

This document was compiled by ASH and outlines Racketeering legal action against the tobacco companies. This Section is on Colombia
Note links were correct at time of last update – 04/11/2002

Racketeering legal action (RICO) against tobacco companies for smuggling

Tobacco companies are facing legal action over their involvement in cigarette smuggling in civil actions under the Racketeer Influenced and Corrupt Organizations (RICO) legislation in the United States ([See text of the RICO Act: link http://www4.law.cornell.edu/uscode/18/ch96.html](#)). This law was introduced in 1970 to deal with organised crime and the Mafia, and been used to tackle corporate crime and conspiracies ([more information on RICO link: http://www.ricoact.com/](#)).

In these actions, the companies are accused of operating a 'smuggling enterprise' in which they control the market for contraband as if it is a regular distribution channel. They do not do the smuggling themselves, but act in such a way as to ensure that it happens and that they control it through middlemen.

There are five cases underway.

2. [Colombian governors](#)

2. Colombian Governors

Background:

- [Background on smuggling in Latin America - International Consortium of Investigative Journalists, 2001: Link no longer works](#)

[BAT faces punitive racketeering charges over Colombian cigarette smuggling](#)

ASH press release with links 21 September 2000 at the point where BAT was added to the action which had already started against Philip Morris. See attached

[BAT's response to the Colombian action](#)

As usual denying everything - 21 September 2000. Link no longer works

[Colombian State Governors: Racketeering \(RICO\) filing](#)

This is the full filing against Philip Morris and BAT Eastern District of New York – filing 20 September 2000. See attached

[Philip Morris Accused of Smuggling, Money-Laundering Conspiracy In Racketeering Lawsuit](#)

News from the International Consortium of Investigative Journalists describing the racketeering action - 23 May 2000. Link no longer works.

[Philip Morris Accused in Smuggling Scheme](#) see attached

Colombian states say tobacco giant engaged in other illegal acts, including wire fraud and money laundering. Los Angeles Times - 25 May 2000.

[Eastern District of New York \(Brooklyn\) documentation for EU and Colombian RICO cases](#)

Index to all the documentation (369 documents) lodged at the Court related to the EU

case and the related Colombian case.

Link: <https://ecf.nyed.uscourts.gov/cgi-bin/DocketSheet.pl?5661>

This case is not proceeding until the issues surrounding the EU case are resolved – the two cases share the same legal team and many of the same arguments. The EU has filed an appeal that includes facts relevant to the Colombian case and BAT.

Press release 21st September 2000 immediate

BAT faces punitive racketeering charges over Colombian cigarette smuggling

British American Tobacco (BAT) is today facing serious racketeering charges over its involvement in cigarette smuggling in Colombia. BAT faces action by the Departments (States) of Colombia which allege that it committed violations of racketeering laws:

“...arising from its involvement in organized crime in pursuit of a massive, ongoing smuggling scheme.”

The full text of the filing is available on the ASH web site [1] and alleges involvement in **money laundering**, and that BAT:

“...committed, and continue to commit, acts that constitute negligence, fraud, unjust enrichment, public nuisance, negligent misrepresentation, and conspiracy to commit such torts.”

The filing was made by New York lawyers Speiser, Krause, Nolan & Granito [2], which represent the Colombian Departments and adds BAT to the case that was already up and running against its rival Philip Morris. A number of the BAT personnel named in the filing are currently at board level.

Related developments. ASH has released hundreds of BAT confidential documents showing BAT's involvement in smuggling in Asia, Latin America and Africa and related developments [3]. In June, the House of Commons Health Select Committee made a formal recommendation that the Department of Trade and Industry should undertake an investigation of BAT's involvement in smuggling. The response from Secretary of State, Stephen Byers is expected in the next couple of weeks. The European Union has announced that it will launch a smuggling RICO action shortly, though it is not yet known whether this will include BAT

ASH said the Colombian move was significant and further strengthened the case for a DTI Companies Act investigation of the allegations of fraud and misconduct at BAT. Clive Bates, Director of ASH said:

“All the evidence we have seen, and there's lots of it, suggests that BAT treated smuggling as just another distribution channel and arranged their business operations to exploit it to the full.

“While we're very heartened that the authorities are finally catching up with BAT and its role in smuggling, it is a British company and the it is British government that needs to take hold of the situation. A DTI investigation into the allegations of fraud and misconduct is clearly now essential and would demonstrate the Government was prepared to tackle rogue corporations, however big and self-important.”

[1] See the full filing at <http://www.ash.org.uk/html/smuggling/html/colombiarico.html>

[2] +1 212-661-0011 (telephone)

[3] Full background on BAT and smuggling: <http://www.ash.org.uk/?smuggling> including the defence of BAT by Rt. Hon Kenneth Clarke QC MP and ASH's challenging response to Clarke.

Press Contact: Clive Bates 020 7739 5902 (w) 0468 791 237 (m) ISDN is available

Colombian State Governors Racketeering (RICO) action against Philip Morris and BAT Eastern District of New York – filing 20 September 2000

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COUNT XX (BAT) (NEGLIGENT MISREPRESENTATION)

DEMAND FOR JUDGMENT

SPEISER, KRAUSE, NOLAN & GRANITO

(Title and table of contents were added by ASH – the remainder is the unedited original filing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

DEPARTMENT OF AMAZONAS,	:	
DEPARTMENT OF ANTIOQUIA,	:	
DEPARTMENT OF ATLANTICO,	:	
DEPARTMENT OF BOLIVAR,	:	
DEPARTMENT OF BOYACA,	:	
DEPARTMENT OF CAQUETA,	:	
DEPARTMENT OF CASANARE,	:	
DEPARTMENT OF CESAR,	:	AMENDED
DEPARTMENT OF CHOCO,	:	COMPLAINT
DEPARTMENT OF CORDOBA,	:	
DEPARTMENT OF CUNDINAMARCA,	:	JURY TRIAL
DEPARTMENT OF HUILA,	:	DEMANDED
DEPARTMENT OF LA GUAJIRA,	:	
DEPARTMENT OF MAGDALENA,	:	
DEPARTMENT OF META,	:	
DEPARTMENT OF NARIÑO,	:	
DEPARTMENT OF NORTE DE SANTANDER,	:	
DEPARTMENT OF PUTUMAYO,	:	Docket No:
DEPARTMENT OF QUINDIO,	:	00 Civ 2881 (EHN)
DEPARTMENT OF RISARALDA,	:	
DEPARTMENT OF SANTANDER,	:	NICKERSON/
DEPARTMENT OF SUCRE,	:	POHORELSKY
DEPARTMENT OF TOLIMA,	:	
DEPARTMENT OF VALLE DEL CAUCA,	:	
DEPARTMENT OF VAUPES, and	:	
SANTA FE DE BOGOTÁ, CAPITAL DISTRICT,	:	

-against-

PHILIP MORRIS COMPANIES, INC., :
 PHILIP MORRIS INCORPORATED d/b/a
 PHILIP MORRIS U.S.A., :
 PHILIP MORRIS INTERNATIONAL, INC.,
 PHILIP MORRIS PRODUCTS, INC., :
 PHILIP MORRIS LATIN AMERICA SALES CORPORATION,
 PHILIP MORRIS DUTY FREE, INC.,
 BRITISH AMERICAN TOBACCO (1998) LTD., :
 B.A.T. INDUSTRIES P.L.C.,
 BROWN & WILLIAMSON TOBACCO CORPORATION, :
 BATUS TOBACCO SERVICES, INC., and
 BRITISH AMERICAN TOBACCO (SOUTH AMERICA) LTD. :
 -----X

Plaintiffs, DEPARTMENT OF AMAZONAS, DEPARTMENT OF ANTIOQUIA,
 DEPARTMENT OF ATLANTICO, DEPARTMENT OF BOLIVAR, DEPARTMENT OF
 BOYACA, DEPARTMENT OF CAQUETA, DEPARTMENT OF CASANARE,
 DEPARTMENT OF CESAR, DEPARTMENT OF CHOCO, DEPARTMENT OF CORDOBA,
 DEPARTMENT OF CUNDINAMARCA, DEPARTMENT OF HUILA, DEPARTMENT OF
 LA GUAJIRA, DEPARTMENT OF MAGDALENA, DEPARTMENT OF META,
 DEPARTMENT OF NARIÑO, DEPARTMENT OF NORTE DE SANTANDER,
 DEPARTMENT OF PUTUMAYO, DEPARTMENT OF QUINDIO, DEPARTMENT OF
 RISARALDA, DEPARTMENT OF SANTANDER, DEPARTMENT OF SUCRE,
 DEPARTMENT OF TOLIMA, DEPARTMENT OF VALLE DEL CAUCA, DEPARTMENT
 OF VAUPES, and SANTA FE DE BOGOTÁ, CAPITAL DISTRICT, (collectively referred to as
 "THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA" or "PLAINTIFFS"), by and
 through the undersigned attorneys, for their complaint against Defendants, PHILIP MORRIS

COMPANIES, INC., PHILIP MORRIS INCORPORATED, d/b/a PHILIP MORRIS U.S.A., PHILIP MORRIS INTERNATIONAL, INC., PHILIP MORRIS PRODUCTS, INC., PHILIP MORRIS LATIN AMERICA SALES CORPORATION, and PHILIP MORRIS DUTY FREE, INC. (hereinafter referred to as “PHILIP MORRIS DEFENDANTS” or “PHILIP MORRIS”); and BRITISH AMERICAN TOBACCO (1998) LTD., BAT INDUSTRIES, P.L.C., BROWN & WILLIAMSON TOBACCO CORPORATION, BATUS TOBACCO SERVICES, INC., and BRITISH AMERICAN TOBACCO (SOUTH AMERICA) LTD. (hereinafter referred to as “BAT DEFENDANTS” or "BAT") allege as follows:

I. INTRODUCTION

1. This is an action by the Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, against the Defendants for violations of the Racketeer Influenced and Corrupt Organizations Act of 1970, Title IX of the Organized Crime Control Act of 1970, as amended, 18 U.S.C. §§ 1961-68 (“RICO”) arising from Defendants’ involvement in organized crime in pursuit of a massive, ongoing smuggling scheme. PHILIP MORRIS and BAT have engaged in a pattern of racketeering activity, including but not limited to money laundering, wire fraud, mail fraud, and acts in violation of the Travel Act, and by such conduct, are involved in the very type of organized crime that RICO was designed to eradicate. In addition, Defendants have committed, and continue to commit, acts that constitute negligence, fraud, unjust enrichment, public nuisance, negligent misrepresentation, and conspiracy to commit such torts. The complaint seeks money damages, as well as injunctive and equitable relief.

2. The Defendants have on a continuing basis, directly and indirectly, smuggled cigarettes illegally into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA in violation of

United States law and common law, as well as customs agreements between the United States and the Republic of Colombia, for the purpose of injuring the economic interests of THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, while increasing their profits and market share in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, enhancing the value of their tobacco operations, and expanding the worldwide market for contraband cigarettes.

3. Treaties and agreements between the Republic of Colombia and the United States specifically confirm that there shall be reciprocal cooperation between the United States and the Republic of Colombia regarding government efforts to combat transnational crime and customs fraud. These treaties and agreements also confirm that the United States and the Republic of Colombia have a unity of objective in insuring the accurate assessment and collection of customs duties and other related fees and charges. The United States and the Republic of Colombia have determined that smuggling operations in breach of customs agreements and existing law are harmful to the economic, fiscal, and commercial interests of both the United States and the Republic of Colombia and, accordingly, it is of benefit to both nations to eliminate and remedy the effects of such operations.

4. As a direct result of the illegal acts and course of conduct of the Defendants, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA have been injured in their business and property. THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA have lost, and continue to lose, billions of dollars, including the deprivation of fees, taxes, money, and property by reason of the Defendants' scheme to smuggle vast shipments of contraband cigarettes and other tobacco products into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. This scheme also harms THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA by supplanting sales of lawfully sold cigarettes on which taxes would have been paid to THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

5. Through actions undertaken in the United States and elsewhere, Defendants have conceived, directed, controlled, and implemented an international conspiracy to defraud Plaintiffs and deprive them of money and property, in order to increase their profits and market share, enhance the value of their tobacco operations, and expand the worldwide market for contraband cigarettes. By means of actions in this District and elsewhere, Defendants created and exploited a sophisticated and clandestine smuggling enterprise that operates throughout the world and within THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. This international scheme has harmed, and continues to harm, the economic interests of many governments, including THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

II. PARTIES

6. The Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA and SANTA FE DE BOGOTÁ, CAPITAL DISTRICT, are autonomous legal subdivisions of the Republic of Colombia. Each of THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA and SANTA FE DE BOGOTÁ, CAPITAL DISTRICT, has rights and responsibilities comparable to that of a state of the United States. Among the legal rights of THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA is the right to hold a legal or beneficial interest in property and receive money arising from the sale of tobacco products in the Republic of Colombia. THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA have the exclusive right, title and interest in the taxes and revenues that are a subject of this action. THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA and SANTA FE DE BOGOTÁ, DISTRICT CAPITAL, maintain their primary consular offices in the United States through the Embassy of the Republic of Colombia at 2118 Leroy Place, Washington, D.C. 20007.

7. PHILIP MORRIS INTERNATIONAL, INC. is a Delaware corporation whose principal place of business is located at 800 Westchester Avenue, Rye Brook, New York 10573. PHILIP MORRIS INTERNATIONAL, INC. is a subsidiary of PHILIP MORRIS COMPANIES, INC. The Defendant, PHILIP MORRIS INTERNATIONAL, INC., is a citizen of the State of New York. During relevant times, PHILIP MORRIS INTERNATIONAL, INC. acted with and through its affiliated entity and instrumentality, PHILIP MORRIS DUTY FREE, INC. PHILIP MORRIS DUTY FREE, INC. is a Delaware corporation with its principal place of business at 800 Westchester Avenue, Rye Brook, New York 10573-1301.

8. PHILIP MORRIS COMPANIES, INC. is a Virginia corporation whose principal place of business is located at 120 Park Avenue, New York, New York 10017. The Defendant, PHILIP MORRIS COMPANIES, INC., is a citizen of the State of New York. PHILIP MORRIS COMPANIES, INC. is the parent corporation of PHILIP MORRIS INC. and PHILIP MORRIS INTERNATIONAL, INC. During all relevant times herein, PHILIP MORRIS COMPANIES, INC. conducted continuous and systematic business in the State of New York, maintains a substantial financial presence in the State of New York, utilizes offices in New York, and is otherwise subject to the jurisdiction of the courts in the State of New York.

9. PHILIP MORRIS INCORPORATED, d/b/a “PHILIP MORRIS U.S.A.”, a subsidiary of PHILIP MORRIS COMPANIES, INC., is a Virginia corporation with its principal place of business located at 120 Park Avenue, New York, New York 10017. As such, the Defendant, PHILIP MORRIS INCORPORATED, is a citizen of the State of New York. PHILIP MORRIS INCORPORATED conducts business under the trade name “PHILIP MORRIS U.S.A.” and is engaged, along with its subsidiaries and affiliates, in the manufacture and sale of cigarettes. It is the largest cigarette company in the United States, and owns seven manufacturing and processing facilities in the United States.

10. PHILIP MORRIS PRODUCTS, INC., a subsidiary of PHILIP MORRIS INTERNATIONAL, INC., is a Virginia corporation with its primary place of business at 2001 East Walmsley Boulevard, Richmond, Virginia 23234. During all relevant times herein, PHILIP MORRIS PRODUCTS, INC. conducted continuous and systematic business in the State of New York, maintained a substantial presence in the State of New York, utilizes offices in the State of New York, and is otherwise subject to the jurisdiction of the courts in the State of New York.

11. PHILIP MORRIS LATIN AMERICA SALES CORPORATION, a subsidiary of PHILIP MORRIS INTERNATIONAL, INC., is a Delaware corporation with its primary place of business located at 800 Westchester Avenue, Rye Brook, New York 10573. The foregoing PHILIP MORRIS-related entities are collectively referred to herein as the “PHILIP MORRIS DEFENDANTS,” “PM” or “PHILIP MORRIS.”

12. The PHILIP MORRIS DEFENDANTS are and were, during all relevant times, affiliated, consolidated, combined, and unitary entities for purposes of tobacco operations and related activities. Tobacco operations were departments within the PHILIP MORRIS DEFENDANTS' corporate family. The PHILIP MORRIS DEFENDANTS maintain control of tobacco operations worldwide through a web of affiliated entities. This integrated and unitary corporate structure was and is an essential aspect of PHILIP MORRIS DEFENDANTS' successful efforts to surreptitiously direct tobacco smuggling in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. This consolidation was achieved through corporate directives from the highest levels of PHILIP MORRIS COMPANIES, INC., including for example, a facsimile directive from Geoffrey Bible, sent and caused to be sent to several PM executives in the 1990's, indicating that “PM USA” and “PMI” would work together as one group in connection with the sale of Marlboro brand cigarettes.

13. PHILIP MORRIS COMPANIES, INC. has adopted a “worldwide” policy that purports to

exercise control of the activities of its employees, as well as those of its direct and indirect subsidiaries. Under this policy, which is said to be monitored and enforced by its Audit Committee, PHILIP MORRIS COMPANIES, INC. has undertaken responsibility for the acts of the employees of the PHILIP MORRIS DEFENDANTS, wherever taken, including acts related to smuggling activities within Colombia.

14. The PHILIP MORRIS DEFENDANTS are and were, during all relevant times, involved in directing, managing, and controlling smuggling operations within THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. At all times pertinent to this Complaint, the PHILIP MORRIS DEFENDANTS, individually and through their employees, agents, joint ventures, co-conspirators, subsidiaries, divisions, or affiliated companies, actively directed, managed, and controlled the PHILIP MORRIS smuggling enterprise, and actively participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful and fraudulent conduct alleged herein, all of which has affected and continues to affect foreign and interstate commerce in the United States.

15. The PHILIP MORRIS DEFENDANTS are and were, during all relevant times, responsible for the acts and omissions of their employees, for acts undertaken within the general area of their authority and for the benefit of the PHILIP MORRIS DEFENDANTS. As alleged herein, the PHILIP MORRIS DEFENDANTS were central figures in the overall conspiracy that actively embarked on and extensively participated in the fraudulent scheme. By means of corporate policies that put PHILIP MORRIS DEFENDANTS' resources and strategy at the heart of the conspiracy, the PHILIP MORRIS DEFENDANTS were aggressor entities that acted to harm the economic interests of PLAINTIFFS.

16. B.A.T. INDUSTRIES, P.L.C. is a British corporation whose principal place of business is Windsor House, 50 Victoria Street, London, England SW1H 0NL, United Kingdom. B.A.T.

INDUSTRIES, P.L.C., through its related entities and persons within its control, conducts continuous and systematic business in the State of New York, maintains a substantial financial presence in the State of New York, maintains offices in New York, and is otherwise subject to the jurisdiction of the courts of New York. Its board members and other representatives have visited New York frequently in connection with the solicitation of investors. B.A.T. INDUSTRIES, P.L.C. is a sophisticated international holding company that supervises the operations of its subsidiaries and related companies across national and state borders. Through the promulgation and enforcement of Group-wide policies and participation in large-scale marketing, and research and development of cigarettes, it exercises dominion and control over tobacco operations in the United States and throughout the world. BRITISH AMERICAN TOBACCO employees are required to operate in accordance with BAT's "Standards of Business Conduct." B.A.T. INDUSTRIES, P.L.C. is subject to jurisdiction by means of its own acts within the State and those of its agents and co-conspirators.

17. BRITISH AMERICAN TOBACCO (1998) LTD. is a British corporation whose principal place of business is Windsor House, 50 Victoria Street, London, England SW1H 0NL, United Kingdom. BRITISH AMERICAN TOBACCO (1998) LTD. conducts continuous and systematic business in the State of New York, maintains a substantial financial presence in the State of New York, maintains offices in New York, and is otherwise subject to the jurisdiction of the courts of New York.

18. BATUS TOBACCO SERVICES, INC., is a Delaware corporation whose principal place of business is located at 200 Brown & Williamson Tower, Louisville, Kentucky 40202. BATUS TOBACCO SERVICES, INC., is the parent corporation of BROWN & WILLIAMSON TOBACCO CORP. BATUS TOBACCO SERVICES, INC., conducts continuous and systematic business in the State of New York, maintains a substantial financial presence in the State of New

York, maintains offices in New York, and is otherwise subject to the jurisdiction of the courts of New York.

19. **BROWN & WILLIAMSON TOBACCO CORP.** is a Delaware corporation whose principal place of business is located at 200 Brown & Williamson Tower, Louisville, Kentucky 40202. **BROWN & WILLIAMSON TOBACCO CORP.** conducts continuous and systematic business in the State of New York, maintains a substantial financial presence in the State of New York, maintains offices in New York, and is otherwise subject to the jurisdiction of the courts of New York.

20. Up to and including February 1994, the Defendant, **BROWN & WILLIAMSON TOBACCO CORP.**, was the primary BAT corporation managing the Colombian market, and continues to be involved in the supervision of the Colombian market to this date. **BROWN & WILLIAMSON TOBACCO CORP.** was and is responsible for managing both the legal and illegal sales of BAT cigarettes in Colombia.

21. **BRITISH AMERICAN TOBACCO (SOUTH AMERICA) LTD.** is a British corporation whose principal place of business is Windsor House, 50 Victoria Street, London, England SW1H 0NL, United Kingdom. **BRITISH AMERICAN TOBACCO (SOUTH AMERICA) LTD.** conducts continuous and systematic business in the State of New York, maintains a substantial financial presence in the State of New York, maintains offices in New York, and is otherwise subject to the jurisdiction of the courts of New York. The foregoing BAT-related entities are collectively referred to herein as “BAT” or the “BAT DEFENDANTS.”

22. The **BAT DEFENDANTS** are and were, during all relevant times, affiliated, consolidated, combined, and unitary entities for purposes of tobacco operations and related activities. Tobacco operations were departments within the **BAT DEFENDANTS'** corporate family. The **BAT DEFENDANTS** maintain control of tobacco operations worldwide through a

web of affiliated entities. This integrated and unitary corporate structure was and is an essential aspect of BAT DEFENDANTS' successful efforts to surreptitiously direct tobacco smuggling in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

23. The BAT DEFENDANTS have adopted a “worldwide” policy that purports to exercise control of the activities of their employees, as well as those of their direct and indirect subsidiaries. Under this policy, which is said to be monitored and enforced by their Audit Committees, the BAT DEFENDANTS, have undertaken responsibility for the acts of the employees of the BAT DEFENDANTS, wherever taken, including acts related to smuggling activities within Colombia.

24. The BAT DEFENDANTS are and were, during all relevant times, involved in directing, managing, and controlling smuggling operations within THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. At all times pertinent to this Complaint, the BAT DEFENDANTS, individually and through their employees, agents, joint ventures, co-conspirators, subsidiaries, divisions, or affiliated companies, actively directed, managed, and controlled the PHILIP MORRIS smuggling enterprise, and actively participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful and fraudulent conduct alleged herein, all of which has affected and continues to affect foreign and interstate commerce in the United States.

25. The BAT DEFENDANTS are and were, during all relevant times, responsible for the acts and omissions of their employees, for acts undertaken within the general area of their authority and for the benefit of the BAT DEFENDANTS. As alleged herein, the BAT DEFENDANTS were central figures in the overall conspiracy that actively embarked on and extensively participated in the fraudulent scheme. By means of corporate policies that put BAT DEFENDANTS' resources and strategy at the heart of the conspiracy, the BAT DEFENDANTS

were aggressor entities that acted to harm the economic interests of PLAINTIFFS.

III. JURISDICTION

26. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331, 1337 because this matter involves allegations of illegal behavior arising under the laws of the United States, including violations of RICO. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000 and involves parties of diverse citizenship. Furthermore, jurisdiction in this Court is proper pursuant to RICO. 18 U.S.C. §§ 1964(a), (c), and 28 U.S.C. § 1651(a). The Defendants are “persons” within the meaning of 18 U.S.C. § 1961(3). The Plaintiffs are “persons” within the meaning of 18 U.S.C. § 1961(3). Finally, this Court may exercise jurisdiction over Plaintiffs' non-federal claims pursuant to 28 U.S.C. § 1367 as this Court possesses both federal question and diversity jurisdiction.

IV. VENUE

27. Venue is proper in this Court pursuant to 18 U.S.C. § 1965(a) because defendants reside, are found, have an agent, or transact affairs in this District. Venue is also proper in this Court pursuant to 18 U.S.C. § 1965(b) because, to the extent any defendant may reside outside of this District, the ends of justice require such defendant or defendants to be brought before the Court. Venue properly lies in this Court pursuant to 28 U.S.C. § 1391(b)(2). Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(d) because a foreign corporation may be sued in any district. Alternatively, venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2).

V. THE INTERNATIONAL SMUGGLING SCHEME: OVERVIEW

28. Beginning in the late 1970s and continuing through the present day, the PHILIP MORRIS DEFENDANTS and BAT DEFENDANTS, in conducting one of their primary businesses of selling tobacco products worldwide, have launched and conducted a consistent and concerted campaign to increase their respective market shares in the countries in which their products are sold.

29. To accomplish this end, the PHILIP MORRIS DEFENDANTS and the BAT DEFENDANTS have actively engaged in smuggling activities, and concealed such conduct, through illegal acts, including money laundering, wire fraud, mail fraud, and other violations of United States law. Defendants have controlled, directed, encouraged, supported, and facilitated the activities of smugglers. Defendants have collaborated with smugglers, encouraged smugglers, and, directly and indirectly, sold cigarettes to persons and entities who they know, or had reason to know, were smugglers, while at the same time supporting the smugglers' sales through the establishment and maintenance of so-called "umbrella operations" in the target jurisdictions. "Umbrella operations" are legal routes for distribution of duty-paid cigarettes that enable the import of a small volume of cigarettes by Defendants into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, while serving the overarching purpose of providing cover for, and otherwise concealing, the Defendants' massive smuggling of contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. By such acts, among others, the Defendants embarked upon and pursued a scheme to smuggle cigarettes on a worldwide basis, including within THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, in order to deprive Plaintiffs of money and property, while increasing the sales of their products, profits, and market share, and enhancing the value of their tobacco operations. The PHILIP MORRIS DEFENDANTS and the BAT DEFENDANTS have engaged and continue to engage in

smuggling schemes by which smugglers and money launderers in Europe, Panama, the Caribbean, Colombia, and the United States collaborate with the Defendants for the purpose of smuggling cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

30. By encouraging, supporting, facilitating, controlling, and directing the activities of the smugglers engaged in the sale, marketing, and distribution of contraband cigarettes throughout THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, the PHILIP MORRIS DEFENDANTS and the BAT DEFENDANTS have achieved multiple benefits for themselves, including but not limited to the following:

- a. The Defendants have increased their cigarette sales because they have new and additional customers, namely, the smugglers and their customers.
- b. By assisting in the evasion of taxes, and under-invoicing their products, the Defendants have increased their cigarette sales and otherwise obtained illicit profits.
- c. The Defendants have increased their market share by making their cigarettes available to the general public within THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA at prices below those which could be charged by their competitors whose products are sold lawfully and which, therefore, are more expensive.
- d. The Defendants have utilized the existence of smuggling into North America, Europe, and South America as a public-relations vehicle and political tool by which to lobby the Republic of Colombia and THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, the United States Congress and the legislatures of the various states of the United States to reduce or eliminate cigarette taxes under the false pretense that high cigarette taxes promote smuggling and other crimes. As a consequence of Defendants' direct and indirect representations to Plaintiffs, the Republic of Colombia and/or government officials of THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, were misled concerning the direct cause of smuggling -- the

Defendants' conduct. The Defendants employed this lobbying scheme while falsely denying and concealing their complicity in smuggling activities.

e. The Defendants have enhanced the market value of their tobacco operations, while decreasing the market value of their competitors.

f. The PHILIP MORRIS DEFENDANTS, the BAT DEFENDANTS, and other tobacco companies worldwide share a common interest and goal to implement a scheme to promote the activities of smugglers in that they coordinate their public-relations efforts and jointly fund their public-relations vehicles as a continuing joint campaign to achieve greater demand for their cigarettes worldwide. The existence of smuggling as encouraged by the Defendants has constituted the "self-fulfilling prophecy" that high cigarette taxes will only cause smuggling. The Defendants, through their various public-relations vehicles, utilize the data concerning smuggling, the hazards of smuggling, and the lost revenues associated with smuggling, as a method by which to encourage or pressure the United States, the Republic of Colombia, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, and other governments to reduce or eliminate their cigarette taxes. The Defendants conduct this public relations and lobbying campaign without disclosing to the public or Plaintiffs their continuing complicity in smuggling.

31. Additionally, the PHILLIP MORRIS DEFENDANTS and BAT DEFENDANTS individually and/or jointly work in concert with various distributors and large-scale smugglers of cigarettes to ensure that their objectives as set forth above are achieved.

