

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

THE ATTORNEY GENERAL OF CANADA,

Plaintiff,

vs.

RJ REYNOLDS TOBACCO HOLDINGS, INC.,
RJ REYNOLDS TOBACCO COMPANY,
RJ REYNOLDS TOBACCO INTERNATIONAL, INC.,
RJR-MACDONALD, INC.,
RJ REYNOLDS TOBACCO COMPANY PR,
NORTHERN BRANDS INTERNATIONAL, INC., and
CANADIAN TOBACCO MANUFACTURERS COUNCIL

Defendants.

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE AND
DECLARATORY RELIEF**

Civil Action No.

**PLAINTIFF DEMANDS
A TRIAL BY JURY**

COMPLAINT

This action is brought on behalf of Her Majesty in Right of Canada by the Attorney General of Canada, the plaintiff herein, by and through Her undersigned attorneys, for Her complaint herein, by which it is alleged:

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I. INTRODUCTION

1. To protect its youth from the health hazards of smoking, and to implement anti-tobacco programs and other public benefits, Canada doubled tobacco duties and taxes in February 1991. Tobacco duty and tax increases, and the resulting higher tobacco prices, held the promise of deterring young people from becoming addicted to a harmful drug. Tobacco duty and tax increases also held the promise of encouraging established smokers to quit.

2. The Defendants frustrated these goals by engaging in a pervasive tobacco smuggling scheme. The Defendants violated the laws of the United States and thwarted the anti-tobacco public policies of Canada by engaging in various enterprises to smuggle tobacco into Canada.

3. Canada brings this action under the laws of the United States to vindicate the laws of the United States, to recover damages suffered by Canada, to restrain Defendants and their co-conspirators from engaging in fraud and other unlawful conduct in the future, and to compel Defendants to disgorge the proceeds of their wrongdoing.

4. Twenty-one individuals and one of the corporate Defendants in this action have already pled guilty in this District to criminal charges under United States' laws stemming from illegal tobacco smuggling into Canada.

5. Those pleas were obtained in Case No. 97-CR-199, presided over by the Honorable Thomas J. McAvoy. Other guilty pleas were obtained in Case Nos. 98-CR-561 and 99-CR-93, also presided over by Judge McAvoy.

6. This action results from the discovery and development of facts obtained as a result of those guilty pleas. The facts uncovered show an elaborate scheme by Defendants and their co-conspirators to smuggle tobacco into Canada without paying applicable duties and taxes.

7. Pursuant to the scheme, Defendants sold enormous amounts of Canadian tobacco to a small group of United States distributors. Distributors resold the tobacco primarily to customers on the St. Regis/Akwesasne Reservation, which straddles the border between the United States and Canada. As part of the scheme, customers on the reservation smuggled the tobacco back into Canada for distribution throughout Canada and sale on the “black market.”

8. Defendants acted in concert with each other, with distributors who supplied to smugglers, and with other co-conspirators to further their fraudulent scheme. Beginning not later than 1991, Defendants subverted a lawful association-in-fact “enterprise” within the meaning of 18 U.S.C. § 1961(4), turning it away from its purpose of providing tobacco, subject to Canada’s regulatory scheme, from farmers to smokers. At the same time, Defendants and their various agents, employees, and co-conspirators, also formed a series of “enterprises” within the meaning of 18 U.S.C. § 1961(4). These enterprises functioned to transport Canadian tobacco to the United States and to smuggle it back into Canada, in violation of United States law, for sale on the black market.

9. Each Defendant participated in the operation and management of the lawful enterprise as well as these unlawful enterprises. Each Defendant committed numerous acts to acquire and maintain and operate the various enterprises. These acts included a pattern of unlawful activity within the meaning of 18 U.S.C. § 1961(1)(B), including mail and wire fraud.

10. While Canada knew that smuggling was occurring along its borders, it was not aware of Defendants' participation in smuggling. Canada recognized the devastating impact upon Canadian society and the integrity of the Canadian regulatory framework. Thus, Canada augmented efforts to control tobacco smuggling and embarked upon an almost decade-long effort to eliminate the growing smuggling problem.

11. To avoid discovery of their fraudulent conduct, Defendants engaged in a scheme to frustrate Canadian authorities by making false and deceptive representations and by concealing facts that they knew would have exposed their scheme.

12. Canada pursued the smugglers and the smuggling activity with reasonable diligence. However, given the complexity of the activity and because of Defendants' efforts to conceal their activities, Canada only recently discovered sufficient evidence to bring claims for relief against Defendants for their involvement in the smuggling.

13. Defendants' unlawful conduct caused Canada to abandon its attempt to decrease smoking by raising duties and taxes, to lose substantial revenue from duties and taxes, and to spend significant sums investigating the smuggling scheme and combating associated criminal activity. In addition, Defendants' conduct produced immense illegal profits. The effect of Defendants' fraudulent scheme and wrongful conduct continued to at least 1998. The full extent of Defendants' unlawful conduct is unknown, but is believed to have continued beyond that date.

II. JURISDICTION AND VENUE

14. Plaintiff's federal claims for relief allege violations of 18 U.S.C. § 1961 *et seq.* Plaintiff's state law claims for relief are based on common law fraud. This Court has jurisdiction over the subject matter of this action under 18 U.S.C. §§ 1964 and 28 U.S.C. §§ 1331, 1337, and 1367.

15. Personal jurisdiction and venue are proper in this Court under 18 U.S.C. §§ 1965(a) and (b), and 28 U.S.C. § 1391(b) because a substantial part of the events and omissions giving rise to the claims occurred in this District, and each Defendant in person or through an agent transacts or has transacted business within New York and this District, or contracts or has contracted to supply goods or services within New York and this District, or has committed a tortious act within New York and this District. In addition, all Defendants did and continue to do business within New York and this District, made contracts to be performed in whole or in part within New York and this District, and/or performed acts that were intended to, and did, result in the sale and distribution of cigarettes within New York and this District.

16. Plaintiff invokes the expanded service of process provisions of 18 U.S.C. § 1965(b) and the long arm provisions of New York Civil Practice Law and Rules § 302.

III. PARTIES

17. Plaintiff THE ATTORNEY GENERAL OF CANADA ("Canada") brings this suit on behalf of the Government of Canada. Canada acts through federal officials and employees of the Government of Canada. Canada is a constitutional monarchy and a federal state with a democratic parliament. Canada is made up of ten Provinces and three Territories, each with its own provincial government and capital: Alberta (Edmonton); British Columbia (Victoria); Manitoba (Winnipeg); New

Brunswick (Fredericton); Newfoundland (St. John's); Nova Scotia (Halifax); Ontario (Toronto); Prince Edward Island (Charlottetown); Quebec (Quebec City); Saskatchewan (Regina); Northwest Territories (Yellowknife); Nunavut (Iqaluit); and Yukon Territory (Whitehorse). The capital of Canada is Ottawa.

18. Defendant RJ REYNOLDS TOBACCO HOLDINGS, INC. ("RJR Holdings") is a Delaware corporation with its principal place of business at 1301 Avenue of the Americas, New York, New York 10019.

19. Prior to June 1999, RJ REYNOLDS TOBACCO HOLDINGS, INC. was known as RJR Nabisco, Inc. ("RJR Nabisco"). At all times pertinent to this Complaint, RJR Nabisco (currently RJR Holdings) was the parent corporation of the following RJR entities: RJ REYNOLDS TOBACCO COMPANY, RJ REYNOLDS TOBACCO INTERNATIONAL, INC.; RJR-MACDONALD, INC., RJ REYNOLDS TOBACCO COMPANY PR, and NORTHERN BRANDS INTERNATIONAL, INC., (collectively the "RJR Subsidiaries", and, together with RJR Holdings, the "RJR Companies").

20. The RJR Subsidiaries have acted within the course and scope of their agency and employment, and with the knowledge, consent, permission, and authorization of RJR Nabisco. Actions of the RJR Subsidiaries were ratified and approved by the officers, directors, and managing agents of RJR Nabisco. At all times pertinent to this Complaint, RJR Nabisco has participated substantially in the management and control of the RJR Subsidiaries. At all times pertinent to this Complaint, RJR Nabisco, individually and through the RJR Subsidiaries, its agents, alter egos, subsidiaries, parent companies and divisions, materially participated in smuggling. At all times pertinent to this Complaint, RJR Nabisco materially participated, conspired, assisted, encouraged, ratified, and otherwise aided and abetted one or

more of the other Defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the Northern District of New York.

21. To effectuate the scheme, RJR Nabisco established Defendant Northern Brands International, Inc. (“NBI”) as its alter ego. NBI was created for the purpose of concealing the RJR Defendants’ active involvement in smuggling tobacco. NBI was a mere instrumentality of RJR Nabisco and was so completely dominated by RJR Nabisco that it had no will of its own. Instead, as a shell corporation, NBI provided another layer of insulation between RJR Nabisco and the smuggling activities. NBI did not retain its own revenues. NBI retained insufficient capital by immediately transferring its revenue to other RJR entities. RJR Nabisco completely disregarded NBI’s separate identity and used NBI to perpetrate the fraud against Canada. Although RJR Nabisco was NBI’s direct parent, RJR Nabisco also allowed its other subsidiaries R.J. Reynolds Tobacco Company, R.J. Reynolds International, Inc., and RJR-Macdonald, Inc. to disregard NBI’s corporate form and to use NBI to perpetrate the smuggling scheme.

22. Defendant R.J. REYNOLDS TOBACCO COMPANY (“RJR U.S.”) is a New Jersey corporation with its principal place of business at 401 North Main Street, Winston-Salem, North Carolina 27102.

23. Defendant RJR U.S. is the parent corporation of Defendant RJ REYNOLDS TOBACCO COMPANY PR, and was the parent of RJ REYNOLDS TOBACCO INTERNATIONAL, INC. (collectively the “RJR U.S. Subsidiaries”), which has recently been sold to Japan Tobacco Inc. In acting as alleged herein, the RJR U.S. Subsidiaries have acted within the course and scope of their agency and employment, and with the knowledge, consent, permission, and authorization of RJR U.S. Actions of the RJR U.S. Subsidiaries were ratified and approved by the officers, directors, and managing agents of RJR

U.S. At all times pertinent to this Complaint, RJR U.S. has: materially participated in the management and control of the RJR U.S. Subsidiaries; materially participated in smuggling individually and through its agents, alter egos, subsidiaries, divisions, or parent companies; materially participated, conspired, assisted, encouraged, ratified and otherwise aided and abetted one or more of the other Defendants in the unlawful, misleading, and fraudulent conduct alleged herein. It has affected foreign and interstate commerce in the United States, including the Northern District of New York.

24. Defendant RJ REYNOLDS TOBACCO INTERNATIONAL, INC. (“RJR International”) is a Delaware corporation with its principal place of business at Chemin Riev 14, 1211, Geneva, 17 Switzerland. RJR Holdings and RJR U.S. sold their non-U.S. tobacco interests, which may have included RJR International, to Japan Tobacco Inc. in May 1999.

25. At all times pertinent to this Complaint, RJR International was a subsidiary of RJR Nabisco, which is now called RJR Holdings. At all times pertinent to this Complaint, RJR International, individually and through its agents, alter egos, subsidiaries, divisions, or parent companies, materially participated in smuggling; and materially participated, conspired, assisted, encouraged, ratified and otherwise aided and abetted one or more of the other Defendants in the unlawful, misleading, and fraudulent conduct alleged herein. It has affected foreign and interstate commerce in the United States, including the Northern District of New York.

26. Defendant RJR-MACDONALD, INC. (“RJR-Macdonald”) is a Canadian corporation with its principal place of business at First Canadian Place, Suite 6000, Toronto, Ontario M5X 1A4. RJR Holdings and RJR U.S. sold their non-U.S. tobacco interests, which included RJR-Macdonald, to Japan Tobacco Inc. in May 1999.

27. At all times pertinent to this Complaint, Defendant RJR-Macdonald was a subsidiary of RJR Nabisco. At all times pertinent to this Complaint, RJR-Macdonald, individually and through its agents, alter egos, subsidiaries, divisions, or parent companies, materially participated in smuggling; and materially participated, conspired, assisted, encouraged, ratified and otherwise aided and abetted one or more of the other Defendants in the unlawful, misleading, and fraudulent conduct alleged herein. It has affected foreign and interstate commerce in the United States, including the Northern District of New York.

28. Defendant RJ REYNOLDS TOBACCO COMPANY PR (“RJR Puerto Rico”) is a Delaware corporation with its principal place of business at Rd. 165 Buchanan to Catano, Guaynabo, Puerto Rico 00657.

29. RJR Puerto Rico is a subsidiary of RJR U.S. At all times pertinent to this Complaint, RJR Puerto Rico, individually and through its agents, alter egos, subsidiaries, divisions, or parent companies, materially participated in smuggling; and materially participated, conspired, assisted, encouraged, ratified and otherwise aided and abetted one or more of the other Defendants in the unlawful, misleading, and fraudulent conduct alleged herein. It has affected foreign and interstate commerce in the United States, including the Northern District of New York.

30. Defendant NORTHERN BRANDS INTERNATIONAL (“NBI”) is a Delaware corporation with its principal place of business at 401 North Main Street, Floor 13, Winston-Salem, North Carolina 27101.

31. NBI is a subsidiary of RJR Nabisco, which is now called RJR Holdings. At all times pertinent to this Complaint, NBI, individually and through its agents, alter egos, subsidiaries, divisions, or parent companies, materially participated in smuggling; and materially participated, conspired, assisted,

encouraged, ratified and otherwise aided and abetted one or more of the other Defendants in the unlawful, misleading, and fraudulent conduct alleged herein. It has affected foreign and interstate commerce in the United States, including the Northern District of New York.

32. Defendant CANADIAN TOBACCO MANUFACTURERS COUNCIL (“CTMC”) is a Canadian corporation with its principal place of business at 701-99 Bank Street, Ottawa, Ontario K1P 6B9.

33. The CTMC is the trade association of the three major tobacco manufacturers in Canada: Imperial Tobacco Limited; Rothmans, Benson & Hedges, Inc.; and RJR-Macdonald, Inc. (collectively the “tobacco manufacturers”). At all times pertinent to this Complaint, CTMC operated as RJR-Macdonald’s agent and public relations and lobbying tool. CTMC acted as a facilitating agency and co-conspirator in furtherance of the Defendants’ conspiracy. CTMC acted within the course and scope of its agency and employment, and with the knowledge, consent, permission, and authorization of RJR-Macdonald. All actions of CTMC were ratified and approved by the officers and managing agents of RJR-Macdonald. At all times pertinent to this Complaint, CTMC individually and through its agents, materially participated in the smuggling scheme, and materially participated, conspired, assisted, encouraged, ratified and otherwise aided and abetted one or more of the other Defendants in the unlawful, misleading, and fraudulent conduct alleged herein. It has affected foreign and interstate commerce in the United States, including the Northern District of New York.

34. To directly control the acts of its agent CTMC, RJR-Macdonald management also served as members of CTMC’s board of directors. For example, Edward Lang, RJR-Macdonald’s Chairman and CEO and RJR International’s Vice President, was a member of CTMC’s board of directors in 1992,

1993, and 1996. Pierre Brunelle, RJR-Macdonald's President, served on the board in 1997, and Stan Smith, RJR-Macdonald's Chief Operating Officer, served on the board in 1998.

35. At all times pertinent to this Complaint, each Defendant was a "person" within the meaning of 18 U.S.C. § 1961(3), because each Defendant was "capable of holding a legal or beneficial interest in property."

36. In addition to the corporate Defendants, there are individuals who, by reason of their position, exercised supervision or control over the scheme alleged and implemented. By functional job description and in fact, these individuals were the corporate Defendants' main decision-makers. These individuals understood that the corporate Defendants were active participants in the smuggling of tobacco into Canada, and conducted their respective businesses to hide these facts. The identities and specific evidence of individual culpability await review of discovery.

37. The following entities are participants but not Defendants ("Participants"): LBL Importing, Inc. ("LBL"); Pine Partnership, Inc. ("Pine Partnership"); J.R. Attea Wholesale/EHA International; Bensen International Tobacco ("Bensen International"); JBML International Import & Export ("JBML"); SMT; Springbok Trading Company Ltd. ("Springbok"); S.V. International Trading ("SV"); and Wade Supply & Service Inc. a/k/a Cardora ("Wade Group/Cardora").

IV. DEFINITIONS

38. As used in this Complaint, "mail," "mails," "mailed," "mailing" or "letter" includes the use of these terms as defined in 18 U.S.C. § 1341.

39. As used in this Complaint, "wire," "wires," "wired," "wiring," "wire communication" or "telephone" includes the use of these terms as defined in 18 U.S.C. § 1343.

V. THE SCHEME TO DEFRAUD

40. Canada obtains revenue by imposing duties and taxes on the sale of tobacco.

41. In 1989, and again in 1991, Canada significantly raised its duties and taxes on tobacco to increase its price and thereby discourage smoking.

42. Beginning in or about 1991, Defendants and others devised a scheme to defraud, corrupt, cheat, steal, and conceal in violation of the laws of the United States (“the scheme”). The primary objective of the scheme was to realize illicit profits through smuggling tobacco into Canada for sale on the black market. This scheme inflicted substantial injury upon Canada, by among other things, interfering with Canada’s efforts to discourage smoking amongst its population. The scheme also caused Canada substantial monetary damages, including the necessity of spending significant resources combating and investigating smuggling.

43. The scheme was successful. RJR-Macdonald increased its Canadian market share, and maintained high profits, through the sale of smuggled cigarettes. In 1992, approximately 20% of the cigarettes sold in Canada and about 50% of the cigarettes sold in Quebec were sold on the black market. By 1994, some estimates suggested these figures had increased to approximately 40% and 60%, respectively. During this time, black market sales moved RJR-Macdonald’s share of the Canadian tobacco market from about 12% in 1992, to about 20% by 1994.

44. The scheme to defraud, corrupt, cheat, steal, obtain by fraud and convert property was in existence by at least 1991. While the scheme is known to have continued until approximately 1998, it may have continued beyond, but the exact duration of the scheme remains unknown to Canada.

VI. FACTS COMMON TO ALL CLAIMS

A. **Canada Regulates Tobacco**

1. **Efforts to Combat Tobacco Use**

45. Tobacco consumption is a serious national public health problem. It is the leading cause of premature death and disease in Canada. Thus, Canada regulates tobacco use by promoting policies that discourage smoking.

46. Canada has taken numerous steps to combat tobacco use. For instance:

- a. In April 1987, Canada announced the *National Strategy to Reduce Tobacco Use*, marking the genesis of Canada's initiative and representing the first nationwide, collaborative effort to combat tobacco use;
- b. In 1987, Canada released the *Directional Paper of the National Strategy to Reduce Tobacco Use*, establishing a framework of goals and quantifying objectives to influence the planning, policy and program initiatives of all participants in the Strategy;
- c. In 1988, Canada passed the *Tobacco Products Control Act (TPCA)*, regulating the marketing and labeling of tobacco; and
- d. In 1994, Canada passed the *Tobacco Sales to Young Persons Act*, prohibiting the sale of tobacco products to people under the age of 18.

2. **Tobacco Duties and Taxes**

47. There are three types of federal levies on tobacco products manufactured or produced in Canada: excise duty under the Excise Act; excise tax under the Excise Tax Act; and a goods and services tax (GST).

48. The Excise Act imposes duties on tobacco products manufactured in Canada at the point of manufacture rather than sale.

49. The Excise Tax Act imposes excise taxes on the sale or delivery of tobacco products.

50. The sale of tobacco is also subject to a federal sales tax, called a goods and services tax (GST).

51. Tobacco moved “in-bond” (or in transit) is not subject to any of the three levies. Tobacco may be moved in-bond only when it is not intended for consumption in Canada. In-bond tobacco must be stored in an excise bonding warehouse. To enter and remove tobacco from an excise bonding warehouse, the tobacco manufacturer must prepare export documentation in which the manufacturer represents to Canada the amount of product included in each shipment that is not to be consumed in Canada.

52. Tobacco intended for export must be marked “Not For Sale In Canada.” Tobacco intended for domestic duty-free sale must be marked “Duty Not Paid.”

53. Goods that are legally imported must be declared and excise duty and tax are payable by the importer of record at the time of importation.

