptive trade practices and/or tortious interference with private business. In other instances, the statements perpetrate academic fraud as they entail purposeful omission of conflicting data. The purpose of this letter is to place you on notice concerning these statements, demand that you cease and desist publishing these statements immediately (including removing them from your web site), and to warn you of further legal and civil enforcement action if you persist in these irresponsible and damaging actions.

The American Suntanning Association has been calling for a higher level of dialogue on the topic of indoor tanning, based on sound science and rational discourse. Instead, it appears there continues to be a concerted effort and coordinated plan, funded largely by those with a direct financial conflict of interest, to destroy legitimate businesses by means of deception and a pattern of unlawful activity. This activity is potentially actionable under civil conspiracy and federal anti-racketeering laws, in addition to various state common law and statutory provisions.

EXHIBIT
A

All that we seek is a truthful presentation of sound science, rather than intentional distortion and trade disparagement aimed at causing consumer confusion and financial harm. Your web site – which contains numerous false statements and which conspicuously ignores relevant, easily discovered material and current science – establishes both intent to deceive and fraud.

For example, an objective evaluation of current science cannot ignore studies which show an inverse relationship between UV exposure and deaths from various types of cancer, such as the Chowdhury Franco study published in the British Medical Journal in April 2014 – the latest in a field of studies whose results paint a balanced picture about UV exposure and sunbed usage ignored completely by your web site.

It appears the Nebraska Cancer Coalition has fallen victim to an agenda driven, in significant part, by those with financial conflicts of interest (such as the cosmetics industry) as well as those willing to commit academic fraud in order to protect their self-interest and further a political agenda. Some in the dermatological community have intentionally chosen to overlook the errors and misapplications discussed below, and are excessively advising less and less UV exposure at a time when inadequate UV exposure is emerging as a public health problem in the U.S. The risks of inadequate UV exposure have become too well documented in the scientific literature to be ignored.

In sum, the malicious publication of false and misleading information designed to harm Nebraska indoor tanning businesses is a serious matter that will not remain unaddressed. Civil conspiracy to damage or destroy legitimate businesses through fraudulent activity and deceptive practices will no longer be tolerated.

The following are some, but not all, of the false, unfounded, misleading, and/or fraudulent statements found on your web site, together with an explanation of why they are false:

STATEMENT 1: "Tanning Causes More Cancers Than Cigarettes."

This statement, delivered without reference to obvious sources of conflicting and confounding material, clearly is designed to mislead. It is both qualitatively and quantitatively incorrect.

- In the United States, tobacco use is responsible for nearly 1 in 5 deaths; this equals about 480,000 early deaths each year. (American Cancer Society Cancer Facts & Figures 2014 and US Surgeon General Report 2014) That number is approximately 37 times greater than the total number of skin cancer deaths in the

United States annually (12,980) – the overwhelming majority of which occur in men over age 50 who have never used a sunbed.

- Female smokers are 25.7 times (2,570 percent increase) more likely than women who never smoked to develop lung cancer. For male smokers, it's 25 times (2,500 percent increase) the risk of men who never smoked. (US Surgeon General Report 2014) In contrast, The World Health Organization says those who used sunbeds increased their risk of melanoma 0.15 times (15 percent) – fully 166-170 times less of a relative increase than the surgeon general ascribed to cigarettes. Additionally, WHO added this caveat: "Epidemiologic studies to date give no consistent evidence that use of indoor tanning facilities in general is associated with the development of melanoma skin cancer."

- Smoking, particularly of cigarettes, is by far the main contributor to lung cancer. (Biesalski, HK; Bueno de Mesquita B, Chesson A et al. (1998). "European Consensus Statement on Lung Cancer: risk factors and prevention. Lung Cancer Panel". CA Cancer J Clin 48 (3): 167–176; discussion 164–166. doi:10.3322/canjclin.48.3.167. PMID 9594919.) Besides lung cancer, tobacco use also increases the risk for cancers of the mouth, lips, nose and sinuses, larynx (voice box), pharynx (throat), esophagus (swallowing tube), stomach, pancreas, kidney, bladder, uterus, cervix, colon/rectum, ovary (mucinous), and acute myeloid leukemia. (Cancer Facts and Figures. American Cancer Society, 2014.)

