UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THE EUROPEAN COMMUNITY,
acting on its own behalf and
on behalf of the MEMBER STATES
it has power to represent, and the
Kingdom of Belgium, Republic of Finland,
French Republic, Hellenic Republic,
Federal Republic of Germany,
Italian Republic,
Grand Duchy of Luxembourg,
Kingdom of the Netherlands,
Portuguese Republic, and Kingdom of
Spain, individually,

Plaintiffs,

- against -

RJR NABISCO, INC.,
R.J. REYNOLDS TOBACCO COMPANY,
R.J. REYNOLDS TOBACCO INTERNATIONAL, INC.,
NABISCO GROUP HOLDINGS CORP.,
RJR NABISCO HOLDINGS CORP.,
R.J. REYNOLDS TOBACCO HOLDINGS, INC.,

PHILIP MORRIS INTERNATIONAL INC.,
PHILIP MORRIS COMPANIES, INC.,
PHILIP MORRIS INCORPORATED, d/b/a
PHILIP MORRIS U.S.A.,
PHILIP MORRIS PRODUCTS, INC., and
PHILIP MORRIS DUTY FREE, INC.

Defendants.

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U.S. DISTRICT COURT E.D.N.Y.
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BROOKLYN OFFICE

GARAUFIS, J.

COMPLAINT

JURY TRIAL
DEMANDED

POHORELSKY, M.J.

Plaintiffs, THE EUROPEAN COMMUNITY, acting on its own behalf and on behalf of the MEMBER STATES it has power to

represent, and the Kingdom of Belgium, Republic of Finland, French Republic, Hellenic Republic, Federal Republic of Germany, Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands, Portuguese Republic, and Kingdom of Spain, individually, (hereinafter referred to as the "MEMBER STATES") collectively referred to as "PLAINTIFFS", by and through their undersigned attorneys, for their complaint against the Defendants, RJR NABISCO, INC., R.J. REYNOLDS TOBACCO COMPANY, R.J. REYNOLDS TOBACCO INTERNATIONAL, INC., NABISCO GROUP HOLDINGS CORP., RJR NABISCO HOLDINGS CORP., R.J. REYNOLDS TOBACCO HOLDINGS, INC., (hereinafter collectively referred to as "RJR DEFENDANTS" or "RJR"), PHILIP MORRIS INTERNATIONAL INC., PHILIP MORRIS COMPANIES, INC., PHILIP MORRIS INCORPORATED, d/b/a PHILIP MORRIS U.S.A., PHILIP MORRIS PRODUCTS, INC., and PHILIP MORRIS DUTY FREE, INC. (hereinafter collectively referred to as "PHILIP MORRIS DEFENDANTS" or "PHILIP MORRIS"), allege as follows:

I. INTRODUCTION

1. This is an action by the Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES, against the Defendants. The MEMBER STATES assert violations of the Racketeer Influenced and Corrupt Organizations Act of 1970, Title IX of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922,

codified at 18 U.S.C. §§ 1961-68 ("RICO"), arising from Defendants' involvement in organized crime in pursuit of a massive, ongoing smuggling scheme. Defendants 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, THE EUROPEAN COMMUNITY and the MEMBER STATES assert claims that the 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, facilitated the smuggling of cigarettes illegally into THE EUROPEAN COMMUNITY and its MEMBER STATES in violation of United States law and common law, as well as customs agreements between the United States and THE EUROPEAN COMMUNITY and its MEMBER STATES, for the purpose of injuring the interests of THE EUROPEAN COMMUNITY and its MEMBER STATES, while increasing their profits and market share in THE EUROPEAN COMMUNITY, enhancing the value of their tobacco operations, and expanding the worldwide market for their contraband cigarettes.

3. Treaties and agreements between THE EUROPEAN COMMUNITY and its MEMBER STATES and the United States, including the Agreement Between the United States of America and THE EUROPEAN COMMUNITY on Customs Cooperation and Mutual Assistance in Customs Matters (1997), which is binding on the Member States as well, specifically confirm that there shall be reciprocal cooperation between the United States and THE EUROPEAN COMMUNITY regarding government efforts to combat transnational crime and customs fraud. These treaties and agreements also confirm that the United States and THE EUROPEAN COMMUNITY 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 EUROPEAN COMMUNITY 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 EUROPEAN COMMUNITY and, accordingly, it is to their mutual benefit 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 EUROPEAN COMMUNITY and its MEMBER STATES have been injured in their business and property. THE EUROPEAN COMMUNITY and its MEMBER STATES have lost, and continue to lose, billions of dollars, including the deprivation of customs duties, fees, taxes, money, and property by reason of

the Defendants' schemes to smuggle and to assist the smuggling of vast shipments of contraband cigarettes and other tobacco products into THE EUROPEAN COMMUNITY. These schemes also harm THE EUROPEAN COMMUNITY and its MEMBER STATES by supplanting sales of lawfully sold cigarettes on which duties, money, and taxes would have been paid to THE EUROPEAN COMMUNITY and its MEMBER STATES.

5. Through actions undertaken in the United States and elsewhere, the Defendants have conceived, directed, controlled, implemented, assisted, and encouraged an international conspiracy to defraud the Plaintiffs and deprive them of money and property, and injure their interests 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 for their respective tobacco brands that operates throughout the world and within THE EUROPEAN COMMUNITY. This international scheme has harmed, and continues to harm, the interests of many governments, including THE EUROPEAN COMMUNITY and its MEMBER STATES.

II. PARTIES

6. (a.) The Plaintiff, THE EUROPEAN COMMUNITY, is a governmental body created as a result of collaboration among the majority of the nations of Western Europe, more specifically, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden, and the United Kingdom. Pursuant to the Treaty establishing THE EUROPEAN COMMUNITY, as last amended by the Treaty of Amsterdam (1999), Article 2, THE EUROPEAN COMMUNITY is vested with the responsibility "to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, . . . a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among the Member States." THE EUROPEAN COMMUNITY has certain legal rights and responsibilities. Pursuant to Article 281 of the Treaty establishing THE EUROPEAN COMMUNITY, THE EUROPEAN COMMUNITY has legal personality. Pursuant to Article 282 of the Treaty establishing THE EUROPEAN COMMUNITY, THE EUROPEAN COMMUNITY possesses the most extensive legal capacity accorded to legal persons under the laws of the Member States, and it may, in particular, acquire or dispose of property and may be a party to

legal proceedings. In such instances, THE EUROPEAN COMMUNITY is represented by the European Commission. Pursuant to Article 280 of the Treaty establishing THE EUROPEAN COMMUNITY, THE EUROPEAN COMMUNITY has the duty to counter fraud and any other illegal activities affecting the financial interests of THE EUROPEAN COMMUNITY through measures which shall act as a deterrent and be such as to afford effective protection in the Member States. THE EUROPEAN COMMUNITY has the duty to protect against harm to the financial institutions and infrastructure within THE EUROPEAN COMMUNITY. THE EUROPEAN COMMUNITY possesses additional duties and authorities which have either been conferred upon it by the MEMBER STATES or which it shares with the MEMBER STATES, by virtue of treaty and/or law, including but not limited to the following: (a) The duty and authority to regulate foreign commerce; (b) The duty and authority to regulate customs territories, free trade zones, and customs bonded warehouses; (c) The duty and authority to regulate transportation into THE EUROPEAN COMMUNITY or within its borders; (d) The duty and authority to ensure and regulate the free movement of goods within THE EUROPEAN COMMUNITY; (e) The duty and authority to regulate safety and security at sea; (f) The duty and authority to regulate and take action to protect against breaches of THE EUROPEAN COMMUNITY Customs Territory or THE EUROPEAN COMMUNITY Customs Border; (g) The duty and authority to regulate and

assure that foreign goods entering THE EUROPEAN COMMUNITY enter THE EUROPEAN COMMUNITY with declared values that are accurate; (h) The duty and authority to regulate and set rules to combat money laundering; (i) The duty and authority to regulate on seizure and confiscation of bank accounts and assets and to take other related actions to combat money laundering and other financial crimes committed against the financial interests of THE EUROPEAN COMMUNITY and the MEMBER STATES; (j) The duty to promote throughout the Community a harmonious, balanced, and sustainable development of economic activities and to protect and promote the economic well being of its citizens. THE EUROPEAN COMMUNITY has the general duty and the authority to act to abate any harm to itself or to the general public of THE EUROPEAN COMMUNITY within its areas of competence as set forth above. Among the legal rights of THE EUROPEAN COMMUNITY is the right to hold a legal or beneficial interest in property and receive money arising from the sale of tobacco products within THE EUROPEAN COMMUNITY. Specifically, THE EUROPEAN COMMUNITY and its MEMBER STATES require that the importers of cigarettes pay customs duties and value-added taxes (VAT) in connection with the importation of cigarettes into THE EUROPEAN COMMUNITY. These customs duties and the right to receive them are the property of THE EUROPEAN COMMUNITY. The value-added taxes, and the right to receive them, are the property of THE EUROPEAN

COMMUNITY and its MEMBER STATES. Smuggling is a means of avoiding these legally required payments and causes injury to the property of THE EUROPEAN COMMUNITY and its MEMBER STATES. THE EUROPEAN COMMUNITY is represented in the United States by a Delegation in Washington, D.C. The Delegation has full diplomatic privileges and immunities, and the Head of the Delegation is accorded full ambassadorial status.

(b.) Each of the named MEMBER STATES, Kingdom of Belgium, Republic of Finland, French Republic, Hellenic Republic, Federal Republic of Germany, Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands, Portuguese Republic, and Kingdom of Spain are sovereign States. As such, each State possesses the legal capacity to acquire, own, or dispose of property and may be a party to legal proceedings. Each is a "person" as defined under the applicable United States law. Each State has the right to hold a legal or beneficial interest in property and receive money arising from the sale of tobacco products within its borders, including value-added taxes (VAT), excise taxes and a portion of the customs duties which it collects on behalf of THE EUROPEAN COMMUNITY. Each of these States is a party to this lawsuit and is represented herein by and through THE EUROPEAN COMMUNITY and the undersigned counsel.

7. RJR NABISCO, INC. was a Delaware corporation and, according to public records, has maintained its principal place

of business at 1301 Avenue of the Americas, New York, New York 10019-6013. During relevant times, RJR NABISCO, INC. was the parent corporation of R.J. REYNOLDS TOBACCO COMPANY and has participated in the sale and manufacture of cigarettes and other tobacco products both individually and through its agent and instrumentality, Defendant R.J. REYNOLDS TOBACCO COMPANY, and related entities and ventures. RJR NABISCO, INC. assumed an active role in the tobacco business and has treated the tobacco business as a department or division of RJR NABISCO, INC. At times pertinent to this complaint, RJR NABISCO, INC., individually and through its agents, subsidiaries, divisions, or affiliated companies, or ventures, materially participated in the operation and management of RJR's smuggling enterprise, and materially 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 foreign and interstate commerce. Upon information and belief, based on RJR's public filings, RJR NABISCO, INC., was renamed R.J. REYNOLDS TOBACCO HOLDINGS, INC., a Delaware corporation, and is now a direct, wholly-owned subsidiary of NABISCO GROUP HOLDINGS CORP. During relevant times herein, RJR NABISCO, INC., has conducted continuous and systematic business in the State of New York, maintains a substantial financial presence in the State of New York,

utilizes offices of its own and of its affiliated corporations in New York, and is otherwise subject to the jurisdiction of the courts in the State of New York.

8. R.J. REYNOLDS TOBACCO COMPANY is a New Jersey corporation whose principal place of business is located at 401 North Main Street, Winston-Salem, North Carolina 27102. At times pertinent to this complaint, R.J. REYNOLDS TOBACCO COMPANY, individually and through its agents, subsidiaries, divisions, or affiliated companies or ventures, materially participated in the operation and management of RJR's smuggling enterprise, and materially 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 foreign and interstate commerce. During relevant times herein, R.J. REYNOLDS TOBACCO COMPANY conducted continuous and systematic business in the State of New York, maintains a substantial financial presence in the State of New York, utilizes offices of its own and of its affiliated corporations in New York, and is otherwise subject to the jurisdiction of the courts in the State of New York.

9. R.J. REYNOLDS TOBACCO INTERNATIONAL, INC. is a Delaware corporation. At times pertinent to this complaint, R.J. REYNOLDS TOBACCO INTERNATIONAL, INC., individually and through its agents, subsidiaries, divisions, or affiliated

companies or ventures, materially participated in the operation and management of RJR's smuggling enterprise, and materially 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 foreign and interstate commerce. During all relevant times, R.J. REYNOLDS TOBACCO INTERNATIONAL, INC. conducted continuous and systematic business in the State of New York, maintained a substantial financial presence in the State of New York, utilized offices of its own and of its affiliated corporations in New York, and is otherwise subject to the jurisdiction of the courts in the State of New York.

10. RJR NABISCO HOLDINGS CORP. is a Delaware corporation whose principal place of business is 1301 Avenue of the Americas, New York, New York 10019-6013. During all relevant times, RJR NABISCO HOLDINGS CORP. was the parent corporation of RJR NABISCO, INC. On June 14, 1999, RJR NABISCO HOLDINGS CORP. changed its name to NABISCO GROUP HOLDINGS CORP. NABISCO GROUP HOLDINGS CORP. is a Delaware corporation whose principal place of business is 7 Campus Drive, Parsippany, New Jersey 07054-0311.

11. On June 14, 1999, RJR NABISCO HOLDINGS CORP. distributed all of the common stock of its subsidiary, R.J.

REYNOLDS TOBACCO HOLDINGS, INC., to the shareholders of RJR NABISCO HOLDINGS CORP.

12. a. During all relevant times, these holding corporations participated, directly and indirectly, in the sale and manufacture of cigarettes and other tobacco products through their agent and instrumentality Defendant, R.J. REYNOLDS TOBACCO COMPANY, and related entities and ventures. These holding corporations assumed an active role in the tobacco business and have treated the tobacco business as a department or division. At times pertinent to this complaint, these holding corporations, individually and through their agents, subsidiaries, divisions, or affiliated companies or ventures, materially participated in the operation and management of RJR's smuggling enterprise, and materially 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 foreign and interstate commerce. During relevant times herein, these holding corporations conducted continuous and systematic business in the State of New York, maintained a substantial financial presence of their own and their affiliated corporations in New York, and are otherwise subject to the jurisdiction of the courts in the State of New York.

b. The RJR DEFENDANTS are and were, during all relevant times, involved in directing, managing, and controlling smuggling operations within THE EUROPEAN COMMUNITY. At all times pertinent to this complaint, the RJR DEFENDANTS, individually and through their employees, agents, joint venturers, co-conspirators, subsidiaries, divisions, or affiliated companies, actively directed, managed, and controlled the RJR 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.

13. The foregoing RJR corporations, as well as their affiliated entities, ventures, and successors, 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 RJR corporate family. The RJR DEFENDANTS maintain control of tobacco operations worldwide through a web of affiliated entities and joint ventures. This corporate structure was an essential aspect of RJR's successful efforts to surreptitiously direct tobacco smuggling in THE EUROPEAN COMMUNITY.