32. The PHILIP MORRIS DEFENDANTS and BAT DEFENDANTS, jointly and as individual corporations, encourage, promote, facilitate, cooperate with, and control the smuggling of cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA in a variety of ways, including but not limited to the following:

a. The Defendants sell cigarettes directly to persons or entities they know, or have reason to

know, are smugglers, or to distributors whom they know, or have reason to know, are selling the cigarettes to smugglers.

b. The Defendants sell large quantities of cigarettes to entities and/or destinations even though the Defendants know, based on their own marketing studies, that the legitimate demand for cigarettes from these entities and/or destinations cannot possibly account for the orders made and the massive quantities delivered. Under these circumstances, the Defendants know that their cigarettes are being sold for illegal purposes.

c. The Defendants knowingly label, mislabel, or fail to label their cigarettes so as to facilitate and expedite the activities of the smugglers.

d. The Defendants provide marketing information to the distributors and to the smugglers so that the smugglers will order, purchase, sell, and distribute the cigarettes manufactured by the Defendants that are in greatest demand in the area of ultimate consumption of the smuggled cigarettes.

e. The Defendants generate false or misleading invoices, bills of lading, shipping documents, and other documents that expedite the smuggling process.

f. The Defendants engage in a pattern of activity by which they ship cigarettes designated for one port knowing that in fact the cigarettes will be diverted to another port so as to be smuggled.

g. The Defendants make arrangements by which the cigarettes in question can be paid for in such a way as to be virtually untraceable.

h. The Defendants make arrangements for the smuggled cigarettes to be paid for into foreign accounts including Swiss corporations and/or Swiss bank accounts in an attempt to improperly utilize Swiss banking and privacy laws as a shield to protect the smugglers from government investigations concerning their activities.

i. The Defendants have formed, financed, and directed the activities of industry groups, in order to disseminate false and misleading information to Plaintiffs and the public.

j. The mails and wires were used, or were caused to be used, in the furtherance of the above actions and the unlawful scheme to defraud Plaintiffs.

33. The Defendants knew or should have known that smugglers have been purchasing their cigarettes in large quantities, either directly or indirectly, in order to smuggle cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

34. The Defendants controlled, directed, encouraged, supported, and facilitated smuggling operations by giving instructions to distributors, shippers, shipping companies, retailers, and/or various other intermediaries, as well as the smugglers, so as to effectuate the sale of large amounts of contraband cigarettes in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

35. But for the active and knowing assistance of the Defendants, the smugglers could not have obtained, smuggled, and sold the large quantities of contraband cigarettes successfully for many years. But for the active assistance of the Defendants, the proceeds of the smuggling scheme could not have been laundered and delivered to the Defendants for their use in the smuggling enterprise.

36. This vertical group, which consisted of the Defendants, the distributors, the shippers, the smugglers, currency brokers, and the Defendants' agents and subsidiaries who received payment for the cigarettes, worked together for the common purpose of engaging in a course of conduct to gain massive profits from the sale of cigarettes that were illegally sold in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA while harming Plaintiffs' economic interests. The activities of this core group constitute a conspiracy in law and in fact.

PHILIP MORRIS' DIRECT INVOLVEMENT IN SMUGGLING AND ORGANIZED CRIME

37. The PHILIP MORRIS DEFENDANTS have been actively involved in cigarette smuggling for many years, and this scheme has been carried out by means of activities conducted throughout this District and throughout this State. Examples of the methods and means by which the PHILIP MORRIS DEFENDANTS have controlled, directed, and facilitated the smuggling of cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, directly and through the acts of their co-conspirators, include the following:

a. The PHILIP MORRIS DEFENDANTS created a circuitous and clandestine distribution chain for the sale of cigarettes in order to facilitate smuggling within the DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. The PHILIP MORRIS DEFENDANTS own, either wholly or partially, and/or operate and/or license facilities in the United States that produce Marlboro cigarettes and other brands owned by PHILIP MORRIS DEFENDANTS. These cigarettes are produced both for domestic consumption and for export. The cigarettes produced for export bear distinctive markings as being tax exempt and specifically produced for export. These Marlboro cigarettes are then sold to affiliated or wholly owned distributors in Belgium and in other countries which, in turn, sell the cigarettes to distributors in the Caribbean and Central and South America. The purpose of this labyrinthian distribution structure is to sell, or cause the sale, to distributors that are known smugglers or business associates of smugglers within the DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, while concealing such sales from government authorities. The decision to establish and maintain this distribution chain was made at the highest executive levels of the PHILIP MORRIS DEFENDANTS.

b. These Caribbean, Central, and South American distributors maintain a close relationship with the Defendants for purposes of increasing the market share of the PHILIP MORRIS DEFENDANTS' products and for other commercial purposes within THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

c. The PHILIP MORRIS DEFENDANTS conduct extensive and expensive advertising campaigns to promote the sales of their cigarette brands, specifically Marlboro, within THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. This is done in spite of the fact that the volume of their sales of legally imported Marlboro cigarettes does not justify the level of expense in advertising and related commercial campaigns. The purpose of this extensive advertising and promotional campaign is to increase the consumption and sale of Marlboro product, including smuggled Marlboro cigarettes. The decisions of the PHILIP MORRIS DEFENDANTS as to the amounts to be spent on advertising and the extent of advertising and the quality thereof within THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA are made by high-level executives within the PHILIP MORRIS DEFENDANTS.

d. The Defendant, PHILIP MORRIS LATIN AMERICA SALES CORPORATION, is one of the primary Defendants involved in the conspiracy. The Defendant, PHILIP MORRIS LATIN AMERICA SALES CORPORATION, developed and operates the "umbrella operation" which allows the PHILIP MORRIS DEFENDANTS to maintain a corporate presence in Colombia and to market and advertise the smuggled product. Individuals, including Peter Schreer and Fred Hauser, were either employees of PHILIP MORRIS LATIN AMERICA SALES CORPORATION and/or acted on behalf of this Defendant in conducting the activities set forth in this complaint.

e. On a regular basis, for at least the last decade, the PHILIP MORRIS DEFENDANTS have made, or caused the making of, false statements to Colombian customs authorities. The PHILIP MORRIS DEFENDANTS engage in a systematic process of "under-invoicing" their otherwise legitimately imported cigarettes into Colombia. Under-invoicing is the process by which the PHILIP MORRIS DEFENDANTS declare the value of a case of cigarettes as being less than its true value. The invoice price is the basis upon which the cigarettes are taxed within

the Republic of Colombia. By declaring the cigarettes to be of less than their fair value, the immediate benefit to the PHILIP MORRIS DEFENDANTS is that PHILIP MORRIS affiliates do not pay the full tax that is due on each case of cigarettes. There is also an indirect benefit to the PHILIP MORRIS DEFENDANTS in that by under-invoicing the cigarettes, PHILIP MORRIS DEFENDANTS are able to manipulate the prices of both legally sold and smuggled cigarettes in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. These Defendants, or parties acting under their control and direction, have stated a declared customs value for the Marlboro product imported by PHILIP MORRIS into Colombia which was substantially below what would otherwise be the price for the product in the market of origin, the United States, for sale to unrelated parties. These prices are reported by the PHILIP MORRIS DEFENDANTS to the Colombian customs authorities as prices for sale to unrelated parties and not as an inter-company transfer of goods. The Colombian customs authorities have relied on these false representations to their economic detriment. Furthermore, the Defendants specifically represent to the Colombian customs authorities that the prices reflected in the documents are unaffected by the fact that the sale is from one PHILIP MORRIS DEFENDANT to another PHILIP MORRIS DEFENDANT. However, in fact, the price ostensibly charged by PHILIP MORRIS PRODUCTS, INC. to PHILIP MORRIS LATIN AMERICA SALES CORPORATION is less than one half of the price that is actually charged to PHILIP MORRIS DEFENDANTS' best customers. The PHILIP MORRIS DEFENDANTS have transmitted dozens, if not hundreds, of such misleading documents to the government of Colombia by use of the U.S. wires and/or mail. Payment for the cigarettes was made by wire transfer to PHILIP MORRIS PRODUCTS, INC.'s account at Citibank in New York City. Records of said transfers are stored in and/or maintained through Citibank's processing center in Queens, New York. A substantial number of the false or misleading documents that were sent to the Colombian government were executed by A. Steven

Roberts, vice-president of PHILIP MORRIS PRODUCTS, INC., from his offices in Richmond, Virginia.

f. This practice of systematic under-invoicing allows the PHILIP MORRIS DEFENDANTS to control the final retail price of the smuggled Marlboro product, as well as to minimize the loss at which, according to the Defendants, the PHILIP MORRIS DEFENDANTS operate in Colombia. This practice in turn allows the PHILIP MORRIS DEFENDANTS to increase their market share at the expense of those entities that comply with the law.

g. The PHILIP MORRIS DEFENDANTS have created a dual system for the distribution of cigarettes within the DEPARTMENTS OF THE REPUBLIC OF COLOMBIA comprised of unlawful and lawful sales. The PHILIP MORRIS DEFENDANTS conduct marketing studies and do extensive market analyses for the Colombian market in which they identify and assess their cigarette sales through two categories; (1) legal sales, known as “DP” (duty-paid) and (2) illegal sales, known as “DNP” (duty-not-paid). One purpose of maintaining artificially low priced legal sales is to allow a corporate presence within their target markets – the so-called “umbrella operation” – in order to provide cover for, and otherwise conceal, their massive smuggling enterprise. This corporate presence allows the PHILIP MORRIS DEFENDANTS to advertise and otherwise compete freely within their primary target markets. This distribution chain and marketing strategy, while being executed by the PHILIP MORRIS DEFENDANTS in Colombia and the PHILIP MORRIS distributors throughout the world, is a strategy and system used by the PHILIP MORRIS DEFENDANTS to disguise the actual illegal nature of the PHILIP MORRIS DEFENDANTS' distribution chain and marketing strategy. The PHILIP MORRIS DEFENDANTS' legal imports of Marlboro cigarettes into Colombia amount to only a small fraction (4%) of their actual sales to Colombia. PHILIP MORRIS INTERNATIONAL, INC. was and is a central part of the smuggling conspiracy. PHILIP MORRIS INTERNATIONAL, INC.

was, in fact, the primary architect of the strategy by which cigarettes were smuggled into Colombia. The majority of the acts set forth within this complaint were undertaken at the direction of PHILIP MORRIS INTERNATIONAL, INC. or with its consent.

h. In or about the early 1990s, Miami bank accounts of various PHILIP MORRIS DEFENDANTS' cigarette distributors were frozen by United States law-enforcement officials because funds credited to those accounts were laundered drug money. The freezing of these accounts was well known to PHILIP MORRIS. By virtue of this event, among others, the PHILIP MORRIS DEFENDANTS were aware or should have been aware that their distributors were handling proceeds of unlawful activity.

i. Since at least 1991, the PHILIP MORRIS DEFENDANTS were selling cigarettes to individuals whom they knew were reputed drug smugglers. As of 1994, court records that were available to the PHILIP MORRIS DEFENDANTS demonstrate that one of those individuals had actually told U.S. government informants that he was involved in drug trafficking. Specifically, he had told U.S. law-enforcement agents that he was involved in the "pool system" of drug trafficking whereby he would combine his load of drugs with those of other drug dealers into a single large shipment destined for the United States. He went on to explain that individual traffickers in the United States received the drugs and sold them for U.S. currency. The traffickers would then deliver the cash to couriers approved by the drug lords who would convert the cash into cashier's checks made payable to specific businesses owned by this individual. The businesses to which these drug funds were delivered are identified by name in the court documents. Accordingly, the fact that this individual was a drug trafficker and the identity of the companies that he used to launder money were known or should have been known to the PHILIP MORRIS DEFENDANTS. In spite of this fact, the PHILIP MORRIS DEFENDANTS continued to sell large volumes of cigarettes to this individual so that he could smuggle them into Colombia

and use those sales to launder drug money.

j. The PHILIP MORRIS DEFENDANTS have had long-term relationships with various agents and distributors in Central America and the Caribbean. It is publicly known that some of these agents and distributors have been investigated and/or indicted by the United States for money laundering. When the PHILIP MORRIS DEFENDANTS became aware that their agents or distributors were accused of illegal activities, the PHILIP MORRIS DEFENDANTS did not sever their relationships with the agents or distributors. Instead, they established a secretive and circuitous route by which they could sell cigarettes to those entities without detection by law enforcement. For the past several years and upon information and belief continuing to the present time, the PHILIP MORRIS DEFENDANTS have implemented a policy and procedure by which certain customers were required to purchase cigarettes only by ordering them through remote offices such as one in Uruguay. Usually, orders may be placed to such an office only verbally over the telephone. Often, any form of written communication with such an office is prohibited. When cigarette orders are placed through such an office, they are passed on to Maraval, a company based in Basel, Switzerland. The agents and distributors must pay Maraval for the cigarettes. Delivery of the cigarettes is arranged by another company called Weitnauer, also based in Switzerland. The sole purpose of this convoluted procedure for secret orders, secret payments, and secret delivery of cigarettes was and is to conceal from law enforcement the fact that the PHILIP MORRIS DEFENDANTS were knowingly selling their cigarettes to distributors who were selling cigarettes into smuggling channels which reached, among other places, the DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. However, in spite of this ostensibly arm's-length transaction, the PHILIP MORRIS DEFENDANTS actually controlled the sale of all cigarettes sold by these agents and distributors, including those that were sold for smuggling. Even as to smuggled cigarettes, the PHILIP MORRIS DEFENDANTS set a price for which

cigarettes must be sold. If the agents, distributors, or smugglers did not sell the cigarettes for the prices set by the PHILIP MORRIS DEFENDANTS, then these Defendants took punitive action against the agents, distributors, and/or smugglers. The requirement by the PHILIP MORRIS DEFENDANTS that orders to the remote offices not be in writing is a further attempt by PHILIP MORRIS to conceal its involvement in illegal activities. A substantial portion of the cigarettes purchased through the aforesaid procedure were smuggled into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

k. The PHILIP MORRIS DEFENDANTS have actively and aggressively cultivated their relationships with their distributors, including those who sell cigarettes into smuggling channels. PHILIP MORRIS has met with, directed, and entertained their so-called "tax-free customers" in the United States. For example, in October 1990, PHILIP MORRIS invited their major customers, including those involved in smuggling, to a conference in Scottsdale, Arizona, called "Arizona 90." Senior members of PHILIP MORRIS management coordinated and attended the conference, including: Mark S. Goldberg, Senior Vice President of PHILIP MORRIS COMPANIES, INC., and Hal Quick, Director, Duty-Free Sales, PHILIP MORRIS INTERNATIONAL. The meeting was coordinated through the use of interstate and foreign wires and/or mails. At the conference, and at other times, PHILIP MORRIS aided and actively promoted the actions of smugglers by providing detailed information concerning PHILIP MORRIS' Latin American Marketing Task Force; PM USA New Product Initiatives; Regional Strategic Objectives; and PM INTERNATIONAL Marketing Overview.

l. The PHILIP MORRIS DEFENDANTS had long-standing relationships with several of their distributors in the Caribbean and Central America. Managerial employees of the PHILIP MORRIS DEFENDANTS, including the one-time head of the Latin-America Sales Division, actually maintained a partnership relationship with these distributors. These PHILIP MORRIS

executives shared in the profits of these distributors as to the cigarettes that were sold into smuggling channels. The PHILIP MORRIS DEFENDANTS expedited the smuggling of cigarettes through these distributors in two ways. First, when a price increase for product was imminent, the PHILIP MORRIS DEFENDANTS would advance order huge volumes of cigarettes at the old, lower price such that the favored distributors would receive the benefit of the old pricing, thereby increasing their profits. Additionally, the PHILIP MORRIS DEFENDANTS would grant exceptionally favorable financing terms to these distributors. For example, whereas most purchasers would be required to pay for their cigarettes in cash upon delivery, certain distributors were allowed financing plans that allowed them sixty to seventy-five days to pay for the cigarettes. When one takes into account the total delivery time for cigarettes, this sixty to seventy-five day grace period allowed these distributors to keep two to three times more cigarettes in the "pipeline" than would be possible if payments were in cash upon delivery of the cigarettes. The PHILIP MORRIS DEFENDANTS granted these favorable financing arrangements to these distributors so as to maximize the amount of cigarettes that was available for sale into and through smuggling channels.

m. The executives of the PHILIP MORRIS DEFENDANTS intentionally created a circuitous route by which the majority of cigarettes which are purchased for sale in Europe or South America must be paid for in Switzerland and are shipped from large warehouses used by PHILIP MORRIS in Belgium or other European countries. PHILIP MORRIS' primary purpose for this circuitous distribution system was to make it more difficult for investigators to distinguish between legitimately and illegitimately sold cigarettes and to make it difficult or impossible for legal authorities to track the payment for the cigarettes and the ultimate destination of the cigarettes. The PHILIP MORRIS DEFENDANTS knowingly engage in this practice because they derive enormous financial benefit from their sales of cigarettes to smugglers. Also,

the PHILIP MORRIS DEFENDANTS achieve maximum market penetration and maximum market share by dumping billions of contraband cigarettes into South American and other markets at prices substantially below the price at which legitimately sold cigarettes can be sold. In the early 1990s, distributors in the Caribbean and Central America who wished to sell Marlboro cigarettes to smugglers could order the cigarettes from Richmond, Virginia, and have them shipped to Miami, Florida, and on to the distributor. However, beginning in approximately 1997, the PHILIP MORRIS DEFENDANTS, in an attempt to conceal their relationships with the distributors and the smugglers, established a more circuitous route by which the cigarettes would be shipped to Antwerp and delivered to Weitnauer. The cigarettes would then be trucked from Antwerp to Rotterdam. The cigarettes would then be shipped from Rotterdam to the distributor in the Caribbean or Central America. Payment for the cigarettes would then be made to Maraval. In spite of the fact that the routing of the cigarettes now included the involvement of two additional companies and in spite of the fact that the distance over which the cigarettes must be transported was drastically increased, the distributors in the Caribbean and Central America were subjected to no price increase. The markups, handling charges, and additional shipping expenses were absorbed by the PHILIP MORRIS DEFENDANTS so that they could insure that the flow of their cigarettes into Colombia would continue as intended and that there would be no reduction of market share associated with a price increase. The strategic plan for the scheme set forth above was developed by all the named PHILIP MORRIS Defendants and, in particular, by the Defendants', PHILIP MORRIS INTERNATIONAL, INC., PHILIP MORRIS PRODUCTS, INC., and PHILIP MORRIS INCORPORATED d/b/a PHILIP MORRIS U.S.A.

n. In approximately 1997, PHILIP MORRIS DEFENDANTS restructured international sales operation such that the vast majority of all cigarettes, both legal and smuggled, sold into Europe, Central and South America were routed through Belgium. Ports and warehouse districts

of Belgium were selected because they were difficult for customs officials to monitor. By routing billions of dollars of cigarettes through ports in Belgium, the PHILIP MORRIS DEFENDANTS encouraged the development of a system by which those ports became a center for smuggling activity. Employees of the PHILIP MORRIS DEFENDANTS visited the docks and warehouses in Belgium on a routine basis for the purpose of meeting customers, maintaining customer relations, and promoting the sale of new products. By virtue of their presence at these facilities and by virtue of the discussions that they had on a routine basis, the employees and management of the PHILIP MORRIS DEFENDANTS were well aware of the high level of smuggling activity surrounding their product.

o. The smuggling activities of the PHILIP MORRIS DEFENDANTS have enabled drug lords to launder their illicit profits. According to the United States Department of Justice, billions of dollars of worth of drug proceeds generated in the United States are laundered through the so-called “black market peso exchange” (BMPE) in Bogota and elsewhere in Colombia. These narcotics-generated proceeds supply the funds for the movement of billions of dollars worth of smuggled U.S. and foreign goods, including cigarettes, into Colombia. In short, what starts out as drug currency on the streets of U.S. cities ends up as smuggled goods, including cigarettes, on the streets of Colombia. Significantly, this dollar-for-peso exchange on Colombia’s black market fuels the illicit drug trade that is the scourge of both the U.S. and Colombia. Representatives of the PHILIP MORRIS DEFENDANTS are on actual notice that the source of funds used to purchase their cigarettes is drug trafficking, yet they continue to receive these funds and to sell cigarettes to these persons. By reason of this conduct, the PHILIP MORRIS DEFENDANTS aid, abet, and act in concert with drug lords to launder their ill-gotten gains. The Defendants have long been on notice that cigarette smuggling activities are linked to the BMPE. In or about 1994, the National Coalition Against Crime and Tobacco Contraband, which was funded by various

tobacco manufacturers, retained Lindquist Avey Macdonald Baskerville Inc. ("Lindquist") to, among other things, investigate and analyze cigarette smuggling in the United States. In its August 15, 1994, report, Lindquist observed that: "There are indications that some Colombian cocaine barons still handle [contraband] cigarettes, but for a different purpose. It is believed that, in some cases, they patriate cocaine profits earned in the United States through cigarette purchases. These cigarettes are imported into Colombia and sold there, providing cocaine traffickers with a seemingly legal alibi for the source of their wealth."

p. Employees of the PHILIP MORRIS DEFENDANTS were personally involved in the laundering of the proceeds of illicit narcotics sales. Various employees of the PHILIP MORRIS DEFENDANTS personally traveled to Colombia and entered the country illegally, paying bribes to ensure that their passports were not marked so as to reflect that they had entered Colombia. These employees on multiple occasions received large volumes of cash that they took into their personal possession or these employees would be present when large volumes of cash were turned over to the distributors with whom the PHILIP MORRIS employees were traveling. These individuals would then smuggle the cash out of Colombia and into Venezuela, with the cash ultimately being deposited in banks and transferred into the coffers of the PHILIP MORRIS DEFENDANTS. The PHILIP MORRIS DEFENDANTS were fully aware of the nature and illegality of these activities.

q. The employees of the PHILIP MORRIS DEFENDANTS received the aforesaid cash knowing that it was the proceeds of illegal activity including smuggling on the "black market," money laundering, and fraud. Furthermore, it was well known to the PHILIP MORRIS DEFENDANTS and to the "distributors" who had arranged the sales that there were risk factors associated with dealing with the cigarette smugglers and receiving "black market" currency in exchange for the cigarettes. As a result, the price of the cigarettes and the financing agreements

by which the cigarettes would be sold was specifically negotiated to take into account the risk factors involved in such illegal transactions. In the case of virtually every such transaction, there were wire communications by telephone and/or facsimile between distributors in the Caribbean, Panama, and elsewhere, and employees of PHILIP MORRIS DEFENDANTS located in New York, Miami, and/or Virginia – all of which furthered the scheme and deprived Plaintiffs of money and property.

r. The PHILIP MORRIS DEFENDANTS knowingly and intentionally shipped large volumes of cigarettes to individuals and corporations in certain free trade zones such as the Colon Free Trade Zone in Panama. These sales were made to companies that were known smugglers and/or known money launderers. Although the ultimate destination of these cigarettes was not Panama, the PHILIP MORRIS DEFENDANTS shipped these cigarettes to Panama so that the money launderers could use the secrecy laws of the Republic of Panama as a shield by which to divert the cigarettes to their ultimate destinations without being scrutinized by the agencies and governments to whom customs duties and excise taxes would be owed on these cigarettes. A substantial percentage of these cigarettes were ultimately smuggled into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. Shipments of this type occurred throughout the 1990s. Shipments of this type continue until the present day. As recently as March 9, 2000, two container loads of PHILIP MORRIS cigarettes were shipped into Panama as a part of the smuggling scheme. The cigarettes in question were produced in the United States by the PHILIP MORRIS DEFENDANTS, shipped to warehouses in Antwerp, Belgium, trucked to Rotterdam, shipped from the Port of Rotterdam to Panama, and would have been smuggled into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA but for the fact that the cigarettes were seized by Panamanian customs authorities on March 9, 2000.

s. As of approximately 1990, the trade name "Belmont" was owned by British American

Tobacco ("BAT") in Venezuela, but was owned by the PHILIP MORRIS DEFENDANTS in Colombia. However, the Belmont trademark was not being used by the PHILIP MORRIS DEFENDANTS in Colombia, in that no Belmont cigarettes were being produced for sale in Colombia. In the early 1990s, BAT began to sell large volumes of Belmont cigarettes in Colombia. Under the laws in Colombia and most South American countries, the owner of a trademark can lose the rights to that trademark if the trademark is not used. Accordingly, in the early 1990s, the PHILIP MORRIS DEFENDANTS were in a position where they may lose their rights to the Belmont trademark if they did not begin selling Belmont cigarettes in Colombia. In order to avoid this possibility, the PHILIP MORRIS DEFENDANTS began manufacturing Belmont cigarettes in Ecuador and smuggling them into Colombia through a number of entry points, including the city of Ipiales. However, due to lack of market demand, there were not enough sales of the Belmont cigarettes to allow the PHILIP MORRIS DEFENDANTS to adequately defend their trademark. Accordingly, in approximately 1992, the PHILIP MORRIS DEFENDANTS launched a more aggressive smuggling campaign by which a larger volume of Belmont cigarettes manufactured in Ecuador would be smuggled into Colombia through Panama and the Caribbean. It was not possible for the PHILIP MORRIS DEFENDANTS to ship these cigarettes through their normal smuggling distributors, because those distributors did not wish to compete with the BAT distributors who were selling large volumes of BAT's Belmont cigarettes in Colombia. As a result, the PHILIP MORRIS DEFENDANTS engaged in the direct smuggling of their product into Colombia. From approximately 1992 through 1994, the PHILIP MORRIS DEFENDANTS, through their employees and executives, smuggled Belmont cigarettes from Ecuador into Colombia through various routes. In approximately 1994, BAT filed legal claims in Colombia to entitle them to register their Belmont trademark in Colombia. In response to this initiative, the PHILIP MORRIS DEFENDANTS started an umbrella operation by which they

could, for the first time, legally sell their Belmont cigarettes in Colombia. These activities resulted in a legal ruling that ultimately resulted in both the PHILIP MORRIS DEFENDANTS and BAT being allowed to sell Belmont cigarettes in Colombia. However, even after that ruling, the majority of the Belmont cigarettes manufactured by the PHILIP MORRIS DEFENDANTS that were ultimately consumed in Colombia were smuggled into Colombia. The PHILIP MORRIS-made Belmont cigarettes were smuggled into Colombia at least until 1999.

t. Throughout the 1990s and continuing into the year 2000, the PHILIP MORRIS DEFENDANTS have continued to knowingly sell cigarettes to smugglers or distributors who sell to smugglers and have gone to great lengths to conceal this fact from the various law-enforcement agencies and customs agencies around the world charged with the monitoring of cigarette sales. For example, throughout 1999 and into the year 2000, the PHILIP MORRIS DEFENDANTS on numerous occasions notified prosecutors and customs officials within the government of Panama that there is currently no authorized dealer in the Colon Free Trade Zone in Panama for the tobacco products of the PHILIP MORRIS DEFENDANTS. However, the PHILIP MORRIS DEFENDANTS continue to sell their products to persons in the Colon Free Trade Zone and conceal these activities. For example, on January 17, 2000, Philip Morris World Trade S.A., an instrumentality of the PHILIP MORRIS DEFENDANTS, sold 440 cases of Marlboro and Marlboro Lights cigarettes to Weitnauer Services Ltd. of Basel, Switzerland. The PHILIP MORRIS DEFENDANTS claim to have no knowledge of where the cigarettes went after they were sold to Weitnauer. However, in fact, the delivery note reflecting the delivery of those cigarettes was faxed by way of U.S. wire to one Marco Shrem, in the Colon Free Zone. Marco Shrem is the owner of a company in the Free Zone called Marksman Latin America S.A. In spite of the fact that the confirmation of the sale was sent to Mr. Shrem, Weitnauer ostensibly did not sell the cigarettes to Mr. Shrem or to any company of which he is an officer. Rather, Weitnauer

ostensibly sold the cigarettes to a company called Interduty Free Tulcan for delivery to a warehouse in Antwerp, Belgium. Interduty Free Tulcan ostensibly shipped the cigarettes to Interduty Free Panama Inc. located in Panama. However, that notice of shipment included notification to a company known as J. F. Hillebrand, U.S.A., Inc. located in Hollywood, Florida. The bills of lading and other pertinent documents relative to this shipment were delivered to Hillebrand U.S.A., Inc. by way of the U.S. wires and/or mails on or about February 17, 2000. The cigarettes in question were ostensibly destined for Ecuador and the declarations of commercial movement indicate that the cigarettes should have been shipped through the Panama Canal without being offloaded and delivered straight to Ecuador. However, when the cigarettes arrived in Panama, they were offloaded and placed in a warehouse without the proper declarations being prepared. As a result of the illegal unloading of the cigarettes, the cigarettes were seized by Panamanian customs authorities. At the time Panamanian customs authorities seized the cigarettes, they discovered Marco Shrem's employees removing the numbers and markings from the cases of Marlboro cigarettes. Even though all documents indicate that the cigarettes are the property of Interduty Free Panama Inc., Marco Shrem has appeared before the Panamanian customs authority with documentary proof from the PHILIP MORRIS DEFENDANTS that the cigarettes belong to him and to Marksman Latin America S.A. Because the PHILIP MORRIS DEFENDANTS provided proof that the cigarettes belonged to Marksman Latin America S.A., the cigarettes were eventually released to that company. They were then, under the watchful eye of Panamanian customs authorities, sold to individuals who it is believed took them to Colombia. Because the cigarettes in question were seized, it is not possible to know the intended destination of these cigarettes had they not been seized. However, shipping records relative to Marksman Latin America S.A. demonstrate that a large proportion of the products purchased and sold by this company are smuggled illegally into Colombia or smuggled illegally

into Europe. The PHILIP MORRIS DEFENDANTS indisputably have knowledge as to the true buyer of the cigarettes by virtue of the fact that the PHILIP MORRIS DEFENDANTS sent the pertinent delivery documents to Marco Shrem. The knowledge that the cigarettes were being sold into smuggling channels is demonstrated by the convoluted process by which PHILIP MORRIS DEFENDANTS sold the cigarettes so as to conceal from law-enforcement agencies the identity of the ultimate purchaser.

u. A company known as "Catana" is a wholly owned subsidiary of PHILIP MORRIS DEFENDANTS. Catana exported Astor cigarettes to the Caribbean, which were then shipped into Colombia and/or Venezuela without any duty or excise tax being paid.

v. The PHILIP MORRIS DEFENDANTS made arrangements by which smugglers and those who distributed to smugglers could pay for their cigarettes in Switzerland so as to avoid detection of these payments. In fact, PHILIP MORRIS has moved the records concerning many of its illegal activities worldwide to Switzerland so as to escape the surveillance of the governments which are victimized by PHILIP MORRIS' illegal activities.

w. The PHILIP MORRIS DEFENDANTS, through the words and actions of their agents and employees, falsely represented to the law-enforcement agencies of various governments, including the Republic of Colombia and THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, that they were attempting to combat smuggling when, in fact, they were actively supporting smuggling. While concealing their complicity in smuggling, the PHILIP MORRIS DEFENDANTS engaged in a widespread public-relations campaign, carried out through use of the mails and the wires, condemning "high taxes" as the cause of smuggling, which campaign induced various governments around the world to reduce or eliminate certain cigarette taxes and incur economic injury. Pursuant to the long-term corporate policy of its so-called External Affairs group, PHILIP MORRIS has acted to "minimize excise taxes and governmental

interference in the production and marketing of cigarettes.” In or about 1992, PHILIP MORRIS used the interstate and international mails to circulate a corporate policy entitled: “External Affairs, Protecting Trademark Equities, 1993-1997.” In order to minimize taxes, PHILIP MORRIS implemented its plan to “update and develop studies that illustrate the problems of cross-border sales/bootlegging.” This strategy continues to be used by PHILIP MORRIS.

x. The PHILIP MORRIS DEFENDANTS specifically design and/or redesign the packaging of their cigarettes so as to make it difficult for customs officials in various countries to identify cigarettes that have been smuggled.

y. Within South America, the priority market within the region historically has been Colombia. The PHILIP MORRIS DEFENDANTS, throughout the 1990s, were engaged in a battle for market share in South America and in particular in Colombia even as to brands that were not legally sold within those countries. The dominant brand in the region was Marlboro, manufactured by the PHILIP MORRIS DEFENDANTS. This was true even as to the "transit market" which is another industry euphemism for smuggled cigarettes. Marketing strategies were created for both legally sold and smuggled cigarettes by the PHILIP MORRIS DEFENDANTS.

z. In April 1991, the BAT DEFENDANTS conducted an extensive analysis of the marketing strategy of PHILIP MORRIS DEFENDANTS in Colombia. It confirms that the PHILIP MORRIS DEFENDANTS utilized a marketing strategy for Colombia by which the PHILIP MORRIS DEFENDANTS sold their products to particular agents in the Caribbean and the Panama Free Zone who would, in turn, sell the cigarettes to the Colombian customers. It further discusses the fact that Marlboro is sold at "full price" in Colombia. The document also states:

Importance to Parent:

The Colombia operation is highly profitable for P.M. [Philip Morris] in view of their full-price strategy for MARLBORO with its in-market sales volume

estimated at approximately 3 billions per year.