54. In addition to the federal duties and taxes, the Provinces impose duties and taxes roughly equal to that of Canada.

B. Canada Increased Duties and Taxes to Discourage Tobacco Use

55. In the 1980’s, Canada began increasing excise duties and taxes on tobacco products, reversing a 25-year trend of declining real prices. Between 1982 and 1991 federal excise duties and taxes on tobacco rose by 550 percent.

56. The federal and provincial governments imposed tobacco duty and taxes only on tobacco intended for consumption in Canada. Initially, there were no levies on tobacco for export, though Canada later imposed such a tax for a short period of time.

57. In 1989, to reduce tobacco consumption, Canada increased the duties and taxes on tobacco.

58. In February 1991, Canada increased the excise tax on cigarettes by \$6.00 (Canadian) per carton (3 cents per cigarette). The excise tax on other tobacco products was increased proportionately. As the Provinces essentially matched the federal tax of \$6.00 (Canadian) per carton, the tax approximately doubled.

59. Canada increased taxes to discourage children from smoking:

Our national strategy to reduce tobacco use . . . is aimed at discouraging young people from beginning to smoke. . . . Effective midnight tonight, the excise tax on cigarettes will be increased by three cents per cigarette. The excise tax on other tobacco products will be increased proportionately. . . . As a result of these measures, it is estimated there will be about 100,000 fewer teenage smokers.

(February 1991 Federal Budget document).

60. Canada's increased federal excise duties and taxes on tobacco products created a growing discrepancy between Canadian domestic tobacco prices and those in the United States, where federal and state taxes remained relatively low.

61. In 1989, before significant tax and duty increases, the average price for a carton of cigarettes in Canada was under \$26 (Canadian). By 1991, the average price had risen to \$48, ranging from

a low of \$42 in Alberta to a high of \$60 in Newfoundland. Duties and taxes accounted for about \$35 of this amount – approximately \$18 in federal duties and taxes and \$17 in provincial duties and taxes.

62. Canadian made cigarettes that were exported to the U.S. and sold there could be purchased at retail at an average price of about \$22 (Canadian) per carton, or less than half the legal selling price in Canada. Thus, each carton of cigarettes represented a potential profit of over \$20 to smugglers.

63. The profit margin on smuggled tobacco was even greater if the smuggler had access to Canadian cigarettes in the United States free of United States duties and taxes. Such profits could be had with the participation of Natives, who (subject to certain restrictions) are exempt from applicable United States taxes. In addition to their ease of access to duty-free cigarettes, certain Natives lived on reservations that were close to or straddled the Canada-United States border, most notably the St. Regis/Akwesasne Reservation, near Massena, New York and Cornwall, Ontario.

64. Foreign Trade Zones (FTZs) within United States territory provided another opportunity for Defendants to increase the profit margin between smuggled cigarettes from the United States and those sold legally in Canada. FTZs are predetermined areas declared and secured by or under United States governmental authority. In FTZs, certain operations (such as limited value-added activities) may be performed on articles without the U.S. considering such articles to have entered into the commerce of the United States. Thus, FTZs serve to insulate goods from taxation while stored in the FTZ until they are sent into the customs territory of the U.S. As further described below, Defendants and Participants utilized the FTZs to avoid paying U.S. duties and taxes, since the tobacco was shipped to the FTZs rather than U.S. customs territory. FTZs became a significant source of the Canadian tobacco products seized in Canada by law enforcement agencies.

C. Defendants Smuggled Tobacco

1. The Canadian Tobacco Industry

65. There are three major manufacturers of Canadian tobacco: Imperial Tobacco; Rothmans, Benson & Hedges; and RJR-Macdonald. They manufacture both cigarettes and fine cut tobacco (roll your own). Imperial has historically had the largest market share of legitimate Canadian tobacco sales. Rothmans, Benson & Hedges has had the second largest share. RJR-Macdonald has had the smallest market share. For example, in the early 1990's, Imperial's market share was approximately 60%, Rothmans' was approximately 24%, and RJR-Macdonald's was approximately 16%.

66. Cigarettes are normally packaged into packages of 20 or 25. The packages are further packaged into cartons of 200 cigarettes (either 8 or 10 packages). Cartons are then packaged into cases of 10,000 cigarettes (50 cartons). Cases of cigarettes are typically shipped in a trailer or container. One trailer or container usually contains 1,000 cases or 10 million cigarettes.

67. Fine cut tobacco is normally packaged into 200 gram tins. Tins are then packaged into cases of 6,000 grams (30 tins).

68. Canadian tobacco is made from Virginia leaf tobacco, which has a different flavor than the burley leaf tobacco made in the United States. Accordingly, there is little market in the United States for Canadian style tobacco. The only market for Canadian style tobacco outside of Canada exists to service Canadian tourists and cross-border shopping. This market is negligible. Prior to 1991, RJR-Macdonald exported only about 200 to 300 million cigarettes per year, less than 4% of the approximately 8 billion cigarettes per year it produced.

2. Pre-1991: Early Smuggling

69. Before 1991, smuggling of tobacco into Canada existed on a much smaller scale than that which ultimately developed after the 1991 duty and tax increase. But the roots of the smuggling problem, including the involvement of RJR's various corporate entities, had, unknown to Canada, taken hold.

70. In about 1987, RJR International established its Special Markets division, which was operated by Thomas Brock and Franco Gabriele, in Winston-Salem, North Carolina. The Special Markets Division sold duty-free tobacco to Latin America, South America, the Caribbean, Mexico, and Canada.

71. From about 1987 to 1991, RJR-Macdonald "exported" tobacco from Canada to or through Special Markets in Winston-Salem in North Carolina. Special Markets then resold the Canadian tobacco to at least the following customers: J.R. Attea Wholesale/EHA International; Bensen International; SMT; SV; and Wade Group. RJR-Macdonald and RJR International planned that these customers would then have the tobacco smuggled back into Canada for sale on the black market.

3. 1991: Canadian Tax Increase

72. As described above, in February 1991, Canada increased duties and taxes over 100% to reduce tobacco consumption, especially among children.

73. Soon after tobacco prices increased, RJR-Macdonald saw its Canadian volumes and market share decline. In addition to being concerned about its declining market share, RJR-Macdonald, aware that Canada intended its increased taxes to decrease consumption, was concerned about a declining market for tobacco.

74. From about February 1991 through September 1991, RJR-Macdonald attempted to restore its market share by increasing sales to legitimate “Class A” customers. These legitimate customers included Wal-Mart and other United States stores operating near the Canadian border or in areas visited by Canadian tourists. RJR-Macdonald attempted to cultivate these legitimate sales by using the distribution network of RJR U.S. RJR U.S. provided the billing and distribution services for these sales. RJR U.S. and RJR-Macdonald each received 50% of the profits from these sales.

75. While RJR-Macdonald’s legitimate sales to the United States increased to more than 500 million cigarettes, this was not enough to stop its slide of market share in Canada. As RJR-Macdonald’s legitimate market share threatened to approach single digits, it became increasingly concerned about its viability. At that same time, leveraged buyouts and large debt led RJR Nabisco to pressure RJR-Macdonald for more earnings.

76. Edward Lang, Chairman and CEO of RJR-Macdonald and Vice President of RJR International, demanded that his staff devise a way to sell more cigarettes. In late 1991, Nigel Holmes, RJR-Macdonald’s Regional Sales Director, gave a presentation to RJR-Macdonald’s Operating Committee. The presentation detailed how RJR-Macdonald could increase its sales by entering into a scheme to smuggle cigarettes into Canada without paying taxes. The scheme was that RJR-Macdonald would sell to customers who would ship the product to the St. Regis Mohawk/Akwesasne Reservation. From the reservation the tobacco would be smuggled back into Canada for sale on the black market, thereby avoiding payment of applicable Canadian duties and taxes.

77. Executives of RJR-Macdonald were concerned by the specificity of the presentation. RJR-Macdonald senior management obtained direct and explicit knowledge of the smuggling scheme from the

presentation. Senior management was attempting to maintain a posture of plausible deniability, amounting to willful blindness. In an attempt to preserve such deniability, Lang communicated that future presentations not be as explicit.

78. The St. Regis Mohawk/Akwesasne Indian Reservation (“St. Regis/Akwesasne Reservation”) is located near Massena, New York and Cornwall, Ontario. It straddles the international border between the United States and Canada. Although the reservation is only six miles wide and five miles long, its geography is unique because part of the reservation lies within the State of New York, and the remainder of the reservation falls within the Provinces of Ontario and Quebec, Canada. The St. Lawrence River runs through the reservation. The river is especially narrow in this region and passage across the river is relatively easy throughout the year. The area was ideal for tobacco smugglers because there are numerous unguarded river crossings and because the Mohawks move freely on the reservation from one country to the other.

79. In 1992, RJR-Macdonald’s Senior Sales Manager Leslie Thompson gave the RJR-Macdonald Operating Committee a second presentation on the advantages of entering the smuggling market. This presentation was perfunctory, describing the potential volume and earnings to be obtained by selling to smugglers. Lang complimented Thompson on the presentation.

4. 1992: RJR-Macdonald Engages In Smuggling Scheme

80. In 1992, Lang and Stan Smith, RJR-Macdonald’s Vice President of Sales, acting with the knowledge of, and within the scope of their employment at RJR-Macdonald and RJR International, directed that RJR-Macdonald’s representatives learn more about a smuggling market opportunity by meeting with

certain Americans who were already engaged in the smuggling of Canadian tobacco from the United States into Canada.

81. Following the directions given by Lang and Smith in March 1992, RJR-Macdonald's Senior Sales Manager, Leslie Thompson, and its Regional Field Manager, Wade Blonheim, met at the Como Restaurant in Niagara Falls, New York with Larry Miller, Robert Tavano, and Lewis Tavano. Miller and the two Tavanos operated a company called LBL Importing, Inc. ("LBL"). At that meeting, LBL informed Thompson and Blonheim that LBL was in the business of buying Canadian tobacco, and selling it to certain Natives in northern New York for smuggling back into Canada for sale on the black market.

82. In April or May 1992, representatives of RJR-Macdonald and LBL (Robert and Lewis Tavano) met again to discuss LBL's purchase of cigarettes directly from RJR-Macdonald. RJR-Macdonald's Smith and Thompson attended the meeting along with RJR-Macdonald's Chief Financial Officer, Paul Neumann and RJR International's Franco Gabriele.

83. At that meeting, LBL reiterated that it was in the business of buying Canadian tobacco and selling it to certain Natives in northern New York, who would smuggle it back into Canada for sale on the black market. LBL told the RJR representatives that LBL could become a large distributor of RJR-Macdonald's Export 'A' brand Canadian cigarettes, because there was a large demand for these cigarettes from certain Native wholesalers.

84. Although RJR-Macdonald's process for approving legitimate direct customers was typically long and difficult, RJR expedited the approval process for LBL, establishing LBL as a smuggling customer and selling it tobacco within days.

85. To further RJR-Macdonald's participation in the smuggling enterprises and conspiracies, in middle to late 1992, RJR-Macdonald's senior management directed Thompson to visit Foreign Trade Zones ("FTZs") located in upstate New York. The purpose of the visit was to learn how FTZs could be used by RJR-Macdonald to distribute and warehouse tobacco before transferring possession of the tobacco to LBL and other smuggling customers.

86. Following his management's instructions, in 1992, Thompson visited the Buffalo offices of the Western New York Foreign Trade Zones Operators, Inc. During his visit, Thompson learned how the FTZ system worked and determined that it could be corrupted to facilitate smuggling.

87. At the direction of RJR-Macdonald's senior management, on October 13, 1992, additional employees from RJR-Macdonald visited the Buffalo FTZ to determine how FTZs could further the smuggling scheme. In particular, RJR-Macdonald's Thompson, Luc Hetu, Joan Eskins, and Harry Dancey met with John Palisano and Beverly Kraus from Western New York Foreign Trade Zones Operators, Inc.

88. Soon after its personnel visited the FTZ, RJR-Macdonald began to use FTZs to facilitate its smuggling scheme. It began to "export" large volumes of tobacco from Montreal to FTZs located in Buffalo, Niagara Falls, Liverpool, and Champlain, New York.

89. To "export" tobacco without paying duties and taxes, RJR-Macdonald presented Canadian officials with export documentation covering tobacco bearing either the marking "Only For Sale Outside Canada" or the marking "Not For Sale In Canada." This constituted representations that the tobacco was not intended for sale or consumption in Canada. These representations were false. Defendants knew and intended that this "exported" tobacco would be smuggled back into Canada, and ultimately sold and consumed in Canada.

90. Each time Defendants “exported” tobacco with such labeling, knowing and intending that the tobacco would eventually be sold and consumed in Canada, they made an independent misrepresentation to Canada.

91. Pursuant to the scheme, by middle to late 1992, RJR-Macdonald regularly sold tobacco to at least the following customers, with the intent that it be smuggled back into Canada: LBL; J.R. Attea Wholesale; Bensen International; SMT; SV Int’l Trading; and the Wade Group/Cardora.

92. After the smuggling customers bought the product, RJR-Macdonald transferred title of the product at the FTZs to the smuggling customers, who had the product sent to the St. Regis/Akwesasne Reservation.

93. Throughout 1992, RJR-Macdonald senior executives were aware of the Defendants’ participation in the smuggling scheme. For instance, at the direction of RJR-Macdonald’s senior management, RJR-Macdonald’s Thompson and Wade Blonheim visited the St. Regis/Akwesasne Reservation to check on matters relating to the smuggling business. As another example, in December 1992, RJR-Macdonald’s President, Pierre Brunelle, welcomed one of RJR-Macdonald’s new smuggling customers, LBL, by giving LBL representatives a tour of RJR-Macdonald’s Montreal production facility.

94. Canada was unaware of Defendants’ participation in tobacco smuggling.

5. 1992: Tobacco Manufactured in Puerto Rico for Smuggling to Canada

95. To reduce the incentive to smuggle exported products back into Canada, in February 1992, Canada imposed an \$8 (Canadian) per carton export tax on cigarettes for export or sale through duty-free stores.

96. Due to press coverage of the smuggling problem and options to address it, RJR-

Macdonald had anticipated the new export tax and had moved two production lines for Canadian cigarettes from its manufacturing plant in Montreal to RJR Puerto Rico.

97. There is no significant market for Canadian cigarettes in Puerto Rico. When the Puerto Rican production plant was established to produce Canadian cigarettes, Defendants planned that substantially all of the Canadian tobacco manufactured in Puerto Rico would be smuggled back into Canada for sale on the black market. Indeed, RJR-Macdonald's Smith and Thompson gave LBL's Larry Miller, Robert and Lewis Tavano, and others tours of the Puerto Rican facility. Smith and Thompson knew LBL to be a smuggling customer, and instructed LBL and others to purchase tobacco from the Puerto Rican operation.

98. Almost all of the tobacco ultimately produced by RJR Puerto Rico was in fact sold to co-conspirators for smuggling into Canada.

99. RJR U.S., RJR-Macdonald, and RJR Puerto Rico encouraged and facilitated this smuggling. RJR-Macdonald licensed its Export 'A' cigarettes to RJR U.S. specifically so that RJR U.S. could manufacture Canadian cigarettes at RJR Puerto Rico. The words on the packaging confirm this license: "R.J. Reynolds Tobacco Co. Winston-Salem, NC 27102 Under License From RJR-Macdonald Inc. Canada."

100. To manufacture the tobacco, RJR Puerto Rico used Virginia Leaf tobacco from RJR-Macdonald's processing plant in Tillsonburg, Ontario.

101. RJR-Macdonald specifically designed the Puerto Rican packaging to mirror Canadian packaging. This packaging facilitated smuggling.

102. To aid in the fraudulent scheme and further conceal its smuggling initiatives, the tobacco

manufactured in Puerto Rico was at times shipped to the Caribbean islands of Aruba, Antigua, and/or St. Maarten through various companies, such as International Duty Free Trading (IDF) in Aruba and BOL in St. Maarten.

103. The following summarizes Defendants' scheme to smuggle tobacco from Puerto Rico into Canada:

- a. RJR U.S. obtained a "license" from RJR-Macdonald to allow RJR Puerto Rico to manufacture Canadian Export 'A' cigarettes for which there was no Caribbean or Puerto Rican market;
- b. RJR-Macdonald sent from Canada Canadian tobacco and packaging to be used in RJR Puerto Rico's product;
- c. RJR Puerto Rico manufactured cigarettes to be sold under Canada's popular Export 'A' brand;
- d. Smuggling customers placed orders for those Export 'A' cigarettes not with RJR Puerto Rico but rather with Franco Gabriele and Harold Hinson at RJR International's offices in Winston-Salem;
- e. Gabriele and Hinson instructed that all "Puerto Rican" Export 'A' cigarettes be sold through Caribbean intermediaries such as IDF (in Aruba) and BOL (in St. Maarten);
- f. The Caribbean intermediaries took title to the "Puerto Rican" Export 'A' cigarettes in name only, immediately reshipping them to smuggling customers as directed by Gabriele and Hinson from their offices in Winston-Salem;

- g. The shipments went to the smuggling customers designated by Gabriele and Hinson, at particular FTZs, for transport to upstate New York;
- h. Although RJR Puerto Rico “invoiced” the Caribbean intermediaries, it was agreed that the intermediaries were not actually liable for invoiced amounts. Rather, the intermediaries immediately invoiced the smuggling customers, and simply passed on to RJR what they received; and
- i. Once the customers received the tobacco at the FTZ, they transferred it to the St. Regis/Akwesasne Reservation for smuggling back into Canada.

104. Defendants engaged in hundreds of transactions with multiple customers along the lines set forth in the preceding paragraph. Among other things, Defendants laundered approximately \$30 million dollars through IDF’s books in 1992, and approximately \$35 million in 1993.

105. In 1992, Defendants manufactured approximately 1.1 billion Export ‘A’ cigarettes in Puerto Rico. In 1993, they manufactured approximately 1 billion Export ‘A’ cigarettes there. They continued manufacturing Export ‘A’ cigarettes in Puerto Rico until the end of 1996.

6. 1992: RJR-Macdonald Used Sales to Smugglers to Manipulate Sales and Increase Bonuses

106. The bonuses of senior management at RJR-Macdonald, RJR International, and RJR U.S. depended on yearly financial results. RJR-Macdonald depended on illegitimate customers artificially to bolster year-end revenues.

107. For example, at the end of 1992, RJR-Macdonald’s senior management directed Thompson to convince LBL to purchase millions of dollars of tobacco that had not yet been produced. LBL agreed. It drew approximately \$5 million from its New York bank, Marine Midland Bank and had

a courier fly it to Montreal airport to hand to Thompson. Thompson deposited the check in the Royal Bank that very evening. Final shipments of this product were not made until April 1993.

108. As another example of using the smuggling network to boost executive bonuses, RJR-Macdonald counted as sold billions of cigarettes that were sitting in FTZs waiting to be smuggled back to Canada – even though the cigarettes were not yet sold.

109. The senior management of RJR-Macdonald, RJR International, and RJR U.S. received substantial bonuses in 1992 based in large part on the millions of dollars of sales of tobacco that they knew was to be smuggled back into Canada.

7. 1993: NBI Set Up and Substantial Smuggling Ensues

110. By the end of 1992, a high level decision had been made within the Defendant RJR companies to establish Northern Brands International (NBI) in the United States to insulate RJR-Macdonald from selling directly to smugglers and to make it harder for Canada to discover that Defendants were involved in the smuggling scheme.

111. In March 1993, RJR-Macdonald's Peter MacGregor gave a presentation at RJR's Graylyn Conference Center in Winston-Salem, North Carolina. The presentation was part of RJR International's annual financial conference. Senior officials from RJR U.S. and RJR International attended the presentation. Those officials included RJR International's Chief Financial Officer, Jaap Uittenbogaard. MacGregor's presentation detailed reasons for setting up NBI, including reducing exposure for failure to comply with Canadian product identification codes designed to track smugglers.

112. Various RJR entities, named as Defendants herein, substantially participated in the establishment, management, control, and concealment of NBI's real purpose. For instance:

- a. NBI was established as a subsidiary of RJR Nabisco.
- b. NBI was incorporated independently of the domestic and international tobacco companies.
- c. NBI was housed on RJR U.S.'s campus in the building occupied by RJR International in Winston-Salem, North Carolina, at 401 North Main Street. This location was chosen in part because it was far from the customers that NBI was to service in upper New York State.
- d. Two employees, Leslie Thompson and Peter MacGregor, were transferred from RJR-Macdonald in Toronto to NBI in Winston-Salem.
- e. The pay checks for NBI's employees were issued by RJR International and charged back to RJR-Macdonald.
- f. NBI's employees participated in RJR U.S.'s health care, dental care, and credit union programs.
- g. NBI officers and directors were also executives of the other RJR entities. For example, Jaap Uittenbogaard, CFO and Vice President of RJR International, served as an NBI director. Thomas Brock and Franco Gabriele, directors of RJR International's Special Markets Division, also served as NBI officers. J. Thomas Pearson, Senior Vice President of Taxation for RJR Nabisco from 1992 through 1997, also served as an NBI officer.

