

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)
UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
TOBACCO-FREE KIDS ACTION FUND)
AMERICAN CANCER SOCIETY, AMERICAN) Civil Action No. 99-CV-02496 (GK)
HEART ASSOCIATION, AMERICAN LUNG)
ASSOCIATION, AMERICANS FOR)
NONSMOKERS' RIGHTS, and NATIONAL)
AFRICAN AMERICAN TOBACCO)
PREVENTION NETWORK,)
)
Intervenors)
v.)
)
PHILIP MORRIS USA INC.,)
f/k/a PHILIP MORRIS INCORPORATED, et al.,)
)
Defendants.)
_____)

PLAINTIFF-INTERVENORS' [PROPOSED] FINAL JUDGMENT AND ORDER

As stated in the brief on page 39, this version of the proposed order filed is in track changes (redlined or edit mode) to clearly show the Court the differences between the Government's (Proposed) Final Judgment and Order filed on June 27th and the Public Health Intervenors' (Proposed) Final Judgment and Order, filed yesterday.

I. Definitions

Unless otherwise specified, the following definitions shall apply to the terms used in this Final Judgment and Order:

(1) "Countertop Display" means a free-standing display with a minimum height of 30 inches and a minimum width of 18 inches that is placed on the counter at retail within the line-of-sight of any customer who is standing in the line for the register.

(2) "Defendants" include Altria Group, Inc. f/k/a Philip Morris Companies, Inc. ("Altria"), American Tobacco Company ("American"), British American Tobacco (Investments) Ltd. ("BATCo"), Brown & Williamson Tobacco Company ("Brown & Williamson" or "B&W"), Council For Tobacco Research – U.S.A., Inc. ("CTR"), Liggett Group, Inc. ("Liggett"), Lorillard Tobacco Company ("Lorillard"), Philip Morris USA Inc. f/k/a Philip Morris Incorporated ("Philip Morris"), R.J. Reynolds Tobacco Company ("Reynolds" or "RJR"), and the Tobacco Institute, Inc. ("TI" or "Tobacco Institute").

(3) "Defendant Cigarette Manufacturers" are Defendants BATCo, Brown & Williamson, Liggett, Lorillard, Philip Morris, and R.J. Reynolds.

(4) "~~Direct Mail Consumer~~ Marketing Database" means a database within which Defendants maintain information about individuals to whom Defendants or a third party have communicated by mail, internet, email, fax, telephone or other means, or intend to communicate in the future by mail, internet, email, fax, telephone or other means. ~~they have sent mail in the past or intend to send mail in the future.~~ The information maintained includes, for example, name, age, mailings sent and dates of mailings, demographic information, smoking preference,

and whether the individual has provided any proof of age, such as a signature or government issued identification. Any records of any individuals who are currently alive and are 21 years of age or older to whom Defendants have sent mail at any point in time shall be deemed to be included in this definition, even if Defendants have since moved those records to a second database, to an archive, or have in some other way designated them as not to receive additional mail.

(5) “Disaggregated Marketing Data” means data disaggregated – or broken down – by type of marketing (including sales data), brand, sub brand, geographical region (to the smallest level of geographic specificity maintained by each Defendant), type of promotion or marketing used, number of each brand of cigarette products sold, ~~eigarettes sold~~, advertising in stores and any other category of data collected and/or maintained by or on behalf of each Defendant.

(6) “Distinguishing Flavor” means a distinguishable taste or aroma other than tobacco or menthol that a cigarette or its tobacco smoke imparts either prior to consumption or during consumption, and a cigarette or brand is also considered to have a “Distinguishing Flavor” if a cigarette or any component thereof is marketed or packaged as having or producing a flavor, taste or aroma other than tobacco or menthol.

(7) “Header Display” means the banner that is displayed by a retailer at the top of a cigarette display case, which may show a cigarette brand name, cigarette brand imagery, prices for cigarettes, or promotional offers to consumers.

(8) “Internet Document Website” means any website providing access to documents and other information required to be publicly accessible pursuant to Section IV.F of this Final Judgment and Order, either previously established or created and maintained pursuant to this

Section IV.F of this Final Judgment and Order.

(9) “Less Hazardous Cigarette,” for purposes of this Final Judgment and Order only, refers to any cigarette product: ~~(1) for which a designed and intended by a Defendant defendant explicitly or implicitly represents directly or indirectly that the product to potentially reduce the adverse health effects of smoking or exposure to secondhand smoke; (2) designed and intended by a Defendant to be marketed with one or more express statements claiming that the cigarette product: (a) potentially reduces exposure of smokers or nonsmokers to specified harmful chemical~~ components of cigarette smoke (“exposure reduction claim”); ~~or (b) potentially reduces contains reduced levels of any component of cigarette smoke (“reduced harmful components claim”); or potentially reduces~~ the adverse health effects of smoking or exposure to secondhand smoke (“disease reduction claim”). Cigarettes traditionally advertised as reduced in tar (“light,” “low tar,” “mild,” “medium,” “ultralight”) are excluded from the definition of “Less Hazardous Cigarette.”

(10) “~~Motors~~ Sports Brand Name Sponsorship” means any motor sports team, car, activity, event or series of events with respect to which payment (or other consideration) is made by or on behalf of a Defendant or an entity within a Defendant’s direction or control, in exchange for the association or use of a brand name with or in relation to the event or series of events.

(11) “Package Onsert” means a communication affixed to an individual cigarette pack and/or carton purchased at retail by consumers, such as a miniature brochure included beneath the outer cellophane wrapping or glued to the outside of the cigarette packaging.

(12) “Price Promotion” means marketing activity that directly or indirectly lowers the price of cigarettes to a customer or provides added value. Price promotion includes: retail value added (defined by the Federal Trade Commission (FTC) as “[a]ll expenditures and costs

associated with the value added to the purchase of cigarettes, including buy one get one free and buy one get x (promotional item) free”); promotional allowances (defined by the FTC as “promotional allowances paid to retailers and any other persons (other than full-time employees of the cigarette manufacturers) in order to facilitate the sale of any cigarette, excluding expenditures in connection with newspapers, magazines, outdoor, audio-visual, transit, and direct mail”); coupons (such as “cents off” type coupons that can apply to single pack, multi-pack, or carton purchases distributed in a variety of ways, including at the point of sale, in newspaper and magazine advertisements, via direct mail, at sponsored events, in product packaging, and on the Internet); sampling (distribution of free cigarettes to the public, including at events sponsored by cigarette companies, bar and club promotions, and other venues); and specialty item distribution (programs that provide gifts that reward brand loyalty). This includes any special price discounts that apply only to sales to or from specific retail outlets or to or from retail outlets located in specific geographic regions smaller than a state.

(13) “Retail Merchandising Program” means any program by which a Defendant incentivizes a retailer to take some action regarding its cigarette products, including but not limited to: stocking, display, or advertising cigarette products; engaging in price promotions; setting or displaying special prices; displaying additional branded items; displaying exterior signage, such as signs at pumps, roadside, or doorways; displaying window or door signage or ceiling signage. Examples of such programs include Philip Morris’s Retail Leaders program and the Lorillard Excel program.

(14) “Youth” means any person under 21 years of age.