This document confirms the fact that the PHILIP MORRIS DEFENDANTS were knowingly engaged in a massive smuggling scheme given that, as of the date of this document, the PHILIP MORRIS DEFENDANTS had no legal sales of Marlboro cigarettes in Colombia whatsoever. At the time of this memorandum, the PHILIP MORRIS DEFENDANTS were just beginning to initiate a program whereby their cigarettes could be legally sold in Colombia and the PHILIP MORRIS DEFENDANTS had no direct sales into Colombia. Accordingly, the "3 billions per year" (believed to mean three billion cigarettes per year) were all smuggled cigarettes.

aa. The PHILIP MORRIS DEFENDANTS developed a strategic plan for the Latin America region for the years 1991 through 1993. That plan analyzes each country in Latin America, but fails to specifically analyze Colombia because in 1991 there were no direct sales of PHILIP MORRIS DEFENDANTS cigarettes in Colombia. However, within the documents the PHILIP MORRIS DEFENDANTS identify key customers who were buying cigarettes prior to and during 1991 from the PHILIP MORRIS DEFENDANTS. Those customers were, in fact, selling their cigarettes in Colombia and this fact was well known to the PHILIP MORRIS DEFENDANTS. This document was transmitted to various personnel within the PHILIP MORRIS DEFENDANTS in the United States by way of the U.S. mail and/or wire transmissions.

bb. Even prior to the time in which the PHILIP MORRIS DEFENDANTS were themselves legally allowed to sell their cigarettes in Colombia, the PHILIP MORRIS DEFENDANTS were actively selling their cigarettes to several major customers who they knew were illegally selling their cigarettes in Colombia. PHILIP MORRIS DEFENDANTS' documents reflect their customers and accounts receivable as to various customers. The documents specifically refer to primary clients who sold cigarettes continually for PHILIP MORRIS DEFENDANTS both before and after it was legal to sell PHILIP MORRIS DEFENDANTS products in Colombia.

Some of these individuals are well known to be involved in criminal activities, such as money laundering. In spite of the fact that the PHILIP MORRIS DEFENDANTS were well aware of these individuals' activities, they continued to, and to the best knowledge of the Plaintiffs, still continue to sell large quantities of PHILIP MORRIS DEFENDANTS cigarettes to these individuals so that they can sell them illegally in Colombia. The strategic plan for Latin America, including Colombia, was developed and implemented by the Defendant, PHILIP MORRIS INTERNATIONAL, INC. The strategic plan was developed by PHILIP MORRIS INTERNATIONAL, INC. in its offices in New York and distributed to at least sixteen officers and/or employees within the PHILIP MORRIS DEFENDANTS. The 1991-1993 strategic plan does not mention Colombia by name because as of 1991 there were no legal sales of PHILIP MORRIS cigarettes in Colombia. However, under the heading "DUTY FREE," the strategic plan notes sales of 3.4 billion cigarettes in 1990 with volume expected to reach 3.9 billion cigarettes in 1993. The document also reflects that the majority of cigarettes sold under the guise of "duty free" are, in fact, being sold to "tax-free customers" who are, in fact, individuals known to the PHILIP MORRIS DEFENDANTS as selling virtually all of their cigarettes to smugglers in Colombia.

cc. Beginning in the 1990s, the PHILIP MORRIS DEFENDANTS engaged in price fixing in regard to South America and, in particular, Colombia. A letter dated August 26, 1991, from the BAT DEFENDANTS sets forth the PHILIP MORRIS DEFENDANTS' marketing strategy in South America. The document sets forth the PHILIP MORRIS DEFENDANTS' strategy in regard to transit (smuggled) cigarettes in South America. The document states among other things:

PMI [Philip Morris] has Belmont from Ecuador positioned as the cheapest transit brand in 20's though some Minister is now being sold on the streets at the same price.

The document goes on to state:

PMI has reduced the price of Parliament transited into Colombia to US\$ 170 per case and has other International Brands like L & M waiting.

The document further states:

Scull [a Philip Morris executive] demands that Bigott's BES and Belmont Largos are the same price in exports. That is a bluff.

This document clearly demonstrates the ongoing battle between the PHILIP MORRIS DEFENDANTS and their competitors for market share in Colombia and the fact that the PHILIP MORRIS DEFENDANTS were actively using smuggling as a means to enhance their market share.

dd. On April 1, 1993, Mark Waterfield, an employee of the BAT DEFENDANTS, sent a letter to Keith Dunt, an executive of the BAT DEFENDANTS, describing his "Colombian market visit." In that letter, he provided a detailed analysis of both the legal and smuggled cigarette market in Colombia. His report specifically noted that Marlboro Reds were "dominant No. 1 D.N.P. brand in Cali. Large billboards +- 150 placed in capital cities." As to the PHILIP MORRIS DEFENDANTS' Parliament, the report stated: "Good D.N.P. distribution (60%) in Bogota. [P]rice reduction last year helped trade push it through." This document further demonstrates the extent to which the PHILIP MORRIS DEFENDANTS treated smuggled cigarettes as a key part of their business.

ee. As of 1995, the PHILIP MORRIS DEFENDANTS were actively and aggressively promoting smuggling as a way to destabilize markets and increase market share in Latin America.

ff. Throughout the 1990s, the PHILIP MORRIS DEFENDANTS have facilitated

and controlled smuggling activities by means of the fixing of prices on smuggled cigarettes throughout the world. The fixing of prices is essential to maintaining the Defendants' control over the smuggling operation inasmuch as unrestrained distribution of low-cost contraband could undercut the PHILIP MORRIS' sales of the relatively small amounts of legally imported tobacco products. A conspiracy between the PHILIP MORRIS DEFENDANTS and the BAT DEFENDANTS to fix prices on smuggled cigarettes and to coordinate smuggling activities in South America began at a meeting at the John F. Kennedy International Airport in Queens, New York, on February 14, 1992. That meeting was attended by Peter Schreer and Fred Hauser representing the PHILIP MORRIS DEFENDANTS and Keith Dunt and David Etchells on behalf of the BAT DEFENDANTS. At that meeting, to the best knowledge of the Plaintiffs, the PHILIP MORRIS DEFENDANTS and the BAT DEFENDANTS met for the first time to set forth a strategy to coordinate their illegal activities in South America. At that meeting, it was agreed that there would be future meetings. This meeting, as well as others among these parties, was arranged and conducted through the Defendants' use of the interstate and/or foreign wires and mails inasmuch as it was the custom and practice of Defendants to coordinate scheduling of, and make arrangements and reservations for, such meetings through use of the wires and mails shortly before the time of the meeting, and to circulate the minutes of the meetings through the mails and/or facsimile wire transmissions shortly after the time of the meeting.

gg. As a consequence of the meeting at John F. Kennedy International Airport in February 1992, a follow-up meeting was held on August 5, 1992, between representatives of the PHILIP MORRIS DEFENDANTS and representatives of the BAT DEFENDANTS. At that meeting, the PHILIP MORRIS representatives discussed not

only a price-fixing scheme for legally sold cigarettes, but also a price-fixing scheme for smuggled cigarettes in South America. The minutes of that meeting specifically refer to the setting of a price on "DNP" cigarettes in South America. "DNP" stands for "duty not paid" and is the industry euphemism for smuggled cigarettes. The PHILIP MORRIS DEFENDANTS' representatives who attended and directed this meeting were Peter Schreer, President of the Latin-American Region for PHILIP MORRIS, Rafael Arguelles, Vice-President for the Latin-American Region for PHILIP MORRIS, and Fred Hauser, Vice-President for Central America, Puerto Rico, and Dominican Republic for PHILIP MORRIS. This meeting was arranged by the participants through the use of the U.S. wires and/or mails including communications between Peter Schreer in New York and Keith Dunt in the United Kingdom on June 18, 1992. In fact, agreements between the PHILIP MORRIS DEFENDANTS and other cigarette companies on price-fixing of cigarettes continued throughout the 1990s in spite of the fact that it was known by these Defendants that price fixing was illegal.

hh. At the meeting of August 5, 1992, the representatives of the PHILIP MORRIS DEFENDANTS and the BAT DEFENDANTS agreed that they should explore a common industry lobby position on the "Andean Pack" [sic] particularly for Venezuela and Colombia. Among other purposes, this industry lobby position was intended to be used as a vehicle to fight increased cigarette taxes. It was agreed that the industry lobby position would be coordinated through Cesar Rodriguez, PHILIP MORRIS DEFENDANTS' public affairs man in New York.

ii. In the 1990's, the PHILIP MORRIS DEFENDANTS destroyed documents related to its so-called "tax-free customers" and thereby concealed PM's direct involvement in and promotion of smuggling activities. From November 29, 1988, to December 3, 1988, Geoffrey Bible of PHILIP MORRIS convened a series of meetings in Boca Raton, Florida, in order to take

aggressive action against perceived threats to PHILIP MORRIS' tobacco business worldwide. The meetings culminated in the creation of the so-called "Boca Raton Action Plan." A key component of the plan was the "Document Retention Plan" which, as PHILIP MORRIS' own documents show, was a plan to "retire" documents with dispatch. The program was implemented through actions of PHILIP MORRIS INTERNATIONAL taken at its offices at 120 Park Avenue in New York City. PHILIP MORRIS' international legal staff, including Bradley Brooks in New York and Steve Parrish in Switzerland, was responsible for the implementation of the program, which included regional education programs conducted by PM International, as well as the creation of a task force, led by PHILIP MORRIS' top lawyer, Murray Bring, to develop a policy for all operating companies. In the aftermath of the program's implementation and pursuant to company-wide policy, PHILIP MORRIS destroyed many boxes of documents relevant to this action. PHILIP MORRIS' own records show that in the 1990's, the PHILIP MORRIS DEFENDANTS destroyed records, including correspondence and order files, related to "Zeinal," "Mansur Trading" and others – all entities that PHILIP MORRIS has openly described as its "tax-free" customers. By further example, on one day alone (January 8, 1991), PHILIP MORRIS, pursuant to an order telecopied to PM's Supervisor of Records Management, destroyed at least 43 cartons of documents related to "Latin American Export Sales," including documents described as: (a) "Duty Free Sales," (b) "Mansur Trading Freezone Shipments/Corr, Misc.," (c) "Mansur Trading Freezone Shippments (*sic*) & Misc.," (d) Salas Int'l.," and (e) "David and Eduardo Puyana Colombia." PHILIP MORRIS' destruction was directly authorized at the highest corporate levels, including through multiple orders from Fred Hauser at PM's headquarters in New York to PM's document storage facility in Carlstadt, New Jersey. In addition to such destruction, according to PHILIP MORRIS' employee's handwritten notes, PHILIP MORRIS files were also "sent to Ecuador," such as the delivery of 11 files to Ecuador pursuant to the

authorization of Fred Hauser, which order was confirmed by facsimile transmission from Carlstadt, New Jersey to PHILIP MORRIS-New York on March 27, 1991. The document “retirement” program has continued in the 1990’s inasmuch as PHILIP MORRIS informed “records coordinators” and “information systems departments” throughout the company that there was no duty to suspend disposal of documents relating to the sale of tobacco products intended for sale outside the United States. Upon information and belief, based on published reports concerning PHILIP MORRIS, the company has acted to “destroy” and “bury” PM documents since the 1970’s. The document purges at PHILIP MORRIS, including removal of documents to Ecuador, were effectuated through the use of interstate and international wires, and is evidence of PHILIP MORRIS’ direct involvement with smugglers and its attempts to conceal such involvement. PHILIP MORRIS’ actions and policies have impeded Plaintiffs’ ability to plead the full extent of the fraudulent scheme.

jj. The PHILIP MORRIS DEFENDANTS were conspirators and direct participants in the affairs of the smuggling enterprise, and each participant in the conspiracy is responsible for the actions of the others in pursuit of the smuggling scheme. Acting for the benefit of the PHILIP MORRIS DEFENDANTS, and with the knowledge and authorization of corporate executives of the PHILIP MORRIS DEFENDANTS, the PHILIP MORRIS DEFENDANTS, acting with and through their conspirators, agents, and employees, carried out the foregoing activities to facilitate the smuggling scheme.

kk. The acts and omissions of the individuals employed by the PHILIP MORRIS DEFENDANTS are imputed to the PHILIP MORRIS DEFENDANTS under the doctrines of vicarious liability and *respondeat superior*. The PHILIP MORRIS DEFENDANTS actually benefited from the performance of predicate acts through increased sales, profits, brand-name recognition, and market share. The PHILIP MORRIS DEFENDANTS and their employees were

central figures and aggressors in the fraudulent scheme, and PHILIP MORRIS personnel and executives performed their fraudulent acts on behalf of the PHILIP MORRIS DEFENDANTS within the scope and course of their employment with PHILIP MORRIS DEFENDANTS.

ll. The PHILIP MORRIS DEFENDANTS are liable under principles of agency. Each of the PHILIP MORRIS DEFENDANTS is responsible for the conduct of its supervisory employees who had either intentionally disregarded the law and violated the PLAINTIFFS' rights or had acted with plain indifference or willful blindness to the law and PLAINTIFFS' rights.

mm. During all relevant times, the PHILIP MORRIS DEFENDANTS communicated with each other and with their co-conspirators on virtually a daily basis, by means of interstate and international mails and wires, as a means of obtaining orders for cigarettes, arranging for sale and shipment of contraband cigarettes, and arranging for and receiving payment for the cigarettes in question. Under the principles of conspiracy and concert of action, the PHILIP MORRIS DEFENDANTS are jointly and severally liable for the actions of their co-conspirators in the furtherance of the smuggling scheme.

nn. The PHILIP MORRIS DEFENDANTS and/or their co-conspirators utilized the United States and international mails and wires, and other means of communications, to prepare and transmit documents that misstate the ultimate destination and value of the cigarettes in question so as to mislead the authorities within the United States and Colombia in regard to the actual destination and value of cigarettes that are transported into Colombia. The Republic of Colombia reasonably relied on said misrepresentations of fact and material omissions in accounting for the cigarettes in question and assessing customs duties on cigarettes entering the Republic of Colombia, and THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA reasonably relied on said misrepresentations of fact and material omissions in accounting for the cigarettes in question and assessing excise taxes on cigarettes entering the Republic of Colombia, and were

damaged as a result of such reliance.

oo. The Defendants, their subsidiary corporations, and their co-conspirators use the United States mail and telephonic and other wire forms of communication on a continual basis to pay for the smuggled cigarettes, confirm billing and payment for the smuggled cigarettes, to account for the payment of the smuggled cigarettes to the Defendants and their subsidiaries, and to maintain an accounting of the proceeds received by the Defendants from the sale of the illegal cigarettes, with said proceeds ultimately being returned to the Defendants in the United States.

pp. The Defendants' co-conspirators, the distributors and smugglers, utilize the United States mail and wire communications on a continuing basis in order to determine marketing strategies, order cigarettes, arrange for sale of the cigarettes, arrange for distribution of cigarettes, arrange for payment of cigarettes, and to support other aspects of the smuggling scheme.

qq. At all relevant times, the PHILIP MORRIS DEFENDANTS devised, or intended to devise, a scheme or artifice to defraud Plaintiffs and used, or caused the use of, mail and wire communications in interstate and foreign commerce to further the scheme. The scheme to defraud and cheat was inconsistent with moral uprightness, fundamental honesty, fair play, and right dealing in the general and business life of members of society. In the execution of or attempt to execute this scheme, Defendants used the United States interstate and foreign mail in violation of 18 U.S.C., Sections 2 and 1341, and interstate and foreign wires, radio, and television, in violation of 18 U.S.C., Sections 2 and 1343.

rr. In that the illegal sale of cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA is a multi-million dollar per year operation and is continuing on a daily basis, it is impractical and impossible to delineate each fraudulent communication in what is a pervasive and ongoing use of the mails and wires in furtherance of the smuggling activities.

ss. The PHILIP MORRIS DEFENDANTS, in addition to using the mail and wire

communications themselves, caused the use of the mails and wires in that they acted with knowledge that the use of the mail and/or wire communications would follow in the ordinary course of business and/or could be reasonably foreseen as a result of their activities; and the use of the mails and wires was for the purpose of executing the scheme, to wit, the smuggling activities. The aforesaid mail and wire transmissions furthered the scheme and were incidental to an essential part of the scheme in that the aforesaid communications were necessary for the co-conspirators, who were separated by great distances, to effectuate their common goals within the smuggling enterprise.

tt. The PHILIP MORRIS DEFENDANTS have used, and continue to use, the wires, mails, and the internet to further their scheme to defraud Plaintiffs and deprive them of money and property, while attempting to conceal their complicity in the smuggling scheme.

The PHILIP MORRIS DEFENDANTS have falsely denied their complicity in smuggling activities. (i.) The PHILIP MORRIS DEFENDANTS falsely denied involvement in smuggling, and claimed that the smuggling was "unfairly" conducted by "someone who carries [Philip Morris] products." Letter from Elizabeth Cho, spokesperson for PHILIP MORRIS INTERNATIONAL, INC., to Center for Public Integrity, Washington, D.C., sent by facsimile transmission in late January or February 2000; (ii.) The PHILIP MORRIS DEFENDANTS falsely announced: "We will not condone, facilitate or support contraband or money laundering," but failed to disclose that the PHILIP MORRIS DEFENDANTS controlled, directed, and profited from smuggling activities for many years. Letter from Elizabeth Cho, spokesperson for PHILIP MORRIS INTERNATIONAL, INC. to the Center for Public Integrity in Washington, D.C., sent by facsimile transmission in January or February 2000; (iii.) On or about February 1, 2000, in a statement to the *Los Angeles Times*, the PHILIP MORRIS DEFENDANTS falsely stated: "We believe the amount our Colombian affiliate spent on advertising was not out of line with the scale

of its business there." In fact, there is no rational basis for the Defendants to conclude that its advertising costs were justified by their volume of otherwise legitimate, duty-paid sales in Colombia.

uu. The PHILIP MORRIS DEFENDANTS have falsely stated that smuggling was and is outside of their control. Specifically, in or about January or February 2000, the PHILIP MORRIS DEFENDANTS asserted that "anti-contraband" efforts were the responsibility of "customs administration, border security forces or the law enforcement departments" of other countries, but failed to disclose that the PHILIP MORRIS DEFENDANTS are and have been engaged in distribution to the "black market," and that the Defendants have control over such distribution. Letter from Elizabeth Cho, spokesperson for PHILIP MORRIS INTERNATIONAL, INC., to Center for Public Integrity in Washington, D.C., sent by facsimile transmission in January or February 2000.

The PHILIP MORRIS DEFENDANTS have falsely asserted that they have cooperated with governmental efforts to end smuggling. In or about January 2000, the PHILIP MORRIS DEFENDANTS falsely asserted that they "have been actively involved in supporting governments' anti-contraband programs in many countries around the world" and that they were engaged in "on-going discussions regarding a cooperative agreement we have offered the Colombian government to assist its efforts in fighting contraband." The Defendants failed to disclose that the PHILIP MORRIS DEFENDANTS are and have been engaged in distribution to the "black market," and that the Defendants have done all they can to undermine governmental efforts to end smuggling. Letter from Elizabeth Cho, spokesperson for PHILIP MORRIS INTERNATIONAL, INC., to Center for Public Integrity in Washington, D.C., sent by facsimile transmission in January or February 2000.

The PHILIP MORRIS DEFENDANTS have falsely stated that smuggling is caused by high

taxes. In or about January or February 2000, the PHILIP MORRIS DEFENDANTS falsely asserted that smuggling results from "extremely high levels of taxation" and "in some cases, trade restrictions." The Defendants failed to disclose that smuggling was caused by the practices and policies of the PHILIP MORRIS DEFENDANTS. The Defendants further failed to disclose that the PHILIP MORRIS DEFENDANTS are and have been engaged in distribution to the "black market." Letter from Elizabeth Cho, spokesperson for PHILIP MORRIS INTERNATIONAL, INC., to Center for Public Integrity in Washington, D.C., sent by facsimile transmission in January or February 2000.

vv. On January 21, 2000, PHILIP MORRIS DEFENDANTS sent a letter to the Colombian Federation of Governors asserting that there was no basis for the Plaintiffs to go forward with this action. The Defendants asserted that a recent decision regarding Guatemala barred this action. In fact, however, the letter contained false statements because the noted decision has no relevance whatsoever to a claim arising from Defendants' racketeering acts taken in pursuit of their scheme to defraud Plaintiffs of business and property and violations of common law. Plaintiffs relied upon the aforesaid false statements to their detriment and have been damaged as a result of the false statements.

ww. The PHILIP MORRIS DEFENDANTS entered into an understanding or agreement, express or tacit, with its distributors, customers, agents, consultants, and other co-conspirators, to participate in a common scheme, plan or design to commit tortious acts and thereby smuggle contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. In pursuance of the agreement, PHILIP MORRIS and its distributors, customers, agents, consultants, and other co-conspirators acted tortiously by, among other things, committing the aforesaid acts constituting fraud, negligent misrepresentation, unjust enrichment, public nuisance, and negligence, thereby causing harm to Plaintiffs. The PHILIP MORRIS DEFENDANTS,

through joint action with their co-conspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the PHILIP MORRIS DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

BAT'S DIRECT INVOLVEMENT IN SMUGGLING AND ORGANIZED CRIME

38. The BAT DEFENDANTS have been actively involved in cigarette smuggling for many years, and this scheme has been carried out by means of activities conducted throughout this District and throughout this State. Examples of the methods and means by which the BAT DEFENDANTS have controlled, directed, and facilitated the smuggling of cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, directly and through the acts of their co-conspirators, include the following:

a. The BAT DEFENDANTS own and/or operate and/or license cigarette manufacturing facilities in a number of locations, including Venezuela, where cigarettes are produced both for internal consumption within the Venezuelan market and for export. The BAT DEFENDANTS own a substantial interest and/or control a company called C.A. Cigarrera Bigott, Sucs. (“Bigott”) which is located in the Republic of Venezuela. Bigott produces a BAT brand known as Belmont. Belmont cigarettes are made in a variety of presentations for market. One of those presentations is specifically designed for Colombia and features a flip-top hard pack and a cigarette measuring 80 millimeters in length. These characteristics distinguish the Colombian presentation from the version produced for consumption in the Venezuelan market, this latter being presented in a soft pack and at a stem length of 70 millimeters. The decision to produce specially designed Belmont cigarettes in Venezuela was made by officers at the highest levels of the BAT DEFENDANTS. The BAT DEFENDANTS through their affiliate, Bigott, then export cigarettes to the Caribbean. These containers of cigarettes are then broken down and sold to

smugglers who in turn smuggle them into Venezuela and Colombia through various points, including the Guajira Peninsula. The BAT DEFENDANTS have specific knowledge of this illegal distribution system and facilitate and promote its use. As of August 6, 1992, and during other times material to this complaint, Delcio Laux, was president and general manager of C.A. Cigarerra Bigott, Sucs. (Bigott). Mark Waterfield was vice president and director of marketing for Bigott. Keith S. Dunt was a member of the board of directors of Bigott. As such, the three individuals named above had direct knowledge of and actually directed the activities of Bigott in regard to the massive smuggling carried on by Bigott into Colombia.

b. The BAT DEFENDANTS also maintain a wholly owned subsidiary in Colombia called BRITISH AMERICAN TOBACCO (SOUTH AMERICA) LTD. This entity while providing a necessary corporate presence in Colombia for the purposes of advertising and other commercial activities also imports a small fraction (3.5%) of the total Belmont cigarettes produced in Venezuela in the special presentation for Colombia. BRITISH AMERICAN TOBACCO (SOUTH AMERICA) LTD., an instrumentality of the BAT DEFENDANTS, under-invoices the otherwise legitimately imported Belmont product and through this under-invoicing brings the product to market at a price that substantially controls the retail price of the smuggled product. The purpose and design of this distribution channel, and the implementation of this smuggled product price-control mechanism, are business decisions conceived and implemented at the highest levels of the BAT DEFENDANTS. BRITISH AMERICAN TOBACCO (SOUTH AMERICA) LTD. constituted an essential part of the smuggling scheme. BRITISH AMERICAN TOBACCO (SOUTH AMERICA) LTD. operated the umbrella operation which allowed the BAT DEFENDANTS to maintain a corporate presence in Colombia and to market and advertise its products in Colombia while providing "cover" for the smuggling operation.

c. The BAT DEFENDANTS also engage in a systematic process of under-invoicing their

otherwise legitimately imported cigarette products into Colombia. The under-invoiced cigarette products are imported into Colombia with a declared customs valuation substantially below what would otherwise be the price of the product in the market of origin for sale to unrelated parties. These prices are reported by the BAT DEFENDANTS to the Colombian customs authorities as prices for sale to unrelated parties and not as an inter-company transfers of goods. The Colombian customs authorities have relied on these false representations to their economic detriment.

d. This practice of systematic under-invoicing allows the BAT DEFENDANTS to control the final retail price of the smuggled cigarette products, as well as to minimize the necessary loss at which the BAT DEFENDANTS are said to operate in Colombia.

e. The BAT DEFENDANTS' legitimate imports amount to a small fraction (about 3.5%) of the total imports of the Belmont product produced by the BAT DEFENDANTS in Venezuela.

f. In 1991, BROWN & WILLIAMSON TOBACCO COMPANY, BATUS TOBACCO SERVICES, INC., BRITISH AMERICAN TOBACCO COMPANY LTD., BAT INDUSTRIES, P.L.C., BRITISH AMERICAN TOBACCO (SOUTH AMERICA) LTD., and other BAT DEFENDANTS formed what they called the "Colombian group." The first meeting of the Colombian group was on May 16, 1991. Shortly after the meeting, the minutes of the first Colombian group meeting were distributed by wire and/or mail, including U.S. wire and/or mail, to at least eleven different executives of the BAT DEFENDANTS, including Thomas Whitehair, who was a director and high-ranking officer of BROWN & WILLIAMSON TOBACCO COMPANY and BATUS TOBACCO SERVICES, INC. and B. D. Bramley. A central purpose of the Colombian group was to manage the growth of the market share of the BAT DEFENDANTS in Colombia, by all means including smuggling. One of the recipients of correspondence concerning the Colombian group was Mr. P. J. Hazel. On January 15, 1991, in a

document marked "SECRET," P. J. Hazel for the first time notified Mr. B. D. Bramley of his concern that drug money was involved with the distribution of BAT DEFENDANTS' cigarettes through the Caribbean. At the time of the incidents in question, Barry Bramley was the chief executive officer of the Defendant, BAT INDUSTRIES P.L.C. and a director of BRITISH AMERICAN TOBACCO (SOUTH AMERICA) LTD. Actions taken by Mr. Bramley were done on behalf of and with the consent of BAT INDUSTRIES P.L.C. and BRITISH AMERICAN TOBACCO (SOUTH AMERICA) LTD.

g. At all times material hereto, Mr. P.J. C. Hazel was an executive with BRITISH AMERICAN TOBACCO COMPANY LTD., now known as BRITISH AMERICAN TOBACCO (1998) LTD. The knowledge of the smuggling scheme by Mr. Hazel is attributed to BRITISH AMERICAN TOBACCO COMPANY LTD. The actions taken by Mr. Hazel in support of the smuggling scheme were taken at the behest of BRITISH AMERICAN TOBACCO COMPANY LTD. Mr. Hazel was the recipient of a communication from Ian Hacking to others within the BAT DEFENDANTS dated June 25, 1991, in which it was noted that the son of their primary distributor in Panama had been shot dead in Panama. The note from Mr. Hacking further states that their distributor was described by the media in Panama as a very important "contrabandista" (smuggler) operating out of the Panama Free Zone. Based upon the above, the members of the Colombian group, B. D. Bramley, P. J. Hazel, and other high-ranking executives within the BAT DEFENDANTS all knew or had reason to know that drug traffickers were involved in the smuggling of the BAT DEFENDANTS' cigarettes. In spite of the fact that it was known to the BAT DEFENDANTS that their Panamanian distributor was a well-known smuggler, the BAT DEFENDANTS continued to sell products to the distributor so that they could be smuggled into Colombia. This process continued up to and including 1999. Shipments made in 1999 include the following:

- (i.) June 4, 1999, BROWN & WILLIAMSON TOBACCO, as agents for BAT INTERNATIONAL SARL, shipped two thousand cases of cigarettes to the distributor.
- (ii.) August 27, 1999, BROWN & WILLIAMSON TOBACCO, as agents for BAT INTERNATIONAL SARL, shipped one thousand cases of cigarettes to the distributor.
- (iii.) September 20, 1999, BROWN & WILLIAMSON TOBACCO, as agents for BAT INTERNATIONAL SARL, shipped one thousand cases of cigarettes to the distributor.
- (iv.) October 18, 1999, BROWN & WILLIAMSON TOBACCO, as agents for BAT INTERNATIONAL SARL, shipped one thousand four hundred sixty cases of cigarettes to the distributor.