113. RJR-Macdonald management referred to Thompson as “our Indian trader” and “our Indian specialist.” In fact, at Thompson’s party on his departure from RJR-Macdonald in Toronto to NBI in Winston-Salem, he was given a Native headdress.

114. Defendants knew that all of the tobacco sold by NBI was to be consumed in Canada. Accordingly, RJR Nabisco authorized its Canadian subsidiary RJR-Macdonald to control the employees and operations of NBI. RJR-Macdonald set the price for which NBI sold tobacco. RJR-Macdonald consolidated NBI’s earnings and profits with its own to calculate executive bonuses. RJR-Macdonald was not required to share NBI’s profits with RJR US, as it was required to do for sales to legitimate customers.

115. By March of 1993, NBI was operational. Its sales were to the following nine black market distributors who each sold to certain Native wholesalers at the St. Regis/Akwesasne Reservation:

- a. LBL Importing (“LBL”). LBL’s principals were Larry Miller, Bob Tavano, and Lewis Tavano. The company’s principal places of business addresses are P.O. Box 2067, Niagara Falls, New York 14301 and Route 2 Trippany Rd., Massena, New York 14301. LBL started purchasing Export ‘A’ cigarettes from RJR-Macdonald in about 1992 and continued purchasing through NBI 1993-1995. LBL purchased Export ‘A’ cigarettes manufactured in Montreal and Puerto Rico, and fine cut processed in Wilson, North Carolina. In about 1995, Larry Miller’s daughter, Victoria Glines, his son-in-law, Tim Glines, and his son, Nick Miller, established a company called VTN to succeed LBL in the purchase of tobacco for smuggling back to Canada. VTN established a company in Antigua to aid the purchase of tobacco from Puerto Rico.

LBL sold tobacco to customers on the St. Regis/Akwesasne Reservation for smuggling back into Canada.

- b. Pine Partnership is a company whose principal place of business was 2024 Pine Ave., Niagara Falls, New York and later 643 19th St., Niagara Falls, New York. The principals of Pine Partnership were Robert and Lewis Tavano. Pine Partnership purchased Export 'A' cigarettes from NBI from about 1993 through about 1997. It purchased Export 'A' cigarettes manufactured in Montreal and Puerto Rico. For its Puerto Rico purchases, Pine Partnership used a company called BOL Limited in St. Maarten. Pine Partnership sold tobacco to customers on the St. Regis/Akwesasne Reservation for smuggling back into Canada.
- c. J.R. Attea Wholesale ("Attea"), whose principal place of business was or is 294 Ed Harris Rd, Ashland City, Tennessee 37015. Attea also used an address at 1010 Niagara Street, Buffalo, N.Y. 14213. Its principal is Milhelm "Junior" Attea, who lives in Tennessee. The company is affiliated with EHA International and it sometimes purchased tobacco in the name of its customs broker, A. N. Derringer. Bob Haas of Buffalo placed some of the orders and made some of the wire transfers on behalf of Attea. Attea purchased Export 'A' cigarettes from RJR International's Special Markets Division from 1988 to 1992 and it purchased from NBI about 1993 to 1995. After 1991, most of the Export 'A' cigarettes purchased by Attea were manufactured in Puerto Rico. For its Puerto Rico purchases, Attea used a company called IDF in

Aruba. Attea sold tobacco to customers on the St. Regis/Akwesasne Reservation for smuggling back into Canada.

- d. Bensen International Tobacco (“Bensen International”) is based at 3301 El Camino Real, Suite 200, Atherton, California 94027. Its principal is Thomas Bensen. Bensen International was run by Andrew Marvin and David Smoot. Another employee of Bensen International – Carole Hegan – was responsible for wire transferring money from California to Toronto and Winston-Salem to purchase Canadian tobacco. Bensen International had tobacco sent to the Land Air FTZ in Williston, Vermont. Most of Bensen International’s purchases were fine cut tobacco manufactured in Montreal or in Wilson, North Carolina at Standard Commercial. Bensen International purchased directly from RJR-Macdonald starting by at least 1988 and purchased from NBI up until about 1997. Bensen International sold tobacco to customers on the St. Regis/Akwesasne Reservation for smuggling back into Canada.
- e. J.B.M.L. Int’l Import & Export (“JBML”) is located at P.O. Box 814, Buffalo, N.Y. 14213. Its principal is Jean Bill, of Montreal. JBML had tobacco sent from Montreal in bond to the United States. Most of JBML’s purchases were Export ‘A’ cigarettes manufactured in Montreal. JBML purchased from RJR International’s Special Markets or RJR-Macdonald starting by at least 1988 and purchased from NBI up until about 1997. JBML sold tobacco to customers on the St. Regis/Akwesasne Reservation for smuggling back into Canada.

- f. SMT Inc. (now known as SMT Duty Free Inc.) (“SMT”) is located at 2043 NW 87th Ave, Miami, Florida 33172. Its principal is Jorge Azel. SMT ordered Export ‘A’ cigarettes from Montreal and Puerto Rico and ordered fine cut tobacco from Montreal and Standard Commercial in Wilson, North Carolina. SMT purchased from RJR International’s Special Markets division starting in about 1988 and it purchased from NBI from about 1993 up until about 1997. SMT sold tobacco to customers on the St. Regis/Akwesasne Reservation for smuggling back into Canada.
- g. Springbok Trading Company, Ltd. (“Springbok”) is located at Box HM 1806, Hamilton, Bermuda. Its principal is Mike Beller. Springbok purchased fine cut tobacco from Montreal and cigarettes from Puerto Rico during 1992-94. Springbok sold tobacco to customers on the St. Regis/Akwesasne Reservation for smuggling back into Canada.
- h. S.V. Int’l Trading (“SV”) was based in Montreal. Its principal was Jean Gareau. SV purchased Export ‘A’ cigarettes from Montreal starting in about 1988. It also purchased the cigarettes from NBI up until about 1995. SV had the cigarettes sent to Air Industrial Park 6, Plattsburgh, N.Y. 12901. From there, SV sold tobacco to customers on the St. Regis/Akwesasne Reservation for smuggling back into Canada.
- i. Wade Group/Cardora is located at 696 Rue William, Montreal, Quebec H3C 1N9. Its principals are Gideon Loran from Montreal and Cindy Cherwin from Sharon, MA. Wade Group purchased Export ‘A’ cigarettes from Montreal starting in about 1988. Cardora purchased the cigarettes from NBI up until about 1993. Wade

Group/Cardora sold tobacco to customers on the St. Regis/Akwesasne Reservation for smuggling back into Canada.

116. A typical transaction involving tobacco manufactured in Montreal occurred as follows:
- a. RJR-Macdonald manufactured Canadian tobacco in Montreal.
 - b. RJR-Macdonald shipped this Canadian tobacco from Montreal to FTZs in upstate New York, where it transferred title to NBI.
 - c. RJR-Macdonald provided documents to Canada representing that the “exported” tobacco was not intended for consumption in Canada.
 - d. Robert Tavano of LBL called from Niagara Falls, New York to Leslie Thompson at NBI’s office in Winston-Salem, North Carolina to place an order for tobacco. Thompson told Tavano the price.
 - e. Tavano paid NBI for the tobacco by wiring money from LBL’s bank account at Marine Midland Bank in Massena, New York to NBI’s bank account at Wachovia Bank in Winston-Salem, North Carolina.
 - f. NBI then paid RJR-Macdonald for the tobacco by wiring two monthly payments from its account at Wachovia Bank in Winston-Salem, North Carolina.
 - g. The first payment was wired to RJR-Macdonald’s bank in Toronto, Ontario. This payment was called a “royalty” check and ranged from a couple of hundred thousand dollars to about \$1 million per month. The second monthly payment that NBI wired was substantially larger. Depending on the period of the scheme, NBI wired this

larger amount to three different RJR entities: RJR-Macdonald, RJR Puerto Rico, and RJR International.

- h. After receiving payments, RJR-Macdonald notified the FTZ to transfer title to the customer, such as LBL.
- i. The customers then shipped the tobacco to the St. Regis/Akwesasne Reservation, and sold it to suppliers on the Reservation, for smuggling into Canada.
- j. The tobacco was then sold on the black market in Canada. The resulting Canadian currency was used to purchase United States checks and money orders to buy more cigarettes.

117. NBI obtained a higher profit margin on smuggling sales than it made lawfully on legitimate sales by RJR-Macdonald in Canada.

118. RJR entities knew of NBI's role in the smuggling scheme. Executives of various RJR entities participated in or ratified NBI's role in smuggling.

119. NBI's Thompson met frequently with LBL and other customers to provide information on market conditions in different parts of Canada. These meetings took place throughout the United States and Canada, including New York City, Massena, Montreal, Toronto, Las Vegas, Palm Springs, the Sonora Lodge in Campbell River, British Columbia, and the Langara Lodge in the Queen Charlotte Islands, British Columbia.

120. At the direction of RJR Macdonald executives, many RJR Macdonald employees visited the St. Regis/Akwesasne Reservation to monitor the smuggling business. For example, in September 1993, RJR-Macdonald senior management directed Christopher Fragomeni, an RJR-Macdonald employee, to

visit the reservation. Fragomeni then provided a detailed report about his trip to RJR-Macdonald's operating committee. This report contained information about inventories and market penetration. The report was accompanied by photographs taken at the reservation.

121. By the middle of 1993, RJR-Macdonald's operating committee began discussing the smuggling scheme during its weekly meetings.

122. In October 1993, Lang gave a presentation about third quarter 1993 results to senior officials from RJR International, RJR U.S., and RJR Nabisco (currently named RJR Holdings). RJR Nabisco's CEO attended. The results showed that NBI earned approximately \$58 million for the quarter. The CEO of RJR Nabisco questioned how NBI could contribute that amount of money to the bottom line. But before Lang could respond, the CEO stated that he now remembered that NBI was in the "feather" business up in New York.

123. In late 1993, senior officials from Defendants RJR International, RJR U.S., and RJR-Macdonald attended a meeting in Winston-Salem, North Carolina. Again, the business of NBI was discussed, including its continued ability to secure product from RJR Puerto Rico.

124. Senior management at RJR-Macdonald took many other actions evidencing their knowledge that RJR-Macdonald's participation in the smuggling scheme was unlawful, including the following:

- a. RJR-Macdonald treated its smuggling customers differently than its legitimate customers; it allowed legitimate customers to purchase cigarettes on account, but it required the smuggling customers to pay before they took possession of tobacco;

- b. Edward Lang, the CEO of RJR-Macdonald and Vice President of RJR International, had a dummy office set up in the building across from Toronto corporate headquarters for his senior management to use when they made calls or otherwise transacted smuggling business;
- c. Lang instructed personnel not to put anything potentially damaging in writing;
- d. RJR-Macdonald's management referred to the smuggling business by the following euphemisms: "black market"; "gray market"; "transit market"; "opportunity market"; "parallel market"; "cross border sales"; and "re-entry market;"
- e. Lang instructed management to try to make sales of Canadian Export 'A' cigarettes to additional customers in the Caribbean or Africa so that the NBI customer list would show more names than just the few customers in the smuggling market; and
- f. Lang hired former RCMP personnel as private investigators to check for tracing mechanisms on computers and telephones at RJR-Macdonald.

125. RJR-Macdonald also entered into an agreement with Standard Commercial of Wilson, North Carolina to package RJR-Macdonald's fine cut tobacco (roll-your-own). Once again, RJR-Macdonald used packaging that resembled its Canadian packaging. Given that there was no U.S. market for this product, all of it ended up being smuggled back into Canada.

126. Lang sought to increase the smuggling scheme even further. He instructed Thompson and Rick Caufield, Vice President of Marketing, to fly to Alaska with Larry Miller to see if they could find any FTZs they could use to help smuggle tobacco into British Columbia. They were joined on the trip by the

internal auditor of RJR-Macdonald and NBI who was an employee of RJR U.S. based in Winston-Salem. They were unsuccessful.

127. In 1993, its first year of operation, NBI produced approximately \$60 million of the \$100 million profit earned by RJR-Macdonald and was responsible for approximately five of the eight billion units sold by RJR-Macdonald that year. NBI earned about \$1.5 million per week during that period. In fact, Edward Lang bragged that NBI's three-person operation was more profitable than Ford Canada.

128. In February 1994, senior officials from Defendants RJR U.S. and RJR-Macdonald, including both of their CEOs, attended a meeting in Montreal, Quebec to discuss NBI's business. Lang made a presentation that included a map of the Canadian/United States border. On the map, Lang marked the location of the St. Regis/Akwesasne Reservation with tee-pees and dollar signs.

8. 1994: Tax Rollback

129. On February 8, 1994, Canada announced its National Action Plan on Smuggling.

130. Excise taxes on tobacco products were reduced, including a \$5 reduction for a carton of 200 cigarettes.

131. Canada also offered to match provincial tax reductions that exceeded \$5 per carton, to a maximum federal reduction of \$10 per carton for Provinces. This matching offer allowed for larger reductions in Provinces where the smuggling problem was most severe.

132. Pursuant to Canada's offer, five Provinces reduced their taxes to varying degrees: Quebec, Ontario, Prince Edward Island, Nova Scotia, and New Brunswick.

133. Along with the cigarette tax reduction, Canada also re-imposed an export tax on Canadian tobacco products potentially destined for illegal re-import into Canada and imposed a three year health promotion surtax on tobacco manufacturing companies profits.

134. Canada attempted to mitigate the expected increase in tobacco consumption by announcing a three-year *Tobacco Demand Reduction Strategy*. This strategy was intended to minimize the impact of the tax reduction on tobacco consumption in Canada on groups most likely to initiate or increase tobacco use as a result of lower prices.

135. The *National Action Plan to Combat Tobacco Smuggling* also included an intensive anti-smoking campaign that:

- a. Along with the *Tobacco Sales to Young Persons Act*, increased the age of purchase from 16 to 18, increased fines, and restricted the location of tobacco vending machines;
- b. Prohibited packages with fewer cigarettes that might appeal to young people because of their lower prices;
- c. Imposed new regulations, under the *Tobacco Products Control Act*, to improve the effectiveness of health warnings on tobacco packaging;
- d. Expanded health promotion and anti-smoking activities; and
- e. Proposed plain cigarette packaging to reduce smoking amongst young people.

136. The *Tobacco Demand Reduction Strategy* was funded by the health promotion surtax imposed on tobacco manufacturing profits as part of the 1994 Government Action Plan.

137. Senior management at RJR-Macdonald directed that Leslie Thompson and Peter MacGregor stay in Winston-Salem to keep running NBI as an “insurance policy” in case Canada decided to raise taxes again.

138. In April 1994, MacGregor wrote to Paul Neumann, the Chief Financial Officer of RJR-Macdonald, to ask for an inventory credit. MacGregor explained that Canada’s February tax rollback was having a severe impact on NBI’s business and in order for NBI’s smuggling customers to remain competitive, NBI had to discount the price. Lang subsequently instructed Neumann to get approval from RJR International to write-down the huge Canadian tobacco inventory in the United States. The write-down would allow NBI to sell the tobacco to the smugglers for less money, and thus it would still be cheaper in Canada to buy smuggled cigarettes rather than to buy the now lower-priced lawfully sold domestic Canadian cigarettes.

139. In 1994, Lang was transferred to the United States. At his going away party at the Four Seasons Hotel in Toronto, he was presented with an “Akwesasne Order of Canada,” to mock Canada’s Order of Canada, a prestigious award bestowed upon persons who have distinguished themselves in public service.

9. 1995-1996: Smuggling Continues

140. In 1995 and 1996, NBI continued to supply the same black market with cigarettes from either Montreal or Puerto Rico, but at lower margins and lower volumes. NBI remained profitable, with 1995 and 1996 net incomes of \$16 million and \$20 million, respectively. In 1996, Puerto Rican production of Export ‘A’ cigarettes stopped.

10. 1997: Customers Indicted & Personnel Moved to Europe

141. On June 20, 1997, the United States Attorney for the Northern District of New York indicted 21 people, including NBI customers, for being involved in smuggling.

142. Shortly thereafter, RJR International moved much of RJR-Macdonald's senior management from Toronto, Ontario to Geneva, Switzerland.

11. 1998: The Fifth Estate Show and Guilty Pleas

143. On January 20, 1998, the Canadian Broadcasting Corporation aired its *Fifth Estate* show. The show alleged that RJR-Macdonald was knowingly involved in a tobacco smuggling scheme. The show set forth some of the facts discussed above.

144. By November 1998, 19 of those indicted in 1997 for violations of United States law resulting from tobacco smuggling had pled guilty, including the following:

- a. On June 5, 1997 Toni Chase and William L. Leclair pled guilty to violations of 18 U.S.C. § 371 for conspiring to aid and abet smuggling.
- b. On June 6, 1997 Norman Treptow pled guilty to a violation of 18 U.S.C. § 371 for conspiring to aid and abet smuggling.
- c. On August 4, 1997 Shawn Burke pled guilty to a violation of 18 U.S.C. § 371 for conspiring to aid and abet smuggling.
- d. On February 13, 1998, Robert Browning pled guilty in this District to violating 18 U.S.C. § 371 for conspiring to aid and abet outbound smuggling and to defraud agencies of the United States. As part of the plea, Browning admitted certain facts and

further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.

- e. On July 27, 1998, Timothy Glines pled guilty in this District to a violation of 18 U.S.C. § 371 for conspiring to aid and abet smuggling and to defraud agencies of the United States, for not filing the necessary reporting forms required for cash transactions over \$10,000. As part of the plea, Glines admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.
- f. On September 10, 1998 Victoria Glines pled guilty to a violation of 18 U.S.C. § 371 for conspiring to aid and abet smuggling.
- g. On September 11, 1998, Richard Rancati pled guilty to violating 18 U.S.C. § 371 by conspiring to aid and abet smuggling and to defraud agencies of the United States. As part of the plea, Rancati admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.
- h. On September 29, 1998 L. David Jacobs pled guilty to a violation of 18 U.S.C. § 1962(c).
- i. On October 29, 1998, Fabian Hart, Charles White, Larry Thompson and Sheila Loran pled guilty to violations of 31 U.S.C. § 5313 (a) for willfully failing to prepare reports containing taxpayer identification information of currency transactions of more than \$10,000 in cash with the United States Department of Treasury, Internal Revenue

Service. As part of the plea, they admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.

- j. On November 3, 1998, Robert Tavano and Lewis Tavano pled guilty to violating 18 U.S.C. § 1956(h) in a wire fraud scheme to defraud the United States and Canada of revenue. As part of the plea, they admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.
- k. On November 3, 1998, John Fountain pled guilty to a violation of 18 U.S.C. § 1956(h) stemming from a wire fraud scheme to defraud the United States and Canada of revenue. As part of the plea, Fountain admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.
- l. On November 4, 1998, Anthony Laughing pled guilty to a money laundering conspiracy and to conducting the affairs of an enterprise in violation of 18 U.S.C. § 1956 (h) and 18 U.S.C. § 1962 (c). As part of the plea, Laughing admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.
- m. On November 5, 1998, Larry Miller pled guilty to violating 18 U.S.C. § 1956(h) in a wire fraud scheme to defraud the United States and Canada of tax revenue through

financial transactions intended to promote underlying criminal activity related to tobacco smuggling. As part of the plea, Miller admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.

- n. On November 6, 1998, Loran Thompson pled guilty to a violation of 18 U.S.C. § 1956(h), resulting from a conspiracy and money laundering scheme in connection with smuggling cigarettes into Canada. As part of the plea, Thompson admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.

145. On December 22, 1998 NBI pled guilty to knowingly and willfully aiding and abetting others who entered and introduced and attempted to enter and introduce, into the commerce of the United States, imported merchandise by means of false and fraudulent practices in violation of 18 U.S.C. §§ 2, 542. As part of the plea, NBI admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.

