under the authority of the Attorney General of the State of New York, with the preservation of all applicable privileges held by any member company of the Tobacco Institute. (no bates) (JD 045158).

483. The Tobacco Institute's Plan of Corporate Dissolution and Distribution of Assets was approved on August 7, 2000, by its Class A members: Ernest Pepples, Senior Vice President of B&W; Michael Szymanczyk, CEO of Philip Morris, Inc.; Alexander Spears, Chairman of Lorillard; and Charles Blixt, Executive Vice President and General Counsel of R.J. Reynolds. TI31113058-3165 (US 21261). The Plan of Corporate Dissolution allowed the Tobacco Institute to continue to defend itself and to protect its interest in litigation, and to assist in the defense of its members in litigation, pursuant to joint defense agreements or arrangements. Id. at 3060, 3065.

484. The Tobacco Institute's Dissolution Plan was adopted by the Tobacco Institute Board of Directors. The members of the Board of Directors at the time were Nicholas Brookes and Ernest Pepples for B&W, Ronald Milstein and Alexander Spears for Lorillard, Tommy Payne and Andrew Schindler for R.J. Reynolds, Michael Szymanczyk for Philip Morris, Inc., and Howard Liebengood for Philip Morris Companies. TI31113205-3207 (JD 053521).

485. The Supreme Court of New York County entered an Order Approving the Tobacco Institute's Plan of Corporate Dissolution and Certificate of Dissolution on or about September 1, 2000. TI31113204-3214 at 3208-3213 (JD 080768).

IV. THE DEFENDANTS ARE ENGAGED IN AND THEIR ACTIVITIES AFFECT INTERSTATE AND FOREIGN COMMERCE

486. Defendants in this case at all relevant times have been and are engaged in interstate and foreign commerce and their activities have affected, and continue to affect, interstate and foreign

commerce within the meaning of 18 U.S.C. § 1962(c) and (d). Regarding Defendant-members of this RICO enterprise, the Court finds the following facts.

A. Philip Morris Companies

487. Defendant Philip Morris Companies has engaged in and conducted activities affecting interstate commerce within the meaning of 18 U.S.C. § 1962(c) and (d) during the period from July 1, 1985 to December 10, 2002. United States v. Philip Morris, No. 1:99-CV-2496, Order #280 at ¶ 7 (D.D.C. Dec. 11, 2002); United States v. Philip Morris, 316 F. Supp.2d 19, 26 (D.D.C. 2004).

B. Philip Morris

488. Defendant Philip Morris has engaged in and conducted activities affecting interstate commerce within the meaning of 18 U.S.C. § 1962(c) and (d) during the period from 1953 to December 10, 2002. United States v. Philip Morris, No. 1:99-CV-2496, Order #280 at ¶ 1 (D.D.C. Dec.11, 2002).

C. R.J. Reynolds

489. Defendant RJR has engaged in and conducted activities affecting interstate commerce within the meaning of 18 U.S.C. § 1962(c) and (d) during the period from 1953 to December 10, 2002. United States v. Philip Morris, No. 1:99-CV-2496, Order #280 at ¶ 2 (D.D.C. Dec. 11, 2002).

D. Liggett

490. Defendant Liggett has engaged in and conducted activities affecting interstate commerce within the meaning of 18 U.S.C. § 1962(c) and (d) during the period from 1990 through January 29, 2003. Liggett's predecessors in interest engaged in and conducted activities affecting interstate commerce within the meaning of 18 U.S.C. § 1962(c) and (d) from 1953 until 1990.

United States v. Philip Morris, No. 1:99-CV-2496, Order #308 at ¶ 1 (D.D.C. Jan. 31, 2003); United States v. Philip Morris, 316 F. Supp.2d 19, 26 (D.D.C. 2004).

E. Lorillard

491. Defendant Lorillard has engaged in and conducted activities affecting interstate commerce within the meaning of 18 U.S.C. § 1962(c) and (d) during the period from 1953 to December 10, 2002. United States v. Philip Morris, No. 1:99-CV-2496, Order #208 at ¶ 5 (D.D.C. Dec. 11, 2002).