- Cigarette smoke contains over 60 unnatural known carcinogens that the body was never designed to process, including radioisotopes from the radon decay sequence, nitrosamine, and benzopyrene. (Hecht, S (October 2003). "Tobacco carcinogens, their biomarkers and tobacco-induced cancer". Nature Reviews. Cancer (Nature Publishing Group) 3 (10): 733–744. doi:10.1038/nrc1190. PMID 14570033.) Additionally, nicotine appears to depress the immune response to malignant growths in exposed tissue. (Sopori, M (May 2002). "Effects of cigarette smoke on the immune system". Nature Reviews. Immunology 2 (5): 372–7. doi:10.1038/nri803. PMID 12033743)

- Across the developed world, almost 90% of lung cancer deaths are caused by smoking. (Peto, R; Lopez AD, Boreham J et al. (2006). Mortality from smoking in developed countries 1950–2000: Indirect estimates from National Vital Statistics. Oxford University Press. ISBN 0-19-262535-7.) In the United States, smoking is estimated to account for 87% of lung cancer cases (90% in men and 85% in women). (Samet, JM; Wiggins CL, Humble CG, Pathak DR (May 1988). "Cigarette smoking and lung cancer in New Mexico." American Review of Respiratory Disease 137 (5): 1110–1113. PMID 3264122)

- In contrast to cigarette smoke, UV exposure from the sun is a natural and intended event and occurs naturally outdoors as an essential component of life.

In the face of this information, the statement "Tanning Causes More Cancers Than Cigarettes" is clearly false. The assertion appears to be based solely on one paper – a meta-analysis of self-administered survey data. (Wehner MR. Interioantla Prevalence of Indoor Tanning: A Systemic Review and Meta-Analysis. JAMA Dermatol. Published online Jan. 29, 2014.) That paper claims 419,254 cases of skin cancer are attributable annually to indoor tanning in the United States – a number which is still less than the DEATHS ascribed to tobacco usage annually, let alone new cases of cancer. Additionally, the paper:

- Attempts to extrapolate results from people who said they "ever had" one sunbed session on self-administered surveys (less UV than one would receive in 60 minutes outdoors in Nebraska in the summer in most cases) without reliably confirming or accounting for other sun behavior or genetic factors. The notion that such information can be used to project how many people will get skin cancer based on the author's own creation of Population Proportional Attributable Risk (PPAR) multipliers is a daisy-chained projection based on no real collection of reliable information. This is not even science.

- Used Relative Risk multipliers for basal cell carcinoma and squamous cell carcinoma from the author's own paper – higher RR multipliers that conflict data from larger studies – to create the PPAR multipliers.

- Failed to acknowledge the U.S. Preventative Services Task Force's 2012 conclusions and caveats on Basal cell carcinoma and squamous cell carcinoma (Behavioral Counseling to Prevent Skin Cancer: Systematic Evidence Review to Update the 2003 USPSTF Recommendation. United States Preventative Services Task Force, May 2012):

    - "Based on mainly case-control studies, it appears that both total and chronic sun exposure are <u>not</u> strongly associated with melanoma."

    - "Occupational sun exposure is <u>inversely</u> associated with melanoma risk." (Regular exposure reduces risk)

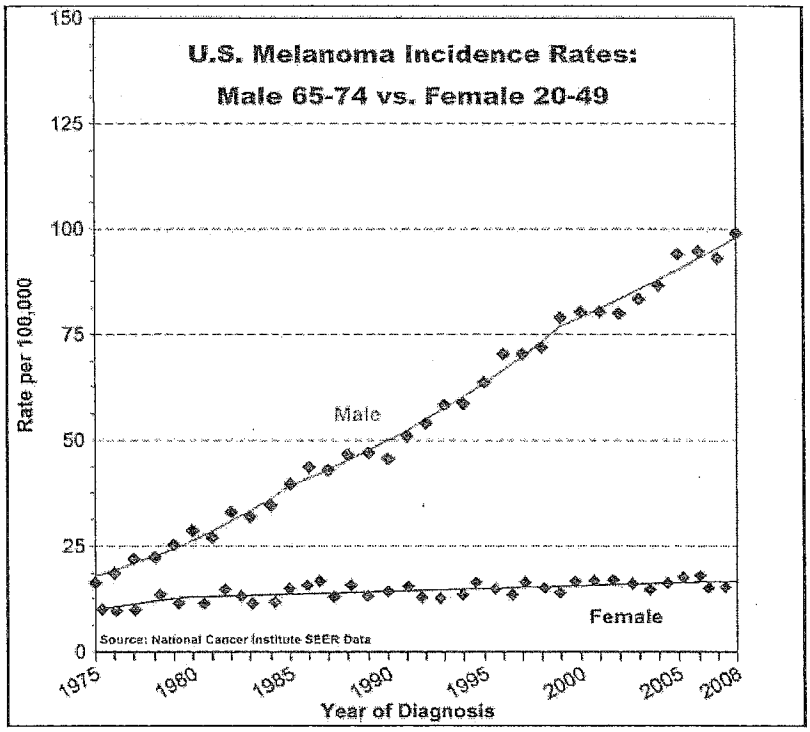
    - "Existing studies did <u>not</u> suggest a strong association between total or chronic sun exposure and squamous cell or basal cell carcinoma."