12. 1999: Thompson Indictment and Guilty Plea

146. In February 1999, the United States indicted Leslie Thompson, NBI's former Director of Sales, on charges of conspiring to defraud Canada and the United States based on facts similar to those set forth herein.

147. On March 25, 1999, Leslie Thompson pled guilty to violating 18 U.S.C. § 1956(h), resulting from his conspiring to conduct financial transactions affecting interstate and foreign commerce with proceeds of specified unlawful activity, or, put simply, a wire fraud scheme to defraud Canada of tax revenue. As part of the plea, Thompson admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations included in this Complaint.

D. Defendants Fraudulently Concealed Their Scheme

148. Defendants fraudulently concealed the existence of the conspiracy from Canada through continuous and multiple affirmative acts.

149. Defendants, individually and collectively, took steps to avoid detection, including:

- a. Creating a company located in the United States to supply Canadian tobacco to smugglers and suppliers of smugglers while attempting to insulate RJR-Macdonald from association with smugglers;
- b. Relocating two lines of Canadian tobacco production to an RJR plant in Puerto Rico, to avoid export taxes and evade detection of RJR-Macdonald's active participation in supplying large quantities of Canadian cigarettes to smugglers;
- c. Laundering the Puerto Rican tobacco production through Aruba and St. Maarten to attempt to insulate Defendants from selling directly to smugglers;
- d. Taking actions to circumvent Canadian regulations on cigarette package labeling designed to aid in the tracking and identification of smuggled products;

- e. Commissioning studies on the source of tobacco smuggling that implicated organized crime, without mentioning involvement by Defendants, to focus blame elsewhere; while making constant pledges to Canada of cooperation in combating smuggling; and
- f. Repeatedly issuing public statements disavowing any knowledge about, or corporate responsibility for, the source of smuggling, and falsely blaming “organized crime” for the smuggling.

150. Defendants’ scheme to fraudulently conceal their complicity and active involvement in smuggling dates back to at least 1988 and involves the CTMC, which represented the three Canadian tobacco manufacturers, including RJR-Macdonald. RJR-Macdonald participated through its senior management.

151. In June 1988, Revenue Canada’s Excise Branch expressed concerns to the CTMC about tobacco company exports. The CTMC assured Revenue Canada that its members would voluntarily monitor their shipments and restrict shipments to legitimate distributors.

152. In July 1988, the CTMC wrote a letter to the Deputy Minister of Revenue Canada indicating that its members wanted to stop smuggling. The CTMC detailed a proposal to mark tobacco, “For Sale Outside Canada,” to make it clear that taxes had not been paid.

153. In July 1989, the CTMC wrote another letter to Revenue Canada. It proposed new markings and reporting of sales data for products destined for export and the duty-free market. The CTMC expressed confidence that although costly for the manufacturers, such steps would enhance enforcement procedures, curtailing smuggling and tax evasion. Canada relied upon these representations. In fact,

Revenue Canada commended the CTMC for its supposed “cooperation” in fighting smuggling and its continued efforts to work with Canada on marking tobacco products for export.

154. With the supposed cooperation of the CTMC and RJR-Macdonald, on October 31, 1989, special markings were required for tobacco destined for export or the duty-free market.

155. In October of 1990, in a letter to one Minister, the CTMC reiterated its concern about the growth of smuggling and registered its interest in working responsibly and cooperatively with government and law enforcement agencies to effectively deal with smuggling. The letter accompanied a report created for the CTMC on the smuggling of duty-free cigarettes into Canada. The report implicated various groups, including organized crime, in the smuggling but contained no mention of tobacco industry participation.

156. Canada relied on these representations. As detailed above, while the CTMC was making these representations in 1988-1990, its member RJR-Macdonald was selling tobacco to or through RJR International’s Special Markets for smuggling back into Canada.

157. Throughout 1991, the CTMC wrote letters to various agencies of Canada pledging its commitment to stop smuggling. For example, in May 1991, the CTMC again diverted attention from the manufacturers by emphasizing the harmful effects of smuggling upon the tobacco industry. The CTMC reiterated the industry’s willingness to cooperate with law enforcement. To that end, the CTMC claimed that the tobacco manufacturers were prepared to share information with law enforcement and customs officials, and to cease shipping product to any wholesaler upon being advised by law enforcement of that wholesaler’s involvement in illegal activity. As another example, in December 1991, the CTMC falsely told the RCMP that RJR-Macdonald was “committed to working with the Government on realistic measures to stop the smuggling.”

158. Canada relied on these representations. As detailed above, while the CTMC was making these representations in 1991, its member RJR-Macdonald was already considering increasing its reliance on the smuggling market, as set forth by a presentation to the RJR-Macdonald Operating Committee.

159. In January 1992, the CTMC wrote a letter to the Senior Assistant Deputy Minister of Finance. In that letter, the CTMC again pledged to cooperate with Canada to address the smuggling problem. The CTMC's claim of cooperation included making a number of suggestions to law enforcement and calling for more effective laws.

160. In January and February 1992, representatives of the CTMC met with the RCMP and Revenue Canada. Again, they expressed the industry's commitment to an effective tobacco marking program. The CTMC reiterated its support of the government's intentions to control and reduce smuggling.

161. In yet another guise of cooperation, in April 1992, RJR-Macdonald agreed to include serialized customer specific identification codes on cigarette cartons destined for export to the United States. Canada intended that such codes would provide assistance in tracing the cigarettes. RJR-MacDonald also agreed to mark its export destined packages with the words "Not for Sale in Canada" and "Duty Not Paid."

162. In September 1992, the CTMC issued a press release in which it assured the public that the Canadian tobacco industry continued to oppose smuggling and was working actively with government and law enforcement agencies to combat it.

163. Also in September 1992, the CTMC wrote letters to the Solicitor General of Canada to register both the industry's continued concern about smuggling and its commitment to working with

authorities to eliminate this problem. Robert Parker, President of the CTMC, directly and falsely denied industry involvement with smugglers: “The second [concern] is the not infrequent accusation that the industry is in direct collusion with smugglers. This is not true, and leveled without an iota of evidence.” Parker’s letter stressed the importance of continued cooperation between the industry and the federal and provincial governments.

164. Also in September 1992, Eugene F. McCarthy, RJR U.S.’s Senior Director, Corporate Security, came to Ottawa ostensibly to discuss the ways in which he could assist Canada with the smuggling problem. Canada law enforcement officials offered an overview of the problem, including the fact that cigarettes manufactured at RJR Puerto Rico were ending up in Canada. McCarthy, however, was actually sent to monitor Canada’s efforts to discover the participants in the smuggling scheme.

165. In October 1992, the CTMC sent another letter, this one to the Revenue Deputy Minister, expressing its opposition to smuggling and a purported desire to work on effective means for ending it: “The Canadian tobacco industry continues to oppose smuggling and to work with authorities on effective means for ending it.”

166. Canada relied on these representations. It told the public that RJR-Macdonald had agreed “to make every effort to ensure that exported tobacco products are delivered to bona fide wholesalers and retailers in the United States” Revenue Canada’s Deputy Minister expressed his appreciation of the industry’s cooperation in combating smuggling: “Please be assured that this Department appreciates the cooperation shown by the industry in our joint efforts to combat tobacco smuggling.”

167. Contrary to the CTMC’s representations during 1992, the RJR companies moved production to Puerto Rico to avoid Canada’s enforcement measures, and they established NBI as RJR-

Macdonald's sole distributor in the United States. These arrangements destroyed the utility of the tracking codes, and further assisted in concealing the source of smuggled tobacco.

168. Specifically, RJR Nabisco, RJR-Macdonald, and RJR International set up NBI as a sham company in Winston-Salem, North Carolina as an entity through which to funnel exports of Canadian cigarettes and further conceal Defendants' role in the conspiracy. By distributing tobacco through NBI rather than RJR-Macdonald, Defendants made it more difficult for Canada to detect the connection between RJR-Macdonald and the wholesalers who supplied to smugglers.

169. As a subsidiary of RJR Nabisco, NBI had no corporate affiliation with RJR-Macdonald. This structure was chosen in order to conceal Defendants' participation in the smuggling enterprise, and to make NBI look, to the outside world, like a legitimate company rather than like a tobacco smuggling conduit. Further, NBI was located in Winston-Salem in order to appear far removed from NBI's real customers, the smugglers in New York.

170. The deceit in NBI's purpose is apparent in the way it operated. NBI had only three employees: Leslie Thompson, its Regional Director; Peter MacGregor, its CFO; and Jean Schlottman, their assistant. All three were provided offices in RJR International's building on RJR U.S.'s property in Winston-Salem. RJR International issued their paychecks, but charged these amounts internally to RJR-Macdonald. RJR U.S. provided their benefits. And their performance reviews were conducted on RJR Nabisco letterhead.

171. Though NBI was incorporated as a subsidiary of RJR Nabisco and with no direct formal affiliation with RJR-Macdonald, Leslie Thompson reported to Stan Smith, Vice President of Sales for RJR-Macdonald, and NBI CFO Peter MacGregor reported to Paul Neumann, CFO of RJR-Macdonald.

Thompson and MacGregor both were ultimately accountable to Edward Lang, CEO and Chairman of RJR-Macdonald and Vice President of RJR International with responsibility for its “America’s Division.”

172. The sales and operations of NBI were in fact controlled by RJR-Macdonald. RJR-Macdonald’s management set the price of NBI’s products in Canada, with NBI having to obtain approval from RJR-Macdonald’s CFO in order to institute a price change. NBI’s earnings were consolidated with RJR-Macdonald’s earnings to calculate RJR-Macdonalds’ executives’ bonuses.

173. To further avoid detection, every month NBI wire transferred its earnings to RJR-Macdonald, RJR International, or RJR Puerto Rico. These wire transfers were substantial, as NBI was earning about \$1.5 million per week during most of 1993. Every month, NBI also sent a “royalty” check by overnight mail to RJR-Macdonald. The amounts of the royalty checks varied from several hundred thousand to about \$1 million.

174. The continued offers of assistance to Canada in combating the smuggling problem – including promises to provide assistance to law enforcement activities – served to conceal the Defendants’ active involvement in the tobacco smuggling they pledged to help combat.

175. Canada relied on these representations when assessing investigative and enforcement priorities.

176. In April 1993, notwithstanding the profits received through smuggled goods and the efforts RJR-Macdonald and its co-conspirators expended in devising and concealing a smuggling network, the president of the CTMC, Robert Parker, told the Toronto Star that the tobacco industry wanted the smuggling to end.

177. At the same time that the CTMC was making the representation that it wanted smuggling to end, two of RJR International's lawyers in Winston-Salem wrote a letter to Eugene F. McCarthy, RJR U.S.'s Senior Director, Corporate Security. They instructed him to help collect debts owed by SV, a known smuggling distributor. The lawyers made it clear that the debts related to tobacco that SV had shipped to the St. Regis/Akwesasne Reservation after obtaining it from RJR-Macdonald and RJR U.S., and transferring it through Puerto Rico, Aruba, a FTZ in Liverpool, New York, and a warehouse in Plattsburgh, New York. McCarthy had been in Ottawa only months before offering to assist in the fight against smuggling.

178. In May 1993, the CTMC and representatives that included RJR-Macdonald met with representatives of Revenue Canada in further apparent efforts to cooperate with the government to reduce smuggling. The topic of the May 1993 meeting was to discuss the rapidly increasing exports of tobacco products to the United States, and to propose further verification programs to ensure that the products qualified for tax exemption.

179. In late 1993, the CTMC even proposed to the RCMP that it cooperate with police in sting investigations by supplying tobacco products.

180. The public denials of involvement in smuggling also continued. In January 1994, Parker was quoted as saying, "We are not flooding the market We're responding to demands from legitimate wholesalers in the United States" He was also quoted as saying that any suggestion "that we are in any way dealing with smugglers is flatly wrong. . . ."

181. However, as detailed above, at this same time, RJR-Macdonald was actively selling to customers that it knew smuggled tobacco back into Canada. Also at the same time, RJR-Macdonald was secretly devising further schemes to conceal its involvement.

182. In June 1994, the CTMC continued to deceive Canada by representing that RJR-Macdonald was not involved in smuggling and that the CTMC was fully cooperating with authorities: “The relationship continues on a very professional level from my perspective; it remains my intent and that of the member companies, whatever policy differences may exist, to ensure that regular exchanges of information and full cooperation continue.”

183. Canada relied on these representations. In his speech accompanying the tobacco tax rollbacks in 1994, Canadian Prime Minister Chretien, though asserting that the tobacco companies had not acted responsibly, attributed responsibility for the smuggling to organized crime.

184. To this day, Defendants have continued to deny any involvement in smuggling. For instance:

- a. An April 1998 KPMG Study of Contraband Tobacco prepared for the CTMC contended that cross border smuggling was controlled by organized criminal groups such as the Italian Mafia, and by various gangs, including Asian, Russian, and motorcycle gangs. The report omitted to note any possible involvement by the RJR Defendants. Parker forwarded the 1998 KPMG study to Canada, claiming that the study was commissioned to collect the best possible information, for the benefit of the government, on contraband tobacco activity.

- b. In 1998, an RJR shareholder submitted a shareholder resolution. It requested that RJR establish a board of independent directors to determine the extent of the company's involvement in cigarette smuggling and to insure that RJR does not market products in a way that assists smuggling. RJR Nabisco termed the proposal "moot" and recommended that shareholders deny the resolution. It maintained that it had internal controls in place that deterred smuggling and that were "more than adequate" to investigate smuggling and insure that none of its employees engaged in smuggling.
- c. On April 24, 1998 Steven Goldstone, the Chairman and CEO of RJR Nabisco issued a prepared statement to financial analysts. He wanted to respond to Washington's proposal to deter children from smoking by raising taxes and thereby raising cigarette prices. He warned that the unintended consequence of such a policy would be a black market in tobacco that would potentially destroy any effort to control the availability of tobacco products to children. He made his point by describing what had happened in Canada between 1989 and 1994. He blamed organized criminal enterprises that he said had immediately invested in a comprehensive, sophisticated infrastructure for illegal distribution.
- d. In August 1998, the CTMC reiterated that RJR-Macdonald was "committed to assisting governments and the various enforcement agencies in deterring and reducing smuggling and contraband. . . ."

- e. After NBI pled guilty for its involvement in smuggling in 1998, an RJR representative told the Globe and Mail newspaper that the actions of NBI were inconsistent with the way that RJR does business.
- f. In January 1999, an RJR representative publicly proclaimed that RJR's tobacco production in Puerto Rico and the creation of NBI were intended to serve the Caribbean basin, where he claimed a significant demand for Canadian tobacco existed.
- g. Representatives of RJR and Japan Tobacco denied corporate involvement in smuggling even after Thompson pled guilty to criminal charges in 1999. A spokesperson for Japan Tobacco told the Toronto Star that "[j]ust because this man pled guilty doesn't mean he was acting on the instruction of his superiors." The spokesperson said that RJR was "certainly not guilty of active involvement."

185. The public denials, individually and cumulatively, have served to conceal the Defendants' active involvement in tobacco smuggling and to derail and misdirect investigations.

186. In addition to continuing to deny their involvement publicly and in meetings with Canada, Defendants sought to avoid detection by providing lawyers paid for by RJR – despite apparent conflicts of interest – to represent individuals accused of participating in smuggling. The RJR-paid lawyers actually served to protect the interests of RJR rather than the interests of the individuals whom RJR feared might provide information to prosecutors regarding RJR's involvement in smuggling. It was only recently that key RJR-Macdonald officials were no longer represented by and under the control of RJR's lawyers and free to begin telling the truth that had been covered up for so long.

187. In 1997, a grand jury from this District subpoenaed documents from RJR U.S., NBI, and RJR International. In the summer of 1998, documents were destroyed at RJR-Macdonald's corporate offices in Toronto.

188. Lang reportedly warned Thompson – prior to Thompson's impending guilty plea with the U.S. Attorney in the Northern District of New York – that "loose lips sink ships." Lang had given Stan Smith the same warning.

189. In fact, throughout the life of this conspiracy, RJR-Macdonald's management warned Thompson and others to take care when putting information in writing, and to choose words carefully. As a result, employees of RJR-Macdonald, NBI, and others used euphemisms such as "gray market," "opportunity market," "parallel market," "transit market," and "re-entry market," to describe the smuggling.

190. When the United States and Canadian investigations into the smuggling enterprise began to focus on RJR-Macdonald, many of RJR's employees who had participated in the smuggling were moved overseas to avoid detection and deny access to these knowledgeable persons.

191. Defendants succeeded, at least for many years, in their continuous and elaborate plan to avoid detection.

192. The CTMC deceived Canada. It never fully cooperated with authorities. It never disclosed RJR-Macdonald's conduct.

193. Canada reasonably relied on Defendants' misrepresentations. Especially with the other actions taken by Defendants to conceal the smuggling, the repeated denials of involvement caused Canada to focus its investigations on "organized crime" and away from Defendants.

194. Because of Defendants' conduct giving rise to equitable estoppel and constituting fraud in the concealment, on which Canada reasonably relied, Canada only recently discovered sufficient evidence to bring a claim for relief against Defendants for their involvement in the smuggling. Thus, the applicable statute of limitations was tolled until the point that Canada through reasonable diligence could bring a claim for relief against Defendants for their involvement in the smuggling.

E. Canada Exercised Reasonable Diligence in Obtaining Information Bearing on the Existence of Its Claims for Relief

195. While Canada was aware of the growing smuggling problem, it was unaware of the involvement of Defendants. One measure of the problem was the growing number of contraband tobacco seizures made by law enforcement officials. Another indirect measure was monitoring the increase in export shipments and sales to domestic duty-free markets, which increased dramatically following the tax increases in 1991 and more than doubled between 1992 and 1993.

196. Canada took strong and immediate steps to combat smuggling. The first of these, which was announced on February 12, 1992, included:

- a. An export tax on tobacco products;
- b. Tighter government controls over the distribution and sale of duty-free tobacco products including changing the rules governing the sale of duty-free tobacco to customs bonded warehouses to restrict resale to diplomats and duty-free shops; and
- c. Expanded use by Customs of flexible response teams and extended hours of operation at certain entry ports.

197. Other regulatory measures followed. An export tax of 4 cents per cigarette (\$8 per carton), announced in February 1992, was designed to increase the price of Canadian cigarettes in the

United States and thereby reduce the price disparity between domestic Canadian tobacco and the price of Canadian tobacco in the United States and the accompanying incentives to smuggle.

198. Canada announced further anti-smuggling measures in April 1992. Those measures included:

- a. Requiring enhanced markings on tobacco products destined for domestic duty-free sale and export. Those markings were meant to identify the products on which duties and taxes had not been paid. Under the new marking provisions, the words “Duty Not Paid” or “Not For Sale in Canada” were to be printed in contrasting colors on the side of packages.
- b. Requiring unique customer identification codes was to be placed on cartons of Canadian brand cigarettes sold into duty-free and export markets. Those codes were designed to assist law enforcement agencies in tracking the shipments and controlling the flow of illicit tobacco products.
- c. Obtaining agreement from RJR-Macdonald and the CTMC that they would make every effort to ensure that exported tobacco products were delivered only to bona fide wholesalers and retailers outside of Canada.
- d. Obtaining agreement from Canadian and U.S. duty-free shop operators to limit the quantity of sales of tobacco products.
- e. Restricting sales by bonded warehouses to ships’ stores.
- f. Providing additional enforcement resources for Revenue Canada and the RCMP dedicated exclusively to dealing with tobacco smuggling.

199. In the summer of 1993, Revenue Canada's Excise Branch also attempted to deal with the diversion of tobacco products by instituting the Tobacco Export Verification Program. That program required the inspection and sealing of every loaded truck headed for export to ensure the contents were actually exported.

200. Canada also imposed enhanced reporting requirements, which required manufacturers to report separately tobacco exports to the United States.

201. To determine those responsible for tobacco smuggling and to learn the true magnitude of the problem, Canada took steps that included:

- a. In 1992, Canada established an anti-smuggling joint Task Force comprised of Canada Customs, Royal Canadian Mounted Police, Ontario Provincial Police and Cornwall City Police officers all based in Cornwall, Ontario, near the St. Regis/Akwesasne Reservation.
- b. In 1992, Canada provided more than 200 officers to Customs and the RCMP.
- c. In 1993, Canada added another 70 officers for the RCMP to support increased intelligence and enforcement efforts aimed at discovering and eliminating the source of the smuggling problem. This included a joint effort between Canada Customs and the RCMP to compile and analyze data on tobacco movements and those groups involved in the activity.
- d. Canada Customs increased border investigations, including "border blitzes," to target commercial trucks at ports having compliance problems.