(15) “Brand Name Sponsorship” means any individual, team, group, organization, entity, activity, event or series of events or activities with respect to which payment (or other

consideration) is made by or on behalf of a Defendant or an entity within a Defendant’s direction or control, in exchange for the association or use of a brand name with or in relation to the event or series of events.

(16) “Consumer” means any person who has purchased or used or might purchase or use a given product, including those who have not previously purchased or used the product and those that purchase or use the product despite not being of legal age to purchase or use the product.

(17) “Special Populations” include African American; Asian American/Pacific Islander; Latino/Hispanic; Native American/Alaska Native; Lesbian, Gay, Bisexual and Transgender (LGBT); and low socio-economic status individuals.

II. Jurisdiction and Authority of the District Court [NO CHANGE]

A. The District Court has jurisdiction over the subject matter of this action, has personal jurisdiction over the parties and legal successors in interest and shall retain exclusive jurisdiction of this action and any dispute, issue or matter arising under or relating to the Final Judgment and Order or relief until further order of the Court. The District Court shall have jurisdiction over any person or entity that receives funding pursuant to this Final Judgment and Order for the purposes of effectuating the remedies provided.

B. The District Court shall retain exclusive jurisdiction to supervise the activities of the court-appointed officers described in Section VI, below (the Independent Investigations Officer (“IO”) and the Independent Hearing Officer (“IHO”)).

C. The District Court shall enforce the Final Judgment and Order and its orders arising under and relating to the Final Judgment and Order through contempt and any other lawful means. Nothing in this Final Judgment and Order shall be construed to modify or limit the inherent power of the District Court, the law governing contempt proceedings or the District Court's discretion and authority in such matters.

D. The District Court shall have the authority to remove any of the court-appointed officers described in Section VI below and their supporting personnel for good cause, including for a conflict of interest as defined in Section VI.A.4.

III. Applicability [NO CHANGE]

This Final Judgment and Order applies to each of the Defendants and to each of their current and future directors, officers, agents, servants, employees, subsidiaries, attorneys, assigns and successors. This Final Judgment and Order shall also apply to those persons in active concert or participation with Defendants and their current and future directors, officers, agents, servants, employees, subsidiaries, attorneys, assigns and successors who have received actual notice of this Final Judgment and Order by personal service or otherwise (hereinafter "Covered Persons and Entities"). See Fed. R. Civ. P. 65(d).

IV. Program Funding, Youth Smoking Reduction, Corrective Communications, Disclosure Requirements and Review of Business Policies and Practices

A. Funding for Remedial Measures

Defendants shall make quarterly payments to the entities and for the purposes specified in ~~part Section IV-(B)(1) and IV.C~~ of this Final Judgment and Order in the amount of ~~\$600,000,000~~ \$1,050,000,000 per quarter and continuing in each subsequent year until its payment obligations under this section expire over an initial period of 5 years, for a total of \$12,000,000,000. ~~Quarterly payments of \$100,000,000 pursuant to Section IV.C of this Final Judgment and Order shall be made by Defendants for an additional five years.~~ ~~(T~~he first quarterly payment shall be made on January 15, 2006. Subsequent quarterly payments of \$1,050,000,000 ~~600,000,000~~ shall be made on April 15, July 15, October 15 and January 15 of every year until the obligations under Section IV(B)(1) expire). An annual payment of \$600,000,000 pursuant to Section IV(B)(2) of this Final Judgment and Order shall be made beginning on March 31, 2006 and on each March 31 thereafter by Defendants and continuing in each subsequent year until its payment obligations under this section expire. An annual payment of \$600,000,000 pursuant to Section IV (C) of this Final Judgment and Order shall be made by defendants for a minimum of ten years (with the potential for termination of payment after ten years if certain conditions are met by Defendants as specified in Section IV(C)(2).~~later of October 15, 2010 or the 20th quarterly payment following the effective date of this Final Judgment and Order.~~ ~~Thereafter, quarterly payments of \$100,000,000 pursuant to Section IV.C of this Final Judgment and Order shall be made on January 15, April 15, July 15 and October 15 of every year until the later of October 15, 2015 or the 40th quarterly payment under this Final Judgment and Order.~~ Defendants shall be jointly and

severally liable for the entire amount required under this Final Judgment and Order, except for payments that may be required by Section ~~(IV)(B).5(7)~~ and Section ~~IV(D)~~ herein.

B. Smoking Cessation and Outreach

~~1.~~ **1. Payments for Cessation Assistance and Treatment.** Defendants shall make four quarterly payments of \$1.05 billion each on March 31, June 30, September 30 and December 31 starting in 2006, and continuing in each subsequent year until its payment obligations under this section expire, to the Cessation Administrative Organization for the development and administration of a National Tobacco Use Cessation Program, including a nationwide cessation quitline providing comprehensive tobacco use cessation guidance, assistance, therapy, and treatment, and references to other available cessation resources, to all users of cigarettes who desire such cessation assistance (hereinafter the “National Smoking Cessation Quitline Network”).

2. Payments for Cessation Outreach. In addition to payments in (1), on March 31, 2006 and on each March 31 thereafter until defendants’ payment obligations under this section expire, defendants shall annually pay \$600 million to the Cessation Administrative Organization for the development and administration of a National Media and Outreach Campaign to reach all smokers to educate them about the benefits to themselves and their families from quitting in comparison to continuing to smoke or to switching to some other brand, sub-brand or tobacco product including reducing their exposure to secondhand smoke; provide basic guidance on how to quit successfully; and inform them about how to access additional cessation guidance, assistance, and treatment through the National Smoking Cessation Quitline Network or through other means.

3. Duration of Payments

- a. Defendants' payments pursuant to section (B)(1) and (2) shall continue until such time as the Independent Investigations Officer (hereinafter "IO", see Section VI) determines, based on independent studies described in (B)(4), that less than ten percent of smokers want to quit or intend to quit.
- b. Starting ten years after the initial payments under section (B) are made and every two years thereafter, defendants may petition the IO to have the payment amounts required by section (B) reduced. If the IO determines that the programs described in (B)(1) and (B)(2) do not need the same amount of annual payments to accomplish the goal in (3)(a), the IO may recommend, pursuant to Section VI(C)(1)(k), a reduction in payment.
- c. In each year following 2006,
 - i. payments made under (B)(1) and used for the purposes of (B)(6)(a) and (c) shall be adjusted to account for changes to the Consumer Price Index for Medical Care Services from December 2005 to the December immediately before each payment is due;
 - ii. payments made under (B)(1) and used for the purposes of (B)(6) shall be adjusted to account for changes to the Consumer Price Index from December 2005 to the December immediately before each payment is due; and

iii. payments made under (B)(2) shall be adjusted to account for changes to the Consumer Price Index from December 2005 to the December immediately before each payment is due.

d. A defendant's payments pursuant to section (B)(2) shall continue for five years beyond the time it would otherwise terminate if the IO finds that the defendant has violated Section V.

4. Independent Studies and Evaluation.

a. Independent Studies. The IO shall commission independent studies, which may include surveys, starting in 2008 and every year thereafter until such time as none of the defendants are obligated to make any more payments pursuant to this section. These studies shall be designed in consultation with the Cessation Administrative Organization to determine whether the requirements of (B)(3)(a) have been met.

b. Evaluation. The CAO shall conduct evaluation studies of the programs conducted pursuant to this section. The findings and methodology of these studies shall be made public. The IO, in consultation with the Cessation Administrative Organization, shall commission independent evaluation studies to assist in the evaluation and monitoring of the effectiveness of the CAO's programs conducted pursuant to this section. The findings and methodology of these studies shall be made public.