All or part of each of these shipments was ultimately sold to companies or individuals who smuggled the cigarettes into Colombia. Payment for the aforesaid cigarettes was made in part by wire transfers to BAT INTERNATIONAL SARL in Geneva, Switzerland.

h. In or about January 1992, a meeting was held in Miami, Florida, of the "Colombian Group." The meeting included representatives of Souza Cruz, Bigott, and Brown & Williamson Tobacco Company. At that meeting, the participants discussed the distinctions between duty-paid cigarettes and duty-not-paid cigarettes and specifically discussed strategies so as to continue the sale of duty-not-paid cigarettes in Colombia. Multiple communications by way of United States mail and wires occurred in conjunction with that meeting and the distribution of minutes of the meeting. Those minutes include, among other things, an exceptionally detailed breakdown and analysis of the DNP (smuggled) distribution channels of cigarettes into Colombia. The minutes include charts that break down, by each distribution channel, the exact volume of various cigarettes sold by the BAT DEFENDANTS and their subsidiaries, including smuggled cigarettes. BROWN & WILLIAMSON employees, including L. Lewis, W. Wong, C. Chadwick, and I. Rivero, were key members of the "Colombian Group." As such, BROWN &

WILLIAMSON played a key role in the development of the smuggling conspiracy as conceived and executed by the Colombian group.

i. On February 23, 1994, there was a meeting in Colombia with a number of executives from the BAT DEFENDANTS and related corporations. Present at the meeting were Keith S. Dunt, B. Telling, Claudio Figueiredo, V. Lines, Javier Soto, Raul Matamoros, D. Green, David J. Etchells, Mark Waterfield, Andrew Gray, Fabio Lima, and Christian Beyer. At that meeting, notes were taken by one or more individuals reflecting discussions at that meeting. At that meeting, there were specific discussions about the manner and means by which the BAT DEFENDANTS conducted marketing strategies in their duty-not-paid cigarettes. Comments made at the meeting include the following:

(i.) It was decided that the Bogota office would be “clean by the third quarter of 1994 in reference to DNP information. Management of DNP will be in Caracas.” It is clear by this discussion that it was the intent of the executives at the meeting that all evidence of smuggling and reference to DNP cigarettes in Colombia would be destroyed or removed from the Bogota office so as to be concealed from Colombian investigative and customs authorities, including those associated with Plaintiffs. The smuggling operation was instead to be managed in Caracas, Venezuela, in order to conceal defendants' involvement in smuggling from Colombian officials.

(ii.) As to Kent Super Lights, it was determined that the “DNP product should be launched two weeks after the DP product has been launched.”

(iii.) As to the Lucky Strike product, it was decided to “withdraw from the DNP market the 20’s and 10’s versions.”

(iv.) As to the Capri product, it was decided to “withdraw Capri only in DNP post 1st April.”

(v.) An issue was discussed as to whether an excise reduction might impact the DNP verses DP business. It was decided that CB (upon information and belief, Christian Beyer) would

analyze this issue.

(vi.) It was discussed that the brand owners would provide BATCo with the brand price positions in relation to DNP versus DP and direct competitive brands. It was determined that Mark Waterfield would perform some of the work on this issue.

(vii.) It was discussed that “the Brand Owners view is that Lucky Strike should be kept in DP operation only. The Lucky Strike offer in the DNP channel will be renewed by April 1st.”

(viii.) It was discussed that “Capri will be kept in the DNP channel only.” In other words, the committee determined that Capri should no longer be sold through legitimate means, but should only be sold by way of smuggling.

Keith S. Dunt and David J. Etchells were, at all times material hereto, employees of BRITISH AMERICAN TOBACCO COMPANY LTD. and its successor corporation now known as BRITISH AMERICAN TOBACCO (1998) LTD. Keith S. Dunt and David J. Etchells were key members of the conspiracy to smuggle cigarettes. At all times material hereto, they were acting on behalf of and at the direction of the companies for whom they worked.

j. In May 1992, executives of BRITISH AMERICAN TOBACCO COMPANY LTD. prepared a project status report regarding the company’s proposal to insure continuity of supply of cigarettes to Colombia in the event that there were to be an export ban or quota initiated by Venezuela so as to limit the ability of the BAT DEFENDANTS to manufacture cigarettes in Venezuela and sell them in Colombia. That status report specifically details the volumes of sales of cigarettes from Venezuela into Colombia of approximately two billion cigarettes per year. These shipment figures were stated even though at that time the total volume of legal, duty-paid cigarettes shipped from Venezuela to Colombia by BAT was only approximately 250 million cigarettes per year. A primary purpose of the status report was to discuss the necessity of being able to continue to ship two billion cigarettes into Colombia each year and the various means by

which this could be achieved. The plan involved establishing cigarette-manufacturing facilities in countries other than Venezuela so as to offset the effects of any quotas or additional export duties. The status report also references a separate strategy paper involving production of cigarettes for the “DNP” segment of the Colombian market. The aforesaid status report was circulated among a variety of executives of the BAT DEFENDANTS and demonstrates the commitment of the BAT DEFENDANTS to continue to produce enough cigarettes so that the smugglers could be supplied with their illegal cigarettes.

k. On June 25, 1992, Keith Dunt, an executive with BRITISH AMERICAN TOBACCO COMPANY LTD., sent a letter to D. O. Laux with Bigott in Venezuela setting forth a plan called "Project CP" by which the production of cigarettes may be transferred away from Venezuela to other countries, while at the same time maintaining the supply of Belmont for sale to Colombia. In that letter, Mr. Dunt specifically emphasized the importance of continuing sales of Belmont cigarettes into Colombia.

l. On June 10 and 11, 1992, there was a meeting of BROWN & WILLIAMSON TOBACCO CORPORATION and BAT executives in Bogota at which sales into Colombia and the “DNP” business were discussed. In that meeting, it was specifically discussed, according to the minutes of the meeting, that the BAT DEFENDANTS needed to prepare aggregate monthly reports on the “DNP” sales of cigarettes for all of Latin America. Individuals within the group were designated as to be in charge of establishing those figures. The minutes of that meeting were communicated to various Brown & Williamson personnel by way of the United States mail and/or wires.

m. Correspondence dated September 1, 1993, between executives of BRITISH AMERICAN TOBACCO COMPANY LTD. specifically analyzed BAT’s market share of cigarette sales in Colombia based upon duty-paid (“DP”) and duty-not-paid (“DNP”) cigarettes.

The documents acknowledge that duty-paid cigarettes are used as an “umbrella operation” to facilitate advertising campaigns for the sale of duty-not-paid cigarettes.

n. At the request of the BAT DEFENDANTS, their officers or agents conducted sophisticated financial analyses as to the quantity of cigarettes that would be sold in Colombia for which duty was not paid (DNP) on a year-by-year basis. That marketing analysis showed the sales of as many as 4.5 billion cigarettes per year that were sold without the proper payment of duties and excise taxes. This document and similar documents were delivered to various BAT executives through the mail and/or the wires.

o. The BAT DEFENDANTS included the smuggling of cigarettes into Colombia as part of their overall, yet clandestine, marketing strategy. BAT employees generated charts setting forth the nature and volume of distribution of certain smuggled cigarettes to specific parts of Colombia such as Barranquilla.

p. On January 17, 1994, one or more of the BAT DEFENDANTS conducted a meeting called the “BATCo Executive Committee meeting.” Participants in that meeting and/or recipients of the extract from the minutes of those meetings included Keith S. Dunt, J. Rembiszewski, C. J. Burton, D. J. Bacon, and Mr. G. J. Burgess. Based upon the minutes, it is clear that the BATCo executive committee specifically discussed the sale of BAT cigarettes in Colombia and made reference to the “duty-paid markets,” further demonstrating that at the executive level the BAT DEFENDANTS knew that they were supplying cigarettes to both the “duty-paid” market and the “duty-not-paid” market in Colombia. By approximately 1994, the BAT DEFENDANTS were conducting such a high level of illegal activity in regard to South America that Keith S. Dunt ordered that a "secure phone" costing thousands of dollars be installed in or near his office so that he could have secret telephone discussions with the BAT offices in Venezuela. A similar "secure phone" was installed in the BAT offices in Venezuela for

the purpose of these clandestine communications.

q. The BAT DEFENDANTS intentionally under-invoiced all of the cigarettes that they legitimately sold into Colombia specifically for the purpose of expediting and controlling the smuggling of their illegal cigarettes into Colombia. By under-invoicing their legitimately sold cigarettes, the BAT DEFENDANTS achieve several objectives that are beneficial to the Defendants but which are harmful to the Plaintiffs. They include the following:

(i.) By under-invoicing the cigarettes that are legally imported into the country, the Defendants avoid the payment of the full and proper import duties and taxes on legally imported cigarettes;

(ii.) By under-invoicing the cigarettes, the Defendants control the price of their cigarettes that are sold through legitimate retail outlets and thereby put constraints on the price at which the illegal cigarettes are sold. This is essential to the Defendants' plan to gain, control, and enhance market share in that the Defendants must control the price at which smuggled cigarettes are sold on the retail market in order to compete with their competitors and maintain their market share.

r. Throughout the 1990s, the BAT DEFENDANTS have been involved not only in the smuggling of cigarettes, but also the fixing of prices on smuggled cigarettes throughout the world. The conspiracy between the PHILIP MORRIS DEFENDANTS and the BAT DEFENDANTS to smuggle cigarettes and fix prices in South America began at a meeting at the John F. Kennedy International Airport in Queens, New York, on February 14, 1992. That meeting was attended by Peter Schreer and Fred Hauser representing the PHILIP MORRIS DEFENDANTS and Keith Dunt and David Etchells on behalf of the BAT DEFENDANTS. At that meeting, to the best knowledge of the Plaintiffs, the PHILIP MORRIS DEFENDANTS and the BAT DEFENDANTS met for the first time to set forth a strategy to coordinate their illegal activities in South America. At that meeting, it was agreed that there would be future meetings

with the next proposed meeting scheduled for June 1992. This meeting, as well as others among these parties, was arranged and conducted through the Defendants' use of the interstate and/or foreign wires and mails inasmuch as it was the custom and practice of Defendants to coordinate scheduling of, and make arrangements and reservations for, such meetings through use of the wires and mails shortly before the time of the meeting, and to circulate the minutes of the meetings through the mails and/or facsimile wire transmissions shortly after the time of the meeting.

s. As a consequence of the meeting at John F. Kennedy International Airport in February 1992, a follow-up meeting was held on August 5, 1992, between representatives of the PHILIP MORRIS DEFENDANTS and representatives of the BAT DEFENDANTS. At that meeting, the BAT representatives discussed not only a price-fixing scheme for legally sold cigarettes, but also a price-fixing scheme for smuggled cigarettes in South America. The minutes of that meeting specifically refer to the setting of a price on "DNP" cigarettes in South America. "DNP" stands for "duty not paid" and is the industry euphemism for smuggled cigarettes. The BAT DEFENDANTS representatives who attended and directed the aforesaid meeting were Keith Dunt, David J. Etchells, and T. M. Wilson. In fact, agreements between the PHILIP MORRIS DEFENDANTS and the BAT DEFENDANTS on price-fixing of cigarettes continued throughout the 1990s in spite of the fact that it was known by these Defendants that price fixing was illegal. Communications between BAT DEFENDANTS in the United Kingdom and Bigott, its wholly owned subsidiary in Venezuela regarding the price-fixing scheme and the negotiations with PHILIP MORRIS DEFENDANTS were communicated by mail and/or wire on August 28, 1992. The aforesaid meeting was arranged and conducted by the use of U.S. wires and/or mails, including communications between Peter Schreer in New York and Keith Dunt in England on June 18, 1992.

t. At the meeting of August 5, 1992, the representatives of the PHILIP MORRIS DEFENDANTS and the BAT DEFENDANTS agreed that they should explore a common industry lobby position on the "Andean Pack" [sic] particularly for Venezuela and Colombia. Among other purposes, this industry lobby position was intended to be used as a vehicle to fight increased cigarette taxes. It was agreed that the industry lobby position would be coordinated through Cesar Rodriguez, PHILIP MORRIS DEFENDANTS' public affairs representative in New York.

u. The illegal sale of cigarettes has become one of the primary vehicles by which drug smugglers launder their illicit profits. The smuggling activities of the BAT DEFENDANTS have enabled drug lords to launder their illicit profits. According to the United States Department of Justice, billions of dollars of worth of drug proceeds generated in the United States are laundered through the so-called "black market peso exchange" (BMPE) in Bogota and elsewhere in Colombia. These narcotics-generated proceeds supply the funds for the movement of billions of dollars worth of smuggled U.S. and foreign goods, including cigarettes, into Colombia. In short, what starts out as drug currency on the streets of U.S. cities ends up as smuggled goods, including cigarettes, on the streets of Colombia. And significantly, this dollar-for-peso exchange on Colombia's black market fuels the illicit drug trade that is the scourge of both the U.S. and Colombia. Representatives of the BAT DEFENDANTS are on actual notice that the source of funds used to purchase their cigarettes is drug trafficking, yet they continue to receive these funds and to sell cigarettes to these persons. By reason of this conduct, the BAT DEFENDANTS aid and abet the efforts of drug lords to launder their ill-gotten gains.

v. One of the primary locations for the delivery of smuggled cigarettes into Colombia is an area known as Maicao. Over at least the last ten years, employees of the BAT DEFENDANTS have visited Maicao on a regular basis to supervise the distribution and the delivery of smuggled

cigarettes, to deal with customer complaints, and to receive cash payments for the cigarettes. The most common route and procedure by which this has been accomplished is as follows:

Employees of the BAT DEFENDANTS, along with their distributors would fly to Maracaibo, Venezuela. From Maracaibo, the employees of the BAT DEFENDANTS would drive by automobile to the Colombian border in cars bearing Venezuelan license plates. When they got to the border, they would leave their Venezuelan vehicles and switch to automobiles with Colombian license plates. In general, at that point, they would bribe Colombian officials to allow them to enter Colombia without having their passports stamped. In this way, they could prevent United States Customs and Immigration authorities from knowing that they had entered Colombia, and conceal their entry into Colombia for illicit purposes. The employees of the BAT DEFENDANTS would then travel by automobile to Maicao. In Maicao, the BAT DEFENDANTS would deal directly with cigarette smugglers, resolve customer complaints involving issues such as stale products, and would promote the sale of new products. They also would be present when their distributors received large amounts of cash that constituted payment for cigarettes that had been sold to smugglers. It was not uncommon for them to receive anywhere from several hundred thousand dollars up to one million dollars in cash in such a transaction. In some instances, they would receive cash in loose form that would require them to count the cash and load it into suitcases. In other instances, they would receive the cash "prepackaged." In such instances, the cash was already packed together, bound and taped, and sometimes covered with a coating of talcum powder. This is the way in which narcotics traffickers commonly packaged and transferred large amounts of cash, in order to prevent the detection of the scent of the narcotics on the currency. The distributors and the employees of the BAT DEFENDANTS would then take the cash by automobile back to the Venezuelan border. Here they would be required by law to declare the cash. However, they would not do so. Rather,

if necessary, they would bribe border personnel in Venezuela to allow them to cross the border with the cash. The cash would then be deposited in a Venezuelan bank and cashiers checks were received in U.S. dollars. From this point, the cashiers checks would normally take one or two different routes. In some instances, the cashiers checks would be transported to the Caribbean where they would be placed in a bank in the Caribbean, and the funds would be wire transferred to bank accounts of the BAT DEFENDANTS in Louisville, Kentucky, or the United Kingdom. On other occasions, the cashiers checks would be transported by courier or DHL to banks in Miami, Florida. Once the funds were deposited in a bank in Miami, Florida, the funds would then be wire transferred to bank accounts of the BAT DEFENDANTS in either Louisville, Kentucky, or the United Kingdom. Throughout the late 1980s and most of the 1990s, trips and transactions of this type occurred on approximately a monthly basis. The BAT DEFENDANTS were fully aware that they were receiving cash from the Colombian black market. They were also well aware that their distributors had substantial risks involved in dealing with money launderers and narcotic traffickers. These risk factors were taken into account in setting the prices and financing agreements by which the cigarettes were sold.

w. The BAT DEFENDANTS established relationships with the distributors in large part to create a buffer between the BAT companies and the smugglers. However, over the years, the BAT DEFENDANTS and, in particular, BROWN & WILLIAMSON TOBACCO CORPORATION, in their eagerness to expand their market, tended to disregard this buffer. BROWN & WILLIAMSON TOBACCO CORPORATION encouraged its employees to circumvent the distributors and to meet directly with the smugglers. At one point, BROWN & WILLIAMSON employees based in its Miami office actually arranged for direct sales of cigarettes to certain smugglers in certain parts of Colombia.

x. As the BAT DEFENDANTS became increasingly concerned about scrutiny by law-

enforcement agencies, they altered their procedures in regard to payment for their products. As of March 1997, distributors in the Caribbean were still able to pay for their cigarettes in U.S. dollars by wire transferring the funds to BAT bank accounts in the United Kingdom. However, by August of 1998, the distributors were required to wire transfer their funds to BAT bank accounts in Switzerland. The change of procedures by which funds must be transferred to Switzerland was solely for the purpose of avoiding detection by the various law-enforcement agencies, including U.S. law-enforcement agencies which were investigating the utilization of cigarettes as a vehicle to launder narcotics money. In 1998, the BAT DEFENDANTS restructured themselves and transferred many of their financial assets and operations to Switzerland. The primary purpose of this reorganization in the transfer of assets and documents to Switzerland was to make it more difficult for Plaintiffs such as THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA to track the proceeds of the smuggling and money-laundering activities. Additionally, the movement of documents to Switzerland was done to take advantage of Swiss secrecy laws which would make it more difficult for law-enforcement authorities and the Plaintiffs to obtain evidence of the smuggling and money-laundering activities of the BAT DEFENDANTS. The decision to undergo this restructuring was made at the highest levels of the BAT DEFENDANTS and is attributable to all of the BAT DEFENDANTS named herein.

y. A large proportion of the cigarettes that the BAT DEFENDANTS sell that are smuggled into Colombia enter the area known as Maicao. One of the means by which cigarettes leave Maicao for distribution throughout Colombia is by way of hundreds of "tourists" who come to Maicao solely for the purpose of picking up large quantities of cigarettes that they load into their "tourist" busses and take from the area. However, a master case of cigarettes is too large to fit in the overhead rack or under the seat of a bus. Accordingly, the BAT DEFENDANTS specially packaged cigarettes that were destined for Maicao so that the cases could be divided into two

pieces, each of which would be small enough to fit under the seats of the buses.

z. The BAT DEFENDANTS attempted to create the appearance that their transactions with the distributors and smugglers were arms-length transactions. However, in fact, the BAT DEFENDANTS exercised strict control over both their distributors and the smugglers in regard to the sale of their cigarettes. In particular, the BAT DEFENDANTS had strict rules concerning where cigarettes could be sold and the prices at which smuggled cigarettes must be sold. The smugglers were also required to keep records of their sales so that the location and value of cigarette sales could be monitored. If the distributors or the smugglers failed to comply with the BAT DEFENDANTS' rules, BAT took punitive action against the distributors and/or smugglers. On one occasion, a BAT employee accompanied the BAT distributor as he made the rounds of Maicao merchants. The distributor had raised his prices on BAT products without the consent of BAT. The purpose of the particular visit by the BAT employee was to notify the merchants in Maicao that prices were being reduced to their prior rate, and to issue credits to the merchants to offset the additional price that they had paid on the previous shipment. In the meetings with these Maicao merchants, the BAT employee made it clear to the merchants that its distributor could not raise prices without the authorization of BAT.

BAT employees traveled to Maicao for the purpose of promoting BAT products, sometimes staying in the Maicao area for as much as a week at a time. BAT employees brought with them or arranged for the delivery of signs, T-shirts, caps, and other promotional materials that were delivered to the Maicao smugglers for delivery to their ultimate customers.

aa. The BAT DEFENDANTS knowingly and intentionally shipped large volumes of cigarettes to individuals and corporations in certain free trade zones such as the Colon Free Trade Zone in Panama. These sales were made to companies that were known smugglers and/or known money launderers. Although the ultimate destination of these cigarettes was not Panama, BAT

DEFENDANTS shipped these cigarettes to Panama so that the money launderers could use the secrecy laws of the Republic of Panama as a shield by which to divert the cigarettes to their ultimate destinations without being scrutinized by the agencies and governments to whom customs duties and excise taxes would be owed on these cigarettes. A substantial percentage of these cigarettes were ultimately smuggled into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

bb. The BAT DEFENDANTS, through the words and actions of their agents and employees, falsely represented to the law enforcement agencies of various governments, including THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, that they were attempting to combat smuggling when, in fact, they were actively supporting smuggling. While concealing their complicity in smuggling, the BAT DEFENDANTS engaged in a widespread public-relations campaign condemning "high taxes" as the cause of smuggling, which campaign induced various governments around the world to reduce or eliminate certain cigarette taxes and incur economic injury. On June 25, 1992, a meeting was held between B. D. Bramley, R. H. Pilbeam, J. Rembiszewski, and Keith Dunt. The notes of that meeting were specifically marked "SECRET." The topic of that meeting was Argentina, Venezuela, and Colombia. At that meeting, the participants agreed to "immediately upgrade presence in DNP [smuggled] to 60 percent." They also agreed to "continue well publicized campaign with government to prevent such trade." In other words, the executives of BAT DEFENDANTS made a knowing and conscious decision to increase the amount of cigarettes that they would smuggle into Venezuela and Colombia, while at the same time publicizing their supposed efforts to prevent smuggling.

cc. The BAT DEFENDANTS have continued to commit fraud against the Colombian government and THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA in that in 1999 the BAT DEFENDANTS entered into a written agreement with the government of Colombia

wherein they would cease all activities that promoted smuggling and would take affirmative action to reduce the smuggling of their cigarette products. The BAT DEFENDANTS entered into this agreement with the knowledge that the Government of Colombia and THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA would rely on the representations made in that agreement. The Government of Colombia and THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA did, in fact, rely upon the representations made in that agreement in that they refrained from taking civil or criminal action against the BAT DEFENDANTS in reliance upon the representations of the BAT DEFENDANTS that the agreement would, in fact, bring an end to the smuggling. However, the BAT DEFENDANTS, even at the time that they negotiated the aforesaid agreement, had no intention of eliminating their involvement in smuggling. To the contrary, even after the agreement was executed, the BAT DEFENDANTS continued to knowingly sell their products into smuggling channels.

dd. The BAT DEFENDANTS specifically design and/or redesign the packaging of their cigarettes so as to make it difficult for custom's officials in various countries to identify cigarettes that have been smuggled.

ee. Within all of South America, the priority market within the region historically has been Colombia. The PHILIP MORRIS DEFENDANTS and the BAT DEFENDANTS, throughout the 1990s, were engaged in a battle for market share in South America and in particular in Colombia even as to brands that were not legally sold within those countries. This was true even as to the "transit market" which is another industry euphemism for smuggled cigarettes. Marketing strategies were created for both legally sold and smuggled cigarettes by both the PHILIP MORRIS DEFENDANTS and the BAT DEFENDANTS.

ff. BAT documents set forth the definitions of "duty paid" versa "duty not paid" cigarettes and clearly show that "DNP" means "smuggled." The amounts of shipments of duty-not-paid

cigarettes is very closely monitored by the companies. This further demonstrates the extent to which duty-not-paid cigarettes are a part of the central marketing strategy of the BAT DEFENDANTS in South America.

gg. On January 17, 1994, there was an executive committee meeting of BAT DEFENDANTS in which they specifically discussed the PHILIP MORRIS DEFENDANTS' smuggling activities in South America. The group noted that the PHILIP MORRIS DEFENDANTS held the rights to their Belmont trademark in Colombia. The BAT DEFENDANTS wished to retaliate against the PHILIP MORRIS DEFENDANTS by way of lawsuits that would result in counterclaims. The BAT DEFENDANTS noted that the PHILIP MORRIS DEFENDANTS were smuggling Belmont cigarettes from Ecuador into Central America and the BAT DEFENDANTS planned to arrange the seizure of those products at a time "appropriate to cause maximum PM disadvantage."

hh. In approximately November 1993, a document was generated by one or more employees of the BAT DEFENDANTS setting forth a possible plan by which responsibility for South America would be divided among the various groups within the BAT DEFENDANTS. In that document, the Defendants set forth the distribution channels for cigarettes that will be transported into Colombia, both legally (DP) and illegally (DNP). The document states:

Due to the sensitivity, management, and co-ordination of the DNP business, all brands should be concentrated on one operator per channel.

The document then indicates that the distribution channel for the BAT DEFENDANTS' cigarettes to be smuggled into Colombia will be through companies known as Romar/Giovanex. Previously, in a document dated May 12, 1992, the BAT DEFENDANTS charted out a complex strategy by which Romar would pay for its cigarettes in cash, would be invoiced through BAT offices in the United Kingdom, and BAT cigarettes

manufactured in Chile would be transferred into Colombia. This scheme, known by BAT as the "Latin-American Sales Unit Concept (LASU)" was part of a complex scheme by which cigarette sales could be invoiced and cash could be paid to BAT offices in the United Kingdom in a way such that it would be difficult or impossible for legal authorities to track the flow of illegal funds and cigarettes. The BAT DEFENDANTS were well aware that virtually all of the cigarettes passing through Romar as DNP cigarettes into Colombia were being smuggled. In spite of this fact, the BAT DEFENDANTS made these smuggled cigarettes a part of their management plan. Furthermore, the BAT DEFENDANTS treated the executives of Romar like regular, valued customers. Executives from Romar were invited to travel to London to meet with BAT executives, attend dinners with them, and even attend the tennis matches at Wimbledon with BAT executives. The November 1993 document also states:

There should be complete clarification in the coordination and management of the DNP. It is well known that this type of business has much more impact on the domestic markets, nevertheless, the Responsible Company should be accountable for the management of the channel.