14. The RJR 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 RJR DEFENDANTS. As alleged herein, the RJR 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 RJR DEFENDANTS' resources and strategy at the heart of the conspiracy, the RJR DEFENDANTS were aggressor entities that acted to harm the economic interests of the Plaintiffs.

15. The RJR DEFENDANTS, during relevant times, 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 RJR's Audit Committee, RJR DEFENDANTS have undertaken responsibility for the acts of the employees of the RJR DEFENDANTS, wherever taken, including acts related to smuggling activities within Europe

16. 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.

17. 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.

18. 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.

19. 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.

20. a. The foregoing PHILIP MORRIS corporations, as well as their affiliated entities, ventures, and successors, 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 corporate family. The PHILIP MORRIS DEFENDANTS maintain control of tobacco operations worldwide through a web of affiliated entities and joint ventures. This corporate structure was an essential aspect of PHILIP MORRIS DEFENDANTS' successful efforts to surreptitiously direct tobacco smuggling into THE EUROPEAN COMMUNITY. 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.

b. The PHILIP MORRIS DEFENDANTS are and were, during all relevant times, involved in directing, managing, and controlling smuggling operations within THE EUROPEAN COMMUNITY. At all times pertinent to this complaint, the PHILIP MORRIS DEFENDANTS, individually and through their employees, agents, joint venturers, 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.

c. 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 the Plaintiffs.

d. 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 Europe.

III. JURISDICTION

21. As to the Plaintiffs, the MEMBER STATES, 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. 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). As to all Plaintiffs, 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. 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

22. 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). Alternatively, venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2).

V. THE INTERNATIONAL SMUGGLING SCHEME: OVERVIEW

23. Beginning in the late 1970s and continuing through the present day, the Defendant corporations, 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.

24. To accomplish this end, the RJR DEFENDANTS and PHILIP MORRIS 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. By such acts, among others, the Defendants embarked upon and pursued a scheme to smuggle cigarettes on a worldwide basis, including into and within THE EUROPEAN COMMUNITY, in order to deprive the Plaintiffs of money and property, while increasing the sales of their products, profits, and market share, and enhancing the value of their tobacco operations. Once smuggled cigarettes have penetrated

the border of THE EUROPEAN COMMUNITY, the Defendants and their co-conspirators exploit the internal free market rules of THE EUROPEAN COMMUNITY to transfer illicit cigarettes from one Member State to another. The RJR DEFENDANTS and the PHILIP MORRIS DEFENDANTS have engaged and continue to engage in smuggling schemes in which they collaborate with smugglers and money launderers in Europe, Panama, the Caribbean, Colombia, and the United States for the purpose of smuggling cigarettes into THE EUROPEAN COMMUNITY.

25. By directing, encouraging, supporting, facilitating, and controlling the activities of the smugglers engaged in the sale, marketing, and distribution of contraband cigarettes throughout THE EUROPEAN COMMUNITY, the 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 duties, 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 EUROPEAN COMMUNITY at prices below that which could

be charged by their competitors whose products are sold lawfully and, 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 EUROPEAN COMMUNITY and the governments of the MEMBER STATES of THE EUROPEAN COMMUNITY, the United States Congress, and the legislatures of the various states of the United States to reduce or eliminate cigarette taxes under the pretense that high cigarette taxes promote smuggling and other crimes. PHILIP MORRIS and RJR took such actions individually, and in concert under the auspices of groups formed and managed by major tobacco manufacturers, to block tobacco-related initiatives within THE EUROPEAN COMMUNITY including those involving the so-called "duty free" market. The industry groups included, without limitation: (a) International Committee on Smoking Issues ("ICOSI") (later renamed INFOTAB); (b) EEC Task Force on Consumerism; (c) International Duty Free Confederation ("IDFC"); (d) "Confederation of European Community Cigarette Manufacturers Ltd." ("CECCM"); and (e) CECCM's "Duty Free Study Group" which was comprised entirely of company representatives, including PHILIP MORRIS and RJR. As a consequence of Defendants' direct and indirect representations to Plaintiffs, governments worldwide, including the MEMBER STATES and THE EUROPEAN

COMMUNITY were misled concerning the direct cause of smuggling -- the Defendants' conduct. The Defendants employed this lobbying scheme while 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 RJR DEFENDANTS and PHILIP MORRIS 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. PHILIP MORRIS and RJR took such actions individually and in concert under the auspices of groups formed by tobacco manufacturers to block tobacco-related initiatives within THE EUROPEAN COMMUNITY including, for example, the "EEC Task Force on Consumerism" and the "Confederation of European Community Cigarette Manufacturers Ltd." The existence of smuggling, as controlled, directed, encouraged, supported and facilitated by the Defendants, has constituted the "self-fulfilling prophecy" that high cigarette taxes will only cause smuggling. The Defendants, through the aforesaid 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 governments worldwide, including THE EUROPEAN COMMUNITY and its MEMBER STATES, 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.

26. Additionally, the RJR DEFENDANTS and the PHILIP MORRIS DEFENDANTS individually and/or jointly work in concert with various distributors whom the Defendants know, or have reason to know, are large-scale smugglers of cigarettes to ensure that the Defendants' objectives as set forth above are achieved.

27. The RJR DEFENDANTS and the PHILIP MORRIS DEFENDANTS, jointly and as individual corporations, control, direct, encourage, support, promote, and facilitate the smuggling of cigarettes into THE EUROPEAN COMMUNITY 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 who 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 those 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.

28. The Defendants knew or should have known that smugglers were purchasing cigarettes in large quantities, either directly or indirectly, in order to smuggle cigarettes into THE EUROPEAN COMMUNITY.

29. 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 cigarettes into THE EUROPEAN COMMUNITY.

30. But for the active assistance of the Defendants, the smugglers could not have obtained, smuggled, and sold the large quantities of contraband cigarettes they did 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.

31. 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 depriving Plaintiffs of money and property and engaging in a course of conduct to gain massive profits from the sale of cigarettes that were illegally sold in THE EUROPEAN COMMUNITY while harming Plaintiffs' economic interests. The activities of this core group constitute a conspiracy in law and in fact.

RJR'S DIRECT INVOLVEMENT IN SMUGGLING

32. The RJR 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 RJR DEFENDANTS have controlled, directed, and facilitated the smuggling of cigarettes into THE EUROPEAN COMMUNITY, directly and through the acts of their co-conspirators, include the following:

a. The RJR DEFENDANTS, through their employee, Richard Larocca, and through various other employees, helped to establish a smuggling network by which RJR cigarettes, and, in particular, Winston cigarettes, were smuggled into THE EUROPEAN COMMUNITY, and, more particularly, into Spain. The RJR DEFENDANTS, through their use of distributors, ship chandlers, and smugglers, established the routes and mechanisms by which the cigarettes were smuggled into Europe. Richard Larocca was specifically recruited by RJR because he was well acquainted with the market in Spain. Richard Larocca was directed to increase the Defendants' market share in Spain by whatever means necessary, including smuggling. Richard Larocca provided detailed information to RJR concerning the marketing potential in Spain for Winston cigarettes that would be transported both legally and illegally into Spain. Mr. Larocca also provided marketing information and other pertinent information to the smugglers so cigarettes could be smuggled efficiently into Spain. The aforesaid plan was initiated by all the named RJR DEFENDANTS and, in particular, R.J. REYNOLDS TOBACCO COMPANY, and R.J. REYNOLDS TOBACCO INTERNATIONAL, INC.

b. In 1994, the RJR DEFENDANTS initiated a process by which their executives could receive massive bonuses if they met specified performance targets. These bonuses could be as high as two to three million dollars to an executive who met certain targets. Motivated by this incentive, these executives met the marketing targets and received these bonuses by drastically increasing sales through smuggling. This process continued for several years and, upon information and belief, still continues today. THE EUROPEAN COMMUNITY experienced a massive surge in smuggling of RJR products in 1996, which on information and belief was directly as a result of the bonus program that RJR put into place. The aforesaid bonus program was initiated by all of the RJR DEFENDANTS and, more particularly, by RJR NABISCO, INC., NABISCO GROUP HOLDINGS CORP., R.J. REYNOLDS TOBACCO HOLDINGS, INC., R.J. REYNOLDS TOBACCO COMPANY, and R.J. REYNOLDS TOBACCO INTERNATIONAL, INC.

c. The RJR DEFENDANTS, through their own personnel and outside consultants, analyzed the routes by which large quantities of RJR cigarettes were smuggled into THE EUROPEAN COMMUNITY. From this investigation, RJR was put on notice of and exploited the smuggling routes into THE EUROPEAN COMMUNITY. For example, the Kingdom of Spain has for many years been a primary destination for smuggled Winston cigarettes. The ultimate consumers in Spain demanded cigarettes of the highest

quality and wanted to be sure that they were receiving authentic American cigarettes. Additionally, various RJR executives were paid money by smugglers to insure that these particular cigarette smugglers would not have other smugglers infringe on their territories. As the demand for Winstons in Spain increased throughout the 1990s, increased numbers of lesser quality smuggled Winstons from other sources were being smuggled into Spain, thereby interfering with the authorized smuggling that was directed by the RJR DEFENDANTS. In order to offset and prevent the unauthorized smuggling, the RJR DEFENDANTS undertook certain steps. First, they developed a particular presentation of Winston cigarettes known to the Spanish consumer as "patanegra." Among other ways, the patanegra presentation could be distinguished from regular Winston cigarettes in that it contained certain distinctive markings and did not contain a blue sticker that was found on most Winston cigarettes. The RJR DEFENDANTS produced the "patanegra" presentation specifically for their best smuggling customers so as to insure that they could maintain their competitive advantage over other smugglers and the RJR DEFENDANTS could increase their market share. The "patanegra" presentation was developed specifically for the Spanish market and sold only in Spain.

d. One of the ways by which the "patanegra" presentation cigarette has been smuggled into Spain is as

follows: large volumes of the "patanegra" presentation were sold by the RJR office located in Miami, Florida. One major customer for the patanegra Winston cigarettes was a company known as Copaco located in Panama. Copaco would order the cigarettes from the office in Miami by the use of the United States wires and/or mail. Copaco would pay RJR for the cigarettes by way of wire transfers and other communications that involved the use of U.S. wires and mail. RJR would then ship the cigarettes from its production facilities in North Carolina to Capaco. Once the cigarettes were received by Copaco, the cigarettes would then be reshipped to Rotterdam in The Netherlands. In order for the cigarettes to be legally shipped from Rotterdam within THE EUROPEAN COMMUNITY, it was necessary for a transit document to be issued. This document was known as a "T1." Several different shippers in Rotterdam would, for an appropriate price, obtain the necessary transit documents and would physically ship the cigarettes. In the early years of this practice, large bonds were not required to insure the delivery of the product to the proper destination. In those days, the T1 transit document would indicate that the ultimate destination of these cigarettes was the Canary Islands. The Winston cigarettes would be delivered by truck from Rotterdam to Barcelona and were thereby smuggled into Spain. The cigarettes would not go on to the Canary Islands as the

shipping documents indicated. In later years, larger bonds were required to insure delivery of the product. When this became a requirement, the shipping procedure was changed. Rather than being designated as having a destination of the Canary Islands, the documents would indicate an ultimate destination of Yugoslavia or another Eastern European country. The cigarettes would then be delivered from Rotterdam to Barcelona by truck where they would be offloaded and sold. The containers that had previously contained the cigarettes were then loaded with another product and the trucks went from Barcelona to Eastern Europe carrying the other product. Once the cargo arrived in Eastern Europe, the transport documents were signed as if the product had been received in Yugoslavia or another Eastern European country. In fact, however, the cigarettes had been smuggled into Spain.

The aforesaid procedure was well known to and was encouraged by the RJR DEFENDANTS. Individual RJR executives charged a kickback of five to fifteen dollars per case in exchange for their selling these very valuable Winston cigarettes into the smuggling network. These executives would further encourage the smugglers and/or their associates to buy more cigarettes and would give them a "discount" on the kickback if they purchased larger volumes of cigarettes. Through these procedures, individual distributors such as Copaco would

purchase and sell up to ten thousand cases of cigarettes per month. The aforesaid procedure occurred throughout the 1990s until at least 1999. In the late 1990s, variations on this smuggling scheme were implemented, including shipments to Madeira or the Canary Islands. The aforesaid smuggling scheme could not have occurred without the complicity of the RJR DEFENDANTS. But for the creation of the "patanegra" presentation for Spain, this lucrative smuggling could not have occurred. Similarly, unless the RJR DEFENDANTS provided large quantities of cigarettes to their Miami office for sale, the smugglers in Panama and other parts of the Caribbean would not have these cigarettes available for purchase and distribution within THE EUROPEAN COMMUNITY.

e. The RJR DEFENDANTS carefully controlled and monitored all the sales of their cigarettes in Spain, both smuggled and legally sold. Because of the way the RJR DEFENDANTS mark and label their cigarettes, the RJR DEFENDANTS identified RJR cigarettes that were in the marketplace and which were smuggled into the country by persons without the authorization of the RJR DEFENDANTS. The RJR DEFENDANTS also identified the distributor from whom those cigarettes were purchased. The RJR DEFENDANTS control the distribution of smuggled cigarettes in the marketplace, and require their distributors to insure that the smuggled cigarettes are

distributed only in RJR-designated markets. For example, when the RJR DEFENDANTS detected a large volume of "unauthorized" smuggled cigarettes on the streets in Spain, the RJR DEFENDANTS would purchase the entire load of unauthorized RJR cigarettes. They would then return the cigarettes to the distributor who sold them, and require the distributor to reimburse the RJR DEFENDANTS for the amount that they had paid on the street for the cigarettes. The distributors would then resell the cigarettes to a purchaser who would be counted on to smuggle the cigarettes to an authorized destination. In some instances, smuggled cigarettes were seized by Spanish authorities. If these "unauthorized" smuggled cigarettes were seized by authorities and sold at auction, the RJR DEFENDANTS would purchase those cigarettes at auction. The RJR DEFENDANTS would then require the smugglers to reimburse the RJR DEFENDANTS for fifty percent of the price that the RJR DEFENDANTS had paid for the cigarettes at the auction. This was one of the ways in which the RJR DEFENDANTS would punish smugglers for smuggling unauthorized cigarettes into Spain and thereby control the smuggling market. The RJR DEFENDANTS would then keep those cigarettes that had been legitimized by their purchase in auction and sell them in Spain through legitimate vendors. The markings on the containers allowed the RJR DEFENDANTS to identify from which smugglers the product had been seized. If a

smuggler refused to reimburse the RJR DEFENDANTS the fifty percent required in that situation, the RJR DEFENDANTS cut off the supply of cigarettes to that smuggler. Communications concerning these matters were effectuated through the use of United States and international wires.