5. Cessation Administrative Organization. The Cessation Administrative Organization (CAO) shall be an independent nonprofit organization. The IO, after consultation with the United States and Public Health Intervenors, shall appoint one or more persons to

establish and direct the CAO. Any person in a leadership, executive, or management position in the Cessation Administrative Organization must not have received any salary, grant, or any compensation or payment for services rendered from any of Defendants or from any other tobacco company for at least ten years prior to taking a position with the Cessation Administrative Organization. The CAO shall also:

- a. Hold, at its discretion, a portion of each year's payments from Defendants in reserve in order to expend such funds in a subsequent year to achieve more effectively the purposes set out in this section.
- b. Ensure that the National Tobacco Use Cessation Program and the National Media and Outreach Campaign reach special populations in culturally appropriate ways that reflect tobacco use patterns with services and messages that are readily accessible by the recipients, and that the grants described in subsections 6(b) and 6(c) address the special circumstances of special populations.
- c. Consult, as appropriate, with relevant experts and with organizations that are knowledgeable about special populations to improve the quality and effectiveness of the programs conducted pursuant to this section.
- d. Coordinate the programs conducted pursuant to this section with the countermarketing and public education activities of the American Legacy Foundation (see Section C) to maximize each entity's ability to accomplish its respective goals and purposes under this Final Judgment and Order.

- e. Be guided by the U.S. Public Health Service's *Treating Tobacco Use and Dependence: A Clinical Practice Guideline* (June 2000) and any subsequent modification of that Guideline, and by the report by the Subcommittee on Cessation, Interagency Committee on Smoking and Health, *Preventing 3 Million Premature Deaths, Helping 5 Million Smokers Quit: A National Action Plan for Tobacco Cessation* (February 2003), as well as subsequent research reports and expert recommendations relating to reaching and educating tobacco users and delivering effective cessation assistance and treatment.
- f. Send, as it determines appropriate, cessation public education messages, with no messages or other content from defendants, to all tobacco product users on any and all Direct Mail and Direct Email Databases held by or controlled by defendants. Defendants shall provide their databases to the Cessation Administrative Organization as required by the Cessation Administrative Organization.
- g. Implement the National Tobacco Use Cessation Program and the National Media and Outreach Campaign in a manner that, to the extent possible, coordinates with and enhances existing public and private resources for cessation (including giving priority to smokers who do not have insurance coverage) and creates public-private partnerships.

6. Use of Cessation Assistance and Treatment Payments. The Cessation Administrative Organization shall use the funds provided pursuant to subsection (B)(1) for the following purposes:

- a. To develop and administer the National Smoking Cessation Quitline Network to provide universal access by adult and youth smokers in the United States to evidence-based, multi-session, proactive telephone cessation counseling, which shall also offer at no cost FDA-approved medications for tobacco cessation, when deemed appropriate, to those smokers accessing the quitline that would benefit from the cessation medications. There shall be no restrictions on eligibility for counseling and treatment from the National Smoking Cessation Quitline Network.
- b. To provide grants for research to develop new smoking cessation counseling and medication therapies; and for training, education, and other support to ensure that clinicians in the United States have the knowledge, skills, and support systems necessary to help smokers to quit tobacco use.
- c. To inventory existing cessation assistance services available to smokers in the United States and provide grants to create, expand and improve such services, nationwide, and to coordinate these other cessation efforts with the National Smoking Quitline Network.

7. **Third Party Actions.** Nothing herein shall give rise to any right of action by any Defendant, Covered Person or Entity, or third party against the CAO based on any alleged violation of the terms of this Final Judgment and Order.

~~\$500,000,000 of each quarterly payment for the first five years after the date of this Final Judgment and Order shall be paid to an organization with the capacity to draw together necessary resources for the efficient and effective administration of a national smoking cessation program (hereinafter “Cessation Administrative Organization”), for the creation, oversight and~~

~~administration of a National Smoking Cessation Quitline Network and the provision of smoking cessation therapy to all American smokers who can be offered treatment at the funding levels provided in this Final Judgment and Order. The National Smoking Cessation Quitline Network shall be administered to provide:~~

~~a. A network for universal access to evidence based, multi-session, proactive telephone counseling and FDA approved medications for tobacco cessation, which shall be provided at no cost to a minimum of the first 2,500,000 smokers requesting treatment each year; and~~

~~b. A national media campaign to encourage cessation and publicize the availability of cessation therapies through the National Smoking Cessation Quitline Network.~~

~~c. If permitted by the funding levels provided in this Final Judgment and Order, the Cessation Administrative Organization shall also be permitted to make grants for:~~

~~(i) Research to develop new smoking cessation counseling and medication therapies; and~~

~~(ii) Training and education to ensure that clinicians in the United States have the knowledge, skills, and support systems necessary to help smokers quit tobacco use.~~

~~2. There shall be no restrictions on eligibility for treatment from the National Smoking Cessation Quitline Network.~~

~~3. Nothing in this Final Judgment and Order shall prohibit the Cessation Administrative Organization or any subsequent administrator of the National Smoking Cessation~~

~~Quitline Network from creating public-private partnerships or using funds received under this Final Judgment and Order to enhance existing resources in order to meet the requirement that comprehensive treatment consisting of multi-session, proactive telephone counseling and FDA-approved medications be made available at no cost to a minimum of 2,500,000 smokers each year.~~

~~4. Violations of this Final Judgment and Order occurring after the first year shall result in an obligation to fund the smoking cessation program for an additional 5 years as follows:~~

~~a. The requirement that Defendants fund the National Smoking Cessation Quitline Network shall be extended beyond five years in the event that the IO finds pursuant to the procedures set out in Section VI of this Final Judgment and Order, with such finding approved by the District Court, that any Defendant has continued to engage in conduct prohibited by the provisions contained in Section V with the intent to prevent smokers who want to quit from doing so or with the intent to fraudulently induce new smokers to begin daily smoking after one year from the date of this Final Judgment and Order.~~

~~b. For each year in which the IO finds that conduct as described in Section IV.B.5.a, with such finding approved by the District Court, the Defendant(s) found to have continued to engage in prohibited conduct shall be required to fund fully the National Smoking Cessation Quitline Network for an additional five years.~~

~~e. The annual cost of the National Smoking Cessation Quitline Network to~~

~~be paid by Defendant(s) during any extended time period will be calculated by the IO as 15% of the total United States' smoking population multiplied by \$670, plus \$375,000,000 for promotional expenditures. The determination of the annual cost by the IO will be subject to the procedures contained in Section VI of this Final Judgment and Order. The annual cost will be paid in equal quarterly installments.~~

~~5. Nothing herein shall give rise to any right of action by any Defendant, Covered Person or Entity, or third party against the Cessation Administrative Organization based on any alleged violation of the terms of this Final Judgment and Order.~~

C. Public Education and Countermarketing

1. Payments for Public Education and Countermarketing. Defendants shall make payments on March 31, 2006 and on each March 31, thereafter in the amount of \$600 million to the American Legacy Foundation to be used, in equal parts, to:

~~1. \$100,000,000 of each quarterly payment for ten years following the date of this Final Judgment and Order shall be paid to the American Legacy Foundation~~

a) to continue and supplement its activities and functions on a nationwide basis relating to youth tobacco use as established by and specified in Section VI of the Master Settlement Agreement;

b) ~~The American Legacy Foundation shall also~~ carry out a nationwide, sustained advertising and education program to educate smokers and nonsmokers of all ages about the comparative disease-health risks of low tar, and ultra low tar, mild, light, ultra light and other products for which an express or implied statement or name or representation is used that a

reasonable consumer might interpret as indicating that it has a different disease risk than a standard tobacco product; and

- c) carry out a nationwide, sustained advertising and education program to educate smokers and nonsmokers of all ages about cigarettes and the disease risks and other harms associated with exposure to secondhand smoke.