Due to the importance of this business in the region, we propose that a "Border Trading Group" be formed to monitor and take decisions, when appropriate, to protect BAT industries interest. It is recommended that there be one member from Souza Cruz, one from Nobleza Piccardo, and one from BATCo.

ii. A BAT subsidiary whose cigarettes were routinely smuggled into Colombia is known as Bigott. The BAT DEFENDANTS conducted extensive analysis as to the extent to which smuggled Bigott cigarettes were being sold in Colombia. The analysis discussed the sale of smuggled cigarettes into Colombia, including detailed charts of the extent to which the smuggled cigarettes were being sold throughout Colombia.

jj. Representatives of the BAT DEFENDANTS routinely made trips to Colombia as part of their marketing program. The trip notes were distributed to other persons within BAT, including

high-level BAT executives by wire and/or mail. The documents contain an extremely detailed analysis of the entire cigarette market in Colombia, both legally imported and smuggled. One document dated February 9, 1994, states outright that "The majority of BAT sales are DNP"; in other words, smuggled. The document goes on to state: "Because the majority of sales are DNP, overall profitability of the market is good." This document further demonstrates the extent to which BAT DEFENDANTS used smuggled cigarettes as a part of its marketing and business strategy.

kk. On April 1, 1993, Mark Waterfield, an employee of BAT DEFENDANTS, sent a letter to Keith Dunt, an executive of the BAT DEFENDANTS, describing his "Colombian market visit." In that letter, he provided a detailed analysis of both the legal and smuggled cigarette market in Colombia. In his report he specifically noted that Marlboro Reds were "dominant No. 1 D.N.P. brand in Cali. Large billboards +- 150 placed in capital cities." As to the PHILIP MORRIS DEFENDANTS' Parliament, he stated: "Good D.N.P. distribution (60%) in Bogota. [P]rice reduction last year helped trade push it through." This document further demonstrates the extent to which BAT DEFENDANTS and PHILIP MORRIS DEFENDANTS treated smuggled cigarettes as a normal part of their business.

ll. In 1999 and through the year 2000, the BAT DEFENDANTS have ostensibly sold an increasing volume of Belmont cigarettes in Colombia legally. In fact, however, a substantial proportion of the Belmont cigarettes that have been sold in Colombia have been sold specifically for the purpose of smuggling the cigarettes into Venezuela. The aforesaid activity has generated two benefits for the BAT DEFENDANTS. First, the BAT DEFENDANTS have increased their sales and profits by expanding the sales of their Belmont product in Venezuela in that smuggled cigarettes can be sold cheaper than duty-paid cigarettes and, as such, the BAT DEFENDANTS market share for Belmont cigarettes in Venezuela has increased. Second, the BAT

DEFENDANTS have used the increased sales of duty-paid cigarettes in Colombia as a means to deceive the Colombian government into believing that the BAT DEFENDANTS are complying with their agreement with the Colombian government to combat smuggling when, in fact, the volume of cigarettes smuggled into Colombia for consumption by Colombians remains almost as high as ever.

mm. The BAT DEFENDANTS were conspirators and direct participants in the affairs of the smuggling enterprise, and each participant in the conspiracy is responsible for the actions of the others in pursuit of the smuggling scheme. Acting for the benefit of the BAT DEFENDANTS, and with the knowledge and authorization of high-ranking corporate officials of the BAT DEFENDANTS, the BAT DEFENDANTS, acting with and through their conspirators, agents and employees, carried out the foregoing activities to facilitate the smuggling scheme.

nn. The acts and omissions of the individuals employed by the BAT DEFENDANTS are imputed to the BAT DEFENDANTS under the doctrines of vicarious liability and respondeat superior. The BAT DEFENDANTS actually benefited from the performance of predicate acts through increased sales, profits, name brand recognition, and market share. The BAT DEFENDANTS and their employees were central figures and aggressors in the fraudulent scheme, and BAT DEFENDANTS' personnel and executives performed their fraudulent acts on behalf of the BAT DEFENDANTS within the scope and course of their employment with BAT DEFENDANTS.

oo. The BAT DEFENDANTS are liable under principles of agency. Each of the BAT DEFENDANTS is responsible for the conduct of its supervisory employees who had either intentionally disregarded the law or had acted with plain indifference or willful blindness to its requirements.

pp. During all relevant times, the BAT DEFENDANTS communicated with each other and

with their co-conspirators on virtually a daily basis, by means of interstate and international wires, as a means of obtaining orders for cigarettes, arranging for sale and shipment of contraband cigarettes, and arranging for and receiving payment for the cigarettes in question.

qq. The BAT DEFENDANTS and their co-conspirators utilized the interstate and international mail and wires, and other means of communications, to prepare and transmit documents that misstate the ultimate destination of the cigarettes in question so as to mislead the authorities within the United States and the Republic of Colombia in regard to the actual destination and value of cigarettes that are transported into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. The Republic of Colombia reasonably relied on said misrepresentations of fact and material omissions in accounting for the cigarettes in question and assessing customs duties on cigarettes entering the Republic of Colombia, and THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA reasonably relied on said misrepresentations of fact and material omissions in accounting for the cigarettes in question and assessing excise taxes on cigarettes entering the Republic of Colombia, and were damaged as a result of such reliance.

rr. The Defendants, their subsidiary corporations, and their co-conspirators use the mail and telephonic and other wire forms of communication on a continual basis to pay for the smuggled cigarettes, confirm billing and payment for the smuggled cigarettes, to account for the payment of the smuggled cigarettes to the Defendants and their subsidiaries, and to maintain an accounting of the proceeds received by the Defendants from the sale of the illegal cigarettes, with said proceeds ultimately being returned to the Defendants in the United States.

ss. The Defendants' co-conspirators, the distributors and smugglers, utilize the mail and wire communications on a continuing basis in order to determine marketing strategies, order cigarettes, arrange for sale of the cigarettes, arrange for distribution of cigarettes, arrange for

payment of cigarettes, and to support other aspects of the smuggling scheme.

tt. At all relevant times, the Defendants engaged in a scheme to defraud and cheat the Plaintiffs. The scheme to defraud and cheat was inconsistent with moral uprightness, fundamental honesty, fair play and right dealing in the general and business life of members of society. In the execution of or attempt to execute this scheme, Defendants used the United States mail in violation of 18 U.S.C., Sections 2 and 1341, and interstate wires, radio, and television, in violation of 18 U.S.C., Sections 2 and 1343.

uu. In that the illegal sale of cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA is a multi-million dollar per year operation and is ongoing on a daily basis, it is impractical and impossible to delineate each fraudulent communication in what is a pervasive and ongoing use of the mails and wires in furtherance of the smuggling activities.

vv. The BAT DEFENDANTS, in addition to using the mail and wire communications themselves, caused the mailing and use of wire communications in that they acted with knowledge that the use of the mail and/or wire communications would follow in the ordinary course of business and/or could be reasonably foreseen as a result of their activities; and the mailing or use of wire communications was for the purpose of executing the scheme, to wit, the smuggling activities. The aforesaid mail and wire transmissions furthered the scheme and were essential to the scheme in that the aforesaid communications were necessary for the co-conspirators, who were separated by great distances, to effectuate their common goals within the smuggling enterprise.

ww. The BAT DEFENDANTS have used, and continue to use, the wires, mails, and internet to further their scheme to defraud Plaintiffs and deprive them of money and property, while attempting to conceal their complicity in the smuggling scheme.

xx. The BAT DEFENDANTS have falsely denied their complicity in smuggling activities.

(i.) On February 3, 2000, Kenneth Clark, BAT's Deputy Chairman, denied allegations that BAT "condoned tax evasion and exploited smuggling." *The Guardian*, February 3, 2000. (ii.) In or about early 2000, R. Don Brown, speaking for the BAT DEFENDANTS and responding to an inquiry by the Center for Public Integrity, stated: "[O]ur company never knowingly sold cigarettes to smugglers." Letter dated January 28, 2000, sent by facsimile transmission from Michael Descoteaux, Director, Public Affairs, Imperial Tobacco to Center for Public Integrity in Washington, D.C. (iii.) On January 11, 2000, Nick Brookes, Chairman and CEO of BROWN & WILLIAMSON, acknowledged in a statement to the National Press Club "the growing risk of black market cigarettes," but failed to disclose that the BAT DEFENDANTS, including BROWN & WILLIAMSON, were themselves involved in and responsible for the growth of the black market. In fact, Mr. Brookes failed to disclose that he had been, at a minimum, on actual notice since at least 1993 of the BAT DEFENDANTS' smuggling activities in the Colombia market. On September 1, 1993, Keith Dunt sent a memorandum to Mr. Brookes, then a high level manager of the BAT DEFENDANTS, entitled "Industry Analysis Colombia" that stated: "DNP now represents $\pm 50\%$ of the local cigarette industry (vs. $\pm 35\%$ in 1989). DP imported product now possible due to freeing up of import restrictions, however although tariffs reduced from 63% to 5% this only constitutes 1.5% of market share, it being apparent that multinationals are using the DP route for imports as an umbrella operation to facilitate publicity campaigns etc." (iv.) On January 11, 2000, Nick Brookes, Chairman and CEO of BROWN & WILLIAMSON, acknowledged in a press release "the growing risk of black market cigarettes," but failed to disclose that the BAT DEFENDANTS, including BROWN & WILLIAMSON, were themselves involved in and responsible for the growth of black market. The press release invited the use of the wires for further information. (v.) BROWN & WILLIAMSON has published a study, undated but currently available on its internet site, that states: "[P]rohibitory taxes have a

perverse result; they encourage bootlegging, a loss of revenue, and do little to reduce consumption." This study does not disclose that "bootlegging" and concomitant "loss of revenue" are caused by the policies and practices of the BAT DEFENDANTS. (vi.) The BAT DEFENDANTS, in a statement by Michael Prideaux to the *L.A. Times*, February 1, 2000, rejected the conclusion in a published report that BAT was complicit in smuggling, and falsely stated that there may be documents that "make it perfectly clear that strenuous efforts were being made [by BAT] to get out of this [smuggling] business." In fact, BAT continues to engage in smuggling.

yy. The BAT DEFENDANTS have falsely stated that smuggling was and is outside of their control. (i.) On January 28, 2000, BAT DEFENDANTS stated that "we cannot control the distribution chain all the way to the final customer." In fact, the BAT DEFENDANTS have control of the distribution network for their cigarettes. (ii.) On January 11, 2000, Nick Brookes, Chairman and CEO of BROWN & WILLIAMSON asserted in a statement to the National Press Club that "the growing risk of black market cigarettes" was the responsibility of government officials and legislators, but failed to disclose that the BAT DEFENDANTS are and have been engaged in distribution to the black market, and that the Defendants have control over such distribution.

zz. The BAT DEFENDANTS have falsely stated that they have cooperated with governmental efforts to end smuggling. (i.) On January 28, 2000, the BAT DEFENDANTS described "smuggling" as a global and serious problem" and stated: "British American Tobacco group companies work with governments and customs and excise authorities around the world proposing solutions to the issue, and supporting initiatives to help eradicate the problem." (ii.) On January 28, 2000, BAT DEFENDANTS stated that it provided its "full co-operation" to "governments and customs authorities around the world." (iii.) On January 28, 2000, BAT

DEFENDANTS stated that "we are acting . . . to seek to eradicate a significant global problem."

(iv.) On February 3, 2000, Kenneth Clarke, BAT's Deputy Chairman, stated: "Our policy therefore is to engage in constructive dialogue and to cooperate with governments to try to eliminate the causes of smuggling. British American Tobacco group companies work with governments and customs and trade authorities around the world and we sometimes have successes, proposing solutions and supporting initiatives to help reduce the problem. We have reached an agreement with the government of Colombia, for example, which has dramatically reduced the proportion of their market taken by smugglers despite the long-standing tradition of smuggling many products that is endemic to parts of that country." *The Guardian*, February 3, 2000. In all of the above statements, the Defendants failed to disclose that the BAT DEFENDANTS are and have been engaged in distribution to the "black market," and that the Defendants have done all they can to undermine the government efforts to end smuggling.

aaa. The BAT DEFENDANTS have falsely stated that smuggling is caused by high taxes.

(i.) On May 20, 1998, Nick Brookes wrote an article in the *Washington Post* asserting that higher taxes "will create a massive black market, in which children will find it easier, not more difficult, to purchase cigarettes." Mr. Brookes failed to disclose, however, that the BAT DEFENDANTS, including BROWN & WILLIAMSON, were themselves involved in and responsible for the growth of the black market. (ii.) On January 28, 2000, the BAT DEFENDANTS represented that the smuggling problem is due to "tax differentials" and a "policy of raising tobacco taxes to excessive levels." (iii.) On February 3, 2000, Kenneth Clarke, BAT's Deputy Chairman, stated that smuggling "is caused by high tax levels, different levels of tax on two sides of a border and the imposition of national trade barriers to legal imports." In fact, however, smuggling is caused by the policies and practices of the BAT DEFENDANTS.

bbb. The BAT DEFENDANTS have falsely stated that the application of reference prices for

the BAT DEFENDANTS' other legitimately imported product into Colombia promotes smuggling. In April 15, 1999, letter to the Colombian authorities, the BAT DEFENDANTS stated that measures such as the Colombian government was taking against the cigarette smuggling scheme employed by the BAT DEFENDANTS in fact "constituted a great stimulus for smuggling," but failed to disclose that the BAT DEFENDANTS were and continued to be engaged in distribution to the black market, and that the BAT DEFENDANTS have control over such distribution.

ccc. The Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, relied upon the aforesaid statements by the Defendants, and others, to their detriment.

ddd. The BAT DEFENDANTS entered into an understanding or agreement, express or tacit, with its distributors, customers, agents, consultants, and other co-conspirators, to participate in a common scheme, plan or design to commit tortious acts and thereby smuggle contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. In pursuance of the agreement, BAT and its distributors, customers, agents, consultants, and other co-conspirators acted tortiously by, among other things, committing the aforesaid acts constituting fraud, negligent misrepresentation, unjust enrichment, public nuisance, and negligence, thereby causing harm to Plaintiffs. The BAT DEFENDANTS, through joint action with their co-conspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the BAT DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

39. The above-described smuggling enterprise, which is an association-in-fact, has generated hundreds of millions of dollars in illegal profits for the Defendants. A large portion of these illegal profits are returned to the Defendants in their offices and facilities in the United States.

40. The smuggling of cigarettes has become such a major activity that criminals in both the

United States and Republic of Colombia have become involved in these activities. The criminal nature of these activities has become so overwhelming that it will be difficult or impossible for the law-enforcement agencies of the Republic of Colombia to combat cigarette smuggling without cutting off the supply at the source. The Colombian government has sought to reduce the flow of illegal cigarettes out of the Maicao area by setting up a border-guard station to stop and inspect vehicles. The border-guard station was destroyed by smugglers using an anti-tank weapon. Several of the personnel manning that station were killed in the attack. The DIAN, the Colombian customs authority, has attempted to increase its surveillance and enforcement of smuggling in Maicao. As a result of these activities, the DIAN office in Maicao has been attacked and burned to the ground. The Defendants knew or consciously avoided knowledge and/or should have known that the illegal smuggling activities that the Defendants are supporting are being conducted by and/or for the benefit of said criminals.

41. All the aforesaid activities occurred with both the knowledge and the direction of persons at both middle management and high-level management positions within the Defendant corporations. A substantial percentage of the cigarettes that are utilized in this enterprise are shipped from the United States.

a. The vast majority of the activities of the PHILIP MORRIS DEFENDANTS that are the subject matter of this complaint, including management decisions, and direction of the enterprise were and are conducted by the Defendants in the United States and, more particularly, from the Defendants' offices in the State of New York.

b. A large percentage of the activities of the BAT DEFENDANTS and the vast majority of the activities of the Defendant, BROWN & WILLIAMSON TOBACCO CORPORATION, that are the subject matter of this complaint, including management decisions, and direction of the enterprise were and are conducted by the Defendants in the United States. Numerous activities of

the BAT DEFENDANTS occurred within the State of New York and within this District.

42. The majority of the conduct of the Defendants which is material to this case is conducted by the Defendants in the United States. There is a substantial effect experienced in the United States as a result of the enterprise that is the subject matter of this complaint in that:

a. This District, and its transportation facilities, have been used by the Defendants as a springboard for transnational smuggling activities, and it was at JFK International Airport that the BAT and PHILIP MORRIS DEFENDANTS agreed to fix prices on smuggled cigarettes in Latin America.

b. The Defendants receive, and have received, the profits and proceeds of said enterprise in the United States, and such funds have been repatriated to this country through money laundering and other acts of concealment, all of which threaten the integrity of the United States financial system.

c. The smuggling scheme is used to aid and abet the conduct of narcotics traffickers in the United States. The U.S. Treasury Department has described the Black Market Peso Exchange as perhaps the most dangerous money laundering scheme ever encountered, and it is a matter of public record that the proceeds of narcotics transactions on the streets of this country are laundered through the purchase of cigarettes, which in turn are smuggled into Colombia.

d. The United States and Colombia have recognized by international conventions that it is in the interest of each country to bring an end to transnational smuggling schemes, and the Defendants' conduct undermines the vital public interest in stemming such illicit conduct.

e. The smuggling scheme is carried out through acts of wire fraud and mail fraud, and such conduct harms the United States' interest in preventing schemes carried out through the U.S. telecommunications system and postal system.

f. Large volumes of false documents have been filed with the United States Customs

Service and the Bureau of Alcohol, Tobacco and Firearms so as to deceive the United States Customs Service and the Bureau of Alcohol, Tobacco and Firearms and allow the smuggling to continue.

g. The smuggling schemes are intertwined with organized crime in New York City. Some of the largest and most dangerous cigarette/narcotics smugglers in the world reside and conduct business in the Eastern District of New York. The Defendants have long been on notice that cigarette smuggling activities are conducted by organized crime, including operations in Brooklyn and Queens. In or about 1994, the National Coalition Against Crime and Tobacco Contraband, which was funded by various tobacco companies, retained Lindquist Avey Macdonald Baskerville Inc. ("Lindquist") to, among other things, investigate and analyze cigarette smuggling in the United States. In its August 15, 1994, report, Lindquist observed that "New York investigators also found that the Russian mob was active in cigarette smuggling in Brooklyn" and "there are at least four bootleggers. . . serving. . . communities in Brooklyn and Queens." Furthermore, certain individuals who work and reside in the Eastern District of New York have established a multi-million dollar industry within the Eastern District of New York for the laundering of the proceeds of illegal cigarette sales. Millions of dollars worth of real estate have been purchased within the Eastern District of New York as a means of laundering money that is the proceeds of illegal cigarette sales in Colombia.

43. The existence of smuggling has been utilized as a public-relations and lobbying tool by which the Defendants have conspired to prevent the United States and the individual states of the United States from raising cigarette taxes by threatening that if taxes are raised there will be smuggling and the related economic problems that have haunted other countries for the past ten years. The Defendants and other cigarette companies provide funding for organizations such as the National Coalition Against Crime that purports to be a citizens group aimed at reducing crime

by legitimate means when, in fact, it is nothing more than a public-relations and lobbying front for the tobacco industry.

44. The PHILIP MORRIS DEFENDANTS and BAT DEFENDANTS entered into an understanding, express or tacit, to take actions to cause the smuggling of contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA and obstruct government efforts to address the problem of smuggling. In pursuance of the agreement, the PHILIP MORRIS DEFENDANTS and the BAT DEFENDANTS entered into price-fixing agreements as to both legitimately sold and smuggled cigarettes so as to expedite the growth of the smuggling industry for all participants. Additionally, the PHILIP MORRIS DEFENDANTS and the BAT DEFENDANTS, acting in concert with other cigarette companies, funded organizations and promoted public-relations and political initiatives so as to represent to the Plaintiffs and the public that the cause of the “black market” was high taxes, when, in fact, it was the conduct of the tobacco companies, including PHILIP MORRIS DEFENDANTS and BAT DEFENDANTS that was a direct cause of the “black market” and the Plaintiffs' injuries. The joint, false representations by the PHILIP MORRIS DEFENDANTS and BAT DEFENDANTS in the furtherance of the conspiracy concealed their involvement in smuggling operations and misled the Plaintiffs, and such conduct constituted, among other things, fraud, negligent misrepresentation, unjust enrichment, public nuisance, and negligence, thereby causing harm to the Plaintiffs, all as alleged above. As to all of the predicate acts set forth above, they share the same purpose and the same victim, to wit, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

VI. CONTINUING DAMAGE TO THE PLAINTIFFS

AND COMPELLING NEED FOR INJUNCTIVE AND EQUITABLE RELIEF

45. The Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA and SANTA FE DE BOGOTÁ, CAPITAL DISTRICT, are autonomous governmental entities. As a result of the activities of the Defendants, large amounts of cigarettes are smuggled into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA and the proper taxes are not paid on the aforesaid cigarettes. As a result of the Defendants' wrongful activities, the Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, have been deprived of the money and property that they would have obtained from the lawful importation and sale of cigarettes, and Defendants have secured vast profits and proceeds from their illegal scheme.

46. As a direct and proximate result of the smuggling activities that are conducted, aided, and encouraged by the Defendants, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA are currently losing hundreds of millions of dollars per year, and the Defendants are receiving hundreds of millions dollars in ill-gotten gains. THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA have been deprived of money and property in this manner throughout the 1990s and continuing through the present time. If the smuggling activities of the Defendants are not stopped, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA will continue to lose money and property in the future. In addition, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA have been required to expend large amounts of money in their efforts to stop smuggling and to recoup funds that they have lost as a result of the activities of the Defendants. Said losses will continue into the future, and said ill-gotten gains will be recovered by Defendants in the future, absent judgment in Plaintiffs' favor and injunctive and equitable relief, including:

A. **“RICO Injunctive and Equitable Relief.”** Under the RICO statute, and the inherent powers of the Court, the United States District Court is empowered to prevent and restrain violations of 18 U.S.C. § 1962 by issuing appropriate orders, including, but not limited to:

ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons. 18 U.S.C. § 1964(a). In addition, the United States District Courts are empowered to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). Consistent with these powers, Plaintiffs seek an order that: (a) enjoins the Defendants and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from selling cigarettes to smugglers or to distributors who sell cigarettes to smugglers; and compels each of the Defendants who have been found to have violated 18 U.S.C. § 1962 to disgorge all proceeds derived from any such violation and to make restitution to Plaintiffs; (b) enjoins the Defendants and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from selling cigarettes without proper documentation, shipping records, markings, and similar indicia of compliance with law that will allow the proper tracking of the cigarettes so that they cannot be sold illegally; (c) enjoins the Defendants and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from selling cigarettes to any distributor or any other person who cannot fully and accurately account for where the cigarettes will ultimately be sold; (d) enjoins the Defendants and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from engaging in any practices by which distributors, shippers, or smugglers can pay for the cigarettes in question into offshore corporations, offshore bank accounts, or other locations that limit the ability of Colombian officials to track the sale of cigarettes or the payment for said cigarettes; (e)

orders the Defendants to create and utilize adequate protocols by which all cigarettes manufactured by the Defendants and all payments made for said cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA can be adequately tracked and monitored by governmental officials of THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA; (f) orders the Defendants to take all reasonable and necessary steps to stop the smuggling of their products into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA including the addition of any necessary labeling, tracking devices, or other means that would allow the Defendants themselves and/or offices of THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA to track and monitor the movement of cigarettes into and within THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA; (g) orders the Defendants to disclose all knowledge within their possession concerning the names, locations, activities, and procedures of smugglers; (h) orders the Defendants to sell and ship cigarettes in accordance with the legitimate demand for the cigarettes manufactured by the Defendants such that the only quantity of cigarettes that are sold to any customer are those which can be demonstrated to be actually consumed or sold legitimately by that customer; (i) orders the imposition of a constructive trust and equitable lien upon Defendants' ill-gotten gains, including without limitation those profits and proceeds derived from the smuggling scheme, and compels Defendants to disgorge to Plaintiffs all ill-gotten gains derived from the smuggling scheme; (j) orders divestiture of all interest in the enterprises involved in the smuggling activities; and (k) orders Defendants to adopt, monitor and enforce appropriate compliance programs to deter and remedy smuggling activities involving their tobacco products. For purposes of this complaint, all of the foregoing injunctive and equitable remedies, and those injunctive and equitable remedies that may hereafter be sought by Plaintiffs or ordered by the Court, shall be referred to herein as: "RICO Injunctive and Equitable Relief."

B. “Common Law Injunctive and Equitable Relief.” Under the common law, and the inherent powers of the Court, the Court is empowered to prevent and restrain Defendants’ and their co-conspirators’ smuggling activities, and enter prohibitory and mandatory injunctions, and impose other equitable relief, to provide full relief to Plaintiffs and prevent the continuing harm to Plaintiffs’ interests. In addition, the Courts is empowered to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). Consistent with these powers, Plaintiffs seek an order that: (a) enjoins the Defendants and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from selling cigarettes to smugglers or to distributors who sell cigarettes to smugglers or otherwise engaging in conduct that violates any common law, statutory or equitable standard; and compels each of the Defendants who have been found to have violated any common law, statutory, or equitable standard to disgorge all proceeds derived from any such violation and to make restitution to Plaintiffs; (b) enjoins the Defendants and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from selling cigarettes without proper documentation, shipping records, markings, and similar indicia of compliance with law that will allow the proper tracking of the cigarettes so that they cannot be sold illegally; (c) enjoins the Defendants and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from selling cigarettes to any distributor or any other person who cannot fully and accurately account for where the cigarettes will ultimately be sold; (d) enjoins the Defendants and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from engaging in any practices by which distributors, shippers, or smugglers can pay for the cigarettes in question into offshore corporations, offshore bank accounts, or other locations that limit the ability of Colombian officials to track the sale of cigarettes or the payment for said cigarettes; (e) orders the

Defendants to create and utilize adequate protocols by which all cigarettes manufactured by the Defendants and all payments made for said cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA can be adequately tracked and monitored by governmental officials of THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA; (f) orders the Defendants to take all reasonable and necessary steps to stop the smuggling of their products into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA including the addition of any necessary labeling, tracking devices, or other means that would allow the Defendants themselves and/or offices of THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA to track and monitor the movement of cigarettes into and within THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA; (g) orders the Defendants to disclose all knowledge within their possession concerning the names, locations, activities, and procedures of smugglers; (h) orders the Defendants to sell and ship cigarettes in accordance with the legitimate demand for the cigarettes manufactured by the Defendants such that the only quantity of cigarettes that are sold to any customer are those which can be demonstrated to be actually consumed or sold legitimately by that customer; (i) orders the imposition of a constructive trust and equitable upon Defendants' ill-gotten gains, including without limitation those profits and proceeds derived from the smuggling scheme, and compels Defendants to disgorge to Plaintiffs all ill-gotten gains derived from the smuggling scheme; (j) orders divestiture of all interest in the enterprises involved in the smuggling activities; (k) orders Defendants to adopt, monitor and enforce appropriate compliance programs to deter and remedy smuggling activities involving their tobacco products. For purposes of this complaint, all of the foregoing injunctive and equitable remedies, and those injunctive and equitable remedies that may hereafter be sought by Plaintiffs or ordered by the Court, shall be referred to herein as: "Common Law Injunctive and Equitable Relief."

COUNT I - (AS TO THE PHILIP MORRIS DEFENDANTS) (RICO; 18 U.S.C. § 1962(a))

47. Plaintiffs restate and reallege paragraphs one (1) through forty-six (46) and further allege:

48. The PHILIP MORRIS DEFENDANTS, along with their co-conspirators in the smuggling scheme, including associated distributors, shippers, currency dealers, currency brokers, lobbyists, and other participants in the scheme identified above, were, during the relevant times herein, an association-in-fact of individuals and corporations engaged in, and the activities of which affected, interstate and foreign commerce and thus constitutes an “enterprise” within the meaning of 18 U.S.C. § 1961(4) (the “PM Smuggling Enterprise”). These persons and entities were and are associated in fact for the purpose, among others, of illegally smuggling contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA to the economic detriment of Plaintiffs. The PM Smuggling Enterprise is an ongoing organization whose constituent elements function as a continuing unit for the common purpose of maximizing the sale of tobacco products through illegal means and carrying out other elements of the Defendants' scheme. The PM Smuggling Enterprise has an ascertainable structure and purpose beyond the scope of the Defendants' predicate acts and the conspiracy to commit such acts, and it possesses an infrastructure and chain of command that is distinct and separate from the corporate structure of the PHILIP MORRIS DEFENDANTS. The PM Smuggling Enterprise has engaged in, and its activities have affected, interstate and foreign commerce. The PM Smuggling Enterprise continues to date through the concerted activities of the Defendants to disguise the nature of the wrongdoing, to conceal the proceeds thereof, and to conceal the Defendants' participation in the Enterprise in order to avoid and/or minimize their exposure to criminal and civil penalties and damages. The role of each Defendant in the Enterprise has been set forth above.