- e. Canada increased RCMP investigations of avenues for smuggled tobacco entering Canada at points other than ports of entry.
- f. Canada increased the prosecution of tobacco smugglers, as evidenced by the increase of tobacco contraband charges brought by the RCMP from 1,332 in 1991 to 3,179 in 1992 and 3,389 in 1993.

202. Even with these enhanced regulatory and investigative measures, as of 1994, Canada believed that tobacco smuggling was in the control of organized crime, which Canada thought accounted for 95% of all contraband tobacco.

203. On February 8, 1994, Canada announced its National Action Plan to Combat Smuggling. The plan included a number of interrelated elements designed to: crack down on organized crime; target people who were breaking the law; reduce the profitability of smuggling; stop the illegal re-importation of Canadian cigarettes from the United States; fund anti-smoking measures and reduce tobacco consumption, particularly by young people.

204. Canada doubled the number of RCMP personnel working on tobacco smuggling operations. The RCMP's efforts included:

- a. Expanded joint force operations with provincial, municipal and aboriginal police forces;
- b. Establishment of mobile response units in Ontario, Quebec and New Brunswick;
- c. The use of special marine patrols; and
- d. Increased investigations under proceeds-of-crime legislation.

205. Canada Customs was given 350 additional full-time employees to, among other things:

- a. Increase examinations of high-risk travelers and commercial shipments;

- b. Provide 24-hour service at 22 ports that handled more than 99 percent of commercial traffic;
- c. Establish temporary border offices at selected sites that were not permanently staffed; and
- d. Conduct border blitzes targeting high-risk travelers and importers.

206. Provincial police were given authority to enforce certain provisions of the Excise Act.

207. Some Provinces did not roll back their taxes in 1994. As a result, inter-provincial smuggling developed into a greater problem. In a continued effort to deal with all kinds of smuggling, in 1995, Revenue Canada assigned special investigators to work with the Provinces, especially those in Western Canada where taxes had not been lowered and thus where smuggling was especially problematic.

208. The RCMP investigated Larry Miller. In 1997, it arrested a member of the Miller smuggling organization in Vancouver for smuggling tobacco into British Columbia.

209. In efforts to discover tobacco smugglers and hold them responsible for their actions, Canada and the United States have cooperated with and assisted each other. This cooperation and assistance, which continues to the present day, includes:

- a. Exchanges of information between Canada's Customs and Excise officials and the United States Government (such as the U.S. Bureau of Alcohol, Tobacco and Firearms and U.S. Customs) including information to track exports and trace and uncover the source of smuggled goods;
- b. Coordination of tobacco smuggling investigations between law enforcement and investigative agencies in both the United States and Canada;

- c. Cooperation in investigating tobacco smuggling as demonstrated by the indictment in June 1997 of 21 people in the Northern District of New York involved in the smuggling scheme previously described in this Complaint. By August 1996 both the RCMP and the U.S. law enforcement agencies were aware of parallel investigations in their respective jurisdictions. Search warrants were executed on both sides of the border in 1996. The RCMP shared copies of reports with its U.S. counterparts. U.S. agents knew what the RCMP were doing and shared information as their investigations ran their course. U.S. Customs agents were aware of and covered meetings between RCMP members and Larry Miller and others in the United States. U.S. agents indicated that the evidence from their prosecution would be made available to the RCMP to assist in the prosecution of offenses in Canada;
- d. This cooperation is also demonstrated by the lengthy investigation into violations of the Canadian Customs and Excise Acts by the Cornwall Task Force. That investigation concluded on March 29, 1999. It led to 30 charges against eight individuals and two businesses from the United States, including Lewis and Robert Tavano , Loran Thompson, and Charles White for conspiring to smuggle tobacco into Canada.

210. Despite all of the above efforts – regulatory measures directed at ensuring general deterrence, measures directed at the domestic duty-free market, measures directed at tracking the source and amount of contraband tobacco, increased coordination between enforcement authorities, intelligence operations directed at uncovering particular smugglers and international cooperation – Canada did not until very recently discover Defendants’ involvement in the smuggling scheme.

211. Despite its due diligence in investigating smuggling, Canada did not have enough information to bring this suit until after the 1998 and 1999 guilty pleas in the criminal action in this District. On June 20, 1997, the United States Attorney's Office for this District returned a criminal indictment regarding portions of the scheme described above. Members of the smuggling scheme began pleading guilty to criminal charges in 1997 and continued pleading guilty throughout 1998. Canada discovered information critical to bringing this action when NBI and Leslie Thompson pled guilty in December 1998 and March 1999 respectively.

212. Even though Canada exercised reasonable diligence, because of Defendants' scheme to conceal their activities, Canada could not have discovered evidence of each of the violations of law until less than four years prior to the filing of this lawsuit.

213. Because Canada exercised reasonable or due diligence in obtaining information bearing on the existence of its claims for relief, the applicable statute of limitations was equitably tolled until the point that Canada through due diligence could have reasonably discovered the fraudulent scheme, which was after the criminal pleas in this District.

VII. FACTS RELEVANT TO THE § 1964 CLAIMS

A. The Enterprises

214. At all relevant times, at least the following "enterprises" existed within the meaning of 18 U.S.C. § 1961(4). Each of these "enterprises" is an entity that engaged in activities affecting interstate and foreign commerce, and each was an enterprise at all times relevant to this Complaint. The Defendants participated in the operation and management of each of these enterprises and conducted their affairs through their pattern of unlawful activity within the meaning of 18 U.S.C. § 1961(1)(B), including execution

of their scheme to defraud, corrupt, cheat, steal and convert the money and property of Canada. Each Defendant has knowingly and intentionally engaged in acts to further the conspiracy to smuggle cigarettes and conceal the existence of the enterprises.

1. The Caribbean Enterprise

215. The Caribbean Enterprise is an association-in-fact enterprise that was comprised of IDF, BOL, and many others involved in the manufacture, distribution, and sale of tobacco. It is included as an enterprise because each of the Defendants was associated with this enterprise and has conducted or participated, directly or indirectly, in the management and operation of the affairs of this enterprise through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5) and 1962(c) (First Claim for Relief below). Defendants also conspired to engage in such conduct (Second Claim for Relief below), and conspired to acquire or maintain an interest in or control of the Caribbean Enterprise through unlawful activity (Fourth Claim for Relief below).

a. Purpose of the Enterprise

216. At all relevant times, the purposes of the Caribbean Enterprise were: (1) to manufacture Canadian tobacco in Puerto Rico; (2) to sell the tobacco to Participants; (3) to have the tobacco trans-shipped through Caribbean companies; (4) to have the Caribbean companies ship the tobacco to FTZs in New Jersey, New York, and Florida; (5) to ship the tobacco to the St. Regis/Akwesasne Reservation and elsewhere; (6) to smuggle the tobacco into Canada; (7) to sell the tobacco on the black market in Canada; and (8) to make illicit profits by engaging in unlawful activities in connection with the manufacture and sale of Canadian tobacco.

217. Planning. The members of the Caribbean Enterprise formulated a broad-ranging plan to manufacture, distribute, and sell tobacco on the black market without paying applicable taxes. The members of the Caribbean Enterprise recognized that the success of its plan was dependent on avoiding the payment of legitimate taxes.

218. Manufacturing. The Defendants manufactured and processed Canadian tobacco in Puerto Rico so that it could be sold in Canada on the black market without paying the applicable taxes.

219. Selling. The Defendants used their resources and personnel to sell tobacco to the Participants so that the Participants could supply it to the St. Regis/Akwesasne Reservation and other places for smuggling into Canada and sale on the black market.

220. At all relevant times, the Defendants used the Caribbean Enterprise to further their illegitimate purpose of smuggling tobacco into Canada to defraud, corrupt, cheat, steal, obtain by fraud and convert the money and property of Canada. Canada, the intended victim of the scheme, was defrauded and cheated out of its ability to impose taxes, to monitor the collection of taxes, and to protect the health of the Canadian people – in particular, its children.

b. Membership in the Caribbean Enterprise

221. The membership in the Caribbean Enterprise was as follows:

- a. RJR U.S.;
- b. RJR International;
- c. RJR-Macdonald;
- d. NBI;
- e. RJR Puerto Rico;

- f. CTMC;
- g. New Jersey, New York, and Florida FTZs;
- h. IDF in Aruba, BOL in St. Maarten, and other Caribbean freight forwarders;
- i. United States and Canadian truckers engaged in smuggling;
- j. St. Regis/Akwesasne Reservation and individuals participating in the scheme;
- k. Canadian black market salespersons; and
- l. The chief executive officer and other executives, managerial and supervisory personnel, and legal counsel of each of the above-listed entities who are presently unknown to Plaintiff, and who participated as officers, directors, lawyers for or employees of the Defendants and Participants and assisted in making and implementing decisions relating to the scheme. The identities of those individuals will be revealed in discovery.

c. Structure of the Enterprise

222. At all relevant times, the Caribbean Enterprise was an ongoing association-in-fact enterprise composed of entities and individuals with a common purpose, a continuity of structure and personnel, and a consensual decision-making structure that was used to effect its scheme to defraud, corrupt, cheat, steal, obtain by fraud and convert the money and property of Canada. The roles that were performed by the various members of the Caribbean Enterprise are described as follows.

223. **Manufacturers and Distributors.** The following entities manufactured and distributed tobacco:

- a. RJR International: Received orders for Canadian tobacco from the Participants; placed these orders with RJR Puerto Rico; directed IDF, BOL, and other Caribbean companies to forward shipments and invoices to Participants in care of different FTZs;
- b. NBI: Received orders for Canadian tobacco from the Participants; placed these orders with RJR Puerto Rico; directed IDF, BOL, and other Caribbean companies to forward shipments and invoices to Participants in care of different FTZs;
- c. RJR U.S.: Obtained the license for RJR Puerto Rico to manufacture Canadian Export 'A' cigarettes;
- d. RJR Puerto Rico: Manufactured Canadian tobacco in Puerto Rico and laundered its sales to the Participants through IDF, BOL, and other Caribbean companies; and
- e. Caribbean Companies: IDF, BOL, and other Caribbean companies received Canadian tobacco from RJR Puerto Rico and forwarded it to Participants.

224. Trade Association. CTMC, the trade association of the tobacco industry, served to conceal Defendants' participation in smuggling tobacco.

225. Foreign Trade Zones. Many FTZs in New York, New Jersey, Vermont, and other places served as depots for the storage of Canadian tobacco to be smuggled back into Canada. One of those FTZs was Western New York Foreign Trade Zones Operators, Inc., located at 1951 Hamburg Turnpike, Buffalo, New York, 14218. Some others were located at the following addresses: Steelway Blvd. North, Liverpool, New York; 4472 Steelway Blvd. North, Liverpool, New York; 1 Trans-Border Drive, Champlain, New York; 2221 Niagara Falls Blvd., Niagara Falls, New York; 2769 Broadway, Buffalo,

New York; 2 Industrial Road, Plattsburgh, New York; 2220 91st Street, North Bergen, New Jersey; 1881 Williston Road, S. Burlington, Vermont; and 12 Avenue B, Williston, Vermont.

226. Freight forwarders. IDF of Aruba and BOL of St. Maarten trans-shipped Canadian tobacco from RJR Puerto Rico to FTZs in Elizabeth, New Jersey so that the Participants could then smuggle the tobacco back into Canada.

227. Wholesalers. Participants purchased tobacco from RJR-Macdonald, RJR International, NBI, RJR Puerto Rico, and other manufacturers, and then sold the tobacco to others on the St. Regis/Akwesasne Reservation and elsewhere to be smuggled back into Canada.

228. Truckers. Certain United States truckers transported tobacco from FTZs to the St. Regis/Akwesasne Reservation and elsewhere for smuggling back into Canada. Certain Canadian truckers transported smuggled tobacco from the Canadian border to locations in Canada for sale on the black market.

229. Individuals and entities operating out of the St. Regis/Akwesasne Reservation and engaged in smuggling. The following individuals and entities operating out of the St. Regis/Akwesasne Reservation, among others, purchased Canadian tobacco from the Participants, stored the tobacco, and helped smuggle it back into Canada:

- a. Fabian Hart (Hart Enterprises);
- b. Anthony Laughing;
- c. Sheila Loran;
- d. George Ransom;
- e. Richard Terrance;

- f. Larry Thompson;
- g. Loran Thompson; and
- h. Buc White (Whites Warehouse).

The precise role and identities of others are as yet not fully known and are to be determined through discovery.

230. Canadian salespersons. Canadian salespersons, including organized crime groups, sold smuggled tobacco to other distributors and consumers in Canada.

231. Other individuals. This group includes the chief executive officer and other executives, managerial and supervisory personnel and legal counsel of each of the above-listed entities presently unknown to Plaintiff who participated as officers, directors, lawyers for or employees of the Defendants and Participants and assisted in making and implementing decisions; the precise role and identities are as yet not fully known and are to be determined through discovery.

232. Defendants and Participants managed and operated the Caribbean Enterprise and the scheme. In managing and organizing the Caribbean Enterprise and scheme, the Defendants played a central role, dictating its structure, decisional process, and organization.

d. Distinction Between the Caribbean Enterprise and of Unlawful Activity Within the Meaning of 18 U.S.C. § 1961(1)(B)

233. As described herein, the Caribbean Enterprise was separate and apart from the pattern of unlawful activity within the meaning of 18 U.S.C. § 1961(1)(B), because the enterprise engaged in a variety of unlawful activity and its structure was beyond that required for the commission of the pattern of unlawful activity. The members of the Caribbean Enterprise included innocent parties unaware of the Defendants' and Participants' scheme or the use of the enterprise in its execution.

e. Continuity of Caribbean Enterprise

234. The Caribbean Enterprise was created at least as early as 1992 when the taxes were raised and the smuggling plan was formed. At that time, those involved in the Caribbean Enterprise contemplated its indefinite duration. Its personnel and structure continued over a substantial period of time up until about 1997.

f. Culpability of Members of the Enterprise

235. Some of the members of the Caribbean Enterprise, including each of the Defendants and Participants, acted with culpability in their conduct of its affairs. Other members of the Caribbean Enterprise were the unwitting instruments or victims of the culpable members of the Caribbean Enterprise.

2. The LBL Enterprise

236. The LBL Enterprise is an association-in-fact enterprise that was comprised of Larry Miller, Robert Tavano, Lewis Tavano, and many others involved in the manufacture, distribution, and sale of tobacco. It is included as an enterprise because each of the Defendants was associated with this enterprise and has conducted or participated, directly or indirectly, in the management and operation of the affairs of this enterprise through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5) and 1962(c) (First Claim for Relief below). Defendants also conspired to engage in such conduct (Second Claim for Relief below).

a. Purpose of the Enterprise

237. At all relevant times, the purposes of the LBL Enterprise was: (1) to manufacture Canadian tobacco; (2) to have Canadian tobacco shipped to FTZs and elsewhere; (3) to sell the tobacco to LBL; (4) to ship the tobacco to the St. Regis/Akwesasne Reservation and elsewhere; (5) to smuggle the tobacco

into Canada; (6) to sell the tobacco on the black market in Canada; and (7) to make illicit profits by engaging in unlawful activities in connection with the manufacture and sale of Canadian tobacco.

238. Planning. The members of the LBL Enterprise formulated a broad-ranging plan to manufacture, distribute, and sell tobacco on the black market without paying applicable taxes. The members of the LBL Enterprise recognized that the success of its plan was dependent on avoiding the payment of legitimate taxes.

239. Manufacturing. The Defendants manufactured and processed Canadian tobacco in Canada, Puerto Rico, and North Carolina so that it could be sold in Canada on the black market without paying the applicable taxes.

240. Exporting. The Defendants presented Canadian officials with export documentation covering tobacco bearing either the marking “Only For Sale Outside Canada” or the marking “Not For Sale In Canada.” This constituted a representation that the tobacco was not intended for sale in Canada. This was false. Defendants knew that the “exported” tobacco ultimately would be consumed in Canada. Defendants intended that the tobacco would be smuggled back into Canada. Defendants concealed from Canada their secretive campaign to subvert the regulatory framework by smuggling tobacco back into Canada for sale on the black market.

241. Selling. The Defendants used their resources and personnel to sell tobacco to LBL so that LBL could supply it to the St. Regis/Akwesasne Reservation and other places for smuggling into Canada and sale on the black market.

242. At all relevant times, the Defendants used the LBL Enterprise to further their illegitimate purpose of smuggling tobacco into Canada to defraud, corrupt, cheat, steal, obtain by fraud and convert

the money and property of Canada. Canada, the intended victim of the scheme, was defrauded and cheated out of its ability to impose taxes, to monitor the collection of taxes, and to protect the health of the Canadian people – in particular, its children.

b. Membership in the LBL Enterprise

243. The membership in the LBL Enterprise was as follows:

- a. RJR-Macdonald;
- b. NBI;
- c. RJR Puerto Rico;
- d. RJR International;
- e. RJR U.S.;
- f. CTMC;
- g. Standard Commercial;
- h. New York and New Jersey FTZs;
- i. IDF and other freight forwarders engaged in smuggling;
- j. LBL;
- k. United States and Canadian truckers engaged in smuggling;
- l. St. Regis/Akwesasne Reservation and individuals participating in the scheme;
- m. Canadian black market salespersons; and
- n. The chief executive officer and other executives, managerial and supervisory personnel, and legal counsel of each of the above-listed entities who are presently unknown to Plaintiff, and who participated as officers, directors, lawyers for or employees of the

Defendants and Participants and assisted in making and implementing decisions relating to the scheme. The identities of those individuals will be revealed in discovery.

c. Structure of the Enterprise

244. At all relevant times, the LBL Enterprise was an ongoing association-in-fact enterprise composed of entities and individuals with a common purpose, a continuity of structure and personnel, and a consensual decision-making structure that was used to effect its scheme to defraud, corrupt, cheat, steal, obtain by fraud and convert the money and property of Canada. The roles that were performed by the various members of the LBL Enterprise are described as follows.

245. Manufacturers and Distributors. The following entities manufactured and distributed tobacco:

- a. RJR-Macdonald: Manufactured Canadian tobacco and sold it to the Participants;
- b. NBI: Purchased tobacco from RJR-Macdonald, RJR Puerto Rico, and Standard Commercial and sold it to the Participants;
- c. RJR Puerto Rico: Manufactured Canadian tobacco in Puerto Rico and laundered its sales to the Participants through Caribbean companies;
- d. RJR International: Received orders for Canadian tobacco from the Participants; placed these orders with RJR-Macdonald and RJR Puerto Rico; and
- e. RJR U.S.: Obtained the license for RJR Puerto Rico to manufacture Canadian Export 'A' cigarettes.

246. Trade Association. CTMC, the trade association of the tobacco industry, served to conceal Defendants' participation in smuggling tobacco.

247. Foreign Trade Zones. Many FTZs in New York, New Jersey, Vermont, and other places served as depots for the storage of Canadian tobacco to be smuggled back into Canada. One of those FTZs was Western New York Foreign Trade Zones Operators, Inc., located at 1951 Hamburg Turnpike, Buffalo, New York, 14218. Some others were located at the following addresses: Steelway Blvd. North, Liverpool, New York; 4472 Steelway Blvd. North, Liverpool, New York; 1 Trans-Border Drive, Champlain, New York; 2221 Niagara Falls Blvd., Niagara Falls, New York; 2769 Broadway, Buffalo, New York; 2 Industrial Road, Plattsburgh, New York; 2220 91st Street, North Bergen, New Jersey; 1881 Williston Road, S. Burlington, Vermont; and 12 Avenue B, Williston, Vermont.

248. Tobacco Processors. Standard Commercial processed Canadian tobacco for sale to other members of the LBL Enterprise; the culpability of Standard Commercial is as yet unknown.

249. Freight forwarders. IDF of Aruba and BOL of St. Maarten trans-shipped Canadian tobacco from RJR Puerto Rico to FTZs in Elizabeth, New Jersey so that the Participants could then smuggle the tobacco back into Canada.

250. Wholesalers. LBL was a wholesaler that purchased tobacco from RJR-Macdonald, NBI, RJR Puerto Rico, and other manufacturers, and then LBL sold the tobacco to others on the St. Regis/Akwesasne Reservation and elsewhere to be smuggled back into Canada.