The American Legacy Foundation shall have the authority after consultation with the IO to revise the allocation of funds between these objectives. Starting with the payment made in March 2007, defendants payments pursuant to this section shall be proportionally adjusted upward or downward to account for inflation, as measured by changes to the Consumer Price Index from December 2005 to the December immediately before the date of each annual payment.

2. Duration of payments. Defendants' payments to the American Legacy Foundation pursuant to this section shall continue for a minimum of ten years. After that tenth year, defendants' payments may be terminated as follows:

- a. The portion being spent on (C)(1)(a) shall terminate if the IO determines that smoking rates for youth, as measured by 30 day prevalence in the National Survey on Drug Use and Health or by a successor survey selected by the IO, are below five percent.
- b. The portion being spent on (C)(1)(b) shall terminate if the IO determines, based on the periodic independent surveys required by this section, that more than 90 percent of the public, including youth, are informed

concerning the health risks of the products described in (C)(1)(b), and the comparative risk as between different tobacco products.

- c. The portion being spent on (C)(1)(c) shall terminate if the IO determines based on the periodic independent surveys required by this section that more than 90 percent of the public, including youth, are informed of the disease risks and other harms of secondhand smoke.
- d. After 20 years, all payments shall be terminated unless the IO determines that they should be extended for a period of five years in order to promote the goals and purposes of this Final Judgment and Order.
- e. A defendant shall make payments pursuant to this subsection for five years beyond the time they would otherwise terminate if the IO finds that the defendant has violated Section V.

3. Independent Studies and Evaluations.

- a. The IO shall commission independent studies, which may include surveys, starting in 2010 and every year thereafter until such time as none of the defendants are otherwise obligated to make any more payments pursuant to this section. These studies shall be designed, in consultation with the American Legacy Foundation, to determine whether the requirements of 2(b) and 2(c) have been met. The findings of these studies as well as their methodology shall be made public.
- b. The American Legacy Foundation shall conduct evaluation studies of its programs conducted pursuant to this section. The findings and methodology of these studies shall be made public. In addition, in

consultation with the American Legacy Foundation, the IO shall commission independent evaluation studies to assist in the evaluation and monitoring of the effectiveness of the American Legacy Foundation's public education and countermarketing programs. The findings and methodology of these studies shall be made public.

4. The American Legacy Foundation. The American Legacy Foundation shall:

- a. Be ~~permitted to hold~~ at its discretion a portion of each year's payments from Defendants in reserve and manage such funds for future use for the purposes set out in this Final Judgment and Order.
- b. Ensure that its public education and countermarketing efforts will reach special populations in culturally appropriate ways that reflect tobacco use patterns and exposure to secondhand smoke. Where such populations need to receive information in a language other than English in order to effectively take advantage of the public education and countermarketing efforts, the foundation shall take reasonable steps depending on the size of the affected population to provide information in appropriate languages to such persons.-
- c. Consult, as appropriate, with relevant experts and with organizations that are knowledgeable about special populations to improve the quality and effectiveness of its public education and countermarketing programs.
- d. Coordinate its public education and countermarketing efforts with the public education and outreach activities of the Cessation Administrative Organization (see Section B).

5. Third Party Actions. ~~3.~~—Nothing herein shall give rise to any right of action by any Defendant, Covered Person or Entity or third party against the American Legacy Foundation based on any alleged violation of the terms of the Master Settlement Agreement or the terms of this Final Judgment and Order.

D. Youth Smoking Reduction Targets and Penalties

Defendant Cigarette Manufacturers shall be liable to pay additional money to fund the programs specified in Section IV.B and IV.C of this Final Judgment and Order if target percent percentage reductions declines in youth smoking proportions rates are not achieved within specified time frames after the date of this Final Judgment and Order, as follows:

1. Target Percents Declines
 - a. By ~~2013~~ 2010 each Defendant Cigarette Manufacturer is required to reduce the share-proportion of youth age 12 to 20 who smoke its cigarette products by 42% from the 2003 baseline level as follows:
 - (i) By the end of 2007, the proportion share of youth age 12 to 20 smoking each Defendant Cigarette Manufacturers' products must fall by 10.56% from 2003 levels.
 - (ii) By the end of 2008, the proportion share of youth age 12 to 20 smoking each Defendant Cigarette Manufacturers' products must fall by 4221% from 2003 levels.
 - (iii) By the end of 2009, the proportion share of youth age 12 to 20 smoking each Defendant Cigarette Manufacturers' products must fall by 4831.5% from 2003 levels.

- (iv) By the end of 2010, the proportion share of youth age 12 to 20 smoking each Defendant Cigarette Manufacturers' products must fall by 2442% from 2003 levels.
- (v) ~~By the end of 2011, the share of Youth age 12 to 20 smoking each Defendant Cigarette Manufacturers' products must fall by 30% from 2003 levels.~~
- ~~(vi) By the end of 2012, the share of Youth age 12 to 20 smoking each Defendant Cigarette Manufacturers' products must fall by 36% from 2003 levels.~~
- ~~(vii) By the end of 2013, the share of Youth age 12 to 20 smoking each Defendant Cigarette Manufacturers' products must fall by 42% from 2003 levels.~~
- (viii) The target percent decline ~~targeted reduction~~ will remain at 42% below 2003 levels from ~~2014~~ 2010 onwards.

b. An individual youth age 12 to 20 will be considered to have smoked a specific Defendant Cigarette Manufacturer's product if they have, ~~on average,~~ smoked at least one cigarette per one day during the past 30 days and identified that specific Defendant Cigarette Manufacturer's brand as their most frequently consumed brand, as reported in the National Survey on Drug Use and Health (NSDUH). ~~Whether a Youth has smoked on average one cigarette per day is computed by multiplying the number of days a Youth smoked in the past 30 days as reported in NSDUH times the~~

~~number of cigarettes smoked per day as reported in the NSDUH and then dividing the product of that calculation by 30.~~

- c. The ~~percentage proportion~~ of youth age 12 to 20 who smoked each brand manufactured by a Defendant Cigarette Manufacturer shall be combined to determine the total ~~percentage proportion~~ of youth age 12 to 20 smoking that Defendant Cigarette Manufacturer's cigarette products.
- d. The targeted reductions in youth smoking, and the assessments for missing those targets, will apply to youth ages 12 to 20. This age range is chosen based on the Court's finding of liability, including the particular finding that Defendants have fraudulently denied that their marketing affects smoking behavior, including initiation (which happens primarily in adolescence), and have fraudulently promised the public that they do not market to young people including those under 21, while continuing to market to those under 21 in order to sustain and increase the market for cigarettes.