- Ignored the most recent meta-analysis of melanoma-sunbed survey data which produced a lower RR multiplier than the author used to make his projections and which described the totality of survey data available this way: "The quality of evidence contributing to review results ranges from poor to mediocre." (Colantonio S. The association of indoor tanning and melanoma in adults: Systematic review and meta-analysis. JAAD. Published on-line March 12, 2014)

- Over-estimated the number of people who use sunbeds. The paper claims there are 38.1 million Americans who visited a tanning salon last year. For that to be true, that would mean that indoor tanning popularity has increased 52 percent in the past decade while at the same time the number of tanning facilities has declined 30-50 percent. That is mathematically improbable.

STATEMENT 2: **"Young women are hit hardest. New cases of malignant melanoma have soared 8-FOLD in young women since 1970, TWICE AS FAST as in young men!"**

This statement is misleading, at best, and fraudulent at worst. This statistic came from one small county in Minnesota – Olmsted County -- that went from approximately 1 reported case per year in 1970 to 8 today. There is no credible way to apply this to Nebraska nor to the rest of the United States, especially since the National Cancer Institute's national SEER database does not replicate this finding – showing that men over 50 are by far "hardest hit."



STATEMENTS 3 and 3A: "Tanning before age 35 increases your risk of melanoma by nearly 60%." and "Tanning Beds Increase Your Chances of Developing Melanoma by 60 Percent."

These statements are false. The studies that comprise those statistics are not all tanning studies (some include medical phototherapy sunbeds in their data); nor do those statistics represent an attempt to use the latest and most comprehensive data available. Contrary to the statements published on your web site, the risk of melanoma and other skin cancers from use of artificial UV lamps varies widely depending on the different locations in which such lamps are used; home use, commercial use in beauty parlors, gyms and indoor tanning salons, and medical use for treatment of skin conditions such as psoriasis. Additionally, there was a major change in the technology and emitted spectra of artificial UV lamps in the late 1970's. Prior to the late 70's lamps emitted up to 25% UVB and even some UVC. This compares to 1-5% UVB and 95-99% UVA (mimicking the sun) after the late 1970's.

A review of the published studies shows both the source of the misinformation you are spreading and why your publication of this false information is reckless and malicious. In 2006, an IARC Working Group did a systematic review of the literature on all epidemiological studies then available having data on melanoma and sunbed use. "Sunbeds" as used by this Working Group meant sunbeds used in commercial tanning salons, mostly in Europe, and sun lamps, sunbeds and other artificial UV devices used at home, in gyms, in beauty salons and in medical facilities. Their conclusion from their meta-analysis of this data was that "first exposure to sunbeds before 35 years of age significantly increased the risk of melanoma, based on 7 informative studies (summary relative risk, 1.75; 95% CI, 1.35-2.26)." However, none of the 7 studies had any data on burning vs. non-burning sunbed exposure, so any conclusions about the proper usage of sunbeds were not possible.

Also, there was insufficient break-out of the data in the IARC study in terms of home use vs. commercial vs. medical use to permit any general conclusions separating the risk from home use compared to commercial use and medical use, although individual studies showed higher risk from home use and medical use. Finally, there was insufficient break-out of the data according to pre-1970's use versus post-1970's use to permit any general conclusions separating the risk of pre-1970's use from post-1970's use; although one study showed that the risk for pre-1970's use was far higher. The Working Group therefore simply combined all the data from all the different locations of use, jurisdictions of use and year of use into a mixed pool of data in coming to its conclusion quoted above.

As noted, some of the 7 studies did break out data according to location of use. In such studies the risk of home use was found to be significantly greater than the risk of commercial tanning salon use. For example, Walter 1990 found that "home use is associated with a significant odds ratio of each sex, suggesting about a doubling of risk" but that "commercial sunbed/sunlamp use was more common in females, but their odds ratio is very close to 1" and "the commercial sunbed/sunlamp odds ratio for males is elevated, but does not attain statistical significance either." See Walter 1990 at page 237. Chen found an OR=2.03 for use at home and OR=0.63 for use in commercial settings. See Table 3 in Chen. Walter 1990 also found an elevated risk for medical use by females (OR=8.42) but not for men (OR=0.88). The finding of higher risk from home use was confirmed by Papas, which examined the location of use data in the 4 studies that had such data (Walter, Chen, Westerdahl 2000, and Bataille) and found significantly higher risk from home use than for commercial tanning salon use. A plausible explanation for the higher risk of home use is that users are more likely to get burned at home than in commercial tanning salons.