f. The RJR DEFENDANTS solicited contacts with companies and individuals in Central America and the Caribbean that the Defendants knew, or had reason to know, were money launderers. Upon information and belief, Richard Larocca, in particular, established direct relationships with individuals in Central America and the Caribbean who he knew, or should have known, were actively involved in laundering the proceeds of illicit narcotics sales. Executives and employees of the RJR DEFENDANTS traveled to the Caribbean and to Central America on multiple occasions for the purpose of meeting and negotiating business agreements with individuals who the RJR DEFENDANTS knew, or should have known, were involved in the laundering of narcotics proceeds. Additionally, in their attempts to build up and establish a market for their cigarette products, the RJR DEFENDANTS, through their agents and employees, developed business relationships with individuals in Colombia that the RJR DEFENDANTS knew or should have known were directly involved in narcotics trafficking. In or about the early 1990s, bank accounts in Miami, Florida, owned by various RJR cigarette

distributors, were frozen by United States law-enforcement officials because funds credited to those accounts represented laundered drug money. The freezing of these accounts was well known to the RJR DEFENDANTS. By virtue of this event, the RJR DEFENDANTS were aware or should have been aware that their distributors had been involved in handling laundered narcotics proceeds. In spite of the fact that the conduct of these individuals was known to Richard Larocca and RJR, the RJR DEFENDANTS actively developed these relationships so as to sell large volumes of cigarettes to these money launderers. A substantial portion of the cigarettes purchased by the money launderers was smuggled into THE EUROPEAN COMMUNITY. The RJR DEFENDANTS have long been on notice that cigarette smuggling activities are linked to the Black Market Peso Exchange and the Colombian cocaine smugglers. In or about 1994, the National Coalition Against Crime and Tobacco Contraband, which was funded by RJR and other 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, Linquist observed that: "There are indications that some Colombian cocaine barons still handle [contraband] cigarettes, but for a different purpose. It is believed, 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."

g. From at least 1991 through 1997, a large percentage of the cigarettes that were ultimately to be smuggled was shipped from New York to the Caribbean for distribution into Europe and South America. In approximately 1991, distributors for RJR informed RJR that they had received complaints from the smugglers that the cardboard cases in which the cigarettes were being packaged were too weak and, as such, the cigarettes were being damaged. The smuggling of cigarettes is performed in such a fashion that there is a greater risk of damage to the product and accordingly the containers for the cigarettes must be made stronger. In response to this information, RJR increased the strength of the cardboard master cases for cigarettes that were to be directed into the smuggling channels. The strengthened master cases were shipped by RJR from ports in New York to the Caribbean at least from 1991 through 1997. Confirmation that the cases would be strengthened was made by use of the U.S. wires in letters faxed from the RJR offices in Miami to RJR executives and customers in 1991 and 1992.

h. The RJR 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 nowhere near Panama, RJR shipped these cigarettes directly 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 which customs duties would be owed on these cigarettes. A substantial percentage of these cigarettes were ultimately smuggled into THE EUROPEAN COMMUNITY. The RJR DEFENDANTS endeavored to conceal the sale of their products into smuggling channels by transferring the cigarettes to several destinations prior to the ultimate delivery to the final customer.

i. From at least October 1995 through April 1997, the RJR DEFENDANTS knowingly supplied large volumes of cigarettes to a smuggling group in the United Kingdom that was in turn smuggling those cigarettes into Spain. One of the companies involved in the smuggling operation was Entire Warehousing. Additionally, there were at least six other related companies that were engaged in a massive cigarette-smuggling, money-laundering scheme. Through the period from 1995 through 1997, the aforesaid companies smuggled thousands of cases of cigarettes manufactured by the RJR DEFENDANTS into

Spain. The RJR DEFENDANTS sold cigarettes to "distributors" in Panama and elsewhere with the full knowledge that the true purchaser of the cigarettes was this smuggling group. The cigarettes were sold to intermediary "distributors" in Panama and elsewhere so as to conceal from law-enforcement authorities the fact that the RJR DEFENDANTS were selling cigarettes to this smuggling group. The smugglers created false documents so as to defraud European customs officials and create the appearance that the cigarettes were being exported to destinations outside THE EUROPEAN COMMUNITY such as Morocco. The smugglers, in order to purchase cigarettes of this large quantity, were required by RJR to notify the RJR DEFENDANTS of the location to which they intended to export the cigarettes. The RJR DEFENDANTS, by virtue of their network of personnel in both Spain and Morocco knew that the cigarettes were not arriving in or being sold in Morocco, but rather were being smuggled into Spain for sale in Spain. In spite of the knowledge of the RJR DEFENDANTS that these cigarettes were being smuggled into Spain, the RJR DEFENDANTS continued to sell the cigarettes to the smugglers and, in fact, encouraged the smugglers to purchase more cigarettes. The cigarettes in question were manufactured in the United States, and orders for the cigarettes were placed to the RJR DEFENDANTS in the United States through the United States mail and/or wires. Payment for the cigarettes in question was

made to the RJR DEFENDANTS through the use of the wires and/or mail.

Shipments that were smuggled into THE EUROPEAN COMMUNITY through the aforesaid scheme include, by way of example, the following:

	Date	Description	Purported Destination	Actual Destination
1.	11/23/95	1,136 master cases Winston cigarettes	Morocco	Spain
2.	11/27/95	1,136 master cases Winston cigarettes	Morocco	Spain
3.	11/28/95	1,056 master cases Winston cigarettes	Morocco	Spain
4.	11/30/95	1,056 master cases Winston cigarettes	Morocco	Spain
5.	12/01/95	1,200 master cases Winston cigarettes	Morocco	Spain
6.	12/04/95	1,200 master cases Winston cigarettes	Morocco	Spain
7.	12/05/95	1,136 master cases Winston cigarettes	Morocco	Spain
8.	12/06/95	1,200 master cases Winston cigarettes	Morocco	Spain
9.	1/05/96	1,200 master cases Winston cigarettes	Morocco	Spain
10.	1/11/96	1,200 master cases Winston cigarettes	Morocco	Spain
11.	1/19/96	1,200 master cases Winston cigarettes	Morocco	Spain

12.	1/26/96	1,100 master cases Winston cigarettes	Morocco	Spain
13.	2/02/96	1,200 master cases Winston cigarettes	Morocco	Spain
14.	2/12/96	1,150 master cases Winston cigarettes	Morocco	Spain
15.	2/22/96	1,100 master cases Winston cigarettes	Morocco	Spain
16.	3/20/96	1,200 master cases Winston cigarettes	Morocco	Spain
17.	4/30/96	1,200 master cases Winston cigarettes	Morocco	Spain
18.	5/16/96	1,200 master cases Winston cigarettes	Morocco	Spain

j. In order for cigarette smuggling to be conducted efficiently, certain labeling and stamping must be conducted at the factory where the cigarettes are produced. Certain labeling, health warnings, and the language in which the package is printed have a significant effect on the value of the cigarettes at their ultimate destination. Also, in order to smuggle cigarettes into certain nations, tax stamps often are affixed to the cigarettes at the factory at the time of packaging. The RJR DEFENDANTS, on a regular basis, packaged their products specifically to meet the needs of their smuggling customers. Additionally, it is a routine practice to attach tax stamps or, on many occasions, counterfeit tax stamps on the product at the factory. Had the RJR DEFENDANTS and its agents

conducted a reasonable inquiry concerning the source and/or validity of the tax stamps, or had they not chosen to turn a blind eye to the source and/or validity of the tax stamps, they would have known that the improper use of tax stamps facilitated smuggling to the detriment of Plaintiffs.

k. Throughout the 1990s, the RJR DEFENDANTS were on notice that their cigarettes were being smuggled into THE EUROPEAN COMMUNITY. One of the RJR DEFENDANTS' primary agents for the storage and handling of cigarettes in THE EUROPEAN COMMUNITY was a company known as Belgium Pakhoed N.V. On May 26, 1997, Belgium Pakhoed N.V. sent a letter to the RJR DEFENDANTS notifying the RJR DEFENDANTS that a substantial number of the RJR DEFENDANTS' customers were smuggling cigarettes and were "involved in major EC-fraud." Belgium Pakhoed N.V. went on to tell the RJR DEFENDANTS that in light of this fraud being conducted by RJR customers, Belgium Pakhoed N.V. would no longer load cigarettes on to ships operated by these customers. The response of the RJR DEFENDANTS was not to cut off its supply of cigarettes to these customers, but rather to redirect their supply of cigarettes to these customers through the country of Cyprus, which is not a member of THE EUROPEAN COMMUNITY. The RJR DEFENDANTS continue to supply cigarettes to these customers three years after RJR had been notified that these customers were involved in EC fraud.

1. In approximately November 1997, the RJR DEFENDANTS manufactured, packaged, and sold a shipment of eighty million cigarettes that were shipped from the RJR facilities in the United States to Europe by being loading on to ships in Charleston, South Carolina, and Savannah, Georgia. The RJR DEFENDANTS had prepared shipping documents indicating that the cigarettes were destined for a customer in Greece. In fact, however, the purported customer in Greece was nothing more than a store front that the RJR DEFENDANTS knew or should have known had neither the intention nor the capability of selling the aforesaid cigarettes in Greece. Rather than being delivered to Greece, the cigarettes were illegally introduced into Spain. The orders for the cigarettes in question were placed to the RJR DEFENDANTS in their offices in the United States by the way of the U.S. wires and/or mail. Shipping documents and other documentation necessary to consummate the transaction were transmitted by the RJR DEFENDANTS by use of the U.S. wires and/or mail. Bills of lading generated by the RJR DEFENDANTS or by their agents on their behalf specifically ordered that there be no reference to marks or numbers of the cigarettes nor any mention of the brand name of the cigarettes shipped. Documents prepared by the RJR DEFENDANTS or by their agents on their behalf that were filed with the United States Bureau of Alcohol, Tobacco and Firearms intentionally misstated the intended

destination of the cigarettes so as to mislead the Bureau of Alcohol, Tobacco and Firearms.

m. In another incident in April 1997, the RJR DEFENDANTS manufactured, packaged, sold, and shipped one hundred twenty million Winston cigarettes. These cigarettes were packaged and shipped ostensibly to locations outside THE EUROPEAN COMMUNITY. In fact, however, the cigarettes were intended to be smuggled into Spain. Approximately twenty-two million cigarettes were seized by Spanish customs authorities. Approximately ninety-eight million cigarettes were smuggled into Spain. The RJR DEFENDANTS, by virtue of the method by which they account for the sales of their cigarettes, knew or had every reason to suspect that the cigarettes in question were, in fact, being sold to smugglers. The orders for the cigarettes in question were placed with the RJR DEFENDANTS in their offices in the United States by U.S. wires and/or mail. The shipping documents, billing documents, and other documentation necessary to consummate the transaction were sent by the RJR DEFENDANTS to the recipients by way of U.S. wires and/or mail. When officials of THE EUROPEAN COMMUNITY attempted to obtain information from the RJR DEFENDANTS concerning this shipment of cigarettes, the RJR DEFENDANTS sent a letter to THE EUROPEAN COMMUNITY and refused to comply with the request based on an argument that to

cooperate with THE EUROPEAN COMMUNITY would be a violation of Swiss law.

n. In order to maintain and exercise control of the smuggling enterprise, the RJR DEFENDANTS, as well as Richard Larocca and others, required the smugglers to keep logs of their loads, to keep track of where the loads were delivered, and to record the price for which the cigarettes were sold. This allowed the RJR DEFENDANTS to keep direct, hands-on control of the entire smuggling process. The RJR DEFENDANTS even threatened smugglers that, if they did not keep proper records of their smuggling activities, the RJR DEFENDANTS would deal with other smuggling customers.

o. In the mid to late 1990s, the RJR DEFENDANTS implemented a policy by which they would not sell cigarettes to any distributor unless the distributor verified to the RJR DEFENDANTS exactly who the final customer was. If the distributor failed to accurately inform the RJR DEFENDANTS who was to be the ultimate purchaser of the cigarettes, the RJR DEFENDANTS would either supply no cigarettes at all to the distributor or would only supply a fraction of the volume requested by the distributor. The final destination of all RJR cigarettes sold worldwide was known to the RJR DEFENDANTS.

p. For many years, RJR and other tobacco manufacturers have conspired, through concert of action, to

mislead and obstruct efforts within THE EUROPEAN COMMUNITY to address smuggling and other tobacco-related problems. (i) Upon information and belief, on January 19 and 20, 1978, PHILIP MORRIS, RJR, and other manufacturers formed the "EEC Task Force on Consumerism." The purpose of the organization was, in the words of its "confidential" minutes, "[t]o inhibit totally or partially the activities of the Brussels' bureaucracy in all matters concerning tobacco advertising, tobacco distribution and smoking and health questions." The organization agreed to consider the proposal for "' throwing sand' in the gears of Brussels by making use of the differences of opinion and competences in the different services." (ii) PHILIP MORRIS, RJR and others formed and funded the Confederation of European Community Cigarette Manufacturers Ltd. (CECCM) for the purpose, among others, of representing its members' public affairs interests within THE EUROPEAN COMMUNITY. In the March 1995 issue of its publication "Equilibrium," CECCM, acting on behalf of its members including PHILIP MORRIS and RJR, asserted that high taxes create an enormous "black market" but failed to disclose the responsibility of the tobacco companies for the smuggling problem within THE EUROPEAN COMMUNITY. (iii) The RJR DEFENDANTS, through the words and actions of their agents and employees, falsely represented to the law-enforcement agencies of various governments, including THE EUROPEAN COMMUNITY and the

MEMBER STATES, that they were attempting to combat smuggling when, in fact, they were controlling, directing, encouraging, supporting and facilitating the smuggling. While concealing their complicity in smuggling, the RJR DEFENDANTS engaged in a widespread public-relations campaign condemning "high taxes" as the cause of smuggling.

q. In order to direct, control, and facilitate smuggling, agents and employees of the RJR DEFENDANTS provided specific marketing information to the smugglers, including specification of which products were in demand and the volume of cigarettes that was needed to meet the specific demands of the smugglers' clients. The smugglers were also provided by RJR with pricing information so that they could have a reliable basis upon which to price their smuggled cigarettes.

r. The RJR 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.

s. The RJR DEFENDANTS arranged a process by which cigarettes purchased by smugglers could be paid for by payments into Swiss corporations and/or Swiss bank accounts so as to make it difficult or impossible for THE EUROPEAN COMMUNITY to track the smuggled cigarettes or to track the payment therefor. The decision to provide for payment by the smugglers into the Swiss

accounts was a decision made at an executive level by the RJR Defendants. In fact, RJR moved the records concerning almost all their illegal activities worldwide to Geneva, Switzerland, so as to escape the surveillance of the governments that are victimized by RJR's illegal activities.