2. Assessments Penalties

- a. General Rule – The penalties are based on the price increase per pack that would produce a decline in youth smoking of the target percent if the Defendant Cigarette Company ~~If a manufacturer~~ misses its ~~that~~ target.

The key features of the penalties are:

- i. A Defendant Cigarette Manufacturer will pay a penalty if the actual percent ~~(i.e., if the percentage of Youth smoking its products declines~~ in the proportion of youth age 12-20 smoking its

products (Section IV.D.2.b.ii) is by less than the targets presented in Section IV.D.1), then that Defendant Cigarette Manufacturer will pay an assessment target percent declines described in Section IV.D.1.

ii. The penalty for a Defendant Cigarette Manufacturer is an amount equal to _____ b. _____ The total the assessment per pack sold as computed below in Section IV.D.2.c multiplied by the number of packs sold by for each Defendant Cigarette Manufacturer is the product of the assessment per Youth smoker times the number of Youth age 12 to 20 by which that Defendant Cigarette Manufacturer missed its target in the target year, as reported to the IO.

iii. The penalty for each Defendant Cigarette Manufacturer will be determined by the steps outlined in Section IV.D.2 b through d below.

b. Determine Percent Decline by Which Target is Missed – Computed in the following three steps:

i. The IO shall compute the proportion of youth age 12 to 20 smoking Defendant Cigarette Manufacturer's products in the target year.

ii. The actual percent decline in youth smoking is the proportion of youth age 12 to 20 smoking the Defendant Cigarette Manufacturer's brands in the baseline year minus the proportion of

youth age 12 to 20 smoking the Defendant Cigarette

Manufacturer's brands in the target year divided by the proportion

of youth age 12 to 20 smoking the Defendant Cigarette

Manufacturer's brands in the baseline year.

iii. The percent decline by which the target is missed by the

Defendant Cigarette Manufacturer is the target percent decline

minus the actual percent decline.

c. Determine the Assessment Per Pack Sold – Computed in the following two steps:

i. The percent decline by which the target is missed by the Defendant

Cigarette Manufacturer is divided by the price elasticity of .0675 (or a

price elasticity determined by the IO), and the result is multiplied by .10.

This produces the percent price increase required to meet the target

percent decline in youth smoking.

ii. The percent price increase required to meet the target percent decline in

youth smoking is multiplied by the average price per pack of Defendant

Cigarette Manufacturers' three brands most popular with youth smokers,

or of its brands comprising 75 percent of its sales to youth, whichever

number of brands is smaller, in the target year (based on the Department

of Labor's Bureau of Labor Statistics). This produces the price increase

per pack that would result in the target percent decline. This is the

assessment per pack sold.

d. The Penalty per Defendant Cigarette Manufacturer is the assessment per pack sold multiplied by the total packs sold by the Defendant Cigarette Manufacturer in the target year.

~~3. Assessment Per Youth Smoker~~

~~a. The assessment in 2007 will be \$3,000 for every Youth age 12 to 20 by which a Defendant Cigarette Manufacturer misses its target.~~

~~b. For each year after 2007 the assessment per Youth age 12 to 20 will be equal to the assessment amount from the preceding year increased by the rate of inflation as measured by the percentage increase in the Consumer Price Index.~~

4. ~~Number of Youth by Which Targets Are Missed~~

~~a. The number of Youth age 12 to 20 by which a Defendant Cigarette Manufacturer misses its target shall be computed in two steps.~~

~~b. First, the IO shall compute the percentage of Youth age 12 to 20 smoking a Defendant Cigarette Manufacturer's cigarette products in excess of the target percentage for that Defendant Cigarette Manufacturer (the "excess youth smoker percentage").~~

~~c. Second, the IO shall multiply the excess Youth smoker percentage times the size of the total Youth population. The size of the total United States population for Youth age 12 to 20 shall be measured using population estimates from the United States Census Bureau.~~

~~5. Double Counting Adjustment~~

a. ~~In computing the assessment in years starting from the second year in which assessments are levied, the assessment amount is only for new misses from the target, or the net change in the stock of Youth smokers of each manufacturer's cigarette brands. For example, suppose that in 2008 a Defendant Cigarette Manufacturer missed its target by 1 million Youth smokers. Suppose that in 2009 it again missed by 1 million Youth smokers. Finally, suppose that 20% of that Defendant Cigarette Manufacturer's Youth smokers in 2008 were 20 year olds. This implies that the 1 million by which the target is missed in 2009 includes 800,000 of those by which the target was previously missed, plus 200,000 new misses (to replace the 200,000 who became 21 years old). So the assessment would only be applied on the 200,000 new misses in the year 2009.~~

63. Notification and Challenges

- a. For each Defendant Cigarette Manufacturer, the IO shall set the target youth smoking ~~percentages-proportions~~ and notify the parties and the District Court ~~of those target Youth smoking percentages~~ by December 1 of the year preceding the year in which the target must be met. For example, by December 1, 2006, the IO shall set target youth smoking ~~percentages-proportions~~ for each Defendant Cigarette Manufacturer and notify the manufacturers of the targets for 2007.
- b. For each Defendant Cigarette Manufacturer, the IO shall calculate and notify the parties and District Court of the actual youth smoking ~~rates~~

proportion for a given target year and the amount of any assessments penalties by January 31 of the second year following each target year. For example, by January 31, 2009, the IO shall calculate and notify the parties and District Court of the actual youth smoking rates-proportions and the amount of any assessments-penalties for target year 2007.

- c. If any party contests the IO's calculation of the actual youth smoking rates proportions and the amount of any assessmentpenalty, the party shall provide written notification to all other parties and the IO of its objection to the calculation within ten days of receipt of the IO's calculation. If the parties and the IO are unable to resolve disagreements as to the calculation within 14 days of the time that the objecting party provides notification of its objection to the IO's calculation, the parties and the IO shall notify the Independent Hearing Officer ("IHO") of the objection. The objection shall be resolved pursuant to the procedures set out below in Sections VI.E.3 and VI.F of this Final Judgment and Order.

74. Payment and Allocation of Penalties Assessments

a. Penalties shall be paid by April 15 of the year in which the IO calculates the assessment-penalty to be charged. Assessments-Penalties shall be paid as follows: 8020% to the Cessation Administrative Organization to supplement funding for the National Smoking Cessation Quitline Network cessation assistance and treatment and cessation outreach programs provided for in Section IV.B of this Final Judgment and Order and 820% to the American Legacy Foundation to supplement funding for its-the activities provided for in Section IV.C of this Final Judgment and Order. All provisions

of Sections IV.B and IV.C of this Final Judgment and Order will apply to the use of ~~assessment-penalty~~ funds and rights of Defendants and third parties specified in those Sections.

E. Corrective Communications [NO CHANGE]

1. Consistent with the Court's finding of liability, each Defendant shall be required to make corrective communications concerning the adverse health effects of smoking; the addictiveness of smoking and nicotine; "low tar" cigarettes; the adverse health effects of exposure to secondhand smoke (also known as environmental tobacco smoke, or ETS); and the impact of tobacco marketing on youth. Initial versions of those affirmative statements are attached at Attachment A. The Court recognizes that variations of the ordered affirmative communications may be necessary and appropriate to account for the varied fora and formats ordered..