Another problem with the IARC report, especially in applying it to US tanning salons, is that most of the data in the IARC meta-analysis came from studies in Scotland, Sweden, Norway, Belgium, France and The Netherlands (5 of the 7 studies). At the time of the sunbed use studied, these countries had no effective regulation of commercial indoor tanning, with the result that, as noted in the IARC report, up to 55% of users in these countries received UV burns. In contrast, *in the United States the FDA has specified maximum permitted doses of artificial UV radiation for persons with various skin types in order to minimize the likelihood of indoor burning. This happened more than 20 years ago.*

The remaining two studies, one in Ontario, Canada, and the other in Connecticut, both had separate data for commercial tanning salon use of sunbeds and home and medical use of sunbeds Both found no risk of melanoma associated with commercial tanning salon use. *The Connecticut study, in fact, found a protective effect for persons under age 25 using commercial tanning salons*, with an adjusted RR of 0.63. See Table 3 in Chen. When use after 1970 was separated from use before 1970, the Connecticut study found the protective effect for combined home and commercial tanning salon use for persons under age 25 after 1970 increased, with an RR of 0.54. See Table 4 in Chen. The 2006 IARC report mistakenly cited the Connecticut study (Chen) as showing an RR=1.38 instead of 0.54 and used this erroneous number in its forest plot in Figure 2 of the IARC report. Other mistakes in the IARC report include using RR=2.58 (for ages 20-29) instead of RR=1.55 (for ages 10-29) in the forest plot for Veierod and OR=1.82 (ages 0-14) instead of OR=0.9 (mean age of 24) in the forest plot for Bataille.

All of the foregoing is in addition to the finding by Dr. David G. Hoel of the University of South Carolina Medical School that the selection of the 7 studies was flawed by publication bias and that the 75% figure, aside from the necessary corrections set forth above, was "invalid." Dr. Hoel is one of the 20 scientists from nine countries that met at IARC in 2009 to reassess the carcinogenicity of various types of radiation and changed the classification of UVR from Group 2A (probably carcinogenic to humans) to Group 1 (carcinogenic to humans).

The 2006 IARC meta-analysis was updated in 2012 by the Boniol meta-analysis, which was written by four of the members of the 2006 IARC Working Group. This update included data from 6 additional studies and lowered the melanoma risk for combined home and commercial use for persons under age 35 from the 75% stated in the IARC meta-analysis to 59% (summary relative risk, 1.59; 95% CI 1.36-1.85).

The 2012 Boniol meta-analysis was updated in 2014 by the Colantonio meta-analysis to account for newer tanning equipment and to focus on persons younger than age 25. Colantonio, which analyzed data from 31 studies covering 248,000 persons, lowered the melanoma risk for combined home and commercial use for persons under age 35 from the 59% stated in Boniol to 35% for persons under age 25 (OR, 1.35; 95% CI 0.99-1.84). Because the 95% confidence interval includes the value 1.00 the risk is considered not to be statistically significant. Additionally, Colantonio repeated the mistake of IARC with respect to the Chen study for persons under age 25, using an OR of 1.35 instead of the correct OR of 0.54. Making this correction lowers Colantonio's risk for combined home and commercial use from 35% to 25% (OR, 1.26 95% CI 0.88-1.81. The risk is further reduced by the sensitivity analysis in Supplemental Table V of Colantonio, which shows a risk 21% (OR, 1.21 95% CI 0.91-1.61) before any correction for Chen. As with IARC and Boniol, all of the numbers for melanoma risk in Colantonio were for home and commercial indoor tanning salon use combined, and there was no finding of a separated risk for commercial indoor tanning salon use alone.

A fair summary of all the foregoing is that studies have shown no statistically significant risk of melanoma from <u>combined</u> home and commercial tanning salon use of sunbeds for persons under age 18, and other studies have shown a much higher risk for home use than for commercial tanning salon use. The current state of the science shows no demonstrated melanoma risk from use of <u>commercial</u> tanning salons for persons under age 18.