t. The RJR DEFENDANTS have, for the past fifteen years, had a customer by the name of Michael Haenggi. Mr. Haenggi publicly admitted in the press that he has frequently supplied Winston cigarettes to smugglers who would then smuggle those cigarettes into Spain. Mr. Haenggi has publicly admitted that in one instance he sold one hundred sixty million cigarettes to a company in Panama which in turn smuggled those cigarettes into Spain. He has further admitted that on another occasion he supplied two hundred twenty million cigarettes to a company registered in the Caribbean that also smuggled those cigarettes into Spain. The vast majority of the cigarettes in both such instances was manufactured by the RJR DEFENDANTS. The RJR DEFENDANTS, to this date, continually supply cigarettes to Mr. Haenggi, even though he has openly admitted that at least part of his purchases from the RJR DEFENDANTS is for the purpose of sale to smugglers. In the transactions between the RJR DEFENDANTS and Mr. Haenggi, the RJR DEFENDANTS utilized the mail and methods of wire communication on a regular basis for the purpose of expediting the ordering of cigarettes, shipment and

delivery of cigarettes, verification of delivery, payment, and verification of payment for the cigarettes sold as a part of the enterprise.

u. The RJR DEFENDANTS have had dealings with individuals in Spain who they knew or should have known were identified by Spanish legal authorities as being involved in narcotics trafficking. For several years, one particular individual was a major customer of the RJR DEFENDANTS in that he purchased large quantities of RJR cigarettes and smuggled them throughout Spain. During all or part of the time the individual was smuggling cigarettes, he was also suspected of narcotics trafficking by Spanish law enforcement officials. The alleged involvement of this individual in narcotics trafficking was known to the RJR DEFENDANTS or would have been known to them but for their blind indifference in that this individual had had several publicized bouts with the law-enforcement agencies in Spain in regard to his alleged narcotics trafficking. In the most recent incident in October 1999, he escaped from law-enforcement authorities just as they were preparing to arrest him on a hashish-smuggling charge.

v. The RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their 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 EUROPEAN COMMUNITY. In pursuance of the agreement, RJR and PHILIP MORRIS formed, managed, and directed the affairs of several groups including, without limitation: (a) International Committee on Smoking Issues ("ICOSI"); (b) EEC Task Force on Consumerism; (c) International Duty Free Confederation ("IDFC"); (d) "Confederation of European Community Cigarette Manufacturers Ltd." ("CECCM"); and (e) CECCM's "Duty Free Study Group" which was comprised entirely of company representatives, including those of PHILIP MORRIS and RJR. RJR and PHILIP MORRIS, acting through the aforesaid groups, obstructed government oversight and represented to 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 and RJR, that was the direct cause of the "black market" and Plaintiffs' injuries. PHILIP MORRIS' and RJR's joint, false representations in the furtherance of the conspiracy concealed their involvement in smuggling operations and misled Plaintiffs, and such conduct constituted, among other things, fraud, negligent misrepresentation, unjust enrichment, public nuisance, and negligence, thereby causing harm to Plaintiffs, all as alleged above. Also in pursuance of the agreement, the RJR DEFENDANTS and their 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 RJR 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 RJR DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein. The RJR 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 RJR DEFENDANTS and with the knowledge and authorization of high-ranking corporate executives of the RJR DEFENDANTS, the RJR DEFENDANTS, acting in concert with and through their conspirators, agents, and employees, carried out the foregoing activities to facilitate the smuggling scheme.

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

x. The RJR DEFENDANTS and their employees were central figures and aggressors in the fraudulent scheme, and RJR personnel, including Richard Larocca and other RJR executives, performed their fraudulent acts on behalf of the RJR DEFENDANTS within the scope and course of their employment with RJR. The officers and directors of the RJR DEFENDANTS, including RJR Chairman Steven F. Goldstone, had knowledge of, or were recklessly indifferent toward, the unlawful activity. For example, in 1998 and 1999, RJR's shareholders proposed resolutions for consideration at the RJR annual meeting that put the RJR board of directors on actual notice that RJR was facilitating cigarette smuggling and was doing business with notorious smugglers; however, the RJR DEFENDANTS did nothing to end RJR's involvement with smuggling.

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

z. During all relevant times, the RJR 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. Under principles of conspiracy and concert of action, the RJR DEFENDANTS are jointly and severally liable for the actions of their co-conspirators in the furtherance of the smuggling scheme.

aa. The RJR DEFENDANTS and their co-conspirators utilized the interstate and international mail and wires, and other means of communications, to prepare and transmit documents that intentionally misstated the ultimate destination of the cigarettes in question so as to mislead the authorities within the United States and THE EUROPEAN COMMUNITY in regard to the actual destination of cigarettes that are transported into THE EUROPEAN COMMUNITY. THE EUROPEAN COMMUNITY and its MEMBER STATES, including the Kingdom of Belgium, Republic of Finland, French Republic, Hellenic Republic, Federal Republic of Germany, Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands, Portuguese Republic, and Kingdom of Spain, reasonably relied on said misrepresentations of fact in accounting for the cigarettes in question and assessing customs duties and taxes on cigarettes entering THE EUROPEAN COMMUNITY, and were and continue to be damaged by such reliance.

bb. The Defendants, their subsidiary corporations, and their co-conspirators use the mail and telephonic and other

wire forms of communication on a daily basis to bill and 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.

cc. 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.

dd. In that the illegal sale of cigarettes into THE EUROPEAN COMMUNITY is a multi-million dollar per year operation and is ongoing on a daily basis, it is impractical and impossible, in advance of discovery, to delineate each and every fraudulent communication in what is a pervasive and ongoing use of the mails and wires in furtherance of the smuggling activities. By conducting some of their activities in countries known for bank secrecy, the RJR DEFENDANTS have taken affirmative steps to prevent the victims of their fraud and

illicit conduct from discovering the exact details of the vast number of wire and mail communications that were incidental to central aspects of the scheme, including orders for contraband tobacco products, and repatriation of the proceeds of the smuggling scheme to the United States.

ee. The RJR 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 and national borders, to effectuate their common goals within the smuggling enterprise.

ff. The Defendants routinely shipped cigarettes to customs bonded warehouses and/or free trade zones in THE EUROPEAN COMMUNITY and filed or caused the filing of false and fraudulent documents which represented to THE EUROPEAN COMMUNITY and the MEMBER STATES that the cigarettes would be shipped out of THE EUROPEAN COMMUNITY so that no duties or taxes would be

paid. In fact, pursuant to the Defendants' smuggling scheme, the cigarettes remained in THE EUROPEAN COMMUNITY illegally or were temporarily removed from THE EUROPEAN COMMUNITY for the purpose of subsequent re-introduction into THE EUROPEAN COMMUNITY without the proper payment of customs duties and taxes. THE EUROPEAN COMMUNITY and the MEMBER STATES reasonably relied upon said false documents to their detriment.

gg. The Defendants filed or caused the filing of false and fraudulent documents which misstated the value of cigarettes in order to expedite the ultimate smuggling of the aforesaid cigarettes into THE EUROPEAN COMMUNITY. THE EUROPEAN COMMUNITY and the MEMBER STATES reasonably relied upon said false documents to their detriment.

hh. Once smuggled cigarettes have penetrated the border of THE EUROPEAN COMMUNITY, the Defendants and their co-conspirators exploit the internal free market rules of THE EUROPEAN COMMUNITY to transfer illicit cigarettes from one Member State to another without detection and without the payment of proper taxes.

PHILIP MORRIS' DIRECT INVOLVEMENT IN SMUGGLING

33. 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 facilitated the smuggling of cigarettes into THE EUROPEAN COMMUNITY include the following:

a. The PHILIP MORRIS DEFENDANTS have, for several years, sold Marlboro cigarettes to an individual known as Corado Baianchi. Mr. Baianchi has openly admitted to the press that he has sold PHILIP MORRIS cigarettes to smugglers so that those cigarettes could be smuggled into Italy. In spite of Mr. Baianchi's public admission that he has been a conduit between the PHILIP MORRIS DEFENDANTS and smugglers for the distribution and sale of contraband cigarettes in Western Europe, upon information and belief, the PHILIP MORRIS DEFENDANTS continue to sell cigarettes to him, even though he has admitted that at least part of his purchases from the PHILIP MORRIS DEFENDANTS is for the purpose of sales to smugglers. Andrew Reitman, the senior vice-president for PHILIP MORRIS' subsidiary in Europe, has acknowledged that PHILIP MORRIS does, in fact, know that its cigarettes are being sold as contraband by smugglers into THE EUROPEAN COMMUNITY. In their transactions between the Defendants and Mr. Baianchi, the Defendants utilized the mail and methods of wire communication on a regular basis for the purpose of expediting the ordering of cigarettes, shipment and

delivery of cigarettes, verification of delivery, payment, and verification of payment for the cigarettes sold as a part of the enterprise.

b. The PHILIP MORRIS DEFENDANTS created a circuitous and clandestine distribution chain for the sale of cigarettes in order to facilitate smuggling within THE EUROPEAN COMMUNITY. 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 United States 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 Europe and also to distributors in the Caribbean and Central America who then return the cigarettes to Europe. 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 EUROPEAN COMMUNITY, 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.

c. In approximately 1997, the PHILIP MORRIS DEFENDANTS restructured international sales operations 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 regular 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 the distribution and sale of their product.

d. The illegal sale of cigarettes has become one of the primary vehicles by which drug smugglers launder their illicit profits. PHILIP MORRIS has become a prime recipient of this business. Money brokers routinely purchase large volumes of PHILIP MORRIS cigarettes with money that represents the proceeds of illicit drug sales. Representatives of PHILIP

MORRIS know or should know the source of these funds and yet continue to receive these funds and to sell cigarettes to these persons.

e. The smuggling activities of the PHILIP MORRIS DEFENDANTS have enabled drug lords to launder their illicit profits. Narcotics-generated proceeds supply funds for the movement of billions of dollars worth of smuggled U.S. and foreign goods, including cigarettes, throughout the world, including THE EUROPEAN COMMUNITY. 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 Western Europe. 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 money laundering. In or about 1994, the National Coalition Against Crime and Tobacco Contraband, which was funded by RJR and other 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: "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."

f. 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.

g. 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 and use those sales to launder drug money.

h. Employees of the PHILIP MORRIS DEFENDANTS were personally involved in international travel to receive proceeds of the smuggling scheme, which aided in the laundering of the proceeds of illicit narcotics sales.

i. 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 EUROPEAN COMMUNITY. However, in spite of this ostensibly arms'-

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 EUROPEAN COMMUNITY.

j. The PHILIP MORRIS DEFENDANTS had long-standing relationships with several of their distributors. 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.

k. 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: Marc 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 America Marketing Task Force; PM USA New Product Initiatives; Regional Strategic Objectives; and PM INTERNATIONAL Marketing Overview.

1. 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 THE EUROPEAN COMMUNITY and other markets at prices substantially below the price at which legitimately sold cigarettes can be sold. In the early 1990s, distributors who wished to sell Marlboro cigarettes to smugglers could order the cigarettes and have them shipped

directly from Richmond, Virginia, to the offshore 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 where they would often be shipped back to THE EUROPEAN COMMUNITY. 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 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 the target countries 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.

m. 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 would be owed on these cigarettes. A substantial percentage of these cigarettes was ultimately smuggled into THE EUROPEAN COMMUNITY. Shipments of this type occurred throughout the 1990s. Shipments of this type continue until the present day. In order for the smuggling scheme to operate, the cigarettes must be packaged and labeled appropriately and shipping documents must be prepared for presentation to the various governments of the countries where the cigarettes are sent. The packaging and labeling of the products in question and the preparation of the aforesaid documents are arranged by the Defendant, PHILIP MORRIS PRODUCTS, INC., from its offices in Richmond, Virginia.

n. Throughout the 1990s and continuing into the year 2000, the PHILIP MORRIS DEFENDANTS 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 cigarettes 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 portion of the products purchased and sold by this company are smuggled illegally into THE EUROPEAN COMMUNITY. 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 the PHILIP MORRIS DEFENDANTS sold the cigarettes so as to conceal the identity of the ultimate purchaser from law-enforcement agencies.

o. 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.

p. For many years, PHILIP MORRIS and other tobacco manufacturers have conspired, through concert of action, to mislead and obstruct efforts within THE EUROPEAN COMMUNITY to address smuggling and other tobacco-related problems. (i) Upon information and belief, on January 19 and 20, 1978, PHILIP MORRIS, RJR, and other manufacturers formed the "EEC Task Force on Consumerism." The purpose of the organization was, in the words of its "confidential" minutes, "[t]o inhibit totally or partially the activities of the Brussels' bureaucracy in all matters concerning tobacco advertising, tobacco distribution and smoking and health questions." On that date, the organization agreed to consider the proposal for "' throwing sand' in the gears of Brussels by making use of the differences of opinion and competences in the different services." (ii) PHILIP MORRIS, RJR and others formed and funded the Confederation of European Community Cigarette Manufacturers Ltd. (CECCM) for the purpose, among others, of representing its members' public affairs interests within THE EUROPEAN COMMUNITY. In the March 1995 issue of its publication "Equilibrium," CECCM, acting on behalf

of its members including PHILIP MORRIS and RJR, asserted that high taxes create an enormous "black market" but failed to disclose the responsibility of the tobacco companies for the smuggling problem within THE EUROPEAN COMMUNITY. (iii) In addition, 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 United States and THE EUROPEAN COMMUNITY, 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. This campaign was and continues to be part of a long-term corporate policy carried out by, among others, PHILIP MORRIS' External Affairs Group, which sought 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 wires to circulate a corporate policy entitled: "External Affairs, Protecting Trademark Equities, 1993-1997." In order to minimize taxes and obstruct government oversight, PHILIP MORRIS implemented its plan to "update and develop studies that illustrate the problems of cross-border sales/bootlegging." (iv) In approximately 1999, the

PHILIP MORRIS DEFENDANTS entered into written agreements with one or more MEMBER STATES of THE EUROPEAN COMMUNITY wherein the PHILIP MORRIS DEFENDANTS promised that they would take a variety of steps to combat smuggling into THE EUROPEAN COMMUNITY. The PHILIP MORRIS DEFENDANTS executed these agreements so as to deceive THE EUROPEAN COMMUNITY and its MEMBER STATES into believing that the PHILIP MORRIS DEFENDANTS were not involved in the smuggling and that the PHILIP MORRIS DEFENDANTS would, in fact, help combat the smuggling. THE EUROPEAN COMMUNITY and its MEMBER STATES justifiably relied upon the written representations by the PHILIP MORRIS DEFENDANTS that they would help combat smuggling, and thereby incurred economic harm.

q. 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.

r. In order for cigarette smuggling to be conducted efficiently, certain labeling and stamping must be conducted at the factory where the cigarettes are produced. Certain labeling, health warnings, and the language in which the package is printed have a significant effect on the value of the cigarettes at their ultimate destination. Also, in order to smuggle cigarettes into certain countries, tax stamps often are affixed to the cigarettes at the factory at the time of

packaging. The PHILIP MORRIS DEFENDANTS, on a regular basis, packaged their products specifically to meet the needs of their smuggling customers. Additionally, it is a routine practice to attach tax stamps or, on many occasions, counterfeit tax stamps on the product at the factory. A reasonable inquiry as to the source of the tax stamps, by the PHILIP MORRIS Defendants and/or their licensees, or a reasonable examination of counterfeit tax stamps would easily reveal that the cigarettes in question are being purchased for smuggling purposes. However, the Defendants and/or their licensees knowingly affix improper stamps to their cigarettes or willfully turn a blind eye to the issue of counterfeit stamps so as to maximize the illicit sale of their products.