F. BATCo

492. Defendant BATCo has engaged in and conducted activities affecting interstate commerce within the meaning of 18 U.S.C. § 1962(c) and (d) during the period from 1953 to December 10, 2002. United States v. Philip Morris, No. 1:99-CV-2496, Order #280 at ¶ 6 (D.D.C. Dec. 11, 2002).

G. Brown & Williamson

493. Defendant B&W has engaged in and conducted activities affecting interstate commerce within the meaning of 18 U.S.C. § 1962(c) and (d) during the period from 1953 to December 10, 2002. United States v. Philip Morris, No. 1:99-CV-2496, Order #280 at ¶ 3 (D.D.C. Dec. 11, 2002).

H. American

494. Defendant American, predecessor to Defendant B&W, engaged in and conducted activities affecting interstate commerce within the meaning of 18 U.S.C. § 1962(c) and (d) during the period from 1953 to February 28, 1995. United States v. Philip Morris, No. 1:99-CV-2496, Order #280 at ¶ 4 (D.D.C. Dec. 11, 2002).

I. Tobacco Institute

495. Defendant Tobacco Institute admits that it was a not-for-profit corporation and tobacco industry association formed in 1958 under the laws of the State of New York, and that, at one time, its principal place of business was located in Washington, D.C. United States v. Philip Morris, No. 1:99-CV-2496, Answers, Defenses and Jury Demand of The Tobacco Institute, Inc. at 16 (D.D.C. Oct. 30, 2000).

496. From at least 1959 through 1995, Defendants American, B&W, Liggett, Lorillard, Philip Morris, and RJR were among the member organizations of the Tobacco Institute, albeit for varying periods of time, who, as a part of their membership obligation, contributed to the Tobacco Institute's funding. TIFL0020285-0311 at 0297-0305 (JD 080429).

497. From 1958 until 1999, Defendants Philip Morris, RJR, American, B&W, Lorillard, and Liggett declared contributions of over $618.4 million to the Tobacco Institute, which were processed through the interstate banking system. (no bates) (US 89561 at 97-103); (no bates) (US 75925 at 54-56); (no bates) (US 89561 at 40-44); (no bates) (US 75555 at 71-73); (no bates) (US 89561 at 132-135).

498. For the period 1980 through 1994, the Tobacco Institute spent more than $169 million for public relations and advertising. TIFL0020285-0311 at 0298 (JD 080429).

499. The Tobacco Institute, its agents, or former employees have made numerous public statements or admissions of the interstate nature and scope of its business. For example, on January 12, 2005, Brennan Dawson, former Senior Vice President for Public Affairs, testified at trial in this case that she made public statements, on behalf of the Tobacco Institute, concerning smoking and health issues on television programs, including CNN's Newsmaker Sunday, CNN's Crossfire, Good

Morning America, and CBS News Night Watch, and that she intended that millions of American television viewers believe such public statements. Dawson TT, 1/12/05, 9925:17-9930:16.

500. During trial, Brennan Dawson also testified that many of the Tobacco Institute's press releases and other public statements were disseminated to the public via newspapers and magazines. Id. at 9928:19-9929:10.

501. On February 25, 1994, the Tobacco Institute's Senior Vice President of Administration, William Adams, and its Senior Vice President for State Activities, Kurt L. Malmgren, mailed, out of state, individual letters to: Brown & Williamson Senior Vice President Ernest Pepples (authored by Mr. Malgrem); Philip Morris President and CEO William Campbell (authored by Mr. Adams); and Lorillard Senior Vice President M. Alfred Peterson (authored by Mr. Adams), requesting their company's respective contribution of at least $100,000 to the Michigan Citizens for Fair Taxes to fight a 1994 ballot initiative, and requesting that each of the companies wire its contribution to the Tobacco Institute's Washington, D.C. bank account. TI16370185-0402 at 0366, 0368, 0369 (US 21258).