<u>Your assertion that using tanning beds increases the risk of melanoma by 60% does not represent the latest science, and is based on demonstratively erroneous data analysis. In light of your other statements on this web site and your pattern of ignoring</u>

conflicting material, this statement appears to be intentionally deceptive. This statement, and others, wrongfully harms tanning businesses based on false and intentionally misleading information. Any statement by you on this subject should reference the Colantonio meta-analysis and its findings, and should point out the facts that the 35% figure is statistically insignificant and is for home and commercial use *combined*, that there is no separate risk assessment for commercial use alone, that prior studies have shown much greater risk for home use than for commercial use, that the 35% figure is reduced to 25% for the Chen error (alone) and separately to 21% by Colantonio in its sensitivity analysis (without regard to the Chen error). The statements currently being published on your website asserting that using tanning beds increases the risk of melanoma by 60% are false and misleading and wrongfully disparage and harm the Nebraska businesses you have intentionally targeted.

> The IARC 2006 meta-analysis concluded:
>
> Epidemiologic studies to date give no consistent evidence that use of indoor tanning facilities in general is associated with the development of melanoma or skin cancer. **However, there was a prominent and consistent increase in risk for melanoma in people who first used indoor tanning facilities in their twenties or teen years.**

The subset analysis for persons under age 30 which IARC claimed showed a 75% increase in melanoma risk for persons using indoor tanning facilities at ages less than age 35 and which received worldwide press coverage causing untold damage to the indoor tanning industry for 5 years, has now been proven wrong and has been dropped from the CDC's website.

STATEMENT 4: "Tanning beds have been proven to cause skin cancer."

Causal statements cannot be legitimately made, given the complex relationship UV light has with human life. Accurate information, however, is obviously available to you. For example, a link to WHO's web site, found right on TheBedIsDead's "Facts" page, provides the following:

> World Health Organization. Sunbeds. World Health Organization. 2010.
>
> Even though the causes of malignant melanoma are not fully understood, tumour development appears to be linked to occasional exposure to intense sunlight. Curiously, tumours are most frequent on body sites that are rarely exposed to the sun. Sunbeds subject their users to intermittent

> high exposures of UVA and UVB radiation – this may provide the ideal setting for the development of malignant skin cancer. However, the few epidemiological studies that have been carried out to date have not provided any consistent results.

(emphasis added). Also contradicting your claim, set forth above, is this from the US Preventative Services Task Force report, "Behavioral Counseling to Prevent Skin Cancer" (2012):

> We found very few studies that examined the relationship between exposure to indoor tanning devices and risk for squamous cell and basal cell carcinoma, after adjusting for all important confounders. Results generally suggest no association. However, a slightly larger body of higher-quality evidence suggests that 'regular' or 'early' use of indoor tanning devices may increase the risk for developing melanoma (range OR, 1.55 to 2.3). Most of these studies used crude measures of indoor tanning exposure.
>
> Of the four studies that found a statistically significant association between indoor tanning exposure and melanoma, only two adjusted for both skin phenotype and some measure of sun exposure, while one adjusted for skin phenotype and number of sunburns and one adjusted for only skin phenotype. These studies suggest that regular or higher frequency indoor tanning or use at a younger age may increase risk for melanoma. The one study that examined sunlamp and tanning bed exposure separately found a statistically significant trend (p=0.02) for frequent sunlamp use (≥6 times) and melanoma risk (OR, 1.54 [CI, 0.93–2.57]), but not for frequent tanning bed use (≥10 times) and melanoma risk (OR, 1.25 [CI, 0.79–1.98]). However, the study investigators stated that while no association with tanning bed use was found, sufficient lag time may not have elapsed to assess a potential effect, given the more recent use of tanning beds.

The existence of this confounding material – material that sheds obvious nuance on the issue – is conspicuous. It exists right in locations that "The Bed Is Dead" cites as sources. *Ignoring conflicting data in a report supposedly based on science is the textbook definition of academic fraud*. According to the Association of American Universities' definition, academic fraud includes "deceptively selective reporting including the purposeful omission of conflicting data . . . ." (AAU, 1982). Given that The Bed Is Dead Campaign's stated intention is to harm indoor tanning businesses, this is fraud with intent to harm.

STATEMENT 5: Your skin remembers EACH tanning session. Just one indoor tanning session increases risk of melanoma by 20%, and each additional use during the same year boosts risk by another 2%.