s. 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 PHILIP MORRIS' sales of the relatively small amounts of legally imported tobacco products. A conspiracy between the PHILIP MORRIS DEFENDANTS and another tobacco manufacturer to fix prices on smuggled cigarettes 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. At that meeting, to the best knowledge of the Plaintiffs, PHILIP MORRIS DEFENDANTS and the other manufacturer met for the first time to set forth a strategy to coordinate their price fixing and coordinate smuggling of their respective brands. 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.

t. 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 another cigarette manufacturer. 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. The minutes of that meeting specifically

refer to the setting of a price on "DNP" cigarettes. "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 other individuals on June 18, 1992. In fact, agreements between the PHILIP MORRIS DEFENDANTS and other manufacturers 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. In that a substantial percentage of the cigarettes sold to distributors and smugglers in Central and South America are ultimately smuggled into THE EUROPEAN COMMUNITY, the aforesaid pricing-fixing agreement had the effect of fixing prices for cigarettes that were ultimately smuggled into THE EUROPEAN COMMUNITY. Similar coordination and agreements between the PHILIP MORRIS DEFENDANTS and other cigarette companies exist to control the prices of smuggled cigarettes throughout the world, including into THE EUROPEAN COMMUNITY.

u. From at least October 1995 through April 1997, the PHILIP MORRIS DEFENDANTS knowingly supplied large volumes of cigarettes to a smuggling group in the United Kingdom that was in turn smuggling cigarettes into the MEMBER STATES of THE EUROPEAN COMMUNITY, including Portugal. One of the companies involved in the smuggling operation was Entire Warehousing. Additionally, there were at least six other related companies that were engaged in a massive cigarette-smuggling, money-laundering scheme. Through the period 1995 through 1997, the aforesaid companies smuggled thousands of cases of cigarettes manufactured by the PHILIP MORRIS DEFENDANTS into THE EUROPEAN COMMUNITY. The PHILIP MORRIS DEFENDANTS sold cigarettes to distributors with the full knowledge that the true purchaser of the cigarettes was this smuggling group. The smugglers created false documents so as to defraud customs officials and create the appearance that the cigarettes were being exported to destinations outside THE EUROPEAN COMMUNITY, such as Morocco, Mozambique, and Angola. In fact, however, the cigarettes were smuggled into MEMBER STATES of THE EUROPEAN COMMUNITY, including Portugal. The smugglers, in order to purchase cigarettes of this large quantity were required to notify the PHILIP MORRIS DEFENDANTS as to the location into which they intended to distribute the cigarettes. The PHILIP MORRIS DEFENDANTS, by virtue of their network of personnel in Europe and Africa knew

that the cigarettes were not arriving in Africa, but rather were being smuggled into the MEMBER STATES of THE EUROPEAN COMMUNITY. In spite of the knowledge by the PHILIP MORRIS DEFENDANTS that these cigarettes were being smuggled into THE EUROPEAN COMMUNITY, the PHILIP MORRIS DEFENDANTS continued to sell the cigarettes to the smugglers and, in fact, encourage the smugglers to purchase more cigarettes. A substantial percentage of the cigarettes in question was manufactured in the United States, and orders for the cigarettes were placed with the PHILIP MORRIS DEFENDANTS in the United States through the United States wire and/or mails.

Shipments smuggled into THE EUROPEAN COMMUNITY through the aforesaid scheme include, by way of example, the following:

	Date	Description	Purported Destination	Actual Destination
1.	1/10/96	300 master cases Marlboro cigarettes	Morocco	Spain
2.	1/12/96	200 master cases Marlboro cigarettes	Morocco	Spain
3.	1/17/96	50 master cases Marlboro cigarettes	Morocco	Spain
4.	2/16/96	300 master cases Marlboro cigarettes	Morocco	Spain
5.	4/18/96	600 master cases Marlboro cigarettes	Morocco	Spain

6.	4/25/96	500 master cases Marlboro cigarettes	Morocco	Spain
7.	5/29/96	425 master cases Marlboro cigarettes	Morocco	Spain
		225 master cases Merit cigarettes	Morocco	Spain
8.	5/30/96	425 master cases Marlboro cigarettes	Morocco	Spain
		225 master cases Merit cigarettes	Morocco	Spain
9.	7/15/96	425 master cases Marlboro cigarettes	Morocco	Spain
		200 master cases Merit cigarettes	Morocco	Spain
		100 master cases Philip Morris cigarettes.	Morocco	Spain

v. The Defendants routinely shipped cigarettes to customs bonded warehouses and/or free trade zones in THE EUROPEAN COMMUNITY and filed or caused the filing of false and fraudulent documents which represented to THE EUROPEAN COMMUNITY and the MEMBER STATES that the cigarettes would be shipped out of THE EUROPEAN COMMUNITY so that no duties or taxes would be paid. In fact, pursuant to the Defendants' smuggling scheme, the cigarettes remained in THE EUROPEAN COMMUNITY illegally or were temporarily removed from THE EUROPEAN COMMUNITY for the purpose of subsequent re-introduction into THE EUROPEAN COMMUNITY without the proper payment of customs duties and

taxes. THE EUROPEAN COMMUNITY and the MEMBER STATES reasonably relied upon said false documents to their detriment.

w. The Defendants filed or caused the filing of false and fraudulent documents which misstated the value of cigarettes in order to expedite the ultimate smuggling of the aforesaid cigarettes into THE EUROPEAN COMMUNITY. THE EUROPEAN COMMUNITY and the Member States reasonably relied upon said false documents to their detriment.

x. Once smuggled cigarettes have penetrated the border of THE EUROPEAN COMMUNITY, the Defendants and their co-conspirators exploit the internal free market rules of THE EUROPEAN COMMUNITY to transfer illicit cigarettes from one Member State to another without detection and without the payment of proper taxes.

34. 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 EUROPEAN COMMUNITY. In pursuance of the agreement, PHILIP MORRIS and RJR formed, managed, and directed the affairs of several groups including, without limitation: (a) International Committee on Smoking Issues ("ICOSI"); (b) EEC Task Force on Consumerism; (c) International Duty Free

Confederation ("IDFC"); (d) "Confederation of European Community Cigarette Manufacturers Ltd." ("CECCM"); and (e) CECCM's "Duty Free Study Group" which was comprised entirely of company representatives, including those of PHILIP MORRIS and RJR. PHILIP MORRIS and RJR, acting through the aforesaid groups, obstructed government oversight and represented to 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 and RJR, that was the direct cause of the "black market" and Plaintiffs' injuries. PHILIP MORRIS' and RJR's joint, false representations in the furtherance of the conspiracy concealed their involvement in smuggling operations and misled Plaintiffs, and such conduct constituted, among other things, fraud, negligent misrepresentation, unjust enrichment, public nuisance, and negligence, thereby causing harm to Plaintiffs, all as alleged above. Also in pursuance of the agreement, the PHILIP MORRIS DEFENDANTS and their 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.

a. 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.

b. 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, name-brand 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 and other illegal acts on behalf of the PHILIP MORRIS

DEFENDANTS within the scope and course of their employment with PHILIP MORRIS DEFENDANTS.

c. 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 or had acted with plain indifference or willful blindness to its requirements.

d. 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 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.

e. 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 misstated the ultimate destination of the cigarettes in question so as to mislead the authorities within the United States and THE EUROPEAN COMMUNITY in regard to the actual destination of cigarettes that are transported into

Europe. THE EUROPEAN COMMUNITY and its MEMBER STATES, including the Kingdom of Belgium, Republic of Finland, French Republic, Hellenic Republic, Federal Republic of Germany, Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands, Portuguese Republic, and Kingdom of Spain, reasonably relied on said misrepresentations of fact in accounting for the cigarettes in question and assessing customs duties and taxes on cigarettes entering THE EUROPEAN COMMUNITY, and THE EUROPEAN COMMUNITY and the MEMBER STATES were damaged as a result of such reliance.

f. 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 bill and 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.

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

h. In that the illegal sale of cigarettes into THE EUROPEAN COMMUNITY 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.

i. The PHILIP MORRIS 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 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.

j. 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 the 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.

k. 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 the 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." The Defendants failed to disclose that the PHILIP MORRIS DEFENDANTS are and have been engaged in distribution to the "black market" in THE EUROPEAN COMMUNITY and elsewhere, 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.

1. 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 the Center for Public Integrity in Washington, D.C., sent by facsimile transmission in January or February 2000.

m. PHILIP MORRIS adopted a corporate plan to use the "problem of contraband" as a tool to reduce or neutralize taxes and thereby enhance income. On June 8, 1994, PHILIP MORRIS announced that its principal, core strategy for its so-called "EEC Region" for the period 1995 through 1997 was to "Reduce/neutralize excise tax threats to growth/IFO." "IFO" is believed to be an acronym for "income from operations." Moreover, PHILIP MORRIS adopted, as part of its Five Year Plan (1994-1998) for its EEC Region, the goal of minimizing the "incidence" of taxation. In that Plan, PHILIP MORRIS stated that "[o]ver the long-term, our efforts will focus on lobbying to obtain specific tax restructuring by highlighting the social and fiscal problems with contraband." Through "lobbying" within THE EUROPEAN COMMUNITY, PHILIP MORRIS used a "problem" of its

own creation -- contraband -- to enhance income, while concealing that it was the root cause of the "problem" and falsely representing that the "problem" was not its responsibility.

n. 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 export sales, including documents described as: (a) "Duty Free Sales," (b) "Mansur Trading Freezone Shipments/Corr, Misc," (c) "Mansur Trading Freezone Shippments (*sic*) & Misc.," and (d) Salas Int'l." 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 are 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.

35. a. RJR's smuggling enterprise, which is an association-in-fact, has generated hundreds of millions of dollars in illegal profits for the RJR DEFENDANTS. A large portion of these illegal profits is returned to the Defendants in their offices and facilities in the United States. The RJR DEFENDANTS received the income and proceeds of the smuggling scheme, and used and invested such income and proceeds, or a portion thereof, to acquire an interest in, establish, and operate the smuggling operation.

b. PHILIP MORRIS' smuggling enterprise, which is an association-in-fact, has generated hundreds of millions of

dollars in illegal profits for the PHILIP MORRIS DEFENDANTS. A large portion of these illegal profits is returned to the Defendants in their offices and facilities in the United States. The PHILIP MORRIS DEFENDANTS received the income and proceeds of the smuggling scheme, and used and invested such income and proceeds, or a portion thereof, to acquire an interest in, establish, and operate the smuggling operation.

36. The smuggling of cigarettes has become such a major activity that criminals in both the United States and in THE EUROPEAN COMMUNITY have become actively involved in these activities. 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 are of benefit to said criminals. For example, (a) RJR's chairman, Steven Goldstone, has acknowledged that "organized crime is already deeply into the cigarette smuggling business, and that Russian, Middle Eastern and Asian organized crime groups are also involved" and "'are involved in firearms and narcotics trafficking, alien smuggling, and other illegal activities.'" (b) Mr. Goldstone has also acknowledged the dangerous methods by which the "black market" for tobacco operates: "Organized criminal enterprises immediately invest in a comprehensive, sophisticated infrastructure for illegal distribution. Ships are chartered; tractor-trailers are leased;

warehouses are procured in and around the major retail markets. * * * For retail distribution, the organizations turn first to street gangs that already exist here, just like they did in Europe. The gang members who sell marijuana find the cigarette business more profitable and less risky. The gangs begin by selling it on street corners, subway exits and around school yards. * * * The illegal market becomes so efficient and robust that every thief sees a pack of cigarettes as ready cash. Thieves start breaking into stores just to steal cigarettes. The stores need armed guards at night to prevent break-ins. Trucks transporting legitimate product do become like Brinks trucks, with armed guards riding shotgun to prevent hijacking."

In fact, since the time of Mr. Goldstone's statements, the situation has become much worse. In the first few months of 2000, at least two Italian revenue agents (Guardia di Finanza) have been murdered by cigarette smugglers who were caught in the act of smuggling the cigarettes manufactured by the Defendants. Throughout Europe, cigarettes and narcotics are routinely smuggled together, and the incidence of violence associated with the smuggling of cigarettes is rising rapidly. High-ranking executives of RJR and PHILIP MORRIS knew or reasonably should have known that their tobacco products were being sold to and through notorious smugglers through dangerous means, and failed to act with reasonable care to investigate and abate the

smuggling activities or otherwise act to prevent the damage to Plaintiffs.

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

38. 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 and in this district as a result of the enterprises that are the subject matter of this complaint because:

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 PHILIP MORRIS DEFENDANTS and another tobacco manufacturer agreed to fix prices on smuggled cigarettes.

b. The Defendants receive, and have received, the profits and proceeds of said enterprises 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 the proceeds of narcotics transactions on the streets of this country are laundered through the purchase of cigarettes, which in turn are smuggled abroad.

d. The United States and THE EUROPEAN COMMUNITY have recognized by international conventions that it is in their mutual interest to bring an end to transnational smuggling schemes, and the Defendants' conduct contravenes 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 including RJR, 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.

h. 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 increased taxes will lead to smuggling and the related economic problems that have haunted other countries for the last ten years. The Defendants and other cigarette companies provide funding for organizations such as the National Coalition Against Crime and Tobacco Contraband 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.

i. A large percentage of the banking and financial records which are relevant to this case are in the possession of Citibank in New York. The records in question are either stored

in or accessed through Citibank's processing center in Queens, New York.

j. The PHILIP MORRIS DEFENDANTS and RJR DEFENDANTS entered into an understanding, express or tacit, to take actions to cause the smuggling of contraband cigarettes into THE EUROPEAN COMMUNITY and obstruct government efforts to address the problem of smuggling. In pursuance of the agreement, the PHILIP MORRIS DEFENDANTS and the RJR DEFENDANTS, acting in concert with other cigarette companies, funded "front" 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, the conduct of the tobacco companies, including the PHILIP MORRIS DEFENDANTS and RJR DEFENDANTS, was a direct cause of the "black market" and the Plaintiffs' injuries. The joint, false representations by the PHILIP MORRIS DEFENDANTS and RJR 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 herein, they share the same purpose and the same victims, to wit, THE EUROPEAN COMMUNITY and its MEMBER STATES, including the

Kingdom of Belgium, Republic of Finland, French Republic, Hellenic Republic, Federal Republic of Germany, Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands, Portuguese Republic, and Kingdom of Spain.