2. All corrective communications shall be placed in a prominent position on any publicly-accessible website of any Defendant for the duration of this Final Judgment and Order, including the following websites (and/or any other web address that provides access to Defendants' corporate website or any successor website, and the Internet Document Websites created or maintained pursuant to Section IV.F):

- a. www.pmus.com
- b. www.altria.com
- c. www.rjrt.com (including www.bw.com)
- d. www.lorillard.com
- e. www.bat.com
- f. www.liggettgroup.com

3. The IO shall have authority to retain appropriate consultants to assist in the development, design, coordination, and execution of the affirmative communications as ordered herein, in order to ensure scientific accuracy, and to ensure maximum exposure and comprehension by smokers and the general public. The corrective communications shall also be made in the following fora:

- a. Using their existing (or future acquired or improved) technology, Defendant Cigarette Manufacturers shall affix to cigarette packaging, either to the outside of or within the outer cellophane wrapping, an “onsert” containing the affirmative statements, in the same manner as certain Defendant Cigarette Manufacturers, including Philip Morris and Brown & Williamson, have utilized package onserts in the past. Two corrective communications, with explanatory information, shall be placed in package onserts, to be included with each pack of Defendant Cigarette Manufacturers’ cigarettes shipped for retail distribution in the United States during the first two weeks of every February, April, June, August, October and December (“installments”), beginning no more than four months after the date of this Final Judgment and Order and continuing for two years. The corrective communications placed in each installment of package onserts shall change, as determined by the IO. The IO shall retain experts with the appropriate scientific expertise to draft the explanatory information for use in each package onsert. The IO will also retain appropriate consultants to design the format for package onserts to assure maximum exposure and comprehension by cigarette smokers. Each onsert

design shall be provided to Defendant Cigarette Manufacturers two months before it is to be included with packs shipped for retail distribution.

- b. Each of the 12 onserts created pursuant to Section IV.E.3.a of this Final Judgment and Order shall also be formatted as a brochure by appropriate consultants retained by the IO for distribution by direct mail and sent by Defendant Cigarette Manufacturers to every adult smoker in the Direct Mail Marketing Database maintained by any Defendant Cigarette Manufacturer. Each brochure shall be mailed during the two week period following the periods when package onserts are required pursuant to Section IV.E.3. The formatted statements shall be mailed without any additional documents or material.
- c. Each of the 12 bi-monthly onserts created pursuant to Section IV.E.3.a of this Final Judgment and Order shall also be designed by appropriate consultants retained by the IO for Countertop Display and Header Display at retail point-of-sale. Each Defendant Cigarette Manufacturer that utilizes a Retail Merchandising Program shall require retailers who participate in the program to display each bi-monthly Countertop Display in a position of prominent visibility for the entire two month period, until it is replaced by the subsequent bi-monthly Countertop Display during the 24 month duration of this requirement. Each Defendant Cigarette Manufacturer that utilizes a Retail Merchandising Program shall require retailers who participate in the program to display each Header Display in an equivalent

position with any brand advertising header for the entire period on the same schedule, whether monthly or quarterly, that any brand advertising header is utilized. The Header Display shall be at least of equivalent size as any brand advertising header or headers provided by Defendant Cigarette Manufacturers. Each Defendant Cigarette Manufacturer shall suspend from its Retail Merchandising Program for a period of one year any retailer that fails to comply with this provision.

- d. Each Defendant except American shall cause a list of each of the corrective statements identified in Section IV.E.4 of this agreement to appear as a full page advertisement in the first section of the Sunday edition of each of the following newspapers: Atlanta Journal-Constitution, Boston Globe, Boston Herald, Charlotte Observer, Chicago Sun Times, Chicago Tribune, Dallas Morning News, Florida Times Union, Fresno Bee, Ft. Worth Star-Telegram, Houston Chronicle, Los Angeles Times, Miami Herald, New York Daily News, New York Post, New York Sun, New York Times, Orlando Sentinel, Palm Beach Post, Philadelphia Inquirer, Richmond Times-Dispatch, Sacramento Bee, San Diego Union-Tribune, San Francisco Chronicle, St. Petersburg Times, Tallahassee Democrat, USA Today, Washington Post, LA Eastern Group Publications, San Francisco La Oferta Review/El Vistaz-Combo, NAHP, Chicago Lawndale Group News, NAHP, Houston – Que Onda! Statements published in Spanish-language newspapers shall appear in Spanish. The statements shall identify the Defendant making the corrective

communications and state that the Defendant “admits the following.”

Corrective communications shall otherwise appear exactly as contained in Attachment B to this Final Judgment and Order or otherwise required by the IO, without any additional text or explanation. Full page advertisements shall be placed by Defendants on the following schedule:

- (i) Altria: the Sunday edition on the 8th Sunday following the date of this Final Judgment and Order, except that for any newspaper that does not have a Sunday edition at the time that publication of the corrective statements is required, the corrective statements shall be published in the first section of the Friday edition on the 8th Friday following the date of this Final Judgment and Order.
- (ii) BATCo: the Sunday edition on the 12th Sunday following the date of this Final Judgment and Order, except that for any newspaper that does not have a Sunday edition at the time that publication of the corrective statements is required, the corrective statements shall be published in the first section of the Friday edition on the 12th Friday following the date of this Final Judgment and Order.

- (iii) B&W: the Sunday edition on the 16th Sunday following the date of this Final Judgment and Order, except that for any newspaper that does not have a Sunday edition at the time that publication of the corrective statements is required, the corrective statements shall be published in the first section of the Friday edition on the 16th Friday following the date of this Final Judgment and Order.
- (iv) CTR: the Sunday edition on the 20th Sunday following the date of this Final Judgment and Order, except that for any newspaper that does not have a Sunday edition at the time that publication of the corrective statements is required, the corrective statements shall be published in the first section of the Friday edition on the 20th Friday following the date of this Final Judgment and Order.
- (v) Liggett: the Sunday edition on the 24th Sunday following the date of this Final Judgment and Order, except that for any newspaper that does not have a Sunday edition at the time that publication of the corrective statements is required, the corrective statements shall be published in the first section of the Friday edition on the 24th Friday following the date of this Final Judgment and Order.

- (vi) Lorillard: the Sunday edition on the 28th Sunday following the date of this Final Judgment and Order, except that for any newspaper that does not have a Sunday edition at the time that publication of the corrective statements is required, the corrective statements shall be published in the first section of the Friday edition on the 28th Friday following the date of this Final Judgment and Order.
- (vii) Philip Morris: the Sunday edition on the 32nd Sunday following the date of this Final Judgment and Order, except that for any newspaper that does not have a Sunday edition at the time that publication of the corrective statements is required, the corrective statements shall be published in the first section of the Friday edition on the 32nd Friday following the date of this Final Judgment and Order.
- (viii) R. J. Reynolds: the Sunday edition on the 36th Sunday following the date of this Final Judgment and Order, except that for any newspaper that does not have a Sunday edition at the time that publication of the corrective statements is required, the corrective statements shall be published in the first section of the Friday edition on the 36th Friday following the date of this Final Judgment and Order.