There is no cause-and-effect study to prove this relationship. This statement relies on survey data that failed to explain how the UV emitted in one sunbed session – 124-624J of energy – is capable of a causal association. If the authors of your web site are willing to accept one retrospective survey study as suitable evidence of cause-and-effect, then by definition the authors must also be willing to accept prospective case-control survey data – implicitly stronger evidence -- that regular sunbed usage or sun exposure lowers all-cause mortality. Accepting the statement you have made while ignoring conflicting material of higher quality is textbook academic fraud with intent to harm Nebraska tanning businesses.

STATEMENT 6: "The time necessary to begin developing cancers of the skin has been shortened from decades to a few years, because of the unnaturally high amount of UV radiation in tanning beds compared to that in natural sunlight. ...Tanning beds are far more intense than natural sun exposure, averaging double the UVB and four times the UVA. High-intensity units can have 12-14 times the UVA. Human skin was never irradiated with this much UVA before tanning beds."

These statements are misleading, if not fraudulent. There is no study to support this; nor is it accurate to say that sunbed users get an unnatural dose of UV. According to the International Agency on Cancer Research, a typical outdoor worker today receives approximately 500 MED of UV on the face annually. In comparison, 25 sunbed sessions (the average indoor tanning client) would deliver just 100 MED of UV. (12th Report on Carcinogens, U.S. National Institutes of Health National Toxicology Program, published 2011.) Human skin used to receive much more UV exposure – humans have never spent less time outdoors than we do today.

STATEMENT 7: Malignant melanoma is now the most common cancer in young adults aged 25-29 years, second most common in young women aged 30-34 years and in teenagers.

This statement is misleading and inaccurate:

- This statistic compares reported incidence rates, ignoring the fact that other cancers outpace melanoma in mortality in these age groups. Breast cancer, for instance, is 10 times more deadly in women in their 20s, according to the National Cancer Institute (MR of 9.0/100,000 for breast cancer; MR of 0.9/100,000 for melanoma).

- This statistic is false for teenagers. Melanoma ranks 8th in incidence in teenage women, according to the American Cancer Society.

STATEMENT 8: **"Ultraviolet radiation and UV tanning devices are rated by the Food and Drug Administration (FDA) and the World Health Organization (WHO), among other agencies, as carcinogenic to humans (type-1 carcinogens), in the highest risk category alongside arsenic, radon, tobacco, and asbestos."**

This statement is designed to mislead. Birth control pills, red wine, salted fish, sawdust and sunlight are in the same category. Unique among substances/exposure circumstances listed as carcinogenic to humans is UV exposure, as it is also the only carcinogen humans need to be healthy. Ignoring this critical caveat is misleading with intent to harm. Further, FDA does not rate carcinogens – the National Institutes of Health's National Toxicology Program is charged by Congress to produce a Report on Carcinogens.

STATEMENT 9: **"One person dies of melanoma every hour in the U.S."**

This statement, listed as "Information about tanning" on your web site, fails to mention that the overwhelming majority of those who die from melanoma are men over age 50 who never once used a sunbed.

STATEMENT 10: **"Malignant melanoma is increasing more rapidly than any other cancer."**

This statement is listed as "Information about tanning" on your web site. It fails to mention that melanoma mortality has leveled off or is declining for most groups in the United States for nearly a generation. According to the American Cancer Society, "During the 1970's, the incidence rate of melanoma increased rapidly by about 6% per year. However, from 1981-2000, the rate of increase slowed to 3% per year and since 2000 melanoma incidence has been stable . . . The death rate for melanoma has been decreasing rapidly in whites younger than 50, by 3% per year since 1991 in men and by 2.3% per year since 1985 in women." (The American Cancer Society "Cancer Facts & Figures, 2008")

STATEMENT 11: **Tanning is addictive. One study produced withdrawal symptoms in frequent tanners with narcotic antagonists such as are used in emergency rooms. Studies find higher rates of alcohol, tobacco, and drug use in females that tan.**

This statement presents theory as fact and ignores a very obvious caveat: Human beings naturally are attracted to sunlight, as we are to air and water. The statement that alcohol, tobacco and drug usage are higher in females that tan suggests

that tanning caused those other activities. In fact, alcohol and drug usage are higher in doctors in some studies. Failure to mention these caveats shows intent to mislead.

STATEMENT 12: Of melanoma cases among patients under 30 who had tanned indoors, 76 percent were attributable to tanning bed use in a recent well-designed and conducted study.

This statement is not based on any reliable scientific evidence. The referenced survey study was conducted in Australia and is not capable of showing causation; nor should it be applied to sunbed usage in the United States for many reasons.

STATEMENT 13: Distribution of melanomas on young women has changed from predominantly legs to the trunk, including "double covered areas," where they rarely showed up from natural sun exposure, but which are exposed in tanning devices.