49. In connection with the fraudulent scheme set forth above, and to further its aims, the PHILIP MORRIS DEFENDANTS have engaged in numerous acts of “racketeering activity,” and each defendant has aided and abetted each other defendant in committing those acts of “racketeering activity” within the meaning of RICO. 18 U.S.C. §1961, et seq. The PHILIP MORRIS DEFENDANTS, as well as their co-conspirators, have committed multiple predicate acts of racketeering including, but not limited to:

a. Wire fraud and mail fraud. (18 U.S.C. §§ 1341, 1343, 1961(1)(B)). The PHILIP MORRIS DEFENDANTS devised a scheme or artifice to defraud or to obtain money by means of false pretenses, representations, or promises, and used the mails and wires for the purpose of executing the scheme, and acted with a specific intent to defraud by devising, participating, and/or abetting the scheme. The timing of the wire and mail communications was during the course of the conspiracy that covered at least 1991 to 1999. There were hundreds of telephone conversations and faxes on virtually a daily basis during the course of the conspiracy. These telephone conversations furthered the scheme by maintaining an adequate and consistent supply of cigarettes to fuel the illicit sales in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA and were part of a clandestine system for the remittance of the proceeds of the scheme to the PHILIP MORRIS DEFENDANTS. The PHILIP MORRIS DEFENDANTS, acting through their employees, agents, and co-conspirators, made or caused to be made such telephone calls to further the scheme. The PHILIP MORRIS DEFENDANTS knew or should have foreseen that their co-conspirators, in the course of carrying out the PHILIP MORRIS DEFENDANTS’ directions and orders, would use or cause to be used the interstate and international wires and mails. The motive for committing fraud is plain: money not paid to Plaintiffs meant increased profits and market share for the PHILIP MORRIS DEFENDANTS.

b. Violation of the Travel Act. (18 U.S.C. §§ 1952, 1961(1)(B)). Defendants traveled in

interstate or foreign commerce, and used facilities in interstate and foreign commerce, including the mail, with intent to distribute the proceeds of unlawful activity, and promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of unlawful activity, and thereafter performed, or attempted to perform unlawful activity.

Defendants knew that the currency provided to them represented the proceeds of unlawful activity, including trafficking in narcotics and controlled substances and that, by accepting such payments, aided the efforts of the drug traffickers to launder their ill-gotten gains and fuel the Black Market Peso Exchange. Defendants, and their representatives and co-conspirators, traveled across national borders and otherwise used the facilities of foreign commerce in order to distribute the proceeds of unlawful activity to the benefit of the PHILIP MORRIS DEFENDANTS. By this conduct, defendants promoted, managed, established, and facilitated such unlawful activity.

c. Money Laundering. (18 U.S.C. §§ 1956(a)(1), 1961(1)(B)). The Defendants, knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, conducted or attempted to conduct financial transactions in interstate and foreign commerce involving the proceeds of specified unlawful activity with intent to promote the carrying on of specified unlawful activity; or, knowing that the transaction is designed in whole or in part to conceal or disguise the nature, the location, the source of ownership, or the control of the proceeds of specified unlawful activity, or, knowing that the transaction is designed in whole or in part to avoid a transaction reporting requirement under State or Federal law.

Defendants knew that the currency that they received in exchange for the smuggled cigarettes represented the proceeds of specified unlawful activity, including but not limited to, wire fraud, mail fraud, and violations of the Travel Act, and an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance. Defendants knowingly

conducted and attempted to conduct such financial transactions with intent to promote the carrying on of such unlawful activity. In addition, defendants knowingly conducted and attempted to conduct such financial transactions with intent to conceal or disguise the nature (proceeds of racketeering activity and smuggling), the location (proceeds generated by activity on the “black market” in South America), the source (drug traffickers, money launderers, smugglers), or the control (PHILIP MORRIS DEFENDANTS) of the proceeds of specified unlawful activity. Finally, defendants knowingly conducted and attempted to conduct such financial transactions to avoid a transaction reporting requirement under State or Federal law, including, but not limited to, currency and monetary instrument reports.

d. International Money Laundering. (18 U.S.C. §§ 1956(a)(2), 1961(1)(B)). Defendants transported, transmitted, and/or transferred a monetary instrument or funds to a place in the United States from or through a place outside the United States, with intent to promote the carrying on of specified unlawful activity, or, knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represented the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of specified unlawful activity, or to avoid a transaction reporting requirement under State or Federal law. By such conduct, Defendants engaged in financial transactions within the meaning of 18 U.S.C. § 1956(c)(4). Defendants knew that the money orders and funds that were sent from South America and received in New York and elsewhere in the United States represented the proceeds of specified unlawful activity, including but not limited to, wire fraud, mail fraud, and violations of the Travel Act, and an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance. Defendants also aided and abetted violations of 18 U.S.C. § 1956(a)(1) and § 1956(a)(2).

e. Conspiracy to Engage in Money Laundering. (18 U.S.C. §§ 1956(h), 1961(1)).

Defendants conspired to commit offenses defined in 18 U.S.C. § 1956 – including § 1956(a)(1) and § 1956(a)(2). Defendants, by their words and actions, agreed to accept currency, monetary instruments, and funds with the knowledge that the currency, monetary instruments, and funds represented the proceeds of specified unlawful activity conducted by themselves and their co-conspirators. Defendants adopted the common purpose of the conspiracy and participated in its consummation. The goal of the money laundering conspiracy was to deprive Plaintiffs of money and property, while assuring that the profits derived from smuggling activities were repatriated to the benefit of the PHILIP MORRIS DEFENDANTS in a clandestine manner to avoid detection and prosecution.

f. Money Laundering. (18 U.S.C. §§ 1957, 1961(1)). Defendants knowingly engaged or attempted to engage in monetary transactions in the United States, in criminally derived property that is of a value greater than \$10,000 and is derived from specified unlawful activity. 18 U.S.C. § 1957(f)(3) and § 1956(c)(7)(A). Defendants engaged in monetary transactions, including deposits, withdrawals, transfers, or exchanges, in or affecting interstate or foreign commerce, of funds or monetary instruments by, through or to a financial institution. Defendants knew that the monetary transactions received in exchange for the smuggled cigarettes represented the proceeds of specified unlawful activity, including but not limited to, wire fraud, mail fraud, and violations of the Travel Act, and an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance.

50. The foregoing acts form a “pattern” of racketeering activity within 18 U.S.C. § 1961(5). The Defendants and others with whom they have been associated have been related in their common objectives of maximizing global sales of tobacco products and defrauding the Plaintiffs of the money and property to which the Plaintiffs are lawfully entitled. The Defendants’

predicate acts have had the same or similar purposes, results, participants, victims, and methods of commission, and occurred over at least a ten-year period. The predicate acts have been consistently repeated and are capable of further repetition.

51. The Defendants conducted or participated, directly or indirectly, in the conduct of the PM Smuggling Enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S.C. §§ 1962(a), (b), and (c). The Defendants' pattern of racketeering activities dates from at least January 1, 1985, through the present and threatens to continue in the future.

52. The PHILIP MORRIS DEFENDANTS used or invested, directly or indirectly, racketeering income, or a part thereof, or the proceeds of such income, to acquire an interest in, establish, and operate, the PM Smuggling Enterprise, which is and was engaged in, or the activities of which affect and have affected, interstate or foreign commerce, in violation of 18 U.S.C. § 1962(a). The PHILIP MORRIS DEFENDANTS were principals in the racketeering scheme. Plaintiffs suffered multiple injuries to their economic interests as a result of this use and investment of racketeering income.

53. Specifically, the PHILIP MORRIS DEFENDANTS received the income and proceeds of a pattern of racketeering activity, including an international money-laundering scheme, acts of wire fraud and mail fraud, and violations of the Travel Act. Upon their receipt of such ill-gotten gains by wire transfers from the smugglers and/or their associates, the PHILIP MORRIS DEFENDANTS used and invested such income and proceeds, or a portion thereof, to acquire an interest in, establish and operate the PM Smuggling Enterprise which was and is engaged in interstate and foreign commerce. In particular, the PHILIP MORRIS DEFENDANTS used the proceeds of the scheme to: (a) operate the PM Smuggling Enterprise; (b) replenish the supply of contraband cigarettes for ultimate sale on the Colombian "black market"; (c) acquire, purchase, and subsidize facilities necessary to the PM Smuggling Enterprise, including manufacturing,

sales, and distribution operations; (d) compensate employees and agents of the PHILIP MORRIS DEFENDANTS engaged in the smuggling activities; (e) pay expenses incurred in connection with smuggling activities such as telephone bills incurred in the wire fraud scheme, and travel costs incurred by such employees; (f) create umbrella operations which, while operating at a loss, provided the framework which allowed the Defendants to promote the smuggling; and (g) establish a flourishing “black market” for the sale of contraband cigarettes. In sum, the PHILIP MORRIS DEFENDANTS did not reinvest the proceeds of racketeering activity in their general business operations, but instead, used and invested such proceeds to establish the infrastructure of, acquire an interest in, and operate the PM Smuggling Enterprise, and it was this use and investment that harmed Plaintiffs. The Defendants used and invested the proceeds of racketeering activity to acquire an interest in, establish, and operate the PM Smuggling Enterprise, in several ways, including but not limited to the following:

- a. Proceeds of the sale of billions of cigarettes in 1991 were used to establish the umbrella operation which PHILIP MORRIS DEFENDANTS created in 1992 and which continues through the present.
- b. The profits from cigarette sales were utilized to promote sales of further smuggled products in Colombia, support the umbrella operation in Colombia, and finance the expansion of the conspiracy within Colombia and into other countries in South America.
- c. The profits from the sale of cigarettes smuggled into Colombia finance the sales and marketing operations that promote the increase of those sales in succeeding years.
- d. The profits from the sale of cigarettes smuggled into Colombia were used in part to pay "consulting fees" to political figures in Colombia in an attempt to purchase political support for the activities of the PHILIP MORRIS DEFENDANTS in Colombia.

54. Plaintiffs were injured in their business and property by reason of the PHILIP MORRIS

DEFENDANTS' use and investment of racketeering income to acquire, establish, and operate the PM Smuggling Enterprise. Absent this use and investment of racketeering income, contraband sales to the Colombian "black market" by the PHILIP MORRIS DEFENDANTS and their co-conspirators would have been difficult if not impossible, the infrastructure of the smuggling enterprise could not have been created or functioned, and the economic injury to Plaintiffs would have been avoided in whole or in part.

55. As a direct and proximate result of the violations set forth above, the Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, have been injured in their business and property as set forth more fully above in paragraphs forty-five (45) through forty-six (46). The Defendants' violations of 18 U.S.C. § 1962(a) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the Plaintiffs are entitled to bring this action and recover herein treble damages, the cost of bringing the suit, pre-judgment interest, and reasonable attorneys' fees.

COUNT II - (AS TO THE PHILIP MORRIS DEFENDANTS) (RICO; 18 U.S.C. § 1962(b))

56. Plaintiffs restate and reallege paragraphs one (1) through fifty-five (55) and further allege:

57. The PHILIP MORRIS DEFENDANTS acquired or maintained, directly or indirectly, through a pattern of racketeering activity, an interest in and control of the PM Smuggling Enterprise, which was and is engaged in, or the activities of which affect and have affected, interstate or foreign commerce in violation of 18 U.S.C. § 1962(b). The Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, have been injured by the Defendants' acquisition and maintenance of an interest in and control of the enterprise through a pattern of racketeering activity.

58. The Defendants, acting through a pattern of racketeering activity, acquired or maintained,

directly or indirectly, an interest in and control of the PM Smuggling Enterprise which is engaged in, and the activities of which affect, interstate and foreign commerce. Specifically, the PHILIP MORRIS DEFENDANTS maintained control of the PM Smuggling Enterprise by means of racketeering activities, including, for example, (a) interstate and international wire communications in violation of 18 U.S.C., Section 1343 (orders were placed telephonically and the PHILIP MORRIS DEFENDANTS had total control over the enterprise and the distribution of its product); (b) money laundering in violation of 18 U.S.C., Sections 1956 and 1957 (PHILIP MORRIS DEFENDANTS controlled and concealed the flow of the proceeds of the smuggling – a key aim of the scheme – through money laundering); (c) violations of the Travel Act (18 U.S.C., Section 1952 (cross-border travel and transactions that facilitated smuggling and other illicit activities)). Through this pattern of racketeering activities, which also included transmitting false statements to government authorities, the PHILIP MORRIS DEFENDANTS were able to acquire and maintain an interest in and control of the PM Smuggling Enterprise. This interest and control furthered, concealed, and protected the operations of the smuggling enterprise, and thereby permitted the PM Smuggling Enterprise to flourish without detection.

59. As a direct and proximate result of the Defendants' acquisition and maintenance of an interest in and control of the PM Smuggling Enterprise, the Plaintiffs, the DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, have been injured in their business and property as set forth more fully above in paragraphs forty-five (45) through forty-six (46). The Defendants' violations of 18 U.S.C. § 1962(b) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the Plaintiffs are entitled to bring this action and recover herein treble damages, the cost of bringing the suit, pre-judgment interest, and reasonable attorneys' fees.

COUNT III (AS TO THE PHILIP MORRIS DEFENDANTS) (RICO; 18 U.S.C. § 1962

(c))

60. Plaintiffs restate and reallege paragraphs one (1) through fifty-nine (59) and further allege:

61. The PHILIP MORRIS DEFENDANTS, through the commission of two or more acts constituting a pattern of racketeering activity, directly or indirectly participated in the operation or management of the PM Smuggling Enterprise, the activities of which affect interstate or foreign commerce.

62. At all relevant times, the PHILIP MORRIS DEFENDANTS participated in the operation or management of an “enterprise”, within the meaning of 18 U.S.C. § 1961(4). The PHILIP MORRIS DEFENDANTS, acting together and individually, operated, managed, and exercised control of the PM Smuggling Enterprise by, among other things: (a) establishing a money laundering scheme by which the co-conspirators remitted to the PHILIP MORRIS DEFENDANTS the proceeds of the smuggling scheme; (b) compelling the smugglers to sell smuggled cigarettes at a price set by the Defendants; (c) requiring the smugglers to keep detailed records of sales of contraband cigarettes; (d) instructing the smugglers to distribute particular brands of cigarettes in specified markets; (e) providing information to the smugglers to allow them to avoid detection and apprehension; (f) investing and using the proceeds of the smuggling scheme in the enterprise; (g) creating incentives for increased sales on the “black market”; (h) selling and distributing vast quantities of cigarettes at favorable prices; (i) giving credit terms to the smugglers that allowed the PHILIP MORRIS Defendants to control the smuggling scheme; (j) fixing the price of contraband cigarettes in concert with other tobacco companies; (k) coordinating smuggling activities in concert with other tobacco companies.

63. The money laundering scheme and the communications of the Defendants concerning the

operation of the PM Smuggling Enterprise were effectuated through the use of interstate and foreign mails and wires. It was the policy and practice of the PHILIP MORRIS DEFENDANTS that if the smugglers failed to follow the PHILIP MORRIS DEFENDANTS' specific orders, the PHILIP MORRIS DEFENDANTS would shut off the supply of favorably-priced cigarettes to the smugglers, and cut off the lifeblood of the smuggling scheme.

64. As a direct and proximate result of the violations set forth above, the Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, have been injured in their business and property as set forth more fully above in paragraphs forty-five (45) through forty-six (46). The Defendants' violations of 18 U.S.C. § 1962(c) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the Plaintiffs are entitled to bring this action and recover herein treble damages, the cost of bringing the suit, pre-judgment interest, and reasonable attorneys' fees.

COUNT IV (AS TO THE PHILIP MORRIS DEFENDANTS) (RICO; 18 U.S.C. § 1962(d))

65. Plaintiffs restate and reallege paragraphs one (1) through sixty-four (64) and further allege:

66. The PHILIP MORRIS DEFENDANTS entered into an agreement with each other, and with distributors, shippers, currency dealers, and smugglers to join in the conspiracy to violate 18 U.S.C. §§ 1962(a), 1962(b), and 1962(c). Each defendant entered into an agreement to join the conspiracy, and took acts in the furtherance of the conspiracy and knowingly participated in the conspiracy. The purpose of the conspiracy was to smuggle cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA to the economic detriment of Plaintiffs and to the economic benefit of the PHILIP MORRIS DEFENDANTS. The conspirators carried out the scheme and each conspirator was put on notice of the general nature of the conspiracy, that the conspiracy extended beyond the individual role of any single member, and that the

conspiratorial venture functioned as a continuing unit for a common purpose. The PHILIP MORRIS DEFENDANTS adopted the goal of furthering and facilitating the criminal endeavor. Their stake in the smuggling venture was in making profits and increasing market share which they knew could come only from their informed and interested cooperation with smugglers, and their active assistance, stimulation, and instigation of the smuggling activities.

67. The PHILIP MORRIS DEFENDANTS, together with each member of the conspiracy, agreed and conspired to violate: (1) 18 U.S.C. § 1962(a) by using, or causing the use of, income they derived from the above-described pattern of racketeering activities in the acquisition, establishment, and/or operation of the enterprise, the activities of which affect interstate or foreign commerce; (2) 18 U.S.C. § 1962(b) by acquiring or maintaining, or causing the acquisition or maintenance of, through a pattern of racketeering activity, an interest or control in the enterprise, the activities of which affect interstate or foreign commerce; and, (3) 18 U.S.C. § 1962(c) by participating, directly and indirectly, in the operation and management of the affairs of the enterprise through a pattern of racketeering activity, including an agreement that the conspirators, or one of them, would commit or cause the commission of two or more racketeering acts constituting such a pattern.

68. The PHILIP MORRIS DEFENDANTS participated in and cooperated with each other and with their co-conspirators in the aforementioned conspiracy that enabled each cigarette manufacturer and distributor to enhance its market share, suppress its competition, and promote sale of its products.

69. As a part of their conspiracy, the PHILIP MORRIS DEFENDANTS retained various lobbyists, funded “research,” and conducted a joint public-relations campaign so as to misstate the nature and scope of cigarette smuggling and so as to promote their own interests.

70. The PHILIP MORRIS DEFENDANTS actively participated in the conspiracy to

smuggle cigarettes and to generate false and misleading information concerning smuggling activities.

71. As a result of the conspiracy, the PHILIP MORRIS DEFENDANTS and their co-conspirators were able to facilitate the smuggling of large volumes of cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

72. The membership of the conspiracy in question included the PHILIP MORRIS DEFENDANTS, tobacco distributors, the shippers, the smugglers, currency brokers, and the PHILIP MORRIS DEFENDANTS' subsidiary corporations in Switzerland and elsewhere, who act in concert to produce the cigarettes, mislabel or fail to properly label the cigarettes, smuggle and sell the cigarettes, and arrange for payment in a way that is undetectable by governmental authorities, with said payment ultimately being returned to the Defendants in the United States. As co-conspirators, the PHILIP MORRIS DEFENDANTS are liable for all of the actions committed by all of the co-conspirators within the conspiracy and are liable for all of the damages sustained by THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA that were caused by any members of the conspiracy, regardless of whether the PHILIP MORRIS DEFENDANTS were themselves directly involved in a particular aspect of the enterprise.

73. As a direct and proximate result of the violations set forth above, the Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, have been injured in their business and property as set forth more fully above in paragraphs forty-five (45) through forty-six (46). The Defendants' violations of 18 U.S.C. § 1962(d) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the Plaintiffs are entitled to bring this action and recover herein treble damages, the cost of bringing the suit, pre-judgment interest, and reasonable attorneys' fees.

COUNT V (AS TO THE PHILIP MORRIS DEFENDANTS) (RICO; 18 U.S.C. §§ 1964 (a), 1964(c); 28 U.S.C. § 1651 (a))

74. Plaintiffs restate and reallege paragraphs one (1) through seventy-three (73) and further allege:

75. The United States District Court is empowered to prevent and restrain violations of 18 U.S.C. § 1962 by issuing appropriate orders, including, but not limited to: ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons. 18 U.S.C. § 1964(a).

76. The PHILIP MORRIS DEFENDANTS are currently engaged in the activities set forth within this Complaint that promote and support the smuggling of contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

77. The Defendants intend to continue said activities and to interfere with investigations being done by governmental officials into smuggling activities.

78. The Defendants, by their conduct of selling cigarettes to smugglers, creating false and misleading documents, improperly labeling shipments of cigarettes, setting up umbrella operations to facilitate the smuggling, and setting forth mechanisms of payment by which smugglers may pay for the cigarettes without being detected by government investigations all continue to exacerbate the problem of cigarette smuggling in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA and to damage the Plaintiffs.

79. As a result of the Defendants' conduct in violation of 18 U.S.C. §§ 1962(a), 1962(b), and 1962(c), THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA have been and continue

to be irreparably injured as is alleged more fully above.

80. As a result of the nature of the smuggling activities, it would be functionally impossible for THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA to put a complete halt to said smuggling activities as long as the Defendants continue to provide support for the smugglers. In addition, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA continue to suffer injury to business and property to an extraordinary degree.

81. Money damages will not provide a full and complete remedy for Defendants' unlawful conduct. There is no adequate remedy at law that will protect the Plaintiffs in the future from these smuggling activities if the Defendants do not cease their involvement and support of smuggling activities. Pursuant to 18 U.S.C. §§ 1964(a), 1964(c), and the All Writs Act (28 U.S.C. § 1651(a)), as well as the inherent power of this Court, Plaintiffs demand full RICO Injunctive and Equitable Relief.

COUNT VI (AS TO THE PHILIP MORRIS DEFENDANTS) (COMMON LAW FRAUD)

82. Plaintiffs restate and reallege paragraphs one (1) through eighty-one (81) and further allege:

83. The PHILIP MORRIS DEFENDANTS and their co-conspirators intentionally falsified documents, falsified shipping records, and generated false and misleading billing records concerning the payment for and/or value of smuggled cigarettes so as to mislead the Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, as to the destination of smuggled cigarettes. Additionally, the PHILIP MORRIS DEFENDANTS intentionally made false representations as to the value of their otherwise legally imported product. The PHILIP

MORRIS DEFENDANTS and their co-conspirators made these false statements and material representations and failed to disclose material information in such documents and records with intent to defraud the Plaintiffs. The Defendants made these material misrepresentations and omissions with the knowledge and intention that the Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, would rely on said documents. The PHILIP MORRIS DEFENDANTS entered into an understanding or agreement, express or tacit, with its distributors, customers, agents, consultants, and other co-conspirators (including BAT), to participate in a common scheme, plan or design to commit the aforesaid tortious acts and thereby smuggle contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. In pursuance of the agreement, PHILIP MORRIS and its distributors, customers, agents, consultants, and other co-conspirators acted tortiously by, among other things, committing the aforesaid acts constituting fraud, thereby causing harm to Plaintiffs. The PHILIP MORRIS DEFENDANTS, through joint action with their co-conspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the PHILIP MORRIS DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein. Plaintiffs reasonably relied upon the Defendants' misrepresentations, and incurred damage as a result of such reliance. Specific examples of the process by which these activities occurred are set forth above.

84. The Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, reasonably relied upon said documents as part of their monitoring of the shipment of cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

85. Furthermore, the PHILIP MORRIS DEFENDANTS knowingly and intentionally generated false, misleading, and material information and intentionally concealed other material information concerning the nature of smuggling in THE DEPARTMENTS OF THE REPUBLIC

OF COLOMBIA, the extent of smuggling in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, and the causes of smuggling in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA with the knowledge and intention that the Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, would rely upon said information.

86. The Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, did reasonably rely upon data and information provided to them by the Defendants and/or their co-conspirators and agents in acting or refraining from acting, with respect to smuggling activities.

87. The PHILIP MORRIS DEFENDANTS, in under-invoicing their products, falsifying documents to expedite the smuggling of cigarettes, and in providing misleading information and in concealing material and true information concerning the smuggling of cigarettes, acted in willful, wanton, gross, and callous disregard for the rights of the Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. The aforesaid actions were knowingly taken for the purpose of supporting the activities of the Defendants' co-conspirators and with the intent of increasing the profits and sales of the Defendants and harming THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

88. Defendants were duty bound to disclose the material information concerning the destination of tobacco shipments and their operations that had been concealed. By law, no person may make false statements to the government. Having undertaken to make representations to THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, Defendants were obligated to provide full, complete, and truthful information concerning the destination of tobacco shipments and their operations. Defendants had superior, if not exclusive, knowledge of such information, and it was not readily available to the Plaintiffs. Defendants intended and knew, or should have known, that Plaintiffs would reasonably rely, act, and refrain from acting, on the basis of false and/or incomplete information provided to Plaintiffs by Defendants, and PLAINTIFFS did so to

their detriment. Under these circumstances, Defendants' conduct amounts to fraudulent misrepresentation and fraudulent concealment, and an effective conversion of PLAINTIFFS' money and property.

89. As a direct and proximate result of the PHILIP MORRIS DEFENDANTS' fraudulent conduct and the Plaintiffs' reasonable reliance upon said fraud, the Plaintiffs have suffered economic damages as are set forth more fully above in paragraphs forty-five (45) through forty-six (46). The Plaintiffs demand judgment for damages, both compensatory and punitive, as well as full Common Law Injunctive and Equitable Relief.

COUNT VII (AS TO THE PHILIP MORRIS DEFENDANTS) (PUBLIC NUISANCE)

90. Plaintiffs restate and reallege paragraphs one (1) through eighty-nine (89) and further allege:

91. Plaintiffs are government authorities.

92. Smuggling of contraband cigarettes is a violation of law and a public nuisance.

93. The smuggling activities in the United States and THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA of the PHILIP MORRIS DEFENDANTS have substantially and unreasonably interfered with, offended, injured, and endangered, and continue to interfere with, offend, injure, and endanger, the public health, morals, and well-being of the general public and the operation of the market for tobacco products in Colombia.

94. The smuggling activities in the United States and THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA of the PHILIP MORRIS DEFENDANTS have been, and continue to be, effectuated through widespread criminal activity, including mail fraud, wire fraud, money laundering, smuggling and other illegal acts.

95. The PHILIP MORRIS DEFENDANTS and their co-conspirators facilitated the smuggling of contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA by means of a variety of acts and omissions, including the following: (a) The PHILIP MORRIS DEFENDANTS arranged a process by which cigarettes purchased by smugglers could be paid for by secret payments into Swiss corporations and/or Swiss bank accounts so as to conceal revenues derived from smuggling activities. (b) The PHILIP MORRIS DEFENDANTS provided specific marketing information to smugglers, including which products were in demand and the volumes of cigarettes that were needed to meet the specific demands of the smugglers' clients. (c) The PHILIP MORRIS DEFENDANTS required the smugglers to keep logs of their loads, to keep track of where the loads were delivered, and the price for which the cigarettes were sold for. This allowed the PHILIP MORRIS DEFENDANTS to maintain direct, hands-on control of the entire smuggling process. The PHILIP MORRIS DEFENDANTS threatened smugglers that if they did not keep proper records of their smuggling activities, the PHILIP MORRIS DEFENDANTS would cut off their supply and deal with other smuggling customers. (d) The PHILIP MORRIS DEFENDANTS failed to properly supervise the distribution of their tobacco products to assure that such products were not sold illegally. (e) The PHILIP MORRIS DEFENDANTS failed to act reasonably when they were put on notice of their involvement with smugglers. (f) The PHILIP MORRIS DEFENDANTS set up umbrella operations to facilitate the smuggling scheme. (g) The PHILIP MORRIS DEFENDANTS entered into an understanding or agreement, express or tacit, with its distributors, customers, agents, consultants, and other co-conspirators (including BAT), to participate in a common scheme, plan or design to commit the aforesaid tortious acts and thereby smuggle contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. In pursuance of the agreement, PHILIP MORRIS and its distributors, customers, agents, consultants, and other co-

conspirators acted tortiously by, among other things, committing the aforesaid acts constituting public nuisance thereby causing harm to Plaintiffs. The PHILIP MORRIS DEFENDANTS, through joint action with their co-conspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the PHILIP MORRIS DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

96. Through these and other intentional and negligent acts and omissions, the PHILIP MORRIS DEFENDANTS have substantially and unreasonably offended, interfered with, and caused damage to the public in the exercise of rights common to all, in a manner such as to (a) offend public morals, (b) interfere with use by the public of a public place, (c) endanger and injure the property, life, health, safety, and comfort of a considerable number of persons; and (d) injure and interfere with the market for tobacco products in Colombia. The acts and omissions of the PHILIP MORRIS DEFENDANTS constitute a public nuisance. This public nuisance, or some part of it, continues unabated to the detriment of Plaintiffs' economic interests.

97. The PHILIP MORRIS DEFENDANTS knew, or reasonably should have known, that their acts and omissions relating to smuggling of tobacco products created great dangers and other harm to the community, including Plaintiffs' economic interests.

98. The PHILIP MORRIS DEFENDANTS have acted maliciously, wantonly, and with a recklessness that bespeaks an improper motive and vindictiveness, and have engaged in outrageous and oppressive conduct and with a reckless or wanton disregard of safety and rights. Their conduct amounts to a fraud on the public.