251. Truckers. Certain United States truckers transported tobacco from FTZs to the St. Regis/Akwesasne Reservation and elsewhere for smuggling back into Canada. Certain Canadian truckers transported smuggled tobacco from the Canadian border to locations in Canada for sale on the black market.

252. Individuals and entities operating out of the St. Regis/Akwesasne Reservation and engaged in smuggling: The following individuals and entities operating out of the St. Regis/Akwesasne Reservation, among others, purchased Canadian tobacco from the Participants, stored the tobacco, and helped smuggle it back into Canada:

- a. Fabian Hart (Hart Enterprises);
- b. Anthony Laughing;
- c. Sheila Loran;
- d. George Ransom;
- e. Richard Terrance;
- f. Larry Thompson;
- g. Loran Thompson; and
- h. Buc White (Whites Warehouse).

The precise role and identities of others are as yet not fully known and are to be determined through discovery.

253. Canadian salespersons. Canadian salespersons, including organized crime groups, sold smuggled tobacco to other distributors and consumers in Canada.

254. Other individuals. This group includes the chief executive officer and other executives, managerial and supervisory personnel and legal counsel of each of the above-listed entities presently unknown to Plaintiff who participated as officers, directors, lawyers for or employees of the Defendants and Participants and assisted in making and implementing decisions; the precise role and identities are as yet not fully known and are to be determined through discovery.

255. Defendants and Participants managed and operated the LBL Enterprise and the scheme. In managing and organizing the LBL Enterprise and scheme, the Defendants played a central role, dictating its structure, decisional process, and organization.

d. Distinction Between the LBL Enterprise and of Unlawful Activity Within the Meaning of 18 U.S.C. § 1961(1)(B)

256. As described herein, the LBL Enterprise was separate and apart from the pattern of unlawful activity within the meaning of 18 U.S.C. § 1961(1)(B), because the enterprise engaged in a variety of unlawful activity and its structure was beyond that required for the commission of the pattern of unlawful activity. The members of the LBL Enterprise included innocent parties unaware of the Defendants' and Participants' scheme or the use of the enterprise in its execution.

e. Continuity of LBL Enterprise

257. The LBL Enterprise was created at least as early as 1992 when the taxes were raised and the smuggling plan was formed. At that time, those involved in the LBL Enterprise contemplated its indefinite duration. Its personnel and structure continued over a substantial period of time up until about 1995.

f. Culpability of Members of the Enterprise

258. Some of the members of the LBL Enterprise, including each of the Defendants and Participants, acted with culpability in their conduct of its affairs. Other members of the LBL Enterprise were the unwitting instruments or victims of the culpable members of the LBL Enterprise.

3. The Pine Partnership Enterprise

259. The Pine Partnership Enterprise is an association-in-fact enterprise that was comprised of Robert Tavano and Lewis Tavano, and many others involved in the manufacture, distribution, and sale of

tobacco. It is included as an enterprise because each of the Defendants was associated with this enterprise and has conducted or participated, directly or indirectly, in the management and operation of the affairs of this enterprise through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5) and 1962(c) (First Claim for Relief below). Defendants also conspired to engage in such conduct (Second Claim for Relief below).

a. Purpose of the Enterprise

260. Plaintiff realleges paragraphs 237-242 above.

b. Membership in the Enterprise

261. Plaintiff realleges paragraph 243 above except that Pine Partnership replaces LBL.

c. Structure of the Enterprise

262. Plaintiff realleges paragraphs 244-255 above except that Pine Partnership replaces LBL.

d. Distinction Between the Enterprise and of Unlawful Activity Within the Meaning of 18 U.S.C. § 1961(1)(B)

263. Plaintiff realleges paragraph 256 above except that Pine Partnership replaces LBL.

e. Continuity of the Enterprise

264. The Pine Partnership Enterprise was created at least as early as 1993. At that time, those involved in the Pine Partnership Enterprise contemplated its indefinite duration. Its personnel and structure continued over a substantial period of time up until about 1997.

f. Culpability of Members of the Enterprise

265. Plaintiff realleges paragraph 258 above except that Pine Partnership replaces LBL.

4. The J.R. Attea Wholesale/EHA International Enterprise

266. The J.R. Attea Wholesale/EHA Enterprise is an association-in-fact enterprise that was comprised of Junior Attea and many others involved in the manufacture, distribution, and sale of tobacco. It is included as an enterprise because each of the Defendants was associated with this enterprise and has conducted or participated, directly or indirectly, in the management and operation of the affairs of this enterprise through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5) and 1962(c) (First Claim for Relief below). Defendants also conspired to engage in such conduct (Second Claim for Relief below).

a. Purpose of the Enterprise

267. Plaintiff realleges paragraphs 237-242 above.

b. Membership in the Enterprise

268. Plaintiff realleges paragraph 243 above except that J.R. Attea Wholesale/EHA International replaces LBL.

c. Structure of the Enterprise

269. Plaintiff realleges paragraphs 244-255 above except that J.R. Attea Wholesale/EHA International replaces LBL.

d. Distinction Between the Enterprise and of Unlawful Activity Within the Meaning of 18 U.S.C. § 1961(1)(B)

270. Plaintiff realleges paragraph 256 above except that J.R. Attea Wholesale/EHA International replaces LBL.

e. Continuity of the Enterprise

271. The J.R. Attea Wholesale/EHA International Enterprise was created at least as early as 1988. At that time, those involved in the J.R. Attea Wholesale/EHA International Enterprise contemplated its indefinite duration. Its personnel and structure continued over a substantial period of time up until about 1995.

f. Culpability of Members of the Enterprise

272. Plaintiff realleges paragraph 258 above except that J.R. Attea Wholesale/EHA International Enterprise replaces LBL.

5. The Bensen International Enterprise

273. The Bensen International Enterprise is an association-in-fact enterprise that was comprised of Thomas Bensen, Andrew Marvin, David Smoot, and many others involved in the manufacture, distribution, and sale of tobacco. It is included as an enterprise because each of the Defendants was associated with this enterprise and has conducted or participated, directly or indirectly, in the management and operation of the affairs of this enterprise through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5) and 1962(c) (First Claim for Relief below). Defendants also conspired to engage in such conduct (Second Claim for Relief below).

a. Purpose of the Enterprise

274. Plaintiff realleges paragraphs 237-242 above.

b. Membership in the Enterprise

275. Plaintiff realleges paragraph 243 above except that Bensen International replaces LBL.

c. Structure of the Enterprise

276. Plaintiff realleges paragraphs 244-255 above except that Bensen International replaces LBL and the Williston, Vermont FTZ becomes the primary depot for the storage of Canadian tobacco to be smuggled back into Canada.

d. Distinction Between the Enterprise and of Unlawful Activity Within the Meaning of 18 U.S.C. § 1961(1)(B)

277. Plaintiff realleges paragraph 256 above except that Bensen International replaces LBL.

e. Continuity of the Enterprise

278. The Bensen International Enterprise was created at least as early as 1988. At that time, those involved in the Bensen International Enterprise contemplated its indefinite duration. Its personnel and structure continued over a substantial period of time up until about 1997.

f. Culpability of Members of the Enterprise

279. Plaintiff realleges paragraph 258 above except that Bensen International replaces LBL.

6. The JBML Enterprise

280. The JBML Enterprise is an association-in-fact enterprise that was comprised of Jean Bill and many others involved in the manufacture, distribution, and sale of tobacco. It is included as an enterprise because each of the Defendants was associated with this enterprise and has conducted or participated, directly or indirectly, in the management and operation of the affairs of this enterprise through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5) and 1962(c) (First Claim for Relief below). Defendants also conspired to engage in such conduct (Second Claim for Relief below).

a. Purpose of the Enterprise

281. Plaintiff realleges paragraphs 237-242 above.

b. Membership in the Enterprise

282. Plaintiff realleges paragraph 243 above except that JBML replaces LBL.

c. Structure of the Enterprise

283. Plaintiff realleges paragraphs 244-255 above except that JBML replaces LBL and the Burlington, Vermont FTZ becomes the primary depot for the storage of tobacco to be smuggled into Canada.

d. Distinction Between the Enterprise and of Unlawful Activity Within the Meaning of 18 U.S.C. § 1961(1)(B)

284. Plaintiff realleges paragraph 256 above except that JBML replaces LBL.

e. Continuity of the Enterprise

285. The JBML Enterprise was created at least as early as 1993. At that time, those involved in the JBML Enterprise contemplated its indefinite duration. Its personnel and structure continued over a substantial period of time up until about 1997.

f. Culpability of Members of the Enterprise

286. Plaintiff realleges paragraph 258 above except that JBML replaces LBL.

7. The SMT Enterprise

287. The SMT Enterprise is an association-in-fact enterprise that was comprised of Jorge Azel and many others involved in the manufacture, distribution, and sale of tobacco. It is included as an enterprise because each of the Defendants was associated with this enterprise and has conducted or participated, directly or indirectly, in the management and operation of the affairs of this enterprise through

a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5) and 1962(c) (First Claim for Relief below). Defendants also conspired to engage in such conduct (Second Claim for Relief below).

a. Purpose of the Enterprise

288. Plaintiff realleges paragraphs 237-242 above.

b. Membership in the Enterprise

289. Plaintiff realleges paragraph 243 above except that SMT replaces LBL.

c. Structure of the Enterprise

290. Plaintiff realleges paragraphs 244-255 above except that SMT replaces LBL.

d. Distinction Between the Enterprise and of Unlawful Activity Within the Meaning of 18 U.S.C. § 1961(1)(B)

291. Plaintiff realleges paragraph 256 above except that SMT replaces LBL.

e. Continuity of the Enterprise

292. The SMT Enterprise was created at least as early as 1988. At that time, those involved in the SMT Enterprise contemplated its indefinite duration. Its personnel and structure continued over a substantial period of time up until about 1997.

f. Culpability of Members of the Enterprise

293. Plaintiff realleges paragraph 258 above except that SMT replaces LBL.

8. The Springbok Enterprise

294. The Springbok Enterprise is an association-in-fact enterprise that was comprised of Mike Bellar and many others involved in the manufacture, distribution, and sale of tobacco. It is included as an enterprise because each of the Defendants was associated with this enterprise and has conducted or

participated, directly or indirectly, in the management and operation of the affairs of this enterprise through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5) and 1962(c) (First Claim for Relief below). Defendants also conspired to engage in such conduct (Second Claim for Relief below).

a. Purpose of the Enterprise

295. Plaintiff realleges paragraphs 237-242 above.

b. Membership in the Enterprise

296. Plaintiff realleges paragraph 243 above except that Springbok replaces LBL.

c. Structure of the Enterprise

297. Plaintiff realleges paragraphs 244-255 above except that Springbok replaces LBL.

d. Distinction Between the Enterprise and of Unlawful Activity Within the Meaning of 18 U.S.C. § 1961(1)(B)

298. Plaintiff realleges paragraph 256 above except that Springbok replaces LBL.

e. Continuity of the Enterprise

299. The Springbok Enterprise was created at least as early as 1992. At that time, those involved in the Springbok Enterprise contemplated its indefinite duration. Its personnel and structure continued over a substantial period of time up until about 1994.

f. Culpability of Members of the Enterprise

300. Plaintiff realleges paragraph 258 above except that Springbok replaces LBL.

9. The SV Enterprise

301. The SV Enterprise is an association-in-fact enterprise that was comprised of Jean Gareau and many others involved in the manufacture, distribution, and sale of tobacco. It is included as an

enterprise because each of the Defendants was associated with this enterprise and has conducted or participated, directly or indirectly, in the management and operation of the affairs of this enterprise through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5) and 1962(c) (First Claim for Relief below). Defendants also conspired to engage in such conduct (Second Claim for Relief below).

a. Purpose of the Enterprise

302. Plaintiff realleges paragraphs 237-242 above.

b. Membership in the Enterprise

303. Plaintiff realleges paragraph 243 above except that SV replaces LBL.

c. Structure of the Enterprise

304. Plaintiff realleges paragraphs 244-255 above except that SV replaces LBL.

d. Distinction Between the Enterprise and of Unlawful Activity Within the Meaning of 18 U.S.C. § 1961(1)(B)

305. Plaintiff realleges paragraph 256 above except that SV replaces LBL.

e. Continuity of the Enterprise

306. The SV Enterprise was created at least as early as 1988. At that time, those involved in the SV Enterprise contemplated its indefinite duration. Its personnel and structure continued over a substantial period of time up until about 1995.

f. Culpability of Members of the Enterprise

307. Plaintiff realleges paragraph 258 above except that SV replaces LBL.

10. The Wade Group/Cardora Enterprise

308. The Wade Group/Cardora Enterprise is an association-in-fact enterprise that was comprised of Gideon Loran and many others involved in the manufacture, distribution, and sale of tobacco. It is included as an enterprise because each of the Defendants was associated with this enterprise and has conducted or participated, directly or indirectly, in the management and operation of the affairs of this enterprise through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5) and 1962(c) (First Claim for Relief below). Defendants also conspired to engage in such conduct (Second Claim for Relief below).

a. Purpose of the Enterprise

309. Plaintiff realleges paragraphs 237-242 above.

b. Membership in the Enterprise

310. Plaintiff realleges paragraph 243 above except that Wade Group/Cardora replaces LBL.

c. Structure of the Enterprise

311. Plaintiff realleges paragraphs 244-255 above except that Wade Group/Cardora replaces LBL and the Champlain and Plattsburgh FTZs become the primary depots where Canadian tobacco was stored before smuggling into Canada.

d. Distinction Between the Enterprise and of Unlawful Activity Within the Meaning of 18 U.S.C. § 1961(1)(B)

312. Plaintiff realleges paragraph 256 above except that Wade Group/Cardora replaces LBL.

e. Continuity of the Enterprise

313. The Wade Group/Cardora Enterprise was created at least as early as 1988. At that time, those involved in the Wade Group/Cardora Enterprise contemplated its indefinite duration. Its personnel and structure continued over a substantial period of time up until about 1993.

f. Culpability of Members of the Enterprise

314. Plaintiff realleges paragraph 258 above except that Wade Group/Cardora replaces LBL.

11. The Canadian Tobacco Enterprise

315. The Canadian Tobacco Enterprise is comprised of numerous members set forth below. It is an association-in-fact enterprise that consists of all of the entities involved in the lawful manufacture, distribution, and sale of tobacco. It is included as an enterprise because each of the Defendants was associated with this enterprise and has conducted or participated, directly or indirectly, in the management and operation of the affairs of this enterprise through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5) and 1962(c) (First Claim for Relief below). Defendants also conspired to engage in such conduct (Second Claim for Relief below).

a. Purpose of the Enterprise

316. At all relevant times, the lawful purposes of the Canadian Tobacco Enterprise were to manufacture and sell Canadian tobacco within the regulatory scheme of Canada, which imposed taxes, monitored collection of taxes, and sought to protect the health of the Canadian people – in particular, its children.

317. At all relevant times, Defendants and Participants sought to circumvent the lawful purposes of the Canadian Tobacco Enterprise by: (1) “exporting” tobacco from Canada to the United States or

manufacturing Canadian cigarettes in Puerto Rico or processing fine-cut tobacco in North Carolina; (2) selling the Canadian tobacco to the Participants; (3) shipping the tobacco to the St. Regis/Akwesasne Reservation; (4) smuggling the tobacco into Canada; (5) selling the tobacco on the black market in Canada; and (6) making profits by engaging in activities in connection with the manufacture and sale of Canadian tobacco.

318. At all relevant times, the Defendants utilized the Canadian Tobacco Enterprise to further their illegitimate purpose of smuggling tobacco into Canada to defraud, corrupt, cheat, steal, obtain by fraud and convert the money and property of Canada. Canada as an intended victim of the scheme was defrauded and cheated out of the ability to regulate and tax the sale of tobacco through this illegitimate use of the Canadian Tobacco Enterprise.

b. Membership in the Canadian Tobacco Enterprise

319. The membership, both witting and unwitting, in the Canadian Tobacco Enterprise was and is as follows:

- a. Canada;
- b. Tobacco farmers;
- c. RJR Nabisco;
- d. RJR U.S.;
- e. RJR-Macdonald;
- f. NBI;
- g. RJR Puerto Rico;
- h. RJR International;

- i. CTMC;
- j. Standard Commercial and other tobacco processors;
- k. New York, New Jersey, and Vermont FTZs;
- l. IDF and other freight forwarders;
- m. Customs brokers;
- n. LBL;
- o. Pine Partnership;
- p. J.R. Attea Wholesale;
- q. Bensen International;
- r. JBML;
- s. SMT;
- t. Springbok;
- u. SV;
- v. Wade Group/Cardora;
- w. United States and Canadian truck drivers;
- x. St. Regis/Akwesasne Reservation and individuals participating in the scheme;
- y. Canadian black market salespersons; and
- z. The chief executive officer and other executives, managerial and supervisory personnel, and legal counsel of each of the above-listed entities who are presently unknown to Plaintiff, who participated as officers, directors, lawyers for or employees of the

Defendants and assisted in making and implementing decisions relating to the scheme.

The identities of those individuals will be revealed in discovery.

c. Structure of the Enterprise

320. At all relevant times, the Canadian Tobacco Enterprise was an ongoing association-in-fact enterprise composed of entities and individuals with a common purpose, a continuity of structure and personnel and a consensual decision-making structure that rested on Canadian, United States, and other law and contracts between the parties, and that implemented its legitimate purposes. The roles that were performed by the various members of the Canadian Tobacco Enterprise are described as follows.

321. Regulatory Framework. Canada's role in the Canadian Tobacco Enterprise is described above.

322. Farmers. The farmers grew the tobacco.

323. Manufacturers and Distributors. The following entities manufactured and distributed tobacco:

- a. RJR-Macdonald: Purchased and manufactured tobacco in Canada and sold it to the Participants; purchased tobacco leaf for processing or manufacturing by RJR Puerto Rico and Standard Commercial Inc. in North Carolina for sale to the Participants;
- b. NBI: Purchased tobacco from RJR-Macdonald, RJR Puerto Rico, and Standard Commercial and sold it to the Participants;
- c. RJR Puerto Rico: Manufactured Canadian tobacco in Puerto Rico and laundered its sales to the Participants through Caribbean companies;

- d. RJR International: Received orders for Canadian tobacco from the Participants; placed these orders with RJR-Macdonald and RJR Puerto Rico; and
- e. RJR U.S.: Obtained the license for RJR Puerto Rico to manufacture Canadian Export 'A' cigarettes.

324. Trade Association. CTMC, the trade association of the tobacco industry, served to represent the tobacco manufacturers' interests.

325. Foreign Trade Zones. Many FTZs in New York, New Jersey, Vermont, and other places served as depots for the storage of Canadian tobacco. One of those FTZs was Western New York Foreign Trade Zones Operators, Inc., located at 1951 Hamburg Turnpike, Buffalo, New York, 14218. Some others were located at the following addresses: Steelway Blvd. North, Liverpool, New York; 4472 Steelway Blvd. North, Liverpool, New York; 1 Trans-Border Drive, Champlain, New York; 2221 Niagara Falls Blvd., Niagara Falls, New York; 2769 Broadway, Buffalo, New York; 2 Industrial Road, Plattsburgh, New York; 2220 91st Street, North Bergen, New Jersey; 1881 Williston Road, S. Burlington, Vermont; and 12 Avenue B, Williston, Vermont.

326. Processors. Standard Commercial and other similar companies process tobacco for manufacturers.

327. Freight-forwarders. Freight-forwarders shipped tobacco from the manufacturers to customers.

328. Customs brokers. Customs brokers arranged for transactions to exchange tobacco.

329. Wholesalers. Wholesalers purchased tobacco from manufacturers and distributors. The following wholesalers purchased tobacco from RJR-Macdonald, NBI, and RJR Puerto Rico, and sold the tobacco to others on the St. Regis/Akwesasne Reservation:

- a. LBL;
- b. Pine Partnership;
- c. J.R. Attea Wholesale;
- d. Bensen International;
- e. JBML;
- f. SMT;
- g. Springbok;
- h. SV; and
- i. Wade Group.