This unattributed statement fails to mention that melanomas are more common on parts of the body that do not get regular sun exposure – whether a person tans or not. It also fails to mention an increase in screening on the trunk. Failure to mention those obvious caveats suggests intent to deceive.

STATEMENT 14: Vitamin D is important, but exposure to UV more than about 10 minutes actually starts to break down the pre-vitamin D in the skin.

This statement is false, is totally baseless, is potentially harmful and is designed to intentionally mislead. The statement contradicts basic facts regarding vitamin D and sun exposure, including differences based on skin type and amount of exposed surface area. "Ten minutes" has no reference to the nature of the light, how much skin is exposed and the skin type of the subject. What's more, this statement mischaracterizes the skin's natural system of de-metabolizing any excessive vitamin D produced by UV exposure. Inadequate UV exposure is increasingly seen as a health problem in the US which is associated with numerous and serious pathologies. Hysterical fear of the sun, perpetuated by irresponsible and financially conflicted entities and businesses is exacerbating this health problem.

STATEMENT 15: Although most tanning facilities seem to be sanitary, a medical team cultured the surfaces on units from 10 High-end Upper East Side Manhattan tanning facilities, and grew multiple species of bacteria, including Staph, Klebsiella, and others. The study appeared in a letter in the Archives of Dermatology.

Again, this statement is intentionally misleading and designed to instill irrational fear based on a non-peer-reviewed letter in a medical journal. The swab test referred to

in the letter could just as easily revealed bacteria in doctor's offices. In fact, deaths from infections acquired in medical facilities are one of the leading causes of death in the United States. According to the CDC, there were an estimated 1.7 million health-care associated infections in 2002, resulting in 98,987 patient deaths. A more recent published study concluded that one in twenty-five patients seeking treatment in hospitals acquired an infection there in 2011.

Tanning facilities are trained to sanitize client surfaces before every tanning visit, using sanitizing agents approved by the U.S. Environmental Protection Agency for that purpose.

Demand to Cease and Desist

To reiterate, the purpose of this letter is to place you on notice concerning these false, misleading and defamatory statements, and to demand that you cease and desist distributing and publishing these statements immediately (including removing them from your web site). The malicious publication of false and misleading information designed to harm Nebraska indoor tanning businesses is a serious matter that will not remain unaddressed. The Nebraska Deceptive Trade Practices Act makes it unlawful to disparage the goods or services or business of another by false or misleading representations of fact. Neb. Rev. Stat. § 87-302(8). Furthermore, your coordination with others in this effort to destroy indoor tanning businesses through a pattern of unlawful activity appears to involve conduct prohibited by civil conspiracy and anti-racketeering laws. If this situation is not corrected voluntarily, within fifteen business days from your receipt of this letter, legal action will be initiated to halt these irresponsible and damaging actions.

Sincerely,

Steve Grasz
Attorney
Husch Blackwell LLP

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SEP 0 2 2014

August 29, 2014

Steve Grasz
Husch Blackwell, LLP
13330 California Street, Suite 200
Omaha, NE 68154

Dear Mr. Grasz,

We have been given your letter dated August 8, 2014, sent to supporters of "the bed is dead" public health information campaign, listed on the website www.thebedisdead.org. The intent of this website is to inform consumers about the hazards of excessive ultraviolet (UV) radiation exposure. The campaign focuses on informing Nebraska girls aged 18 and under and their parents of the danger of indoor tanning.

Multiple levels of scientific evidence clearly link exposure to the intense UV radiation in tanning units, particularly to the skin of young people, to greater risk and earlier onset of cancers of the skin. As you are no doubt aware, comprehensive review of scientific literature[i] led the World Health Organization to designate tanning beds in 2009 as carcinogenic to humans. The U.S. Food and Drug Administration now warns that tanning beds are "contraindicated for use on persons under the age of 18 years[ii]."

One of the five strategic goals in the Surgeon General's Call to Action to Prevent Skin Cancer is to "reduce harms from indoor tanning[iii]." The Surgeon General calls for "tailored messages to reduce indoor tanning among populations at high risk[iv]." We remain committed to that goal.

The information on the site is supported by well-accepted basic research and epidemiologic literature, with appropriate references. After reviewing the various claims in your letter we are making some minor modifications to the website, including the addition of further citations to scientific references which will help to clarify the content.