99. As a direct and proximate result of the acts and omissions of the PHILIP MORRIS DEFENDANTS, which constitute a public nuisance, Plaintiffs have sustained and continue to sustain economic injury as set forth more fully above in paragraphs forty-five (45) through forty-

six (46).

100. By reason of the injury to their economic interest due to the public nuisance, as set forth in the preceding paragraphs to this complaint, Plaintiffs are entitled to an award of damages, including actual, compensatory, and punitive damages. In addition, damages do not constitute a full and adequate remedy at law, and for this reason, Plaintiffs are entitled to full Common Law Injunctive and Equitable Relief, including a judgment permanently enjoining defendants from the continuation of activities constituting a public nuisance, and compelling defendants to take steps to abate and prevent the smuggling of tobacco products.

COUNT VIII (AS TO THE PHILIP MORRIS DEFENDANTS) (UNJUST ENRICHMENT)

101. Plaintiffs restate and reallege paragraphs one (1) through one hundred (100) and further allege:

102. The PHILIP MORRIS DEFENDANTS were unjustly enriched at Plaintiffs' expense. The PHILIP MORRIS DEFENDANTS entered into an understanding or agreement, express or tacit, with its distributors, customers, agents, consultants, and other co-conspirators, to participate in a common scheme, plan or design to commit the aforesaid tortious acts and thereby smuggle contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. In pursuance of the agreement, PHILIP MORRIS and its distributors, customers, agents, consultants, and other co-conspirators (including BAT) acted tortiously by, among other things, committing the aforesaid acts constituting unjust enrichment, thereby causing harm to Plaintiffs and permitting Defendants to secure ill-gotten gains. The PHILIP MORRIS DEFENDANTS, through joint action with their co-conspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the

PHILIP MORRIS DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein. The acts and omissions of these defendants and others have placed in the possession of these Defendants money under such circumstances that in equity and good conscience they ought not to retain it.

103. The PHILIP MORRIS DEFENDANTS were unjustly enriched through their smuggling scheme. By reason of their smuggling scheme, and the illicit avoidance of payment of duties and taxes, the PHILIP MORRIS DEFENDANTS were enabled to sell their product at lower cost, and illegally enhance profits, market share, and the value of the international tobacco operations.

104. The unjust enrichment of the PHILIP MORRIS DEFENDANTS was accomplished at the expense of Plaintiffs. By reason of the smuggling scheme, Plaintiffs were, and continue to be, deprived of taxes, and Defendants reaped vast profits and proceeds from their illegal scheme.

105. Under these circumstances, the receipt and retention of the money derived from smuggling operations are such that, as between Plaintiffs and Defendants, it is unjust for Defendants to retain it.

106. Equity and good conscience require the PHILIP MORRIS DEFENDANTS to pay damages and restitution to Plaintiffs, disgorge their ill-gotten gains and, to effectuate these remedies, a constructive trust and equitable lien should be imposed by this Court upon the proceeds obtained by Defendants by reason of smuggling activities, which proceeds are rightly owned by and belong to Plaintiffs. Plaintiffs are also entitled to recover for their economic injuries as set forth more fully above in paragraphs forty-five (45) through forty-six (46). Judgment in Plaintiffs' favor should include full Common Law Injunctive and Equitable Relief.

COUNT IX (AS TO THE PHILIP MORRIS DEFENDANTS) (NEGLIGENCE)

107. Plaintiffs restate and reallege paragraphs one (1) through one hundred six (106) and further allege:

108. Defendants owed, and continue to owe, a duty of reasonable care to refrain from causing foreseeable loss to the Plaintiffs. Defendants were and are obligated to avoid negligently causing harm to PLAINTIFFS, and were and are duty bound to:

- a. produce, market, and distribute their cigarette products lawfully and with due care;
- b. use proper practices and procedures in the hiring, selection, approval, instruction, training, supervision, and discipline of employees, agents, and other personnel engaged in the production, marketing, and distribution of their products, some of whom the Defendants knew, or reasonably should have known, were assisting and otherwise engaged in the smuggling of cigarettes;
- c. design, implement, and utilize effective monitoring and oversight procedures, including appropriate compliance programs, to deter and detect smuggling-related activities by its employees and agents;
- d. investigate and terminate the smuggling-related conduct of their employees, agents, and business associates particularly inasmuch as their managerial personnel with decision-making authority were put on reasonable notice of such illicit conduct;
- e. deal with the Plaintiffs, and their representatives, in an honest, good faith, and forthright manner;
- f. terminate sales of their tobacco products to or through persons or entities known to be engaged, directly or indirectly, in smuggling;
- g. comply with federal and state statutes and the standards of care reflected therein.

109. As manufacturers, distributors and dominant participants in the marketplace, Defendants had, and continue to have, the authority and ability to act reasonably to prevent smuggling of

their products for the protection of Plaintiffs. Reasonable steps could and should have been taken by the Defendants to prevent or reduce the risk of the sale of their products to persons likely to distribute and sell them on the Colombian “black market.”

110. Defendants, as manufacturers, distributors, and dominant participants in the marketplace, have a special ability and duty to exercise reasonable care to detect and guard against the risks associated with the distribution of their products, for the benefit and protection of those foreseeably and unreasonably placed at risk of harm from the distribution of their products, including Plaintiffs.

111. Defendants’ unreasonable acts and omissions created and enhanced the risk that their products would be distributed on the Colombian “black market” and injure Plaintiffs.

112. Defendants’ unreasonable acts and omissions affirmatively and foreseeably obstructed PLAINTIFFS’ abilities to collect full and proper taxes and otherwise to protect themselves from harms associated with smuggling.

113. The PHILIP MORRIS DEFENDANTS have acted maliciously, wantonly, and with a recklessness that bespeaks an improper motive and vindictiveness, and have engaged in outrageous and oppressive conduct and with a reckless or wanton disregard of safety and rights. Their conduct amounts to a fraud on the public.

114. Defendants, acting with and through their employees, agents, and co-conspirators, breached their duty of care, as aforesaid, by acts and/or omissions that posed an unreasonable and foreseeable risk of harm to Plaintiffs. The PHILIP MORRIS DEFENDANTS entered into an understanding or agreement, express or tacit, with its distributors, customers, agents, consultants, and other co-conspirators (including BAT), to participate in a common scheme, plan or design to commit the aforesaid tortious acts and thereby smuggle contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. In pursuance of the agreement,

PHILIP MORRIS and its distributors, customers, agents, consultants, and other co-conspirators acted tortiously by, among other things, committing the aforesaid acts constituting negligence thereby causing harm to Plaintiffs. The PHILIP MORRIS DEFENDANTS, through joint action with their co-conspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the PHILIP MORRIS DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

115. Defendants' breach proximately caused, and continues to cause, damage to the economic interests of Plaintiffs, as set forth more fully above in paragraphs forty-five (45) through forty-six (46).

116. By reason of the injury to its economic interests due to the negligence of the Defendants, as aforesaid, Plaintiffs are entitled to an award of damages, including actual, compensatory, and punitive damages. In addition, damages do not constitute a full and adequate remedy at law, and for this reason, Plaintiffs are entitled to full Common Law Injunctive and Equitable Relief, including a judgment permanently enjoining Defendants from the continuation of activities constituting negligence, and compelling Defendants to take steps to abate and prevent the smuggling of tobacco products in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

COUNT X (AS TO THE PHILIP MORRIS DEFENDANTS) (NEGLIGENT MISREPRESENTATION)

117. Plaintiffs restate and reallege paragraphs one (1) through one hundred sixteen (116) and further allege:

118. Defendants owed, and continue to owe, a duty of reasonable care to refrain from causing foreseeable loss to the Plaintiffs. Defendants have assumed the special duty to speak truthfully to government officials, and particularly due to their superior knowledge of their own conduct, were bound to speak with due care. Defendants were and are obligated to avoid negligently causing foreseeable harm to Plaintiffs, and were and are duty bound to exercise reasonable care to: (a) be truthful in their representations to Plaintiffs and their representatives concerning smuggling, under-invoicing, and other improper activities as aforesaid; and (b) refrain from negligently misrepresenting -- through documents or other forms of communication that the Defendants knew or should have known would be reasonably relied on by Plaintiffs -- the payment for and/or value of smuggled cigarettes; the destination of smuggled cigarettes; and the nature, extent, and cause of smuggling within THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA; and (c) avoid misleading Plaintiffs when providing Plaintiffs with such information as Defendants possess concerning the smuggling of Defendants' products into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

119. Defendants breached their duty to Plaintiffs by negligently making various material misrepresentations and/or failing to disclose material information to Plaintiffs and their representatives as aforesaid.

120. The Defendants have acted maliciously, wantonly, and with a recklessness that bespeaks an improper motive and vindictiveness and have engaged in outrageous and oppressive conduct and with a recklessness or wanton disregard of Plaintiffs' interest and rights. Their conduct amounts to a fraud on the public.

121. Defendants, acting with and through their employees, agents, and co-conspirators, breached their duty of care, as aforesaid, by acts and/or omissions that posed an unreasonable risk of foreseeable harm to Plaintiffs. The PHILIP MORRIS DEFENDANTS entered into an

understanding or agreement, express or tacit, with its distributors, customers, agents, consultants, and other co-conspirators (including BAT), to participate in a common scheme, plan or design to commit the aforesaid tortious acts and thereby smuggle contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. In pursuance of the agreement, PHILIP MORRIS and its distributors, customers, agents, consultants, and other co-conspirators acted tortiously by, among other things, committing the aforesaid acts constituting negligent misrepresentation, thereby causing harm to Plaintiffs. The PHILIP MORRIS DEFENDANTS, through joint action with their co-conspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the PHILIP MORRIS DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

122. Plaintiffs reasonably relied on Defendants' misrepresentations and, as a result, Defendants' breach proximately caused, and continues to cause, damage to the economic interests of the Plaintiffs, as set forth more fully above in paragraphs forty-five (45) through forty-six (46).

123. By reason of the injury to its economic interests due to the negligence, malice, and recklessness of the Defendants, as aforesaid, Plaintiffs are entitled to an award of damages, including actual, compensatory, and punitive damages. In addition, damages do not constitute a full and adequate remedy at law, and for this reason, Plaintiffs are entitled to full Injunctive and Equitable Relief, including a judgment permanently enjoining Defendants from the continuation of activities constituting negligence.

COUNT XI (AS TO THE BAT DEFENDANTS) (RICO; 18 U.S.C. § 1962(a))

124. Plaintiffs restate and reallege paragraphs one (1) through one hundred twenty-three (123)

and further allege:

125. The BAT DEFENDANTS, along with their co-conspirators in the smuggling scheme, including associated distributors, shippers, currency dealers, currency brokers, lobbyists, and other participants in the scheme identified above, were, during the relevant times herein, an association-in-fact of individuals and corporations engaged in, and the activities of which affected, interstate and foreign commerce and thus constitutes an “enterprise” within the meaning of 18 U.S.C. § 1961(4) (the “BAT Smuggling Enterprise”). These persons and entities were and are associated in fact for the purpose, among others, of illegally smuggling contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA to the economic detriment of Plaintiffs. The BAT Smuggling Enterprise is an ongoing organization whose constituent elements function as a continuing unit for the common purpose of maximizing the sale of tobacco products through illegal means and carrying out other elements of the Defendants' scheme. The BAT Smuggling Enterprise has an ascertainable structure and purpose beyond the scope of the Defendants' predicate acts and the conspiracy to commit such acts, and it possesses an infrastructure and chain of command that is distinct and separate from the corporate structure of the BAT DEFENDANTS. The BAT Smuggling Enterprise has engaged in, and its activities have affected, interstate and foreign commerce. The BAT Smuggling Enterprise continues to date through the concerted activities of the Defendants to disguise the nature of the wrongdoing, to conceal the proceeds thereof, and to conceal the Defendants' participation in the Enterprise in order to avoid and/or minimize their exposure to criminal and civil penalties and damages. The role of each Defendant in the Enterprise has been set forth above.

126. In connection with the fraudulent scheme set forth above, and to further its aims, the BAT DEFENDANTS have engaged in numerous acts of “racketeering activity,” and each defendant has aided and abetted each other defendant in committing those acts of “racketeering

activity” within the meaning of RICO. 18 U.S.C. § 1961, et seq. The BAT DEFENDANTS, as well as their co-conspirators, have committed multiple predicate acts of racketeering including, but not limited to:

a. Wire fraud and mail fraud. (18 U.S.C. §§ 1341, 1343, 1961(1)(B)). The BAT DEFENDANTS devised a scheme or artifice to defraud or to obtain money by means of false pretenses, representations, or promises, and used the mails and wires for the purpose of executing the scheme, and acted with a specific intent to defraud by devising, participating, and/or abetting the scheme. The timing of the wire and mail communications was during the course of the conspiracy that covered at least 1991 to 1999. There were hundreds of telephone conversations and faxes on virtually a daily basis during the course of the conspiracy. These telephone conversations furthered the scheme by maintaining an adequate and consistent supply of cigarettes to fuel the illicit sales in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA and were part of a clandestine system for the remittance of the proceeds of the scheme to the BAT DEFENDANTS. The BAT DEFENDANTS, acting through their employees, agents, and co-conspirators, made or caused to be made such telephone calls to further the scheme. The BAT DEFENDANTS knew or should have foreseen that their co-conspirators, in the course of carrying out the BAT DEFENDANTS’ directions and orders, would use or cause to be used the interstate and international wires and mails. The motive for committing fraud is plain: money not paid to Plaintiffs meant increased profits and market share for the BAT DEFENDANTS.

b. Violation of the Travel Act. (18 U.S.C. §§ 1952, 1961(1)(B)). Defendants traveled in interstate or foreign commerce, and used facilities in interstate and foreign commerce, including the mail, with intent to distribute the proceeds of unlawful activity, and promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of

unlawful activity, and thereafter performed, or attempted to perform unlawful activity.

Defendants knew that the currency provided to them represented the proceeds of unlawful activity, including trafficking in narcotics and controlled substances and that, by accepting such payments, aided the efforts of the drug traffickers to launder their ill-gotten gains and fuel the Black Market Peso Exchange. Defendants, and their representatives and co-conspirators, traveled across national borders and otherwise used the facilities of foreign commerce in order to distribute the proceeds of unlawful activity to the benefit of the BAT DEFENDANTS. By this conduct, defendants promoted, managed, established, and facilitated such unlawful activity.

c. Money Laundering. (18 U.S.C. §§ 1956(a)(1), 1961(1)(B)). The Defendants, knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, conducted or attempted to conduct financial transactions in interstate and foreign commerce involving the proceeds of specified unlawful activity with intent to promote the carrying on of specified unlawful activity; or, knowing that the transaction is designed in whole or in part to conceal or disguise the nature, the location, the source of ownership, or the control of the proceeds of specified unlawful activity, or, knowing that the transaction is designed in whole or in part to avoid a transaction reporting requirement under State or Federal law. Defendants knew that the currency that they received in exchange for the smuggled cigarettes represented the proceeds of specified unlawful activity, including but not limited to, wire fraud, mail fraud, and violations of the Travel Act, and an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance. Defendants knowingly conducted and attempted to conduct such financial transactions with intent to promote the carrying on of such unlawful activity. In addition, defendants knowingly conducted and attempted to conduct such financial transactions with intent to conceal or disguise the nature (proceeds of racketeering activity and smuggling), the location (proceeds generated by activity on

the “black market” in South America), the source (drug traffickers, money launderers, smugglers), or the control (BAT DEFENDANTS) of the proceeds of specified unlawful activity. Finally, defendants knowingly conducted and attempted to conduct such financial transactions to avoid a transaction reporting requirement under State or Federal law, including, but not limited to, currency and monetary instrument reports.

d. International Money Laundering. (18 U.S.C. §§ 1956(a)(2), 1961(1)(B)). Defendants transported, transmitted, and/or transferred a monetary instrument or funds to a place in the United States from or through a place outside the United States, with intent to promote the carrying on of specified unlawful activity, or, knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represented the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of specified unlawful activity, or to avoid a transaction reporting requirement under State or Federal law. By such conduct, Defendants engaged in financial transactions within the meaning of 18 U.S.C. § 1956(c)(4). Defendants knew that the money orders and funds that were sent from South America and received in New York and elsewhere in the United States represented the proceeds of specified unlawful activity, including but not limited to, wire fraud, mail fraud, and violations of the Travel Act, and an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance. Defendants also aided and abetted violations of 18 U.S.C. § 1956(a)(1) and § 1956(a)(2).

e. Conspiracy to Engage in Money Laundering. (18 U.S.C. §§ 1956(h), 1961(1)). Defendants conspired to commit offenses defined in 18 U.S.C. § 1956 – including § 1956(a)(1) and § 1956(a)(2). Defendants, by their words and actions, agreed to accept currency, monetary instruments, and funds with the knowledge that the currency, monetary instruments, and funds

represented the proceeds of specified unlawful activity conducted by themselves and their co-conspirators. Defendants adopted the common purpose of the conspiracy and participated in its consummation. The goal of the money-laundering conspiracy was to deprive Plaintiffs of money and property, while assuring that the profits derived from smuggling activities were repatriated to the benefit of the BAT DEFENDANTS in a clandestine manner to avoid detection and prosecution.

f. Money Laundering. (18 U.S.C. § 1957, 1961(1)). Defendants knowingly engaged or attempted to engage in monetary transactions in the United States, in criminally derived property that is of a value greater than \$10,000 and is derived from specified unlawful activity. 18 U.S.C. § 1957(f)(3) and § 1956(c)(7)(A). Defendants engaged in monetary transactions, including deposits, withdrawals, transfers, or exchanges, in or affecting interstate or foreign commerce, of funds or monetary instruments by, through, or to a financial institution. Defendants knew that the monetary transactions received in exchange for the smuggled cigarettes represented the proceeds of specified unlawful activity, including but not limited to, wire fraud, mail fraud, and violations of the Travel Act, and an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance.

127. The foregoing acts form a “pattern” of racketeering activity within 18 U.S.C. § 1961(5). The Defendants and others with whom they have been associated have been related in their common objectives of maximizing global sales of tobacco products and defrauding the Plaintiffs of the money and property to which the Plaintiffs are lawfully entitled. The Defendants’ predicate acts have had the same or similar purposes, results, participants, victims, and methods of commission, and occurred over at least a ten-year period. The predicate acts have been consistently repeated and are capable of further repetition.

128. The Defendants conducted or participated, directly or indirectly, in the conduct of the

BAT Smuggling Enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S.C. §§ 1962(a), (b), and (c). The Defendants' pattern of racketeering activities dates from at least January 1, 1985, through the present and threatens to continue in the future.

129. The BAT DEFENDANTS used or invested, directly or indirectly, racketeering income, or a part thereof, or the proceeds of such income, to acquire an interest in, establish, and operate, the BAT Smuggling Enterprise, which is and was engaged in, or the activities of which affect and have affected, interstate or foreign commerce, in violation of 18 U.S.C. § 1962(a). The BAT DEFENDANTS were principals in the racketeering scheme. Plaintiffs suffered multiple injuries to their economic interests as a result of this use and investment of racketeering income.

130. Specifically, the BAT DEFENDANTS received the income and proceeds of a pattern of racketeering activity, including an international money-laundering scheme, acts of wire fraud and mail fraud, and violations of the Travel Act. Upon their receipt of such ill-gotten gains by wire transfers from the smugglers and/or their associates, the BAT DEFENDANTS used and invested such income and proceeds, or a portion thereof, to acquire an interest in, establish and operate the BAT Smuggling Enterprise which was and is engaged in interstate and foreign commerce. In particular, the BAT DEFENDANTS used the proceeds of the scheme to: (a) operate the BAT Smuggling Enterprise; (b) replenish the supply of contraband cigarettes for ultimate sale on the Colombian "black market"; (c) acquire, purchase, and subsidize facilities necessary to the BAT Smuggling Enterprise, including manufacturing, sales, and distribution operations; (d) compensate employees and agents of the BAT DEFENDANTS engaged in the smuggling activities; (e) pay expenses incurred in connection with smuggling activities such as telephone bills incurred in the wire fraud scheme, and travel costs incurred by such employees; (f) create umbrella operations which, while operating at a loss, provided the framework which allowed the Defendants to promote the smuggling; and (g) establish a flourishing "black market" for the sale

of contraband cigarettes. In sum, the BAT DEFENDANTS did not reinvest the proceeds of racketeering activity in their general business operations, but instead, used and invested such proceeds to establish the infrastructure of, acquire an interest in, and operate the BAT Smuggling Enterprise, and it was this use and investment that harmed Plaintiffs. The Defendants used and invested the proceeds of racketeering activity to acquire an interest in, establish, and operate the BAT Smuggling Enterprise, in several ways, including but not limited to the following:

- a. The BAT DEFENDANTS used profits from the sale of cigarettes smuggled into Colombia in 1996 and 1997 to finance the acquisition of additional warehouse space in the Caribbean in 1997 so as to better supply the smugglers with cigarettes.
- b. The profits from cigarette sales were utilized to promote sales of further smuggled products in Colombia, support the umbrella operation in Colombia, and finance the expansion of the conspiracy into other countries in South America.
- c. The profits from the sale of cigarettes smuggled into Colombia finance the sales and marketing operations that promote the increase of those sales in succeeding years.
- d. The profits from the sale of cigarettes smuggled into Colombia were returned to the BAT DEFENDANTS in the United Kingdom and a part of those profits were used to pay "consulting fees" and other payments to political figures in Colombia so as to purchase political support for their activities in Colombia.

131. Plaintiffs were injured in their business and property by reason of the BAT DEFENDANTS' use and investment of racketeering income to acquire, establish, and operate the BAT Smuggling Enterprise. Absent this use and investment of racketeering income, contraband sales to the Colombian "black market" by the BAT DEFENDANTS and their co-conspirators would have been difficult if not impossible, the infrastructure of the smuggling enterprise could not have been created or functioned, and the economic injury to Plaintiffs would have been

avoided in whole or in part.

132. As a direct and proximate result of the violations set forth above, the Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, have been injured in their business and property as set forth more fully above in paragraphs forty-five (45) through forty-six (46). The Defendants' violations of 18 U.S.C. § 1962(a) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the Plaintiffs are entitled to bring this action and recover herein treble damages, the cost of bringing the suit, pre-judgment interest, and reasonable attorneys' fees.

COUNT XII (AS TO THE BAT DEFENDANTS) (RICO; 18 U.S.C. § 1962(b))

133. Plaintiffs restate and reallege paragraphs one (1) through one hundred thirty-two (132) and further allege:

134. The BAT DEFENDANTS acquired or maintained, directly or indirectly, through a pattern of racketeering activity, an interest in and control of the BAT Smuggling Enterprise, which was and is engaged in, or the activities of which affect and have affected, interstate or foreign commerce in violation of 18 U.S.C. § 1962(b). The Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, have been injured by the Defendants' acquisition and maintenance of an interest in and control of the enterprise through a pattern of racketeering activity.

135. The Defendants, acting through a pattern of racketeering activity, acquired or maintained, directly or indirectly, an interest in and control of the BAT Smuggling Enterprise which is engaged in, and the activities of which affect, interstate and foreign commerce. Specifically, the BAT DEFENDANTS maintained control of the BAT Smuggling Enterprise by means of racketeering activities, including, for example, (a) interstate and international wire

communications in violation of 18 U.S.C., Section 1343 (orders were placed telephonically and the BAT DEFENDANTS had total control over the enterprise and the distribution of its product); (b) money laundering in violation of 18 U.S.C., Sections 1956 and 1957 (BAT DEFENDANTS controlled and concealed the flow of the proceeds of the smuggling – a key aim of the scheme – through money laundering); (c) violations of the Travel Act (18 U.S.C., Section 1952 (cross-border travel and transactions that facilitated smuggling and other illicit activities)). Through this pattern of racketeering activities, which also included transmitting false statements to government authorities, the BAT DEFENDANTS were able to acquire and maintain an interest in and control of the BAT Smuggling Enterprise. This interest and control furthered, concealed, and protected the operations of the smuggling enterprise, and thereby permitted the BAT Smuggling Enterprise to flourish without detection.

136. As a direct and proximate result of the Defendants' acquisition and maintenance of an interest in and control of the BAT Smuggling Enterprise, the Plaintiffs, the DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, have been injured in their business and property as set forth more fully above in paragraphs forty-five (45) through forty-six (46). The Defendants' violations of 18 U.S.C. § 1962(b) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the Plaintiffs are entitled to bring this action and recover herein treble damages, the cost of bringing the suit, pre-judgment interest, and reasonable attorneys' fees.

COUNT XIII (AS TO THE BAT DEFENDANTS) (RICO; 18 U.S.C. § 1962(c))

137. Plaintiffs restate and reallege paragraphs one (1) through one hundred thirty-six (136) and further allege:

138. The BAT DEFENDANTS, through the commission of two or more acts constituting a

pattern of racketeering activity, directly or indirectly participated in the operation or management of the BAT Smuggling Enterprise, the activities of which affect interstate or foreign commerce.

139. At all relevant times, the BAT DEFENDANTS participated in the operation or management of an “enterprise”, within the meaning of 18 U.S.C. § 1961(4). The BAT DEFENDANTS, acting together and individually, operated, managed, and exercised control of the BAT Smuggling Enterprise by, among other things: (a) establishing a money laundering scheme by which the co-conspirators remitted to the BAT DEFENDANTS the proceeds of the smuggling scheme; (b) compelling the smugglers to sell smuggled cigarettes at a price set by the Defendants; (c) requiring the smugglers to keep detailed records of sales of contraband cigarettes; (d) instructing the smugglers to distribute particular brands of cigarettes in specified markets; (e) providing information to the smugglers to allow them to avoid detection and apprehension; (f) investing and using the proceeds of the smuggling scheme in the enterprise; (g) creating incentives for increased sales on the “black market”; (h) selling and distributing vast quantities of cigarettes at favorable prices; (i) giving credit terms to the smugglers that allowed the BAT Defendants to control the smuggling scheme; (j) fixing the price of contraband cigarettes in concert with other tobacco companies; (k) coordinating smuggling activities in concert with other tobacco companies.

140. The money laundering scheme and the communications of the Defendants concerning the operation of the BAT Smuggling Enterprise were effectuated through the use of interstate and foreign mails and wires. It was the policy and practice of the BAT DEFENDANTS that if the smugglers failed to follow the BAT DEFENDANTS' specific orders, the BAT DEFENDANTS would shut off the supply of favorably-priced cigarettes to the smugglers, and cut off the lifeblood of the smuggling scheme.

141. As a direct and proximate result of the violations set forth above, the Plaintiffs, THE

DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, have been injured in their business and property as set forth more fully above in paragraphs forty-five (45) through forty-six (46). The Defendants' violations of 18 U.S.C. § 1962(c) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the Plaintiffs are entitled to bring this action and recover herein treble damages, the cost of bringing the suit, pre-judgment interest, and reasonable attorneys' fees.

COUNT XIV (AS TO THE BAT DEFENDANTS) (RICO; 18 U.S.C. § 1962(d))

142. Plaintiffs restate and reallege paragraphs one (1) through one hundred forty-one (141) and further allege:

143. The BAT DEFENDANTS entered into an agreement with each other, and with distributors, shippers, currency dealers, and smugglers to join in the conspiracy to violate 18 U.S.C. §§ 1962(a), 1962(b), and 1962(c). Each defendant entered into an agreement to join the conspiracy, and took acts in the furtherance of the conspiracy and knowingly participated in the conspiracy. The purpose of the conspiracy was to smuggle cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA to the economic detriment of Plaintiffs and to the economic benefit of the BAT DEFENDANTS. The conspirators carried out the scheme and each conspirator was put on notice of the general nature of the conspiracy, that the conspiracy extended beyond the individual role of any single member, and that the conspiratorial venture functioned as a continuing unit for a common purpose. The BAT DEFENDANTS adopted the goal of furthering and facilitating the criminal endeavor. Their stake in the smuggling venture was in making profits and increasing market share which they knew could come only from their informed and interested cooperation with smugglers, and their active assistance, stimulation, and instigation of the smuggling activities.

144. The BAT DEFENDANTS, together with each member of the conspiracy, agreed and

conspired to violate: (1) 18 U.S.C. § 1962(a) by using, or causing the use of, income they derived from the above-described pattern of racketeering activities in the acquisition, establishment, and/or operation of the enterprise, the activities of which affect interstate or foreign commerce; (2) 18 U.S.C. § 1962(b) by acquiring or maintaining, or causing the acquisition or maintenance of, through a pattern of racketeering activity, an interest or control in the enterprise, the activities of which affect interstate or foreign commerce; and, (3) 18 U.S.C. § 1962(c) by participating, directly and indirectly, in the operation and management of the affairs of the enterprise through a pattern of racketeering activity, including an agreement that the conspirators, or one of them, would commit or cause the commission of two or more racketeering acts constituting such a pattern.

145. The BAT DEFENDANTS participated in and cooperated with each other and with their co-conspirators in the aforementioned conspiracy that enabled each cigarette manufacturer and distributor to enhance its market share, suppress its competition, and promote sale of its products.

146. As a part of their conspiracy, the BAT DEFENDANTS retained various lobbyists, funded “research,” and conducted a joint public-relations campaign so as to misstate the nature and scope of cigarette smuggling and so as to promote their own interests.