VI. CONTINUING DAMAGE TO THE PLAINTIFFS AND COMPELLING NEED FOR INJUNCTIVE AND EQUITABLE RELIEF

39. The Plaintiff, THE EUROPEAN COMMUNITY, exists for the purpose of promoting the stability and economic welfare of its MEMBER STATES. As a result of the activities of the Defendants, large amounts of cigarettes have been smuggled into THE EUROPEAN COMMUNITY, and the proper duties and taxes have not been paid on the aforesaid cigarettes. As a result of the Defendants' wrongful activities, the Plaintiffs, THE EUROPEAN COMMUNITY, including its MEMBER STATES, 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. This money and property includes, but is not limited to the following: (a) Customs duties that are levied exclusively for the benefit of THE EUROPEAN COMMUNITY. A portion of said customs duties is retained by the Member States pursuant to the own resources decisions of THE EUROPEAN COMMUNITY as ratified by

all the Member States. (b) Value-added tax levied on cigarettes. This tax is shared between THE EUROPEAN COMMUNITY and its Member States. THE EUROPEAN COMMUNITY has the legal authority to seek the compensation for loss of the value-added tax on behalf of itself and the Member States. The interests sought, to wit; the value-added tax, are germane to THE EUROPEAN COMMUNITY'S purpose. In addition, the Kingdom of Belgium, Republic of Finland, French Republic, Hellenic Republic, Federal Republic of Germany, Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands, Portuguese Republic, and Kingdom of Spain have been deprived of the money and property that they would have obtained from the excise taxes that would have been paid on the cigarettes in question absent the wrongful activities of the Defendants and their co-conspirators. Also, the MEMBER STATES have suffered an injury to business and property in that they have been required to contribute additional funding to THE EUROPEAN COMMUNITY to make up for shortfalls in THE EUROPEAN COMMUNITY's budget which have occurred as a result of the non-payment of customs duties and VAT taxes on the smuggled cigarettes in question. In addition, THE EUROPEAN COMMUNITY has suffered additional economic and non-economic injury including but not limited to the following:

a. THE EUROPEAN COMMUNITY has been required to expend substantial funds to fight against cigarette smuggling. Said

expenditures include the creation and manning of a Cigarette Task Force whose function is to combat the cigarette smuggling perpetrated by these Defendants and their co-conspirators. Money is expended by THE EUROPEAN COMMUNITY for the purpose of funding the Task Force, assisting enforcement actions against cigarette smuggling, conducting meetings intended to combat cigarette smuggling, and other functions.

b. THE EUROPEAN COMMUNITY has a Customs Territory and a Customs Border separate and apart from the borders of the MEMBER STATES. The violation of that Border and that Territory by smuggling activities violates the legal rights and responsibilities of THE EUROPEAN COMMUNITY, threatens the safety, security, and well-being of governmental personnel and property within THE EUROPEAN COMMUNITY, and interferes with and damages the purpose and the regulatory system and authority of THE EUROPEAN COMMUNITY.

c. THE EUROPEAN COMMUNITY is charged with a duty to promote throughout the Community a harmonious, balanced, and sustainable development of economic activities and to protect and promote the economic well being of its citizens. The smuggling of cigarettes and associated money laundering disrupt the legitimate trade and markets within THE EUROPEAN COMMUNITY, damage the economic viability of THE EUROPEAN COMMUNITY, and cause harm to the financial institutions and infrastructure

within THE EUROPEAN COMMUNITY, all of which THE EUROPEAN COMMUNITY is bound to protect; and otherwise cause severe harm to THE EUROPEAN COMMUNITY and its citizens as well as the MEMBER STATES.

d. The cigarette smuggling, money laundering, and related criminal activities affront and infringe upon THE EUROPEAN COMMUNITY's duties, responsibilities, and legal authority, and inhibit the ability of THE EUROPEAN COMMUNITY to prevent harm to the financial institutions and infrastructure within THE EUROPEAN COMMUNITY.

e. The cigarette smuggling and related criminal activity undermine the purpose of THE EUROPEAN COMMUNITY in that said activities inhibit the free circulation of goods within THE EUROPEAN COMMUNITY and otherwise damage the internal market which THE EUROPEAN COMMUNITY is bound to protect.

f. THE EUROPEAN COMMUNITY provides at its expense a marketplace without internal frontiers which inures to the benefit of all commercial enterprises which operate within the borders of THE EUROPEAN COMMUNITY. It is this marketplace which makes the sale of products such as cigarettes more expeditious and profitable. The Defendants, in smuggling cigarettes into THE EUROPEAN COMMUNITY and moving said products freely within THE EUROPEAN COMMUNITY without the payment of duties and taxes, make illicit use of this marketplace to their economic benefit

and to the economic detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES.

g. The cigarette smuggling, money laundering, and related criminal activities substantially inhibit the capacity of THE EUROPEAN COMMUNITY to execute its duties to regulate foreign commerce, regulate customs territories, free trade zones, and customs bonded warehouses, regulate transportation into THE EUROPEAN COMMUNITY or within its borders, regulate the free movement of goods within THE EUROPEAN COMMUNITY, regulate safety and security at sea, regulate and take action to protect against breaches of THE EUROPEAN COMMUNITY Customs Territory or THE EUROPEAN COMMUNITY Customs Border, combat money laundering, protect and promote the economic well being of its citizens, and to abate harm to itself and the general public of THE EUROPEAN COMMUNITY.

40. As a direct and proximate result of the smuggling activities that are conducted, aided, and encouraged by the Defendants, THE EUROPEAN COMMUNITY and its MEMBER STATES, including the Kingdom of Belgium, Republic of Finland, French Republic, Hellenic Republic, Federal Republic of Germany, Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands, Portuguese Republic, and Kingdom of Spain, are currently losing hundreds of millions of dollars per year. THE EUROPEAN COMMUNITY and the MEMBER STATES 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 EUROPEAN COMMUNITY and the MEMBER STATES will continue to lose money and property in the future. In addition, THE EUROPEAN COMMUNITY and the MEMBER STATES 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. All of these losses will continue into the future, absent judgment in Plaintiffs' favor and injunctive and equitable relief, including:

A. **"RICO Injunctive and Equitable Relief."** Under 18 U.S.C. § 1964(a) of 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. In addition,

under 28 U.S.C. § 1651(a), 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." Consistent with these powers, the MEMBER STATES 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; (b) 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 Plaintiff; (c) 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; (d) 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; (e) 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 government officials to track the sale of cigarettes or the payment for said cigarettes; (f) 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 EUROPEAN COMMUNITY can be adequately tracked and monitored by governmental officials of THE EUROPEAN COMMUNITY and the MEMBER STATES; (g) orders the Defendants to take all reasonable and necessary steps to stop the smuggling of their products into THE EUROPEAN COMMUNITY including the addition of any necessary labeling, tracking devices, or other means that would allow the Defendants themselves and/or offices of THE EUROPEAN COMMUNITY and the MEMBER STATES to track and monitor the movement of cigarettes into and within THE EUROPEAN COMMUNITY; (h) orders the Defendants to disclose all knowledge within their possession concerning the names, locations, activities, and procedures of smugglers; (i) 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; (j) 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; (k) orders divestiture of all interest in the enterprises involved in the smuggling activities; and (l) 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 the MEMBER STATES or ordered by the Court with respect to the MEMBER STATES' claims under RICO 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, 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 federal courts are empowered under 28 U.S.C. § 1651(a) to "issue all writs necessary or appropriate in aid of their respective

jurisdictions and agreeable to the usages and principles of law." Consistent with these powers, THE EUROPEAN COMMUNITY and the MEMBER STATES 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; (b) 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; (c) 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; (d) 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; (e) 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 government officials to track the sale of cigarettes or the payment for said cigarettes; (f) 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 EUROPEAN COMMUNITY can be adequately tracked and monitored by governmental officials of THE EUROPEAN COMMUNITY and the MEMBER STATES; (g) orders the Defendants to take all reasonable and necessary steps to stop the smuggling of their products into THE EUROPEAN COMMUNITY including the addition of any necessary labeling, tracking devices, or other means that would allow the Defendants themselves and/or offices of THE EUROPEAN COMMUNITY and the MEMBER STATES to track and monitor the movement of cigarettes into and within THE EUROPEAN COMMUNITY; (h) orders the Defendants to disclose all knowledge within their possession concerning the names, locations, activities, and procedures of smugglers; (i) 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; (j) 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 Plaintiff all ill-gotten gains derived from the smuggling scheme; (k) orders divestiture of all interest in the enterprises involved in the smuggling activities; (l) 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 on Plaintiffs' common law claims, shall be referred to herein as "Common Law Injunctive and Equitable Relief."

COUNT I

MEMBER STATES

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

41. The MEMBER STATES restate and reallege paragraphs one (1) through forty (40) and further allege:

42. The PHILIP MORRIS DEFENDANTS, along with their co-conspirators in the smuggling scheme, including associated

distributors, shippers, currency dealers, smugglers, 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 EUROPEAN COMMUNITY 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 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.

43. 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 in, 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 2000. 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 EUROPEAN COMMUNITY 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, they aided the efforts of the drug traffickers to launder their ill-gotten gains. 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 was 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 was designed in whole or in part to avoid a transaction reporting requirement under state or federal law. Defendants knew that the currency 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"), 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 was 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/or Europe 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.

44. 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.

45. The Defendants' pattern of racketeering activities dates from at least January 1, 1985, through the present and threatens to continue in the future.

46. 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. The MEMBER STATES suffered multiple injuries to their economic interests as a result of this use and investment of racketeering income.

47. 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 European "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; and (f) 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 the MEMBER STATES. 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. The proceeds from the sale of cigarettes smuggled into THE EUROPEAN COMMUNITY finance the sales and marketing operations that promote the increase of those sales in succeeding years;

b. The proceeds from the sale of cigarettes smuggled into THE EUROPEAN COMMUNITY are utilized to offset the additional expenses incurred by the Defendants when they pay for the additional shipping and handling charges associated with the clandestine movement of the cigarettes through the circuitous routes established by the Defendants.

c. The proceeds from the sale of cigarettes smuggled into THE EUROPEAN COMMUNITY are used to offset the extraordinary financing arrangements that are given to distributors who sell into the smuggling pipeline so as to maximize the volume of cigarettes within the smuggling pipeline.

d. The proceeds from the sale of cigarettes smuggled into THE EUROPEAN COMMUNITY are utilized to pay for the additional costs associated with the repackaging and relabeling

of cigarettes necessary to allow for the smuggling trade to flourish.

48. The MEMBER STATES 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 European "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 the MEMBER STATES would have been avoided in whole or in part.

49. As a direct and proximate result of the violations set forth above, the Plaintiffs, the MEMBER STATES, have been injured in their business and property as set forth more fully above in paragraphs thirty-nine (39) through forty (40). The Defendants' violations of 18 U.S.C. § 1962(a) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the MEMBER STATES 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

MEMBER STATES

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

50. The MEMBER STATES restate and reallege paragraphs one (1) through forty-nine (49) and further allege:

51. 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 MEMBER STATES, have been injured by the Defendants' acquisition and maintenance of an interest in and control of the enterprise through a pattern of racketeering activity.

52. 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 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.

53. 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 MEMBER STATES, have been injured in their business and property as set forth more fully above in paragraphs thirty-nine (39) through forty (40). The Defendants' violations of 18 U.S.C. § 1962(b) caused these losses. Under the provisions of 18 U.S.C.

§ 1964(c), the MEMBER STATES 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

MEMBER STATES

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

54. The MEMBER STATES restate and reallege paragraphs one (1) through fifty-three (53) and further allege:

55. 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.

56. 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 PHILIP MORRIS DEFENDANTS to control the smuggling scheme; (j) fixing the price of contraband cigarettes in concert with another tobacco company; and (k) coordinating smuggling activities in concert with another tobacco company. 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.

57. Executives of the PHILIP MORRIS DEFENDANTS operated or managed the PM Smuggling Enterprise. By means of

their high-ranking, policy-making positions, as well as their responsibility for sales of cigarettes into the European "black market," their leadership at key meetings that gave birth to the smuggling scheme, and their roles in directing the operations of the enterprise, these executives managed, operated, and exerted control over the PM Smuggling Enterprise.

58. As a direct and proximate result of the violations set forth above, the Plaintiffs, the MEMBER STATES, have been injured in their business and property as set forth more fully above in paragraphs thirty-nine (39) through forty (40). The Defendants' violations of 18 U.S.C. § 1962(c) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the MEMBER STATES 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

MEMBER STATES

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

59. The MEMBER STATES restate and reallege paragraphs one (1) through fifty-eight (58) and further allege:

60. 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 EUROPEAN COMMUNITY 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.

61. 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.

62. 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.

63. 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.

64. The PHILIP MORRIS DEFENDANTS actively participated in the conspiracy to smuggle cigarettes and to

generate false and misleading information concerning smuggling activities.

65. 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 EUROPEAN COMMUNITY.

66. 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 EUROPEAN COMMUNITY and the MEMBER STATES 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.

67. As a direct and proximate result of the violations set forth above, the Plaintiffs, the MEMBER STATES, have been injured in their business and property as set forth more fully above in paragraphs thirty-nine (39) through forty (40). The Defendants' violations of 18 U.S.C. § 1962(d) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the MEMBER STATES 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

MEMBER STATES

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

68. The MEMBER STATES restate and reallege paragraphs one (1) through sixty-seven (67) and further allege:

69. 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).

70. The PHILIP MORRIS DEFENDANTS are currently actively engaged in the activities set forth within this complaint that promote and support the smuggling of contraband cigarettes into THE EUROPEAN COMMUNITY.

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

72. The Defendants, by their conduct of selling cigarettes to smugglers, creating false and misleading documents, improperly labeling shipments of cigarettes, 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 EUROPEAN COMMUNITY and the MEMBER STATES and to damage the MEMBER STATES.

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

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

75. 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 MEMBER STATES in the future from these smuggling activities if the Defendants do not cease their involvement in and support of smuggling activities. Pursuant to 18 U.S.C. §§ 1964(a), 1964(c), as well as 28 U.S.C. § 1651(a), MEMBER STATES demand full RICO Injunctive and Equitable Relief.

COUNT VI

EUROPEAN COMMUNITY AND the MEMBER STATES

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

76. Plaintiffs restate and reallege paragraphs one (1) through seventy-five (75) and further allege:

77. 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 EUROPEAN COMMUNITY, and legal authorities in the MEMBER STATES as to the destination of smuggled cigarettes. The PHILIP MORRIS DEFENDANTS and their co-conspirators made these false and material statements and 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 EUROPEAN COMMUNITY and the MEMBER STATES, would reasonably rely on said documents. The PHILIP MORRIS DEFENDANTS entered into an understanding or agreement, express or tacit, with their 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 EUROPEAN COMMUNITY and the MEMBER STATES. 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 agreement and 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.

78. The Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES, reasonably relied upon said documents as part of their monitoring of the shipment of cigarettes into THE EUROPEAN COMMUNITY.