Nebraska Cancer Coalition (NC2)
233 South 13th Street, Ste 1200
Lincoln, NE 68508
www.necancer.org

EXHIBIT
B

We are prepared to engage in a civilized public dialogue with your client, in the forum of your choice, on the scientific basis of the statements made on www.thebedisdead.org. Insults, accusations and legal threats are a waste of time and resources and are a poor substitute for a serious debate in the court of public opinion.

Sincerely,

Alan Thorson, MD
Chair, Nebraska Cancer Coalition

David Watts, MD
Vice-Chair, Nebraska Cancer Coalition

References:

[i] http://monographs.iarc.fr/ENG/Monographs/vol100D/mono100D-6.pdf
[ii] http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm350790.htm
[iii] http://www.surgeongeneral.gov/library/calls/prevent-skin-cancer/exec-summary.html
[iv] http://www.surgeongeneral.gov/library/calls/prevent-skin-cancer/exec-summary.html

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November 14, 2014

The Nebraska Cancer Coalition
233 South 13th Street
Lincoln, Nebraska 68508

Re: Scientific dialogue regarding indoor tanning/UV exposure

Dear Dr. Thorson and Dr. Watts:

This letter is in response to your correspondence received on September 2, 2014, and your offer therein to "engage in a civilized public dialogue . . . in the forum of your choice, on the scientific basis of the statements made on www.thebedisdead.org." The American Suntanning Association ("ASA") has long called for a higher level of dialogue on the topic of indoor tanning, based on sound science and rational discourse. Therefore, on behalf of the ASA, we hereby accept your offer.

Since receiving your letter, we have considered how best to accomplish the stated objective. We propose to work with you to arrange a scientific discussion as outlined below:

1. Venue: UNMC College of Public Health

2. Date: Sometime in the month of January 2015

3. Participants: One scientist selected by the Nebraska Cancer Coalition ("NCC") and one scientist selected by ASA, along with one additional representative selected by each party.

4. Moderator: Mutually agreed moderator from Creighton University charged with facilitating a fair, civil and respectful scientific discussion which allows for the open exchange of relevant information.

5. Observers: One representative of UNMC. One additional observer selected ASA and one selected by NCC.

EXHIBIT
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6. Length of event/discussion: 2-3 hours

7. Format: A small forum designed to facilitate an open and civil exchange of information regarding scientific research relied upon by each group for its stated views concerning indoor tanning/UV exposure as set forth in NCC's web site and ASA's response thereto.

8. Ground rules: Participants should refrain from ad hominem arguments or disparagement of the motives, beliefs or actions of the other parties during this forum. Participants should focus their comments on the questions presented. Participants may raise questions and make comments concerning research relied upon by the other side, but in accordance with the moderator's guidelines and these ground rules. Each party should make available to the other party, prior to the event, a citation to or a copy of pertinent published research upon which they intend to rely during the discussion in order to facilitate an informed and efficient discussion.

9. Questions for discussion: (a) What are the views expressed by NCC on its "bedisdead" web site and what scientific research is relied upon for these views? (b) What is ASA's response to the views expressed on the web site, and what scientific research is relied upon for its position? To ensure productive use of time, the parties may want to limit discussion to areas of apparent disagreement as identified in ASA's prior correspondence.

10. Objective: Civil scientific discussion designed to identify what each side agrees on and what the parties disagree on with regard to current UV/tanning research.

We look forward to working on the details of this endeavor and would be happy to communicate with any support staff or coalition representative you may wish to designate as a contact person for this purpose. We pledge our full commitment to a cooperative spirit in the planning of this event and would ask for your earliest possible response regarding a mutually agreeable date.

Sincerely,

Steve Grasz

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December 22, 2014

The Nebraska Cancer Coalition
233 South 13th Street
Lincoln, Nebraska 68508

Re: Scientific dialogue regarding indoor tanning/UV light exposure

Dear Dr. Thorson and Dr. Watts:

Last month a letter was directed to you, on behalf of the American Suntanning Association, accepting your written offer to engage in a civil dialogue, in the forum of our choice, on the scientific basis of the statements made on "thebedisdead" web site. While we recognize and respect the demands of your medical practices, we also recognize the need to get this forum scheduled and organized in a timely manner.

As noted in the enclosed copy of our original letter, the ASA has agreed to address this situation through reasoned scientific dialogue. You will note we proposed the forum be set for *January of 2015*. In order for this to occur, we will need to schedule a date in the very near future. Consequently, we respectfully request your response no later than *December 31, 2014*. In the event no response is received, we will be left to assume your offer was not made in good faith, in which case this law firm has been directed to proceed with addressing this situation through other means.

Sincerely,

Steve Grasz

EXHIBIT
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