147. The BAT DEFENDANTS actively participated in the conspiracy to smuggle cigarettes and to generate false and misleading information concerning smuggling activities.

148. As a result of the conspiracy, the BAT DEFENDANTS and their co-conspirators were able to facilitate the smuggling of large volumes of cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

149. The membership of the conspiracy in question included the BAT DEFENDANTS, tobacco distributors, the shippers, the smugglers, currency brokers, and the BAT DEFENDANTS' subsidiary corporations in Switzerland and elsewhere, who act in concert to produce the

cigarettes, mislabel or fail to properly label the cigarettes, smuggle and sell the cigarettes, and arrange for payment in a way that is undetectable by governmental authorities, with said payment ultimately being returned to the Defendants in the United States. As co-conspirators, the BAT DEFENDANTS are liable for all of the actions committed by all of the co-conspirators within the conspiracy and are liable for all of the damages sustained by THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA that were caused by any members of the conspiracy, regardless of whether the BAT DEFENDANTS were themselves directly involved in a particular aspect of the enterprise.

150. As a direct and proximate result of the violations set forth above, the Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, have been injured in their business and property as set forth more fully above in paragraphs forty-five (45) through forty-six (46). The Defendants' violations of 18 U.S.C. § 1962(d) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the Plaintiffs are entitled to bring this action and recover herein treble damages, the cost of bringing the suit, pre-judgment interest, and reasonable attorneys' fees.

COUNT XV (AS TO THE BAT DEFENDANTS) (RICO; 18 U.S.C. §§ 1964(a), 1964(c); 28 U.S.C. § 1651(a))

151. Plaintiffs restate and reallege paragraphs one (1) through one hundred fifty (150) and further allege:

152. The United States District Court is empowered to prevent and restrain violations of 18 U.S.C. § 1962 by issuing appropriate orders, including, but not limited to: ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in,

the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons. 18 U.S.C. § 1964(a).

153. The BAT DEFENDANTS are currently engaged in the activities set forth within this Complaint that promote and support the smuggling of contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

154. The Defendants intend to continue said activities and to interfere with investigations being done by governmental officials into smuggling activities.

155. The Defendants, by their conduct of selling cigarettes to smugglers, creating false and misleading documents, improperly labeling shipments of cigarettes, setting up umbrella operations to facilitate the smuggling, and setting forth mechanisms of payment by which smugglers may pay for the cigarettes without being detected by government investigations all continue to exacerbate the problem of cigarette smuggling in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA and to damage the Plaintiffs.

156. As a result of the Defendants' conduct in violation of 18 U.S.C. §§ 1962(a), 1962(b), and 1962(c), THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA have been and continue to be irreparably injured as is alleged more fully above.

157. As a result of the nature of the smuggling activities, it would be functionally impossible for THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA to put a complete halt to said smuggling activities as long as the Defendants continue to provide support for the smugglers. In addition, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA continue to suffer injury to business and property to an extraordinary degree.

158. Money damages will not provide a full and complete remedy for Defendants' unlawful conduct. There is no adequate remedy at law that will protect the Plaintiffs in the future from

these smuggling activities if the Defendants do not cease their involvement and support of smuggling activities. Pursuant to 18 U.S.C. §§ 1964(a), 1964(c), and the All Writs Act (28 U.S.C. § 1651(a)), as well as the inherent power of the Court, Plaintiffs demand full RICO Injunctive and Equitable Relief.

COUNT XVI (AS TO THE BAT DEFENDANTS) (COMMON LAW FRAUD)

159. Plaintiffs restate and reallege paragraphs one (1) through one hundred fifty-eight (158) and further allege:

160. The BAT DEFENDANTS and their co-conspirators intentionally falsified documents, falsified shipping records, and generated false and misleading billing records concerning the payment for and/or value of smuggled cigarettes so as to mislead the Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, as to the destination of smuggled cigarettes. Additionally, the BAT DEFENDANTS intentionally made false representations as to the value of their otherwise legally imported product. The BAT DEFENDANTS made these false statements and material representations and failed to disclose material information in such documents and records with intent to defraud the Plaintiffs. The Defendants made these material misrepresentations and omissions with the knowledge and intention that the Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, would rely on said documents. The BAT DEFENDANTS entered into an understanding or agreement, express or tacit, with its distributors, customers, agents, consultants, and other co-conspirators (including PM), to participate in a common scheme, plan or design to commit the aforesaid tortious acts and thereby smuggle contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF

COLOMBIA. In pursuance of the agreement, BAT and its distributors, customers, agents, consultants, and other co-conspirators acted tortiously by, among other things, committing the aforesaid acts constituting fraud, thereby causing harm to Plaintiffs. The BAT DEFENDANTS, through joint action with their co-conspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the BAT DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein. Plaintiffs reasonably relied upon the Defendants' misrepresentations, and incurred damage as a result of such reliance. Specific examples of the process by which these activities occurred are set forth above.

161. The Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, reasonably relied upon said documents as part of their monitoring of the shipment of cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

162. Furthermore, the BAT DEFENDANTS knowingly and intentionally generated false, misleading, and material information and intentionally concealed other material information concerning the nature of smuggling in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, the extent of smuggling in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, and the causes of smuggling in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA with the knowledge and intention that the Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, would rely upon said information.

163. The Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, did reasonably rely upon data and information provided to them by the Defendants and/or their agents in acting or refraining from acting, with respect to smuggling activities.

164. The BAT DEFENDANTS, in under-invoicing their products, falsifying documents to expedite the smuggling of cigarettes, and in providing misleading information and in concealing

material and true information concerning the smuggling of cigarettes, acted in willful, wanton, gross, and callous disregard for the rights of the Plaintiffs, THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. The aforesaid actions were knowingly taken for the purpose of supporting the activities of the Defendants' co-conspirators and with the intent of increasing the profits and sales of the Defendants and harming THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

165. Defendants were duty bound to disclose the material information concerning the destination of tobacco shipments and their operations that had been concealed. By law, no person may make false statements to the government. Having undertaken to make representations to THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA, Defendants were obligated to provide full, complete, and truthful information concerning the destination of tobacco shipments and their operations. Defendants had superior, if not exclusive, knowledge of such information, and it was not readily available to the Plaintiffs. Defendants intended and knew, or should have known, that Plaintiffs would reasonably rely, act, and refrain from acting, on the basis of false and/or incomplete information provided to Plaintiffs by Defendants, and PLAINTIFFS did so to their detriment. Under these circumstances, Defendants' conduct amounts to fraudulent misrepresentation and fraudulent concealment, and an effective conversion of PLAINTIFFS' money and property.

166. As a direct and proximate result of the BAT DEFENDANTS' fraudulent conduct and the Plaintiffs' reasonable reliance upon said fraud, the Plaintiffs have suffered economic damages as are set forth more fully above in paragraphs forty-five (45) through forty-six (46). The Plaintiffs demand judgment for damages, both compensatory and punitive, as well as full Common Law Injunctive and Equitable Relief.

COUNT XVII (AS TO THE BAT DEFENDANTS) (PUBLIC NUISANCE)

167. Plaintiffs restate and reallege paragraphs one (1) through one hundred sixty-six (166) and further allege:

168. Plaintiffs are government authorities.

169. Smuggling of contraband cigarettes is a violation of law and a public nuisance.

170. The smuggling activities in the United States and THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA of the BAT DEFENDANTS have substantially and unreasonably interfered with, offended, injured, and endangered, and continue to interfere with, offend, injure, and endanger, the public health, morals, and well-being of the general public and the operation of the market for tobacco products in Colombia.

171. The smuggling activities in the United States and THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA of the BAT DEFENDANTS have been, and continue to be, effectuated through widespread criminal activity, including mail fraud, wire fraud, money laundering, smuggling and other illegal acts.

172. The BAT DEFENDANTS facilitated the smuggling of contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA by means of a variety of acts and omissions, including the following: (a) The BAT DEFENDANTS arranged a process by which cigarettes purchased by smugglers could be paid for by secret payments into Swiss corporations and/or Swiss bank accounts so as to conceal revenues derived from smuggling activities. (b) The BAT DEFENDANTS provided specific marketing information to smugglers, including which products were in demand and the volumes of cigarettes that were needed to meet the specific demands of the smugglers' clients. (c) The BAT DEFENDANTS required the smugglers to keep logs of their loads, to keep track of where the loads were delivered, and the price for which the cigarettes were sold for. This allowed the BAT DEFENDANTS to maintain direct, hands-on control of the entire smuggling process. The BAT DEFENDANTS threatened smugglers that if

they did not keep proper records of their smuggling activities, the BAT DEFENDANTS would cut off their supply and deal with other smuggling customers. (d) The BAT DEFENDANTS failed to properly supervise the distribution of their tobacco products to assure that such products were not sold illegally. (e) The BAT DEFENDANTS failed to act reasonably when they were put on notice of their involvement with smugglers. (f) The BAT DEFENDANTS set up umbrella operations to facilitate the smuggling scheme. (g) The BAT DEFENDANTS entered into an understanding or agreement, express or tacit, with its distributors, customers, agents, consultants, and other co-conspirators (including PM), to participate in a common scheme, plan or design to commit the aforesaid tortious acts and thereby smuggle contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. In pursuance of the agreement, BAT and its distributors, customers, agents, consultants, and other co-conspirators acted tortiously by, among other things, committing the aforesaid acts constituting public nuisance thereby causing harm to Plaintiffs. The BAT DEFENDANTS, through joint action with their co-conspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the BAT DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

173. Through these and other intentional and negligent acts and omissions, the BAT DEFENDANTS have substantially and unreasonably offended, interfered with, and caused damage to the public in the exercise of rights common to all, in a manner such as to (a) offend public morals, (b) interfere with use by the public of a public place, (c) endanger and injure the property, life, health, safety, and comfort of a considerable number of persons; and (d) injure and interfere with the market for tobacco products in Colombia. The acts and omissions of the BAT DEFENDANTS constitute a public nuisance. This public nuisance, or some part of it, continues

unabated to the detriment of Plaintiffs' economic interests.

174. The BAT DEFENDANTS knew, or reasonably should have known, that their acts and omissions relating to smuggling of tobacco products created great dangers and other harm to the community, including Plaintiffs' economic interests.

175. The BAT DEFENDANTS have acted maliciously, wantonly, and with a recklessness that bespeaks an improper motive and vindictiveness, and have engaged in outrageous and oppressive conduct and with a reckless or wanton disregard of safety and rights. Their conduct amounts to a fraud on the public.

176. As a direct and proximate result of the acts and omissions of the BAT DEFENDANTS, which constitute a public nuisance, Plaintiffs have sustained and continue to sustain economic injury, as set forth more fully above in paragraphs forty-five (45) through forty-six (46).

177. By reason of the injury to their economic interest due to the public nuisance, as set forth in the preceding paragraphs to this complaint, Plaintiffs are entitled to an award of damages, including actual, compensatory, and punitive damages. In addition, damages do not constitute a full and adequate remedy at law, and for this reason, Plaintiffs are entitled to full Common Law Injunctive and Equitable Relief, including a judgment permanently enjoining defendants from the continuation of activities constituting a public nuisance, and compelling defendants to take steps to abate and prevent the smuggling of tobacco products.

COUNT XVIII (AS TO THE BAT DEFENDANTS) (UNJUST ENRICHMENT)

178. Plaintiffs restate and reallege paragraphs one (1) through one hundred seventy-seven (177) and further allege:

179. The BAT DEFENDANTS were unjustly enriched at Plaintiffs' expense. The BAT

DEFENDANTS entered into an understanding or agreement, express or tacit, with its distributors, customers, agents, consultants, and other co-conspirators (including PM), to participate in a common scheme, plan or design to commit the aforesaid tortious acts and thereby smuggle contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. In pursuance of the agreement, BAT and its distributors, customers, agents, consultants, and other co-conspirators acted tortiously by, among other things, committing the aforesaid acts constituting unjust enrichment, thereby causing harm to Plaintiffs and permitting Defendants to secure ill-gotten gains. The BAT DEFENDANTS, through joint action with their co-conspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the BAT DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein. The acts and omissions of these Defendants and others have placed in the possession of these Defendants money under such circumstances that in equity and good conscience they ought not to retain it.

180. The BAT DEFENDANTS were unjustly enriched through their smuggling scheme. By reason of their smuggling scheme, and the illicit avoidance of payment of duties and taxes, the BAT DEFENDANTS were enabled to sell their product at lower cost, and illegally enhance profits, market share, and the value of the international tobacco operations.

181. The unjust enrichment of the BAT DEFENDANTS was accomplished at the expense of Plaintiffs. By reason of the smuggling scheme, Plaintiffs were, and continue to be, deprived of taxes, and Defendants have reaped vast proceeds and profits from their illicit scheme.

182. Under these circumstances, the receipt and retention of the money derived from smuggling operations are such that, as between Plaintiffs and Defendants, it is unjust for Defendants to retain it.

183. Equity and good conscience require the BAT DEFENDANTS to pay damages and restitution to Plaintiffs, disgorge their ill-gotten gains and, to effectuate these remedies, a constructive trust and equitable lien should be imposed by this Court upon the proceeds obtained by Defendants by reason of smuggling activities, which proceeds are rightly owned by and belong to Plaintiffs. Plaintiffs are also entitled to recover for their economic loss, as set forth more fully above in paragraphs forty-five (45) through forty-six (46). Judgment in Plaintiffs' favor should include full Common Law Injunctive and Equitable Relief.

COUNT XIX (AS TO THE BAT DEFENDANTS) (NEGLIGENCE)

184. Plaintiffs restate and reallege paragraphs one (1) through one hundred eighty-three (183) and further allege:

185. Defendants owed, and continue to owe, a duty of reasonable care to refrain from causing foreseeable loss to the Plaintiffs. Defendants were and are obligated to avoid negligently causing harm to PLAINTIFFS, and were and are duty bound to:

- a. produce, market, and distribute their cigarette products lawfully and with due care;
- b. use proper practices and procedures in the hiring, selection, approval, instruction, training, supervision, and discipline of employees, agents, and other personnel engaged in the production, marketing, and distribution of their products, some of whom the Defendants knew, or reasonably should have known, were assisting and otherwise engaged in the smuggling of cigarettes;
- c. design, implement, and utilize effective monitoring and oversight procedures, including appropriate compliance programs, to deter and detect smuggling-related activities by its employees and agents;

- d. investigate and terminate the smuggling-related conduct of their employees, agents, and business associates particularly inasmuch as their managerial personnel with decision-making authority were put on reasonable notice of such illicit conduct;
- e. deal with the Plaintiffs, and their representatives, in an honest, good faith, and forthright manner;
- f. terminate sales of their tobacco products to or through persons or entities known to be engaged, directly or indirectly, in smuggling;
- g. comply with federal and state statutes and the standards of care reflected therein.

186. As manufacturers, distributors and dominant participants in the marketplace, Defendants had, and continue to have, the authority and ability to act reasonably to prevent smuggling of their products for the protection of Plaintiffs. Reasonable steps could and should have been taken by the Defendants to prevent or reduce the risk of the sale of their products to persons likely to distribute and sell them on the Colombian “black market.”

187. Defendants, as manufacturers, distributors, and dominant participants in the marketplace, have a special ability and duty to exercise reasonable care to detect and guard against the risks associated with the distribution of their products, for the benefit and protection of those foreseeably and unreasonably placed at risk of harm from the distribution of their products, including Plaintiffs.

188. Defendants’ unreasonable acts and omissions created and enhanced the risk that their products would be distributed on the Colombian “black market” and injure Plaintiffs.

189. Defendants’ unreasonable acts and omissions affirmatively and foreseeably obstructed Plaintiffs’ abilities to collect full and proper taxes and otherwise to protect themselves from harms associated with smuggling.

190. The BAT DEFENDANTS have acted maliciously, wantonly, and with a recklessness that

bespeaks an improper motive and vindictiveness, and have engaged in outrageous and oppressive conduct and with a reckless or wanton disregard of safety and rights. Their conduct amounts to a fraud on the public.

191. Defendants, acting with and through their employees, agents, and co-conspirators, breached their duty of care, as aforesaid, by acts and/or omissions that posed an unreasonable and foreseeable risk of harm to Plaintiffs. The BAT DEFENDANTS entered into an understanding or agreement, express or tacit, with its distributors, customers, agents, consultants, and other co-conspirators (including PM), to participate in a common scheme, plan or design to commit the aforesaid tortious acts and thereby smuggle contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. In pursuance of the agreement, BAT and its distributors, customers, agents, consultants, and other co-conspirators acted tortiously by, among other things, committing the aforesaid acts constituting negligence thereby causing harm to Plaintiffs. The PHILIP MORRIS DEFENDANTS, through joint action with their co-conspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the BAT DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

192. Defendants' breach proximately caused, and continues to cause, damage to the economic interests of Plaintiffs, as set forth more fully above in paragraphs forty-five (45) through forty-six (46).

193. By reason of the injury to its economic interests due to the negligence of the Defendants, as aforesaid, Plaintiffs are entitled to an award of damages, including actual, compensatory, and punitive damages. In addition, damages do not constitute a full and adequate remedy at law, and for this reason, Plaintiffs are entitled to full Common Law Injunctive and Equitable Relief, including a judgment permanently enjoining Defendants from the continuation of activities

constituting negligence, and compelling Defendants to take steps to abate and prevent the smuggling of tobacco products in THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

COUNT XX (AS TO THE BAT DEFENDANTS) (NEGLIGENT MISREPRESENTATION)

194. Plaintiffs restate and reallege paragraphs one (1) through one hundred ninety-three (193) and further allege:

195. Defendants owed, and continue to owe, a duty of reasonable care to refrain from causing foreseeable loss to the Plaintiffs. Defendants have assumed the special duty to speak truthfully to government officials, and particularly due to their superior knowledge of their own conduct, were bound to speak with due care. Defendants were and are obligated to avoid negligently causing foreseeable harm to Plaintiffs, and were and are duty bound to exercise reasonable care to: (a) be truthful in their representations to Plaintiffs and their representatives concerning smuggling, under-invoicing, and other improper activities as aforesaid; and (b) refrain from negligently misrepresenting -- through documents or other forms of communication that the Defendants knew or should have known would be reasonably relied on by Plaintiffs -- the payment for and/or value of smuggled cigarettes; the destination of smuggled cigarettes; and the nature, extent, and cause of smuggling within THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA; and (c) avoid misleading Plaintiffs when providing Plaintiffs with such information as Defendants possess concerning the smuggling of Defendants' products into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA.

196. Defendants breached their duty to Plaintiffs by negligently making various material misrepresentations and/or failing to disclose material information to Plaintiffs and their

representatives as aforesaid.

197. The Defendants have acted maliciously, wantonly, and with a recklessness that bespeaks an improper motive and vindictiveness and have engaged in outrageous and oppressive conduct and with a recklessness or wanton disregard of Plaintiffs' interest and rights. Their conduct amounts to a fraud on the public.

198. Defendants, acting with and through their employees, agents, and co-conspirators, breached their duty of care, as aforesaid, by acts and/or omissions that posed an unreasonable risk of foreseeable harm to Plaintiffs. The BAT DEFENDANTS entered into an understanding or agreement, express or tacit, with its distributors, customers, agents, consultants, and other co-conspirators (including PM), to participate in a common scheme, plan or design to commit the aforesaid tortious acts and thereby smuggle contraband cigarettes into THE DEPARTMENTS OF THE REPUBLIC OF COLOMBIA. In pursuance of the agreement, BAT and its distributors, customers, agents, consultants, and other co-conspirators acted tortiously by, among other things, committing the aforesaid acts constituting negligent misrepresentation, thereby causing harm to Plaintiffs. The BAT DEFENDANTS, through joint action with their co-conspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the BAT DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

199. Plaintiffs reasonably relied on Defendants' and their co-conspirators' misrepresentations and, as a result, Defendants' breach proximately caused, and continues to cause, damage to the economic interests of the Plaintiffs, as set forth more fully above in paragraphs forty-five (45) through forty-six (46).

200. By reason of the injury to its economic interests due to the negligence, malice, and recklessness of the Defendants, as aforesaid, Plaintiffs are entitled to an award of damages, including actual, compensatory, and punitive damages. In addition, damages do not constitute a

full and adequate remedy at law, and for this reason, Plaintiffs are entitled to full Common Law Injunctive and Equitable Relief, including a judgment permanently enjoining Defendants from the continuation of activities constituting negligence.

DEMAND FOR JUDGMENT

201. WHEREFORE, the Plaintiffs demand judgment in their favor and against Defendants as follows:

- a. Pursuant to COUNT I, damages, including interest, against the PHILIP MORRIS DEFENDANTS, jointly and severally, the precise amount to be supplied to the Court upon a trial on the merits; treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.
- b. Pursuant to COUNT II, damages, including interest, against the PHILIP MORRIS DEFENDANTS, jointly and severally, the precise amount to be supplied to the Court upon a trial of the merits; treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.
- c. Pursuant to COUNT III, damages, including interest, against the PHILIP MORRIS DEFENDANTS, jointly and severally, the precise amount to be supplied to the Court upon a trial of the merits; treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.
- d. Pursuant to COUNT IV, damages, including interest, against the PHILIP MORRIS DEFENDANTS, jointly and severally, the precise amount to be supplied to the Court upon a trial of the merits; treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.

- e. Pursuant to COUNT V, RICO Injunctive and Equitable Relief against the PHILIP MORRIS DEFENDANTS, jointly and severally along with an award of the costs of the suit and a reasonable attorney's fee.
- f. Pursuant to COUNT VI, against the PHILIP MORRIS DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.
- g. Pursuant to COUNT VII, against the PHILIP MORRIS DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.
- h. Pursuant to COUNT VIII, against the PHILIP MORRIS DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.
- i. Pursuant to COUNT IX, against the PHILIP MORRIS DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.
- j. Pursuant to COUNT X, against the PHILIP MORRIS DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.
- k. Pursuant to COUNT XI, damages, including interest, against the BAT DEFENDANTS,

jointly and severally, the precise amount to be supplied to the Court upon a trial on the merits; treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.

l. Pursuant to COUNT XII, damages, including interest, against the BAT DEFENDANTS, jointly and severally, the precise amount to be supplied to the Court upon a trial of the merits; treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.

m. Pursuant to COUNT XIII, damages, including interest, against the BAT DEFENDANTS, jointly and severally, the precise amount to be supplied to the Court upon a trial of the merits; treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.

n. Pursuant to COUNT XIV, damages, including interest, against the BAT DEFENDANTS, jointly and severally, the precise amount to be supplied to the Court upon a trial of the merits; treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.

o. Pursuant to COUNT XV, RICO Injunctive and Equitable Relief against the BAT DEFENDANTS, jointly and severally along with an award of the costs of the suit and a reasonable attorney's fee.

p. Pursuant to COUNT XVI, against the BAT DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

q. Pursuant to COUNT XVII, against the BAT DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to

the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

r. Pursuant to COUNT XVIII, against the BAT DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

s. Pursuant to COUNT XIX, against the BAT DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

t. Pursuant to COUNT XX, against the BAT DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

u. Such other and similar relief as the Court deems just, proper, and equitable; and trial by jury as to all issues triable as of right by jury.

Dated: New York, New York
September 20, 2000

SPEISER, KRAUSE, NOLAN & GRANITO

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Thursday, May 25, 2000 |  [Print this story](#)**Philip Morris Accused in Smuggling Scheme**

■ Lawsuit: Colombian states say tobacco giant engaged in other illegal acts, including wire fraud and money laundering.

By HENRY WEINSTEIN, Times Legal Affairs Writer

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Philip Morris engaged in a sophisticated conspiracy to smuggle cigarettes into Colombia for a decade, defrauding 22 Colombian states out of billions in tax revenue, according to a lawsuit filed in federal court in Brooklyn.

The lawsuit contends that Philip Morris, the world's largest cigarette maker, engaged in a host of illegal acts including smuggling, wire fraud, money laundering, and the creation of a labyrinth of third-party payments and Swiss bank accounts in order to hide the illegal acts. The company also maintained relations with drug dealers as part of the smuggling operation, according to the suit.

Filed on behalf of 22 Colombian states and the city of Bogota by a New York law firm that specializes in complex civil litigation, the suit contains some of the most stark charges ever made about a cigarette company and is likely to intensify concern about international cigarette smuggling.

The suit cites court records and industry documents in an attempt to buttress the allegations. Sources said the plaintiff's lawyers also have used private investigators to develop evidence.

"The Philip Morris defendants created a circuitous and clandestine distribution chain for the sale of cigarettes in order to facilitate smuggling within the departments of the Republic of Colombia," according to the complaint lodged May 19 and made public Wednesday by Speiser, Krause, Nolan & Granito. "The decision to establish and maintain the distribution chain was made at the highest executive levels of the Philip Morris defendants," the suit alleges.

Five Philip Morris entities--including the parent company, the international division and the company's Latin American sales corporation--are named defendants.

Philip Morris attorney Michael York branded the suit "pretty wacky. There really is no factual or legal basis for the claims in this lawsuit."

The suit contends that Philip Morris' goal was to increase its market share and profit while evading taxes. In addition to losing

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tax revenue, Colombian officials have expended large sums of money in unsuccessful efforts to stop smuggling, according to the suit, which states that a border guard station "was destroyed by smugglers using an antitank weapon."

The new case marks the second time in six months that a U.S. cigarette manufacturer has been accused of violating the Racketeer Influenced and Corrupt Organizations (RICO) law in connection with smuggling. Canada filed the first such suit last December, accusing R.J. Reynolds Tobacco Co. in federal court in Syracuse, N.Y., of involvement in a smuggling operation that undercut a government program to discourage smoking through higher taxes.

In January, two public interest organizations--Britain's Action on Smoking and Health and the Washington-based Center for Public Integrity--released a cache of documents that suggested British American Tobacco Corp. encouraged and relied on smuggling to boost its sales in Latin America and Asia.

More recently, on March 30, U.S. Customs Commissioner Raymond W. Kelly told a Senate subcommittee that "international cigarette smuggling has grown to a multibillion-dollar-a-year illegal enterprise linked to transnational organized crime and international terrorism. Profits from cigarette smuggling rival those of narcotics trafficking."

The new lawsuit seeks about \$3 billion in damages and an injunction to curb Philip Morris' alleged illegal practices.

John H. Halloran Jr., a former Justice Department lawyer who is the co-lead counsel for the plaintiffs, declined to comment on the suit. But the 74-page complaint describes events starting in 1990 and as recent as February 2000. It includes the names of several Philip Morris officials who allegedly participated in these events. Meetings at John F. Kennedy International Airport in New York and other events in Belgium, Colombia, Ecuador, Holland, Panama, Switzerland and Venezuela are detailed in the complaint.

Some of the most explosive charges in the lawsuit concern Philip Morris' alleged relationship to drug dealers. The suit states that as long ago as 1994 "court records that were available to the Philip Morris defendants demonstrate that one of" the individuals the company was selling cigarettes to "had actually told U.S. government informants that he was involved in drug trafficking. Specifically, he had told U.S. law enforcement agents that he was involved in the 'pool system' of drug trafficking whereby he would combine his load of drugs with those of other drug dealers into a single large shipment destined for the United States."

The suit also states that this individual--who is not named in the suit--told U.S. law enforcement officials about how the drug money was laundered in the U.S. and gave the names of U.S. businesses to whom the money was delivered, and that this information was available to Philip Morris because it is in court records. "In spite of this fact, the Philip Morris defendants continued to sell large volumes of cigarettes to this individual so that he could smuggle them into Colombia and use those sales to

launder drug money," according to the complaint.

Along the same line, the suit alleges that the Miami bank accounts of some Philip Morris cigarette distributors were frozen in the early 1990s by U.S. law enforcement officials "because funds credited to those accounts were laundered drug money. The freezing of these accounts was well known to Philip Morris."


The suit also contends that Philip Morris employees "were personally involved in the laundering of the proceeds of illicit narcotics sales. Various employees of the Philip Morris defendants personally traveled to Colombia and entered the country illegally, paying bribes to ensure that their passports were not marked to reflect that they had entered Colombia. These employees on multiple occasions received large volumes of cash that they took into their personal possession or these employees would be present when large volumes of cash were turned over to the distributors with whom the Philip Morris employees were traveling. These individuals would then smuggle the cash out of Colombia and into Venezuela, with the cash ultimately being deposited into the coffers of the Philip Morris defendants."

The suit also accuses Philip Morris of:

- * Selling cigarettes to smugglers or distributors who are known to sell to smugglers.
- * Shipping cigarettes designated for one port realizing that they will be diverted to another port and then smuggled.
- * Creating false shipping documents to facilitate smuggling.
- * Using Swiss bank accounts in an attempt to hide the proceeds of cigarette smuggling and to protect smugglers from government investigations.

Domestic cigarette companies in Colombia have complained for some time that their market share was being undercut by sales of cigarettes by international companies, such as Philip Morris and BAT, that had been smuggled into their country.

Last June, at a U.S. Senate hearing, Fanny Kertzman, Colombia's director general for taxes and customs, testified that 90% of the cigarettes imported into that country was contraband.

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