79. 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 EUROPEAN COMMUNITY, the extent of smuggling in THE EUROPEAN COMMUNITY, and the causes of smuggling in THE EUROPEAN COMMUNITY with the knowledge and intention that the Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES, would reasonably rely upon said information. The PHILIP MORRIS DEFENDANTS also executed agreements with some MEMBER STATES so as to mislead the Plaintiffs as to the Defendants' role in the smuggling.

80. The Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES, 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.

81. The PHILIP MORRIS DEFENDANTS, in 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 EUROPEAN COMMUNITY and the MEMBER STATES. 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 EUROPEAN COMMUNITY and the MEMBER STATES.

82. 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 EUROPEAN COMMUNITY and the MEMBER STATES, 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 the 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.

83. As a direct and proximate result of the PHILIP MORRIS DEFENDANTS' fraudulent conduct and the Plaintiffs' reliance thereupon, the Plaintiffs have suffered economic damages as are set forth more fully above in paragraphs thirty-nine (39) through forty (40). The Plaintiffs demand judgment for damages, both compensatory and punitive, as well as full Common Law Injunctive and Equitable Relief.

COUNT VII

EUROPEAN COMMUNITY and MEMBER STATES

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

84. Plaintiffs restate and reallege paragraphs one (1) through eighty-three (83) and further allege:

85. Plaintiffs are government authorities.

86. Smuggling of contraband cigarettes and money laundering are a violation of law and a public nuisance.

87. The smuggling and money laundering activities in the United States and THE EUROPEAN COMMUNITY of the PHILIP MORRIS DEFENDANTS: (a) Have substantially and unreasonably interfered with, offended, injured and endangered, and continue to interfere with, offend, injure and endanger, the public health, morals, safety, convenience, and well-being of the general public and the operation of the market for tobacco products in THE EUROPEAN COMMUNITY and have interfered with and endangered the Customs Territory, Customs Border and free market which THE EUROPEAN COMMUNITY is bound to protect; (b) Constitute conduct which is proscribed by applicable laws, administrative regulations, and directives; (c) Constitute conduct of a continuing nature and/or have produced a permanent or long-lasting effect, and the Defendants know or have reason to know, that said conduct has a significant harmful effect upon the public right.

88. The smuggling activities in the United States and THE EUROPEAN COMMUNITY 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.

89. The PHILIP MORRIS DEFENDANTS and their co-conspirators facilitated the smuggling of contraband cigarettes into THE EUROPEAN COMMUNITY and the MEMBER STATES by means of a variety of acts and omissions conducted in or directed from the United States, 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 volume of cigarettes that were needed to meet the specific demands of the smugglers' clients. (c) The Defendants filed or caused the filing of false and fraudulent documents which misstated the value of and the intended destination of cigarettes that were ultimately smuggled into THE EUROPEAN COMMUNITY. (d) The PHILIP MORRIS DEFENDANTS failed to 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 entered into an understanding or agreement, express or tacit, with their 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 EUROPEAN COMMUNITY and the MEMBER STATES. 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.

90. 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; (d) injure and interfere with the market for tobacco products in THE EUROPEAN COMMUNITY; and (e) injure the economic well being of the citizens of THE EUROPEAN COMMUNITY. 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' interests and has undermined and endangered the Customs Territory, Customs Border, and free market which THE EUROPEAN COMMUNITY is bound to protect.

91. The PHILIP MORRIS DEFENDANTS knew, or reasonably should have known, that their acts and omissions relating to smuggling of tobacco products created great dangers to the community, including Plaintiffs' economic and non-economic interests. The Defendants directly, or through their co-conspirators, undermined THE EUROPEAN COMMUNITY'S duties and authority to regulate foreign commerce, regulate customs territories, free trade zones, and customs bonded warehouses, regulate transportation into THE EUROPEAN COMMUNITY or within its borders, ensure and regulate the free movement of goods within THE EUROPEAN COMMUNITY, regulate safety and security at sea, regulate and take action to protect against breaches of THE EUROPEAN COMMUNITY Customs Territory or THE EUROPEAN COMMUNITY Customs Border, regulate and assure that foreign goods entering THE EUROPEAN COMMUNITY enter THE EUROPEAN COMMUNITY with declared values that are accurate, and regulate and set rules to combat money laundering, all harms different from those suffered by members of the general public or the Member States, and all

wrongs which are the duty and responsibility of THE EUROPEAN COMMUNITY to redress.

92. 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.

93. 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 injury as set forth more fully above in paragraphs thirty-nine (39) through forty (40). THE EUROPEAN COMMUNITY and the MEMBER STATES each have the right to recover damages as set forth in paragraphs 39 through 40 in that each has suffered damages which are unique to it and which are of a kind different from those suffered by the general public.

94. By reason of the injury to their economic and non-economic interests due to the public nuisance, as set forth in the preceding paragraphs to this complaint, the 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 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

EUROPEAN COMMUNITY and MEMBER STATES

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

95. Plaintiffs restate and reallege paragraphs one (1) through ninety-four (94) and further allege:

96. The PHILIP MORRIS DEFENDANTS were unjustly enriched at Plaintiffs' expense. The PHILIP MORRIS DEFENDANTS entered into an understanding or agreement, express or tacit, with their 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 EUROPEAN COMMUNITY and the MEMBER STATES. 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 unjust enrichment, 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 Plaintiff. 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.

97. THE EUROPEAN COMMUNITY provides at its expense a marketplace without internal frontiers which inures to the benefit of all commercial enterprises which operate within the borders of THE EUROPEAN COMMUNITY. It is this marketplace which makes the sale of products such as cigarettes more expeditious and profitable. The Defendants, in smuggling cigarettes into THE EUROPEAN COMMUNITY and moving said products freely within THE EUROPEAN COMMUNITY without the payment of duties and taxes, make illicit use of this marketplace to their economic benefit and to the economic detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. 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.

98. The unjust enrichment of the PHILIP MORRIS DEFENDANTS was accomplished at the expense of the Plaintiffs. By reason of the smuggling scheme, the Plaintiffs were, and continue to be, deprived of duties and taxes and have suffered other economic and non-economic injuries, and Defendants reaped vast profits and proceeds from their illegal scheme.

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

100. 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 entitled to damages, including actual, compensatory, and punitive damages, and their injuries are set forth more fully above in paragraphs thirty-nine (39) through forty (40). Judgment in Plaintiffs' favor should include full Common Law Injunctive and Equitable Relief.

COUNT IX

EUROPEAN COMMUNITY and MEMBER STATES

(AS TO THE PHILIP MORRIS DEFENDANTS)
(NEGLIGENCE)

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

102. 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 their 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; and

g. comply with federal and state statutes and the standards of care reflected therein.

103. As manufacturers, distributors, and dominant participants in the marketplace, Defendants had, and continue to have, the authority and ability to act reasonably to prevent the 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 European "black market."

104. 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.

105. Defendants' unreasonable acts and omissions created and enhanced the risk that their products would be distributed on the European "black market" and injure Plaintiffs.

106. Defendants' unreasonable acts and omissions affirmatively and foreseeably obstructed Plaintiffs' abilities to collect full and proper duties and taxes, caused substantial economic and non-economic damages to the Plaintiffs, and otherwise obstructed their ability to protect themselves from harms associated with smuggling. 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 their 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 EUROPEAN COMMUNITY. 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. Defendants' breach proximately caused, and continues to cause, damage to the economic and non-economic interests of the Plaintiffs.

107. 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.

108. By reason of the injury to their economic and non-economic interests due to the negligence of the Defendants, as set forth more fully above in paragraphs thirty-nine (39) through forty (40), 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 EUROPEAN COMMUNITY and the MEMBER STATES.

COUNT X

EUROPEAN COMMUNITY and MEMBER STATES

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

109. Plaintiffs restate and reallege paragraphs one (1) through one hundred eight (108) and further allege:

110. The 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) refrain from negligently misrepresenting -- through documents and 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 EUROPEAN COMMUNITY; (b) be truthful in their representations to Plaintiffs and their representatives concerning smuggling and other improper activities as aforesaid; and (c) avoid misleading Plaintiffs when providing Plaintiffs with such information as Defendants possess concerning the smuggling of Defendants' products into THE EUROPEAN COMMUNITY.

111. 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.

112. 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' interests and rights. Their conduct amounts to a fraud on the public.

113. 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 their 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 EUROPEAN COMMUNITY and the MEMBER STATES. 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.

114. Plaintiffs reasonably relied on Defendants' misrepresentations and, as a result, Defendants' breach proximately caused, and continues to cause, damage to the economic and non-economic interests of Plaintiffs.

115. By reason of the injury to their economic and non-economic interests due to the negligence, malice, and recklessness of the Defendants, as set forth more fully in paragraphs thirty-nine (39) and forty (40), 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.

COUNT XI

MEMBER STATES

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

116. The MEMBER STATES restate and reallege paragraphs one (1) through one hundred fifteen (115) and further allege:

117. At all relevant times, the RJR DEFENDANTS, together with distributors, shippers, smugglers, currency brokers, and other persons and entities constituted an "enterprise" within the meaning of 18 U.S.C. § 1961(4), in that they are associated in fact for the purpose, inter alia, of wrongfully smuggling contraband cigarettes into THE EUROPEAN COMMUNITY to the economic detriment of Plaintiffs (the "RJR Smuggling Enterprise"). This 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 RJR Smuggling Enterprise has an ascertainable structure and purpose beyond the scope of the Defendants' predicate acts and the conspiracy to commit such acts. The Enterprise has engaged in and its activities have affected interstate and foreign commerce. The Enterprise continues 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 RJR Smuggling Enterprise has been set forth above.

118. In connection with the fraudulent scheme set forth above, and to further its aims, the RJR 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 RJR DEFENDANTS 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 RJR 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 in, 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 EUROPEAN COMMUNITY and were part of a clandestine system for the remittance of the proceeds of the scheme to the RJR DEFENDANTS. The RJR DEFENDANTS, acting through their employees, agents, and co-conspirators, made or caused to be made such telephone calls to further the scheme. The RJR DEFENDANTS knew or should have foreseen that their co-conspirators, in the course of carrying out the RJR 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 RJR 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. 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 RJR 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 was 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 was 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"), the source (drug traffickers, money launderers, smugglers), or the control (RJR 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 was 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, the Caribbean, and Europe to 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 RJR 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.

119. The 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 income 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.

120. The Defendants' pattern of racketeering activities dates from at least January 1, 1985, through the present and threatens to continue in the future.

121. The RJR 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 RJR 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 RJR DEFENDANTS were principals in the racketeering scheme. The MEMBER STATES suffered multiple injuries to their

economic interests as a result of this use and investment of racketeering income.

122. Specifically, the RJR DEFENDANTS received the income and proceeds of a pattern of racketeering activity in which they participated as principals, 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 RJR DEFENDANTS used and invested such income and proceeds, or a portion thereof, to acquire an interest in, establish, and operate the RJR Smuggling Enterprise which was and is engaged in interstate and foreign commerce. In particular, the RJR DEFENDANTS used the proceeds of the scheme to (a) operate the RJR Smuggling Enterprise; (b) replenish the supply of contraband cigarettes for ultimate sale on the European "black market;" (c) acquire, purchase, and subsidize facilities necessary to the RJR Smuggling Enterprise, including manufacturing, sales, and distribution operations; (d) compensate employees and agents of the RJR 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; and (f) establish a flourishing "black market" for the sale of contraband cigarettes. In sum, the RJR

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 RJR Smuggling Enterprise, and it was this use and investment that harmed the MEMBER STATES. The use and investment of the proceeds of racketeering activity occurred in several ways, including but not limited to the following:

a. The proceeds from the sale of cigarettes smuggled into THE EUROPEAN COMMUNITY finance the sales and marketing operations that promote the increase of those sales in succeeding years.

b. The proceeds from the sale of cigarettes smuggled into THE EUROPEAN COMMUNITY are utilized to offset the additional expenses incurred by the Defendants when they pay for the additional shipping and handling charges associated with the clandestine movement of the cigarettes through the circuitous routes established by the Defendants.

c. The proceeds from the sale of cigarettes smuggled into THE EUROPEAN COMMUNITY are utilized to pay for the additional costs associated with the repackaging and re-labeling of cigarettes necessary to allow for the smuggling trade to flourish.

123. The MEMBER STATES were injured in their business and property by reason of the RJR DEFENDANTS' use and investment of racketeering income to acquire, establish, and operate the RJR Smuggling Enterprise. Absent this use and investment of racketeering income, contraband sales to the European "black market" by the RJR 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 the MEMBER STATES would have been avoided in whole or in part.

124. As a direct and proximate result of the violations set forth above, the Plaintiffs, the MEMBER STATES, have been injured in their business and property as set forth more fully above in paragraphs thirty-nine (39) through forty (40). The Defendants' violations of 18 U.S.C. § 1962(a) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the MEMBER STATES 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

MEMBER STATES

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

125. The MEMBER STATES restate and reallege paragraphs one (1) through one hundred twenty-four (124) and further allege:

126. The RJR DEFENDANTS acquired or maintained, directly or indirectly, through a pattern of racketeering activity, an interest in and control of the RJR 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 MEMBER STATES, have been injured by the Defendants' acquisition and maintenance of an interest in and control of the enterprise through a pattern of racketeering activity.

127. The Defendants, acting through a pattern of racketeering activity, acquired or maintained, directly or indirectly, an interest in and control of the RJR Smuggling Enterprise which it engaged in and the activities of which affect interstate and foreign commerce. Specifically, the RJR DEFENDANTS maintained control of the RJR 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 RJR 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 (RJR controlled and concealed the flow of the proceeds of the smuggling - a key aim of the scheme - through money laundering); and (c) violations of the Travel Act, 18 U.S.C., Section 1952 (cross-border travel and transactions to facilitate smuggling and other illicit activities). Through this pattern of racketeering activities, which also included transmitting false statements to government authorities, the RJR DEFENDANTS were able to acquire and maintain an interest in and control of the RJR Smuggling Enterprise. This interest and control furthered, concealed, and protected the operations of the smuggling enterprise, and thereby permitted the RJR Smuggling Enterprise to flourish without detection.

128. As a direct and proximate result of the Defendants' acquisition and maintenance of an interest in and control of the RJR Smuggling Enterprise, the Plaintiffs, the MEMBER STATES, have suffered the loss of money and property as set forth more fully above in paragraphs thirty-nine (39) through forty (40). The Defendants' violations of 18 U.S.C. § 1962(b) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the MEMBER STATES 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

MEMBER STATES

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

129. The MEMBER STATES restate and reallege paragraphs one (1) through one hundred twenty-eight (128) and further allege.

130. The RJR 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 RJR Smuggling Enterprise, the activities of which affect interstate or foreign commerce.