- (ix) TI: the Sunday edition on the 40th Sunday following the date of this Final Judgment and Order, except that for any newspaper that does not have a Sunday edition at the time that publication of the corrective statements is required, the corrective statements shall be published in the first section of the Friday edition on the 40th Friday following the date of this Final Judgment and Order.

F. Document Disclosure

1. Defendants Philip Morris, R.J. Reynolds, Lorillard, Brown & Williamson, CTR, and TI will maintain Internet Document Websites until June 30, 2030 at their expense. These Defendants shall maintain on their Internet Document Websites the documents and bibliographic information that currently appear on their respective Internet Document Websites as well as the additional documents and bibliographic information described below. These Defendants shall provide links to their Internet Document Websites from any and all publicly-accessible company websites.

2. Defendants BATCo and Liggett shall create and maintain at their expense Internet Document Websites until June 30, 2030. The BATCo and Liggett Internet Document Websites shall be created and publicly accessible no later than 60 days from the date of this Final Judgment and Order. BATCo and Liggett shall provide links to their Internet Document Websites from any and all publicly-accessible company websites.

3. Defendants shall add documents and bibliographic data to the websites as follows:

- a. Defendants shall add the following additional documents: (1) all documents produced to the United States in this action; (2) all documents produced on or after the date of this Final Judgment and Order in any court or administrative action in the United States or in any foreign country concerning smoking and health (including secondhand smoke), marketing, addiction, low-tar or low-nicotine cigarettes, or less hazardous cigarette research; (3) all transcripts of depositions and letter of request testimony (with corresponding exhibits if not already on the website) given by any of their current or former employees, officers, directors, corporate designees, attorneys or agents, in this action or in any court or administrative action in the United States concerning smoking and health, marketing, addiction, low-tar or low-nicotine cigarettes, or less hazardous cigarette research; such transcripts shall be in machine-readable text if received or available from the court reporter; and (4) Disaggregated Marketing Data, including Disaggregated Expenditure Data and Disaggregated Sales Data (see Section IV.F.7, *infra*). Philip Morris shall provide on its website all such documents produced by, pertaining to, or concerning Altria.
- b. Defendants shall add these additional documents (and data newly required by this Final Judgment and Order) to their respective Internet Document Websites within 45 days of the date of production, in the case of documents; within 45 days of receipt of the transcript, in the case of depositions and letter of request testimony; within 45 days of the effective

date of this Final Judgment and Order in the case of existing Disaggregated Marketing Data; and within 45 days of the end of each calendar year for Disaggregated Marketing Data required to be disclosed in the future (see Section IV.F.7, *infra*). These requirements are subject to Section IV.F.8 concerning documents under court order or ruling.

c. Each Internet Document Website shall provide, and be searchable by, the following bibliographic fields for all documents (no matter whether images are provided or are withheld on grounds of privilege or confidentiality):

- (i) Document ID
- (ii) Master ID
- (iii) Other Number
- (iv) Document Date
- (v) Primary Type
- (vi) Other Type
- (vii) Person Attending
- (viii) Person Noted
- (ix) Person Author
- (x) Person Recipient
- (xi) Person Copied
- (xii) Person Mentioned
- (xiii) Organization Author

- (xiv) Organization Recipient
- (xv) Organization Copied
- (xvi) Organization Mentioned
- (xvii) Organization Attending
- (xviii) Organization Noted
- (xix) Physical Attachment 1
- (xx) Physical Attachment 2
- (xxi) Characteristics
- (xxii) File Name
- (xxiii) Site
- (xxiv) Area
- (xxv) Verbatim Title
- (xxvi) Old Brand
- (xxvii) Primary Brand
- (xxviii) Mentioned Brand
- (xxix) Page Count
- (xxx) Live hyperlink to document image (except where image is withheld)
- (xxxi) Court or administrative action in which document was produced or transcript taken, including case title(s), action number(s), court(s) or administrative body(ies)

(xxxii) Date on which document was produced or transcript was received

(xxxiii) Date hard copy was produced to Minnesota Depository

(xxxiv) Box number in which hard copy was produced to Minnesota

Depository

In addition, defendant BATCo's bibliographic fields shall include the File Number, File Owner, and File User fields that it used in this action, and its website shall identify the Folder Number prefixes.

- d. The Internet Document Websites shall also provide, and be searchable by, the above fields for documents withheld from the website on grounds of privilege ("the privilege log"), and for documents withheld from the website on grounds that they contain trade secret information ("the confidential document index"). Each Internet Document Website's privilege log shall also provide fields stating the basis for the privilege assertion with sufficient detail to allow an opposing party, the IO, the IHO, or the Court to assess the soundness of the assertion; and, similar to Order #51, ¶ III.G.9 in this action, a statement of whether the claimed privilege has ever been (i) expressly waived, or (ii) ruled waived, invalid, inapplicable or unenforceable for any reason by a court, with a specification of the case title(s), action number(s), court(s), date(s) of waiver or decision, and Document ID(s) for such waivers, orders and decisions. Each Internet Document Website shall provide a copy of all

such waivers, orders and decisions (and underlying judicial materials such as magistrate judge reports and recommendations). Defendants may withhold the title of documents withheld on grounds of privilege if the document title, without reference to the document's contents, reveals privileged information, with the restriction that the title must be provided where a Defendant has previously waived privilege over the document title, e.g., pursuant to Order #75, ¶ 8 in this action.

- e. Each Internet Document Website shall provide a glossary that identifies, and is searchable by, the persons referred to in its privilege log and its confidential document index, by name and relationship to the parties in the relevant actions.
- f. Each Internet Document Website shall provide its bibliographic data index, privilege log, confidential document index, and glossary in a format suitable for downloading (e.g., comma separated value (CSV) file, compressed in a ZIP or similar format). In addition, monthly update files shall be provided in a format suitable for downloading, and shall be maintained on the website for 12 months.

5. Defendants Philip Morris, R.J. Reynolds, Lorillard, Brown & Williamson, CTR, TI, BATCo, and Liggett shall, at their expense, produce documents to the Minnesota Depository created in *Minnesota v. Philip Morris Inc.*, No. C1-94-8565 (Minn. Dist. Ct.), or its successor, as follows:

- a. These defendants shall produce to the Minnesota Depository hard copies of all documents described in Section IV.F.3.a.
- b. These documents shall be produced to the Minnesota Depository within 30 days of being produced in the pertinent litigation or administrative proceeding (or received from the court reporter). This requirement is subject to Section IV.F.8 below concerning documents under court order or ruling.
- c. Each production of documents to the Minnesota Depository shall include an index of the documents produced in that production, with the fields specified in Section IV.B.3.c, in both hard copy and electronic form.
- d. Defendants shall continue to fund and produce documents to the Minnesota Depository until June 30, 2030.

6. A Defendant may redact from a document placed on its Internet Document Website or produced to the Minnesota Depository individual Social Security numbers, home addresses, and home telephone numbers. Such redactions shall indicate that confidential personal information has been redacted. Wherever less than the entirety of a document is subject to a claim of privilege or trade secret pursuant to Section IV.F.8 below, Defendants shall produce the document in redacted form on their Internet Document Website and to the Minnesota Depository. Such redactions shall indicate that privileged or trade secret information, as pertinent, has been redacted.