330. Truckers. Truckers transported tobacco from point to point.

331. St. Regis/Akwesasne Reservation. Precise role as yet not fully known and to be determined through discovery.

332. Canadian salespersons. Canadian salespersons sold tobacco to other distributors and consumers in Canada.

333. Other individuals. This group includes the chief executive officer and other executives, managerial and supervisory personnel, and legal counsel of each of the above-listed entities who are presently unknown to Plaintiff, and who participated as officers, directors, lawyers for or employees of the

Defendants and assisted in making and implementing decisions. The precise role and identities are as yet not fully known and are to be determined through discovery.

334. Defendants managed and operated the Canadian Tobacco Enterprise and the scheme. In managing and organizing the Canadian Tobacco Enterprise and scheme, the Defendants played a central role, dictating its structure, decisional process, and organization.

d. Distinction Between the Canadian Tobacco Enterprise and Pattern of Unlawful Activity

335. As described herein, the Canadian Tobacco Enterprise was separate and apart from the pattern of unlawful activity within the meaning of 18 U.S.C. § 1961(1)(B) because the enterprise engaged in both legitimate and illegitimate activity. The members of the Canadian Tobacco Enterprise included innocent parties unaware of the Defendants' scheme or the use of the enterprise in its execution.

e. Continuity of Canadian Tobacco Enterprise

336. The Canadian Tobacco Enterprise was in operation for a substantial period of time, but for the purposes of this Complaint, it began in 1987. Its personnel and structure continued over a substantial period of time to today.

f. Culpability of Members of the Enterprise

337. Some of the members of the Canadian Tobacco Enterprise, including each of the Defendants and Participants, acted with culpability in their conduct of its affairs. Canada and other members of the Canadian Tobacco Enterprise were the unwitting instruments or victims of the culpable members of the Canadian Tobacco Enterprise.

12. The RJR Nabisco Enterprise

338. The RJR Nabisco Enterprise was comprised of RJR Nabisco, which is now called RJR Holdings. It is included as an enterprise because Defendants conspired to derive income from unlawful activity and to use or invest that income in establishing or operating RJR Nabisco within the meaning of 18 U.S.C. § 1962(a) (Third Claim for Relief below).

13. RJR U.S. Enterprise

339. The RJR U.S. Enterprise is comprised of Defendant RJR U.S. It was an enterprise at all times relevant to this Complaint. It is included as an enterprise because Defendants conspired to derive income from unlawful activity and to use or invest that income in establishing or operating RJR U.S. within the meaning of 18 U.S.C. § 1962(a) (Third Claim for Relief below).

14. RJR International Enterprise

340. The RJR International Enterprise is comprised of Defendant RJR International. It was an enterprise at all times relevant to this Complaint. It is included as an enterprise because Defendants conspired to derive income from unlawful activity and to use or invest that income in establishing or operating RJR International within the meaning of 18 U.S.C. § 1962(a) (Third Claim for Relief below).

15. RJR-Macdonald Enterprise

341. The RJR-Macdonald Enterprise is comprised of Defendant RJR-Macdonald. It is included as an enterprise because Defendants conspired to acquire or maintain an interest in or control of RJR-Macdonald through unlawful activity (Fourth Claim for Relief Below).

16. NBI Enterprise

342. The NBI Enterprise is comprised of Defendant NBI. It is included as an enterprise because Defendants conspired to acquire or maintain an interest in or control of NBI through unlawful activity (Fourth Claim for Relief Below).

17. RJR Puerto Rico Enterprise

343. The RJR Puerto Rico Enterprise is comprised of Defendant RJR Puerto Rico. It is also included as an enterprise because Defendants conspired to acquire or maintain an interest in or control of RJR Puerto Rico through unlawful activity (Fourth Claim for Relief Below).

B. Wire and Mail Fraud – the Unlawful Activity Within the Meaning of 18 U.S.C. § 1961(1)(B)

344. At all times relevant to this Complaint, as previously alleged herein, Defendants devised, intended to devise and carried out a scheme to defraud, corrupt, cheat, steal, deprive, obtain by fraud and convert the money and property of Canada. The scheme to defraud involved the use of material misrepresentations and/or omissions and other deceptive practices reasonably calculated to deceive Canada. The scheme to defraud involved depriving Canada of its property by trick, deceit, chicane and overreaching.

345. In executing or attempting to execute this scheme and to receive the financial benefits of the scheme, Defendants repeatedly used the United States mails and interstate and foreign wire communications.

346. Defendants thus engaged in a pattern of unlawful activity within the meaning of 18 U.S.C. § 1961(1)(B) consisting of predicate acts of mail fraud in violation of 18 U.S.C. §§ 2 and 1341, and wire fraud in violation of 18 U.S.C. §§ 2 and 1343.

347. From approximately 1991, up to and including the 1998 guilty pleas, Defendants exchanged mail and wire communications with each other, with the Participants, and with others on a regular basis. Defendants knowingly delivered and caused to be delivered by mail documents in furtherance of the scheme to defraud. Defendants knowingly transmitted or caused to be transmitted by means of wire, in interstate or foreign commerce, writings, sounds, and signals for the purpose of executing the scheme to defraud. These wire and mail communications included those set forth in the following paragraphs.

1. RJR Used the Wires to Further the Scheme

348. Before NBI was established in Winston-Salem in March 1993, Leslie Thompson, Stan Smith, and others used the telephone from Toronto to take orders for tobacco from Participants in the United States. They also frequently called FTZs in New York, New Jersey, and Vermont to transfer title to tobacco held at FTZs from RJR-Macdonald to the Participants.

349. Throughout and between 1993 and 1997, Leslie Thompson, Peter MacGregor, and Jean Schlottman at NBI's office in Winston-Salem, North Carolina used the telephone to call RJR-Macdonald employees in Toronto, Ontario and Montreal, Quebec, and to call Carmen Gonzales and others at RJR Puerto Rico to place orders for tobacco.

350. Between March 1, 1992 and August 1993, Harold Hinson and other employees of RJR Tobacco International, and later Northern Brands International, both located in Winston-Salem, North Carolina, called employees of Harms Brothers and later International Duty Free ("IDF") in Aruba to arrange shipments of "Export 'A'" cigarettes manufactured in Puerto Rico to special accounts in the United States, such as J.R. Attea Wholesale Co./EHA International, that supplied the cigarettes to smugglers.

351. On or about February 15, 1993, Jaap Uittenbogaard, Chief Financial Officer of RJR International, sent an e-mail message from Winston-Salem, to dozens of employees of RJR Macdonald, RJR International, and RJR U.S., including Peter MacGregor and Ton Younan in Toronto. This e-mail message announced a meeting to discuss among other things the reasons for creating NBI. The reasons included NBI's contemplated role in supplying other Defendants in the scheme with Canadian tobacco.

352. Approximately every month between March 1993 and 1997, NBI wired "royalty" checks drawn from its account at the Wachovia Bank in Winston-Salem, North Carolina to RJR-Macdonald in Toronto, Ontario.

353. On or about November 8, 1994, Peter MacGregor sent a memorandum from Winston-Salem to Stan Smith and Roland Kostantos in Toronto seeking approval for a discount to LBL to help move RJR-Macdonald fine cut inventory that had accumulated after Canada rolled back taxes. This discount was to decrease the price disparity between the Canadian tobacco in the United States and the tobacco produced for Canadian consumption. The decreased price disparity was to facilitate the smuggling of the Canadian tobacco from the United States into Canada. The approval was returned by a facsimile transmission.

354. On or about February 28, 1996, Peter MacGregor sent a memorandum from NBI in Winston-Salem to Stan Smith and Roland Kostantos in Toronto furthering the scheme. In particular, this memorandum set forth the terms by which NBI proposed to deliver 4000 cases of fine cut tobacco to the Tavano's for smuggling back into Canada. NBI sought RJR-Macdonald's permission to provide the tobacco to the Tavano's free of charge in order to compensate them for losses they suffered in 1995 when

another shipment of fine cut tobacco became moldy before it could be smuggled back into Canada. This memorandum was returned to MacGregor on or about March 3, 1996, via facsimile.

355. Between about February 28 and March 3, 1996, Peter MacGregor of NBI in Winston-Salem and Stan Smith and Roland Kostantos of RJR Macdonald in Toronto exchanged various facsimile transmissions regarding a special delivery of free goods to Pine Partnership to compensate Pine Partnership for losses suffered on stagnant inventory of fine cut tobacco accumulated after the Canadian tax rollback in 1994.

356. On or about July 17, 1996, Peter MacGregor in Winston-Salem sent a memorandum to Stan Smith and Roland Kostantos in Toronto requesting permission for a price adjustment on Canadian tobacco in the United States with the purpose of more easily allowing for the smuggling of existing inventory in the United States. The approval for a price decrease was returned by facsimile.

357. On or about July 17, 1996, Peter MacGregor in Winston-Salem again requested, via e-mail, approval from Roland Kostantos of RJR Macdonald in Toronto to discount the price of four containers of tobacco to sell to smuggling customers for smuggling back into Canada.

2. RJR Used the Mails to Further the Scheme

358. On or about April 8, 1992 Leslie Thompson, as Director of Sales for RJR-Macdonald Inc. in Toronto, wrote to Andrew Martin of Bensen International Tobacco Inc. at 3301 El Camino real, Suite 200 in Atherton, California, to offer an off-invoice discount on 200 gram tins of Export Fine Cut that would be smuggled back into Canada.

359. On or about April 15, 1994 Peter MacGregor of NBI in Winston-Salem mailed a letter to Derek Wallace of RJR-Macdonald, One First Canadian Place, Toronto, requesting a credit of

approximately 4.5 million dollars for “Export ‘A’” inventory that was on hand in the United States when Canada rolled back excise taxes in February 1994. NBI needed the credit in order to sell the product for smuggling back into Canada because there was no longer a large price disparity with cigarettes legitimately destined for consumption in Canada.

360. On or about January 17, 1995 Peter MacGregor sent another memorandum from Winston-Salem to Stan Smith and Roland Kostantos of RJR-Macdonald in Toronto requesting the authority to provide discounts on existing stock. The discounts were needed to sell the Canadian tobacco to other participants in the scheme who ultimately smuggled it back into Canada; the large price disparity between tobacco for (supposed) consumption in the United States and Canada had been narrowed as a result of the February 1994 tobacco tax rollback. The written approval was given and returned by mail.

361. On or about April 19, 1995 Peter MacGregor sent a memorandum from Winston-Salem to Roland Kostantos and Stan Smith of RJR-Macdonald in Toronto seeking approval of 1995 production volumes for “Export ‘A’” cigarettes for sale by NBI but sourced out of the RJR-Macdonald plant in Montreal and the RJR plant in Puerto Rico. The production approval was given and the memorandum returned to NBI. This allowed for continued production at RJR Puerto Rico for smuggling back into Canada.

362. On or about January 19, 1996 Leslie Thompson sent a letter from the NBI offices in Winston-Salem to Stan Smith of RJR Macdonald in Toronto recommending special compensation for Pine Partners relating to unsaleable fine cut tobacco in storage in the Champlain, New York Foreign Trade Zone, on the reservations, and further down the distribution chain. The tobacco was stored in these locations to further the scheme to smuggle it back to Canada.

363. On or about January 26, 1996 Leslie Thompson sent a letter from the NBI offices in Winston-Salem to Stan Smith of RJR Macdonald in Toronto recommending the production of more Canadian fine-cut tobacco at Standard Commercial (to be sent to NBI in the United States) to meet the demands for the product by the smuggling market.

364. On or about February 1, 1996, Stan Smith sent a memorandum from Toronto to Pierre Brunelle of RJR Tobacco International, with a copy to Leslie Thompson in Winston-Salem, proposing that NBI move to Miami as part of the continuing scheme to smuggle tobacco.

3. Customers Paid for the Tobacco Through the Wires and Mail

365. Robert Tavano of LBL and Pine Partnership wired and mailed funds from the Marine Bank in Niagara Falls, New York to NBI's account at Wachovia Bank in Winston-Salem, North Carolina to pay for tobacco. Lewis and Robert Tavano also wired funds from the Fleet Bank in Massena, New York and the Key Bank in Massena, New York to NBI and RJR International as payment for tobacco ultimately destined to be smuggled back into Canada.

366. During the course of the scheme, Larry Miller, doing business as LBL Importing, wired payments for the Canadian-brand tobacco products purchased from NBI and RJR Puerto Rico.

367. In particular, on or about July 28, 1993 Larry Miller instructed the Durham's Currency Exchange to wire transfer \$355,680 to NBI as payment for Canadian-brand tobacco products delivered to warehouses at the St. Regis/Akwesasne Reservation. Miller or those acting under his direction also instructed, at various times, the Newberry State Bank, the First National Bank of Manistique, and the First National Bank of Northern New York to wire transfer payments to NBI for Canadian-brand tobacco

products purchased from NBI or RJ Reynolds International Tobacco Company, and delivered to warehouses on the Reservation.

368. Junior Attea of J.R. Attea Wholesalers Enterprise wired and mailed funds from Nashville, Tennessee to NBI's account at Wachovia Bank in Winston-Salem, North Carolina to pay for tobacco.

369. Bensen International wired and mailed funds from Vermont to NBI's account at Wachovia Bank in Winston-Salem, North Carolina to pay for tobacco.

370. Springbok wired and mailed funds from Bermuda to NBI's account at Wachovia Bank in Winston-Salem, North Carolina and to RJR Puerto Rico to pay for tobacco.

371. Jorge Azel of SMT wired and mailed funds from Miami, Florida to NBI's account at Wachovia Bank in Winston-Salem, North Carolina to pay for tobacco.

372. Gideon Loran of the Wade Group wired and mailed funds from Montreal, Canada to NBI's account at Wachovia Bank in Winston-Salem, North Carolina to pay for tobacco.

4. Use of the Wires with International Duty Free (IDF)

373. After IDF's customers wired funds to IDF's account in Aruba for their purchase of tobacco, IDF transferred the funds, through interstate and international wires and mails, back to RJR Puerto Rico. These wire and mail transfers took place throughout 1992 and part of 1993.

374. For instance, to accomplish the transfer of funds through the wires and mails between IDF and RJR, on numerous occasions between April 1992 and August 1993 RJR Puerto Rico mailed invoices and shipping and billing instructions to IDF in Aruba for "Export 'A'" cigarettes manufactured in, and sent from, Puerto Rico. IDF then mailed an IDF invoice to RJR's special accounts, such as LBL, in the United States. Initially, Harold Hinson of RJR Tobacco International in Winston-Salem instructed IDF, through

the wires and mails, on the mailing of these invoices. At some point during this period the instructions stopped coming from Harold Hinson and started coming from NBI employees, also located in Winston-Salem.

375. Throughout 1993 alone, millions of dollars, obtained pursuant to the scheme, were wired or mailed through IDF. For instance, between April 1, 1993 and December 31, 1993, IDF transferred by wire approximately \$35,676,571 from its account at Interbank, Aruba to RJR's accounts in the United States, including accounts at Citibank in New York.

376. These wire and mail transfers directly promoted the scheme. They were devised as a method of disguising shipments of "Export 'A'" cigarettes manufactured in Puerto Rico to customers such as LBL for ultimate smuggling into Canada.

5. Customers Used the Wires to Further the Scheme

377. The following constitute examples of regular communications.

a. Use of the Wires/Mail with LBL and Pine Partnership

378. Larry Miller, Robert Tavano, and Lewis Tavano of LBL and Pine Partnership used the telephone to call from Niagara Falls, Buffalo, Massena, and other places in New York to Leslie Thompson and others at RJR-Macdonald's offices in Mississauga and Toronto, Ontario to place orders for tobacco.

379. Larry Miller, Robert Tavano, and Lewis Tavano of LBL and Pine Partnership used the telephone to call from Niagara Falls, Buffalo, Massena, and other places in New York to Leslie Thompson, Peter MacGregor, and Jean Schlottman at NBI's office in Winston-Salem, North Carolina to place orders for tobacco.

380. Larry Miller, Robert Tavano, and Lewis Tavano of LBL and Pine Partnership used the telephone to call from Niagara Falls, Buffalo, Massena, and other places in New York to Carmen Gonzales and others at RJR Puerto Rico's facility in Puerto Rico to place orders for tobacco.

381. Victoria Glines, working on behalf of her father Larry Miller, used the telephone to make frequent calls, throughout 1995 and 1996, from upstate New York to Carmen Gonzales at the RJR shipping department in Puerto Rico. These calls were made to confirm orders of Canadian blend tobacco for smuggling back into Canada.

382. Victoria Glines also used the telephone to make frequent calls from upstate New York to Leslie Thompson, Peter MacGregor, and Jean Schlottman at the NBI offices in Winston-Salem, North Carolina to place orders for tobacco that would be smuggled back into Canada.

b. Use of the Wires/Mail with J.R. Attea Wholesale

383. Junior Attea or Bob Haas of J.R. Attea Wholesale/EHA Enterprise used the telephone to call from Nashville, Tennessee and Buffalo, New York to Franco Gabriele of RJR International and Leslie Thompson of NBI at their offices in Winston-Salem, North Carolina to place orders for tobacco.

384. Examples of the mechanics of a sale of Export 'A' cigarettes from RJR Puerto Rico via IDF to J.R. Attea Wholesale in furtherance of the conspiracy are described in the following paragraphs.

385. By invoice number 9193, dated December 10, 1993, RJR Puerto Rico sold a container of 800 cases of Export 'A' Medium Cigarettes and 330 cases of Export 'A' FF for \$421,270.26.

386. The cigarettes were shipped from Puerto Rico to IDF in Aruba.

387. On December 24, 1993, RJR Puerto Rico advised IDF that the ownership in the 1,130 cases of cigarettes referred to above was to be transferred to J.R. Attea Wholesale. On the same date,

NBI, by way of a letter to IDF, authorized the release of the same shipment to J.R. Attea Wholesale.

388. By invoice dated December 24, 1993, RJR Puerto Rico invoiced J.R. Attea Wholesale c/o IDF for the same 800 cases of Export 'A' Medium cigarettes and 330 cases of Export 'A' FF cigarettes. Payment was to be made to RJR Puerto Rico's Citibank account in San Juan, Puerto Rico.

c. Use of the Wires/Mail with Bensen International

389. Bensen International used the telephone to call from Ohio, California, and Vermont to Leslie Thompson at NBI's office in Winston-Salem, North Carolina to place orders for tobacco.

390. To further the scheme, on or about April 8, 1992 Leslie Thompson, as Director of Sales for RJR-Macdonald Inc. in Toronto, wrote to Andrew Martin of Bensen International Tobacco Inc. at 3301 El Camino real, Suite 200 in Atherton, California, to offer an off-invoice discount on 200 gram tins of Export Fine Cut that would be smuggled back into Canada.

d. Use of the Wires/Mail with JBML

391. Jean Bill of JBML used the telephone to call from Montreal, Quebec to Franco Gabriele at RJR International's office in Winston-Salem and to Leslie Thompson at NBI's office in Winston-Salem to place orders for tobacco.

392. One example of the mechanics of a sale of Export 'A' cigarettes from RJR Puerto Rico via IDF to JBML in furtherance of the conspiracy is described in the following paragraphs.

393. In response to a telephone order from Franco Gabrielle of RJR International in Winston-Salem, by invoice number 4392, dated July 31, 1992, RJR Puerto Rico sold a container of 1,130 cases of Export 'A' Medium Cigarettes manufactured in Puerto Rico to JBML Int'l. Import & Export, in care of IDF in Aruba for \$356,163.00. RJR Puerto Rico requested payment to its Citibank bank account in

San Juan, Puerto Rico.

394. The cigarettes were shipped from Puerto Rico to Aruba. IDF then reshipped them to a FTZ in Buffalo, New York through the port of Elizabeth, New Jersey.

395. IDF re-invoiced JBML for the cigarettes on August 11, 1992, adding freight and insurance charges, and directing that payment of \$359,542.15 be made to Citibank New York i.f.o. Interbank Aruba N.V. for further credit to International Duty Free Trading.

396. On at least one occasion, JBML failed to follow the payment plan and paid RJR Puerto Rico directly by mailing bank draft E388439, dated June 10, 1992, drawn on the Hongkong Bank of Canada for \$100,000.00 directly to the Special Markets Division of RJR International in Winston-Salem. Franco Gabriele, the Director of the Division, had Harold Hinson, the order-taker for Special Markets, forward the check to RJR Puerto Rico for credit to the account of International Duty Free. Gabrielle advised Robert Sheets, RJR International's financial officer, of this event.

e. Use of the Wires/Mail with SMT

397. Jorge Azel of SMT used the telephone to call from Miami, Florida to Leslie Thompson at NBI's office in Winston-Salem, North Carolina to place orders for tobacco.