131. At all relevant times, the RJR DEFENDANTS participated in the operation or management of an "enterprise," within the meaning of 18 U.S.C. § 1961(4). The RJR DEFENDANTS, operating together and individually, directed and controlled the RJR Smuggling Enterprise. The RJR DEFENDANTS operated, managed, and exercised control of the smuggling enterprise by, among other things: (a) establishing a money-laundering scheme by which the co-conspirators facilitated the smuggling scheme and concealed and remitted to the RJR 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; and (i) giving credit terms to the smugglers that allowed the RJR DEFENDANTS to control the smuggling scheme. It was the policy and practice of RJR that if the smugglers failed to follow the RJR DEFENDANTS' specific orders, the RJR DEFENDANTS would have shut off the supply of favorably priced cigarettes to the smugglers, and cut off the lifeblood of the smuggling scheme.

132. As a direct and proximate result of the violations set forth above, the Plaintiffs, the MEMBER STATES, have been injured in their business and property as set forth more fully above in paragraphs thirty-nine (39) through forty (40). The Defendants' violations of 18 U.S.C. § 1962(c) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the MEMBER STATES 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

MEMBER STATES

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

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

134. The RJR 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 EUROPEAN COMMUNITY to the economic detriment of Plaintiffs and to the economic benefit of the RJR 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 RJR 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.

135. The RJR 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, 18 U.S.C. § 1962(c) by participating, directly and indirectly, in the conduct 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.

136. The RJR 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.

137. As a part of their conspiracy, the RJR 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.

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

139. As a result of the conspiracy, the RJR DEFENDANTS and their co-conspirators were able to facilitate the smuggling of large volumes of cigarettes into THE EUROPEAN COMMUNITY.

140. The membership of the conspiracy in question included the RJR DEFENDANTS and tobacco distributors, the shippers, the smugglers, currency brokers, and the RJR DEFENDANTS' subsidiary corporations; 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 RJR 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 EUROPEAN COMMUNITY and the MEMBER STATES that were caused by any members of the conspiracy, regardless of whether the RJR DEFENDANTS were themselves directly involved in a particular aspect of the enterprise.

141. As a direct and proximate result of the violations set forth above, the Plaintiffs, the MEMBER STATES, have been injured in their business and property as set forth more fully above in paragraphs thirty-nine (39) through forty (40). The Defendants' violations of 18 U.S.C. § 1962(d) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the MEMBER STATES 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

MEMBER STATES

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

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

143. 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 in which the enterprise engaged, 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).

144. The RJR DEFENDANTS are currently actively engaged in the activities set forth within this complaint that promote and support the smuggling of contraband cigarettes into THE EUROPEAN COMMUNITY.

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

146. The Defendants, by their conduct of selling cigarettes to smugglers, creating false and misleading documents, improperly labeling shipments of cigarettes, 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 EUROPEAN COMMUNITY and the MEMBER STATES and to damage the MEMBER STATES.

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

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

149. 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 MEMBER STATES in the future from these smuggling activities if the Defendants do not cease their involvement in and support of smuggling activities. Pursuant to 18 U.S.C. §§ 1964(a), 1964(c), as well as 28 U.S.C. § 1651(a), the MEMBER STATES demand full RICO Injunctive and Equitable Relief.

COUNT XVI

EUROPEAN COMMUNITY and MEMBER STATES

(AS TO THE RJR DEFENDANTS)
(COMMON LAW FRAUD)

150. Plaintiffs restate and reallege paragraphs one (1) through one hundred forty-nine (149) and further allege:

151. The RJR DEFENDANTS and their co-conspirators intentionally falsified documents, falsified shipping records, and generated false and misleading billing records concerning the payment for smuggled cigarettes so as to mislead the Plaintiffs, THE EUROPEAN COMMUNITY, and legal authorities in the MEMBER STATES as to the destination of smuggled cigarettes. The RJR DEFENDANTS and their co-conspirators made these false and material statements and 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 EUROPEAN COMMUNITY and the MEMBER STATES, would reasonably rely on said documents. The RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their 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 EUROPEAN

COMMUNITY and the MEMBER STATES. In pursuance of the agreement, RJR 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 RJR DEFENDANTS, through agreement and 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 RJR DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

152. 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.

153. The Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES, reasonably relied upon said documents as part of their monitoring of the shipment of cigarettes into THE EUROPEAN COMMUNITY.

154. Furthermore, the RJR DEFENDANTS knowingly and intentionally generated false, misleading and material information, and intentionally concealed other material information, concerning the nature of smuggling in THE EUROPEAN COMMUNITY, the extent of smuggling in THE EUROPEAN COMMUNITY,

and the causes of smuggling in THE EUROPEAN COMMUNITY with the knowledge and intention that the Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES, would reasonably rely upon said information.

155. The Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES, 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.

156. The RJR DEFENDANTS, in falsifying documents to expedite the smuggling of cigarettes, providing misleading information concerning the smuggling of cigarettes, and concealing material and true information, acted in willful, wanton, gross, and callous disregard for the rights of the Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES. 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 EUROPEAN COMMUNITY and the MEMBER STATES.

157. 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 EUROPEAN COMMUNITY and the MEMBER STATES, 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.

158. As a direct and proximate result of the RJR DEFENDANTS' fraud and the Plaintiffs' reliance upon said fraud, the Plaintiffs have suffered economic damages as are set forth more fully above in paragraphs thirty-nine (39) through forty (40). The Plaintiffs demand judgment for damages, both compensatory and punitive, as well as full Common Law Injunctive and Equitable Relief.

COUNT XVII

EUROPEAN COMMUNITY and MEMBER STATES

(AS TO THE RJR DEFENDANTS)
(PUBLIC NUISANCE)

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

160. Plaintiffs are governmental authorities.

161. Smuggling of contraband cigarettes and money laundering are a violation of law and a public nuisance.

162. The smuggling and money laundering activities in the United States and THE EUROPEAN COMMUNITY of the RJR DEFENDANTS: (a) Have substantially and unreasonably interfered with, offended, injured and endangered, and continue to interfere with, offend, injure and endanger, the public health, morals, safety, convenience, and well-being of the general public and the operation of the market for tobacco products in THE EUROPEAN COMMUNITY and have interfered with and endangered the Customs Territory, Customs Border and free market which THE EUROPEAN COMMUNITY is bound to protect; (b) Constitute conduct which is proscribed by applicable laws, administrative regulations, and directives; (c) Constitute conduct of a continuing nature and/or have produced a permanent or long-lasting effect, and the Defendants know or have reason to know,

that said conduct has a significant harmful effect upon the public right.

163. The smuggling activities in the United States and THE EUROPEAN COMMUNITY of the RJR DEFENDANTS have been, and continue to be, effectuated through widespread criminal activity, including mail fraud, wire fraud, money laundering, smuggling, and other illegal acts.

164. The RJR DEFENDANTS facilitated the smuggling of contraband cigarettes into THE EUROPEAN COMMUNITY and the MEMBER STATES by means of a variety of acts and omissions conducted in or directed from the United States, including the following: (a) The RJR 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 RJR DEFENDANTS provided specific marketing information to smugglers, including which products were in demand and the volume of cigarettes that was needed to meet the specific demands of the smugglers' clients. (c) The Defendants filed or caused the filing of false and fraudulent documents with THE EUROPEAN COMMUNITY and/or the MEMBER STATES which misstated the value of and the intended destination of cigarettes that were placed within customs bonded warehouses and/or free trade zones within THE EUROPEAN COMMUNITY. (d) The RJR 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. This allowed the RJR DEFENDANTS to maintain direct, hands-on control of the entire smuggling process. The RJR DEFENDANTS threatened smugglers that if they did not keep proper records of their smuggling activities, the RJR DEFENDANTS would cut off their supply and deal with other smuggling customers. (e) The RJR DEFENDANTS failed to supervise the distribution of their tobacco products to assure that such products were not sold illegally. (f) The RJR DEFENDANTS failed to act reasonably when they were put on notice of their involvement with smugglers. (g) The RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their 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 EUROPEAN COMMUNITY and the MEMBER STATES. In pursuance of the agreement, RJR 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 RJR 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 RJR DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

165. Through these and other intentional and negligent acts and omissions, the RJR 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 THE EUROPEAN COMMUNITY; and (e) injure the economic well being of the citizens of THE EUROPEAN COMMUNITY. The acts and omissions of the RJR DEFENDANTS constitute a public nuisance. This public nuisance, or some part of it, continues unabated to the detriment of Plaintiffs' interests and has undermined and endangered the Customs Territory, Customs Border and free market which THE EUROPEAN COMMUNITY is bound to protect.

166. The RJR DEFENDANTS knew, or reasonably should have known, that their acts and omissions relating to smuggling of tobacco products created great dangers to the community, including Plaintiffs' economic and non-economic interests. The Defendants directly, or through their co-conspirators,

undermined THE EUROPEAN COMMUNITY'S duties and authority to regulate foreign commerce, regulate customs territories, free trade zones, and customs bonded warehouses, regulate transportation into THE EUROPEAN COMMUNITY or within its borders, ensure and regulate the free movement of goods within THE EUROPEAN COMMUNITY, regulate safety and security at sea, regulate and take action to protect against breaches of THE EUROPEAN COMMUNITY Customs Territory or THE EUROPEAN COMMUNITY Customs Border, regulate and assure that foreign goods entering THE EUROPEAN COMMUNITY enter THE EUROPEAN COMMUNITY with declared values that are accurate, and regulate and set rules to combat money laundering, all harms different from those suffered by members of the general public or the Member States, and all wrongs which are the duty and responsibility of THE EUROPEAN COMMUNITY to redress.

167. The RJR 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.

168. As a direct and proximate result of the acts and/or omissions of the RJR DEFENDANTS, which constitute a public nuisance, Plaintiffs have sustained and continue to

sustain injury as set forth more fully in paragraphs thirty-nine (39) and forty (40). THE EUROPEAN COMMUNITY and the MEMBER STATES each have the right to recover damages as set forth in paragraphs 39 through 40 in that each has suffered damages which are unique to it and which are of a kind different from those suffered by the general public.

169. By reason of the injury to their economic and non-economic interests 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

EUROPEAN COMMUNITY and MEMBER STATES

(AS TO THE RJR DEFENDANTS)
(UNJUST ENRICHMENT)

170. Plaintiffs restate and reallege paragraphs one (1) through one hundred sixty-nine (169) and further allege:

171. The RJR DEFENDANTS were unjustly enriched at Plaintiffs' expense. 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.

172. The RJR DEFENDANTS were unjustly enriched through their smuggling scheme. The RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their 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 EUROPEAN COMMUNITY and the MEMBER STATES. In pursuance of the agreement, RJR 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. The RJR 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 RJR DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

173. THE EUROPEAN COMMUNITY provides at its expense a marketplace without internal frontiers which inures to the

benefit of all commercial enterprises which operate within the borders of THE EUROPEAN COMMUNITY. It is this marketplace which makes the sale of products such as cigarettes more expeditious and profitable. The Defendants, in smuggling cigarettes into THE EUROPEAN COMMUNITY and moving said products freely within THE EUROPEAN COMMUNITY without the payment of duties and taxes, make illicit use of this marketplace to their economic benefit and to the economic detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. The RJR 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 RJR DEFENDANTS were enabled to sell their product at lower cost, and illegally enhance profits, market share, and the sales price of their international tobacco operations.

174. The unjust enrichment of the RJR DEFENDANTS was accomplished at the expense of Plaintiffs. By reason of the smuggling scheme, Plaintiffs were, and continue to be, deprived of duties and taxes, and have suffered other economic and non-economic injuries, and Defendants reaped vast profits and proceeds from their illegal scheme.

175. 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.

176. Equity and good conscience require the RJR 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 have suffered damages as set forth more fully in paragraphs thirty-nine (39) and forty (40), and are entitled to recover actual, compensatory, and punitive damages. Judgment in Plaintiffs' favor should include full Common Law Injunctive and Equitable Relief.

COUNT XIX

EUROPEAN COMMUNITY and MEMBER STATES

(AS TO THE RJR DEFENDANTS)
(NEGLIGENCE)

177. Plaintiffs restate and reallege paragraphs one (1) through one hundred seventy-six (176) and further allege:

178. 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 and agents 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 their employees and agents;

d. investigate and terminate the smuggling-related conduct of their employees and agents, 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; and

g. comply with federal and state statutes and the standards of care reflected therein.

179. As manufacturers, distributors, and dominant participants in the marketplace, Defendants had, and continue to have, the authority and ability to act reasonably to prevent the 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 their products being sold to persons likely to distribute and sell them on the European "black market."

180. 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.

181. Defendants' unreasonable acts and omissions created and enhanced the risk that their products would be distributed on the European "black market" and injure Plaintiffs.

182. Defendants' unreasonable acts and omissions affirmatively and foreseeably obstructed Plaintiffs' abilities to collect full and proper duties and taxes, caused substantial economic and non-economic damages to the Plaintiffs, and otherwise obstructed their ability to protect themselves from harms associated with smuggling. 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 RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their 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 EUROPEAN COMMUNITY. In pursuance of the agreement, RJR 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 Plaintiff. The RJR 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 RJR DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

183. Defendants' breach proximately caused, and continues to cause, damage to the economic and non-economic interest of the Plaintiffs, as set forth more fully in paragraphs thirty-nine (39) and forty (40).

184. The RJR 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.

185. By reason of the injury to their economic and non-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 EUROPEAN COMMUNITY and the MEMBER STATES.

COUNT XX

EUROPEAN COMMUNITY and MEMBER STATES

(AS TO THE RJR DEFENDANTS)
(NEGLIGENT MISREPRESENTATION)

186. Plaintiffs restate and reallege paragraphs one (1) through one hundred eighty-five (185) and further allege:

187. The Defendants owed, and continue to owe, a duty of reasonable care to refrain from causing foreseeable loss to 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) refrain from negligently misrepresenting -- through documents and 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 EUROPEAN COMMUNITY; (b) be truthful in their representations to Plaintiffs and their representatives concerning smuggling and other improper activities as aforesaid; and (c) avoid misleading Plaintiffs when providing Plaintiffs

with such information as Defendants possess concerning the smuggling of Defendants' products into THE EUROPEAN COMMUNITY.

188. 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.

189. 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 the Plaintiffs' interests and rights. Their conduct amounts to a fraud on the public.

190. 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.

191. Plaintiffs reasonably relied on Defendants' misrepresentations and, as a result, Defendants' breach proximately caused, and continues to cause, damage to the economic interest of Plaintiffs. The RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their 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 EUROPEAN COMMUNITY and the MEMBER STATES. In pursuance of the agreement, RJR 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 RJR 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 RJR DEFENDANTS and their co-conspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

192. By reason of the injury to its economic interests due to the negligence, malice and recklessness of the Defendants, as set forth more fully in paragraphs thirty-nine (39) and forty (40), and 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

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 RJR 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 RJR 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.

m. Pursuant to COUNT XIII, damages, including interest, against the RJR 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.

n. Pursuant to COUNT XIV, damages, including interest, against the RJR 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.

o. Pursuant to COUNT XV, RICO Injunctive and Equitable Relief against the RJR 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 RJR 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 RJR 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 RJR 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 RJR 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 RJR 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: Fort Lauderdale, Florida
August 3, 2001

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