502. On August 31, 1994, William Adams, Senior Vice President of Administration of the Tobacco Institute, mailed, out of state, individual letters to: Philip Morris President William Campbell; Reynolds Executive Vice President David Anderson; Brown & Williamson Senior Vice President Ernest Pepples; Lorillard Senior Vice President M. Alfred Peterson; and American Vice President John Hager, advising them each that the Tobacco Institute Management Committee had approved additional lobbying expenditures for a state initiative and requesting their respective company's payment. TI16370185-0402 at 0340-0346 (US 21258).

J. TIRC/CTR

503. Defendant TIRC was formed in January 1954 by several entities, including Defendants Philip Morris, RJR, B&W, American, and Lorillard. TIRC had its principal place of business in New York City, New York. In 1964, TIRC changed its name to The Council for Tobacco Research -- U.S.A. In 1971, the name was changed to The Council for Tobacco Research -- U.S.A., Inc., when CTR incorporated as a not-for-profit corporation organized under the laws of the State of New York. United States v. Philip Morris, No. 1:99-CV-2496, Answer of CTR at 4, 6 (D.D.C. Oct. 30, 2000).

504. From 1954 to 1999, Defendants Philip Morris, American, B&W, Liggett, Lorillard, and RJR contributed a total of approximately $505.4 million to CTR, which payments were processed through the interstate banking system. From the period 1954 through 1999, member contributions to the CTR General Fund, processed through the interstate banking system, totaled over $470.2 million. DXA0630917-1033 at 1017-1023 (US 75927).

505. Through 1997, CTR funded 1,657 research grants-in-aid, research contracts, and scientific conferences, totaling approximately $317 million, in the United States and abroad. McAllister WD, 53:3-54:3; 70000302-0618 at 0308 (JD 090039).

506. From about 1966 to 1991, CTR also administered the funding of certain CTR Special Projects, which were separate and distinct from CTR's grant in aid program. CTR administered Special Project funding through a separate checking account, and received direction and funding from sponsor companies, including Defendants Philip Morris Companies, Philip Morris, American, B&W, Liggett, Lorillard, and RJR and/or their attorneys. CTR also sent correspondence and funds to Special Project recipients and/or their affiliated institutions through the United States Mail. For

the period 1966 through 1990, CTR members contributed over $18.2 million toward the funding of these Special Projects. United States v. Philip Morris, No. 1:99-CV-2496, Answer of CTR at 9 (D.D.C. Oct. 30, 2000); McAllister WD, 159:8-164:5; DXA0630917-1033 at 1024 (US 75927).

507. CTR provided funding to Special Projects recipients via checks processed through the interstate banking system and delivered via the United States Mail. McAllister PD, United States v. Philip Morris, 5/24/02, 98:3-99:2, 102:13-22, 103:7-19.

508. According to Harmon McAllister, CTR's 30(b)(6) witness on the subject of mailings, CTR mailed its Annual Reports through the United States mails. Id. at 65:11-66:21.

V. DEFENDANTS DEVISED AND EXECUTED A SCHEME TO DEFRAUD CONSUMERS AND POTENTIAL CONSUMERS OF CIGARETTES IN MOST, BUT NOT ALL, OF THE AREAS ALLEGED BY THE GOVERNMENT

A. Defendants Have Falsely Denied, Distorted and Minimized the Significant Adverse Health Consequences of Smoking for Decades

509. Cigarette smoking causes disease, suffering, and death. Despite internal recognition of this fact, Defendants have publicly denied, distorted, and minimized the hazards of smoking for decades. The scientific and medical community's knowledge of the relationship of smoking and disease evolved through the 1950s and achieved consensus in 1964. However, even after 1964, Defendants continued to deny both the existence of such consensus and the overwhelming evidence on which it was based.

1. Cigarette Smoking Causes Disease

510. Cigarette smoking and exposure to secondhand smoke (also known as environmental tobacco smoke or "ETS") kills nearly 440,000 Americans every year. The annual number of deaths due to cigarette smoking is substantially greater than the combined annual number of deaths due to