398. One example of the mechanics of a sale of Export 'A' cigarettes from RJR Puerto Rico via IDF to SMT in furtherance of the conspiracy is described in the following paragraph.

399. On June 29, 1993 Peter MacGregor faxed a letter from NBI to International Duty Free in Aruba directing IDF to ship two containers (2,260 cases) of Export 'A' Regular from Aruba to SMT for smuggling back into Canada. MacGregor then informed Roland Kostantos, the Chief Financial Officer

of RJR-Macdonald in Toronto of the transaction by sending him a copy of the letter. For this shipment, RJR Tobacco Company directly invoiced SMT for the cigarettes while IDF billed SMT directly for insurance, shipping and handling.

f. Use of the Wires/Mail with Springbok

400. Springbok used the telephone to call from Bermuda to Leslie Thompson at NBI's office in Winston-Salem, North Carolina to place orders for tobacco. Springbok also used e-mails from Bermuda to NBI in Winston-Salem to order tobacco and confirm shipping and payment.

401. Examples of the mechanics of a sale of Export 'A' cigarettes from RJR Puerto Rico via IDF to Springbok in furtherance of the conspiracy are described in the following paragraphs.

402. Early on in the scheme, Springbok Trading Company Limited wired \$125,000.00 (U.S.) to IDF when RJR wanted the money. By facsimile dated July 15, 1992, Springbok asked IDF to redirect those funds to account number 05-31-00-494 of RJR U.S., Wachovia Bank and Trust, Winston-Salem.

403. On or about August 6, 1992 Springbok arranged for the transfer of one container of 1,100 cases of Export 'A' cigarettes from IDF to Hart Enterprises in Hogensberg, New York via the Western New York Foreign Trade Zone in Buffalo, New York. This tobacco was intended to be smuggled back into Canada.

g. Use of the Wires/Mail with SV (a/k/a MB or Abode A.V.V.)

404. Jean Gareau of SV used the telephone to call from Montreal, Quebec to Franco Gabriele at RJR International's office in Winston-Salem and to Leslie Thompson at NBI's office in Winston-Salem to place orders for tobacco.

405. One example of the mechanics of a sale of Export 'A' cigarettes from RJR Puerto Rico via

IDF to SV in furtherance of the conspiracy is described in the following paragraphs.

406. On June 23, 1992 MB International Warehouse Ltd. wired money from its Bank in Plattsburgh, New York to the account of IDF in Aruba as payment for a shipment of cigarettes.

407. By fax from Montreal, John Gareau of Abode A.V.V. (a/k/a SV or MB) directed IDF to ship Order number 1059 to M.B. International Warehouse Ltd. in Plattsburgh, New York. This tobacco was later smuggled back into Canada.

h. Use of the Wires/Mail with Wade Group

408. Gideon Loran of the Wade Group used the telephone to call from Montreal, Canada to Leslie Thompson at NBI's office in Winston-Salem, North Carolina to place orders for tobacco.

6. Wire and Mail Communications to Further Conceal the Scheme's Existence

409. As part of the efforts to conceal the conspiracy, RJR sought to move Thompson out of Winston-Salem and away from media scrutiny. In September 1997, Richard LaRocca, a Vice-President of RJR Tobacco International, Inc., and Kathryn Steelman, Senior Director of Human Resources, wrote to Leslie Thompson and offered him a temporary assignment in RJR Tobacco International's Miami Office.

410. In furtherance of moving Thompson and concealing the scheme, on July 24, 1998 Kathryn Steelman again wrote to Leslie Thompson to confirm a one-time relocation and reimbursement expense.

411. In the course of executing the scheme, Defendants have, as alleged herein, caused the misrepresentation or concealment, or directly misrepresented and/or concealed from Canada the material facts of their contacts, and Canada has reasonably relied upon and has suffered to its detriment by reason of these misrepresentations and omissions.

7. Pattern

412. Each such communication transmitted during the period constituted a separate execution of the scheme through mails, and interstate and foreign wire communications.

413. Each such communication accomplished, among other things, the purpose of retaining the fruits of the illegal scheme by the Defendants in the form of increased profits.

414. The forgoing predicate acts, taken together, constitute a pattern of unlawful activity within the meaning of 18 U.S.C. § 1961(1)(B). The predicate acts are both related and continuous. The acts are connected to one another as part of a scheme to accomplish a uniform purpose. The repeated nature of the conduct during the period of the scheme and the threat of similar conduct occurring in the future makes the acts continuous.

C. Summary of § 1964 Allegations

415. In connection with the activities giving rise to these claims, the Defendants at all relevant times acted corruptly, with malice, intent, and knowledge, and in reckless disregard of Canada's rights.

416. At all relevant times, the enterprises as defined herein were engaged in interstate and foreign commerce in various states, including New York.

417. As set forth above, the Defendants at all relevant times in connection with the activities giving rise to these claims, conspired with each other and with others as yet unknown to engage in the various activities set forth herein and aided and abetted one another in these activities, all in violation of the statutes set forth herein, and specifically 18 U.S.C. § 2, and conspired to do so in violation of 18 U.S.C. § 1962(d). In addition, unknown individuals not yet named as Defendants conspired with the Defendants as alleged herein.

418. Each of the Defendants agreed to the operation of the conspiracies to defraud, corrupt, cheat, steal, obtain by fraud and convert the property and money of Canada.

419. As set forth above, at all relevant times, and in furtherance of and for the purpose of executing the scheme and artifice to defraud, corrupt, cheat, steal, obtain by fraud and convert the money or property of Canada, the Defendants, on numerous occasions used and caused to be used the mails and wire communications. Each such use of the mails and wire communications in connection with and in furtherance of the scheme constitutes the offense of mail fraud in violation of 18 U.S.C. §§ 2 and 1341 and the offense of wire fraud in violation of 18 U.S.C. §§ 2 and 1343.

VIII. FIRST CLAIM FOR RELIEF

(Violation of §1962(c))

420. Plaintiff realleges paragraphs 1-419 above.

421. Plaintiff is a “person” under 18 U.S.C. §§ 1961(3) and 1962(c).

422. Each of the Defendants is a “person” under 18 U.S.C. §§ 1961(3) and 1962(c).

423. The following enterprises constitute “enterprises” within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c), which enterprises were engaged in activities affecting interstate and foreign commerce at all times relevant to this Complaint:

- a. Caribbean Enterprise;
- b. LBL Enterprise;
- c. Pine Partnership Enterprise;
- d. J.R. Attea Wholesale Enterprise;
- e. Bensen International Enterprise;

- f. JBML Enterprise;
- g. SMT Enterprise;
- h. Springbok Enterprise;
- i. SV Enterprise;
- j. Wade Group/Cardora Enterprise; and
- k. Canadian Tobacco Enterprise.

424. Each of the Defendants was associated with these enterprises and has conducted or participated, directly or indirectly, in the management and operation of the affairs of the enterprises through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5) and 1962(c), to wit:

- a. Multiple, repeated and continuous instances of mail fraud in violation of 18 U.S.C. §§ 2 and 1341; and
- b. Multiple, repeated and continuous instances of wire fraud in violation of 18 U.S.C. §§ 2 and 1343.

425. Plaintiff suffered injury to its business or property within the meaning of 18 U.S.C. § 1964(c) by reason of the violation of 18 U.S.C. § 1962(c) committed by the Defendants.

IX. SECOND CLAIM FOR RELIEF

(Conspiracy in Violation of § 1962(d) to Violate § 1962(c))

- 426. Plaintiff realleges paragraphs 1-419 above.
- 427. Plaintiff is a “person” within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).
- 428. Each of the Defendants is a “person” under 18 U.S.C. §§ 1961(3), 1962(c), and 1962(d).

429. The following enterprises constitute “enterprises” within the meaning of 18 U.S.C. §§ 1961(4), 1962(c), and 1962(d), which enterprises were engaged in activities affecting interstate and foreign commerce at all times relevant to this Complaint:

- a. Caribbean Enterprise;
- b. LBL Enterprise;
- c. Pine Partnership Enterprise;
- d. J.R. Attea Wholesale Enterprise;
- e. Bensen International Enterprise;
- f. JBML Enterprise;
- g. SMT Enterprise;
- h. Springbok Enterprise;
- i. SV Enterprise;
- j. Wade Group Enterprise; and
- k. Canadian Tobacco Enterprise.

430. Each of the Defendants was associated with these enterprises and conspired within the meaning of 18 U.S.C. § 1962(d) to violate 18 U.S.C. § 1962(c), that is, the Defendants conspired among themselves and with each of the Participants separately to manage or operate, directly or indirectly, in the conduct of the affairs of these enterprises in relationship to the Plaintiff through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5), 1962(c), and 1962(d) to wit:

- a. Multiple, repeated and continuous instances of mail fraud in violation of 18 U.S.C. §§ 2 and 1341; and

- b. Multiple, repeated and continuous instances of wire fraud in violation of 18 U.S.C. §§ 2 and 1343.

431. Plaintiff was injured in its business or property within the meaning of 18 U.S.C. § 1964(c) by reason of the commission of the unlawful activities within the meaning of 18 U.S.C. § 1961(1)(B) that were overt acts in violation of 18 U.S.C. § 1962(d) committed by the Defendants.

X. THIRD CLAIM FOR RELIEF

(Conspiracy in Violation of § 1962(d) to Violate § 1962(a))

- 432. Plaintiff realleges paragraphs 1-419 above.
- 433. Plaintiff is a “person” within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).
- 434. Each of the Defendants is a “person” under 18 U.S.C. §§ 1961(3), 1962(a), and (d).
- 435. The following enterprises constitute “enterprises” within the meaning of 18 U.S.C. §§ 1961(4) and 1962(a), which enterprises were engaged in activities affecting interstate and foreign commerce at all times relevant to this Complaint:

- a. RJR Nabisco Enterprise;
- b. RJR U.S. Enterprise; and
- c. RJR International Enterprise.

436. Defendants conspired among themselves and with each of the Participants separately within the meaning of 18 U.S.C. § 1962(d) to violate 18 U.S.C. § 1962(a), that is, that Defendants conspired among themselves and with each of the Participants separately that income would be received, directly or indirectly, from a pattern of unlawful activity within the meaning of 18 U.S.C. § 1961(1)(B) in which

Defendants and each of the Participants separately participated as principals within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5), and 1962(a), to wit:

- a. Multiple, repeated and continuous instances of mail fraud in violation of 18 U.S.C. §§ 2 and 1341; and
- b. Multiple, repeated and continuous instances of wire fraud in violation of 18 U.S.C. §§ 2 and 1343,

by using or investing, directly or indirectly, any part of such income, or the proceeds of such income, in the operation of RJR Holdings Enterprise.

437. The conspiracy set forth in the preceding paragraph amounted to separate conspiracies by the Defendants with each of the Participants that purchased tobacco from RJR-Macdonald and NBI.

438. Plaintiff was injured in its business or property within the meaning of 18 U.S.C. § 1964(c) by reason of the commission of the unlawful activities within the meaning of 18 U.S.C. § 1961(1)(B) that were overt acts in violation of 18 U.S.C. § 1962(d) committed by the Defendants.

XI. FOURTH CLAIM FOR RELIEF

(Conspiracy in Violation of § 1962(d) to Violate § 1962(b))

439. Plaintiff realleges paragraphs 1-419 above.

440. Plaintiff is a “person” within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).

441. Each of the Defendants is a “person” under 18 U.S.C. §§ 1961(3), 1962(b), and (d).

442. The following enterprises constitute “enterprises” within the meaning of 18 U.S.C. §§ 1961(4) and 1962(b), which enterprises were engaged in activities affecting interstate and foreign commerce at all times relevant to this Complaint:

- a. Caribbean Enterprise;
- b. RJR-Macdonald Enterprise;
- c. NBI Enterprise; and
- d. RJR Puerto Rico Enterprise.

443. Defendants conspired among themselves and with each of the Participants separately within the meaning of 18 U.S.C. § 1962(d) to violate 18 U.S.C. § 1962(b), that is, that Defendants conspired among themselves and with each of the Participants separately to acquire or maintain, directly or indirectly, an interest in or control of NBI and RJR Puerto Rico through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5), and 1962(b), to wit:

- a. Multiple, repeated and continuous instances of mail fraud in violation of 18 U.S.C. §§ 2 and 1341; and
- b. Multiple, repeated and continuous instances of wire fraud in violation of 18 U.S.C. §§ 2 and 1343,

by acquiring or maintaining, directly or indirectly, an interest in or control of RJR-Macdonald, NBI, and RJR Puerto Rico through a pattern of unlawful activity within the meaning of 18 U.S.C. § 1961(1)(B).

444. The conspiracy set forth in the preceding paragraph amounted to separate conspiracies by the Defendants with each of the Participants that purchased tobacco from RJR-Macdonald and NBI.

445. Plaintiff was injured in its business or property within the meaning of 18 U.S.C. § 1964(c) by reason of the commission of the unlawful activities within the meaning of 18 U.S.C. § 1961(1)(B) that were overt acts in violation of 18 U.S.C. § 1962(d) committed by the Defendants.

XII. FIFTH CLAIM FOR RELIEF

(Common Law Fraud)

446. Plaintiff realleges paragraphs 1-419 above.

447. Throughout the course of the scheme, Defendants made and conspired to make various misrepresentations of material facts to Canada.

A. RJR-Macdonald's Fraud

448. Defendant RJR-Macdonald presented Canadian officials with export documentation covering tobacco bearing either the marking "Only For Sale Outside Canada" or the marking "Not For Sale In Canada." This constituted a representation that the tobacco was not intended for sale or consumption in Canada. Through this documentation, Defendant RJR-Macdonald claimed not to owe domestic duties and taxes on tobacco reported as destined for "export." This tobacco sold for "export" was ultimately, with the active participation of RJR-Macdonald, sold for consumption in Canada.

449. Before making these representations, Defendant RJR-Macdonald knew that the "exported" tobacco would in fact be consumed in Canada. Defendant RJR-Macdonald intended that the tobacco would be smuggled back into Canada. Defendant RJR-Macdonald also knew that it was participating in a scheme to supply smuggling networks with tobacco that would be consumed in Canada.

450. Defendant RJR-Macdonald made representations that the tobacco marked "Only For Sale Outside Canada" or "Not For Sale In Canada" was destined for "export" (and that it was not liable for

duties and taxes on that tobacco) with the intent to cause Canada to rely on the representations and to permit the tobacco to be “exported” without duties and taxes that are applicable to tobacco that is to be consumed in Canada. Defendant RJR-Macdonald knew that it was concealing this scheme to avoid the payment of duties and taxes on that tobacco.

451. Canada reasonably and justifiably relied upon RJR-Macdonald’s representation that it did not owe Canada taxes on the tobacco listed as destined for “export.” Had Canada known about RJR-Macdonald’s participation in the scheme, it would not have permitted these tax and duty-free “exports.” The facts concealed and misrepresented by RJR-Macdonald were material to Canada’s decision.

452. As a result, Canada suffered damages.

B. The CTMC’s Fraud

453. Defendant CTMC falsely represented that RJR-Macdonald and its corporate affiliates were not involved in smuggling. As detailed above, they falsely claimed, through meetings, letters, and agreements with Canada, to be engaged in active steps to combat smuggling.

454. Before making these representations, the CTMC knew that RJR-Macdonald was participating in a scheme to supply smuggling networks with tobacco that would be consumed in Canada.

455. CTMC made the representations that RJR-Macdonald was not involved in smuggling with the intent to cause Canada to rely on its representations and to refrain from investigating the CTMC and RJR-Macdonald and imposing additional restrictions on tobacco sales.

456. Canada reasonably and justifiably relied upon the CTMC’s representations that neither it nor RJR-Macdonald were involved in smuggling. Had Canada known about the CTMC’s and RJR-Macdonald’s participation in the scheme, it would have directed additional resources at investigating the

CTMC and RJR-Macdonald and it would have insisted on additional regulations to control the sale of tobacco. The facts concealed and misrepresented by RJR-Macdonald were material to Canada's decision.

457. As a result, Canada suffered damages.

C. RJR Nabisco's Fraud

458. RJR Nabisco falsely represented that part of its systems of internal control for all of its subsidiaries included effective anti-smuggling programs. It represented that these programs eliminated the need for additional investigations. It also represented that its Audit Committee would ensure that its subsidiaries were complying with all applicable laws and regulations relating to smuggling.

459. Before Defendant RJR Nabisco made these representations, it knew that the RJR companies were involved in smuggling and that its internal controls were insufficient to prevent smuggling.

460. Defendant RJR Nabisco made these material misrepresentations with knowledge of their falsity and with the intent to prevent the passage of a shareholder resolution that would have prevented smuggling.

461. Canada reasonably and justifiably relied upon RJR Nabisco's representations that its internal controls prevented its subsidiaries from smuggling tobacco. Had Canada known about RJR Nabisco's participation in the scheme, it would have directed additional resources at investigating RJR Nabisco and its related entities. The facts concealed and misrepresented by RJR-Macdonald were material to Canada's decision.

462. As a result, Canada suffered damages.

D. All Defendants are Responsible for Conspiracy and Aiding and Abetting Liability

463. Defendants formed an agreement to induce or participate in the act of concealing from and not disclosing material facts to Canada regarding their participation in the smuggling scheme. Such facts would have been material to Canada's decision to permit RJR-Macdonald to "export" tobacco without paying duties and taxes, to refrain from holding Defendants responsible for duties and taxes due when Canadian tobacco was brought back into Canada, to direct certain enforcement resources to areas other than investigation of Defendants, and to refrain from posing additional restrictions on the sale of tobacco.

464. Defendants committed the following overt acts, among others, in furtherance of that agreement:

- a. They established NBI for the purpose of selling tobacco to be smuggled into Canada and to divert and conceal attention from RJR-Macdonald;
- b. They produced Canadian tobacco in Puerto Rico for the purpose of selling tobacco to be smuggled into Canada; and
- c. They processed and packaged Canadian tobacco in Wilson, North Carolina for the purpose of selling tobacco to be smuggled into Canada.

465. All of Defendants, as co-conspirators, aided and abetted the fraudulent misrepresentations and omissions of RJR Nabisco, RJR-Macdonald, and the CTMC to Canada.

466. Defendants' actions were committed willfully, maliciously, with intent to injure and damage Canada, and with reckless disregard of Canada's legal rights and the sanctity of its relationships.

467. Plaintiff suffered and continues to suffer actual damages due to these wrongful acts, which Defendants conspired to induce or participate in.

XIII. JURY DEMAND

Plaintiff demands a trial by jury of any and all issues triable of right.

XIV. PRAYER FOR RELIEF

WHEREFORE, Canada prays for relief and judgment against all Defendants, jointly and severally, as follows:

1. Actual damages incurred by the Plaintiff owing to the wrongful acts and omissions of the Defendants herein;

2. Treble damages for awards entered under the First through the Fourth Claims for Relief, in addition to the cost of investigating and prosecuting this suit and reasonable attorney fees pursuant to 18 U.S.C. § 1964(c);

3. Equitable relief as may be appropriate pursuant to 18 U.S.C. § 1964(a), and other law, including but not limited to:

- a. Restitution for the unjust enrichment of Defendants by virtue of their conduct, in an amount to be determined at trial;
- b. Direction of an equitable accounting for all benefits, consideration and profits received, directly or indirectly, by any of the Defendants, including the imposition of a constructive trust, the voiding of any unlawful transfers, and the disgorgement of all ill-gotten gains and profits;
- c. Imposition of reasonable restrictions on the future activities or investments of any of the Defendants;
- d. Imposition and execution of equitable liens that may be appropriate; and

e. Declaration that Defendants are liable, jointly and severally, for all lost taxes and for enforcement costs incurred by Canada resulting from the past tortious and wrongful conduct of Defendants.

4. Punitive damages, in an amount to be determined at trial, on the grounds that the wrongful acts and omissions of Defendants established herein were committed willfully, maliciously, with intent to injure and damage Canada, and with reckless disregard of Canada's legal rights and the sanctity of its relationships;

5. Reasonable attorney fees incurred in the prosecution of this action;

6. All costs, expenses and other fees incurred in the prosecution of this action;

7. Pre-judgment and post-judgment interest on actual damages incurred; and

8. All other and further relief that the Court deems just and proper.

Respectfully submitted,

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