7. Disclosure of Disaggregated Marketing Data.

- a. Each Defendant Cigarette Manufacturer shall be required to disclose all Disaggregated Marketing Data on its Internet document website.
- b. All Disaggregated Marketing Data for the period 1971-2004 shall be placed on each Defendant Cigarette Manufacturer's respective Internet document website within 45 days of the effective date of this Final Judgment and Order.
- c. Disaggregated Marketing Data for 2005 shall be placed on each Defendant Cigarette Manufacturer's respective Internet document website by the later of February 14, 2006 or 45 days from the effective date of this Final Judgment and Order.
- d. Disaggregated Marketing Data for subsequent years (2006-2029) shall be placed on each Defendant Cigarette Manufacturer's Internet Document website annually by February 14 of each following year. For example, Disaggregated Marketing Data for 2006 shall be placed on each Defendant Cigarette Manufacturer's respective Internet document website no later than February 14, 2007.
- e. Disaggregated Marketing Data shall be accessible via a direct link from the entry page, or home page, of each Defendant's respective Internet document website.
- f. Disaggregated Marketing Data shall be maintained in the databases and formats maintained by Defendants, and all reports generated from such Disaggregated Marketing Data shall be made available on each Defendant Cigarette Manufacturer's respective Internet document website.

- g. In addition, each year's Disaggregated Marketing Data shall be separately maintained in a format suitable for downloading (e.g., comma separated value (CSV) file, compressed in a ZIP or similar format). All data fields shall be specified.

8. This Final Judgment and Order does not require any Defendant to place on its Internet Document Website or in the Minnesota Depository documents that: (1) it continues to claim to be privileged or a trade secret in the document's entirety, or (2) continue to be subject in the document's entirety to any protective order, sealing order or other order or ruling that prevents or limits the pertinent Defendant from disclosing such documents. As in Order #36, a "trade secret" is defined as information, including a formula, pattern, compilation, program, device, method, technique or process that (a) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure and use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. However, the foregoing exceptions shall not apply to documents which a Defendant continues to claim to be privileged but which this Court ordered produced in this action; and shall not apply to documents which a Defendant continues to claim to be trade secret or contain confidential or proprietary business information, or which continue to be subject to any protective order, sealing order or other order or ruling that prevents or limits the pertinent Defendant from disclosing such documents, if this Court overruled such

assertions and/or the pertinent Defendant did not make such assertions to prevent the documents from being used in open court during this action.

9. The foregoing provision shall not limit the right of the IO, IHO, the United States Department of Justice or the District Court to inspect and copy any of Defendants' documents pursuant to any of the provisions of this Final Judgment and Order, including documents that a Defendant claims to contain a trade secret or proprietary business information, or continue to be subject to any protective order, sealing order or other order or ruling that prevents or limits a Defendant from disclosing such documents; except that this provision shall not apply to any document over which a Defendant maintains a legitimate claim of privilege. Such documents may be reviewed only by the Independent Hearing Officer or the District Court in camera.

10. Because the economic value of many trade secrets substantially declines with the passage of time, Defendants shall review all trade secret assertions every three years to determine whether they still satisfy the definition of trade secret in Section IV.F.8. The first review shall be complete within 1 year of this Final Judgment and Order.

11. Defendants shall also provide on their Internet Document Websites and on their company websites a current list identifying by name and address any person or entity that engages in public health or public policy related education, research, grassroots advocacy, lobbying, or other advocacy or political activities relating to tobacco, tobacco use, tobacco-caused harms, tobacco-related lawsuits, or efforts to prevent or reduce tobacco use or its harms -- such as academic institutions, public policy centers, grassroots or citizen action groups, issue advocacy organizations, business or trade associations, and the like, including those based overseas -- to which defendants have provided any payments, grants, other funding, contracts, contributions, or other support. For each listed person or entity, defendants shall also provide the

date and amount of any such monetary payments, grants, contracts, or other provided funding and the date and description of any provided non-monetary contributions, support or assistance.

12. Defendants shall make every reasonable effort to secure and disclose any documents under their control or over which they can obtain control that are required to be disclosed by this Final Judgment and Order, and defendants shall not take any action to destroy, conceal, or otherwise make unavailable any documents or information produced by or for defendants, obtained by defendants or otherwise under defendants' control that are required to be disclosed by this Final Judgment and Order.

G. Review of Business Policies and Practices [NO CHANGE]

1. The IO shall review the business policies, practices and operations of each Defendant other than CTR and TI to recommend procedures and measures that will facilitate or otherwise assist in accomplishing the remedial purposes of the Final Judgment and Order and/or relief, including but not limited to:

- a. Eliminating economic incentives for defendants to sell cigarettes to youth.
- b. Changing compensation and promotion policies for managers and executives to produce outcomes inconsistent with misconduct.
- c. Requiring subcontracting of certain research to independent third parties monitored by the Court, in the event that the IO finds that research activities are being undertaken and/or promoted for purposes prohibited by Section V of this Final Judgment and Order.
- d. Requiring Defendants to divest intact their research and development, current product development activities, and all other relevant material

regarding less hazardous cigarettes so that less hazardous cigarettes can be brought to the marketplace.

- e. Requiring the institution of programs to educate managers in such a way to address bias in decision making.
- f. Creating internal mechanisms for employees, agents and contractors to report misconduct without fear of retribution.
- g. Changing oversight and reporting arrangements to produce outcomes inconsistent with misconduct.

2. The IO shall conclude his or her review and make recommendations within 180 days of the Final Judgment and Order. Any recommendations shall be made pursuant to the provisions governing the filing of a complaint or Final Order by the IO in Section VI of this Final Judgment and Order.

3. The IO shall monitor Defendants' business policies, practices and operations following the conclusion of the initial review and presentation of recommendations and when appropriate shall make additional recommendations.

V. Prohibited Practices

All Defendants, Covered Persons and Entities are permanently enjoined from:

A. Committing any act of racketeering, as defined in 18 U.S.C. § 1961(1) relating in any way to the manufacturing, marketing, promotion, health consequences, or sale of cigarettes or secondhand smoke in the United States.

B. Participating in any way, directly or indirectly, in the management and/or control of any of the affairs of CTR, TI or The Center for Indoor Air Research ("CIAR"), or any

successor entities of CTR, TI or CIAR, or other entity affiliated with CTR, TI or CIAR, known to the Defendant, Covered Person or Entity to be engaged in any act of racketeering, and from having any dealings about any matter that relates directly or indirectly to the management and/or control of CTR, TI or CIAR or any successor or affiliated entities known to them to be engaged in any act of racketeering; and from reconstituting the form or function of CTR, TI or CIAR, except that the prohibition against reconstituting the form or function of TI shall not prohibit the Defendants from independently engaging in lobbying activity that is otherwise permissible.

C. Making, or causing to be made in any way, any material false, misleading or deceptive statement or representation, or otherwise engaging in any public relations or marketing endeavor that misrepresents or suppresses information concerning cigarettes or secondhand smoke that is disseminated to the United States public, to consumers, or to government officials. Such “material” statements include, but are not limited to, any matter that: (1) involves health, safety, addictiveness or other areas with which a reasonable consumer of cigarettes including youth, would be concerned, (2) a reasonable consumer, including youth, would attach importance to its existence or nonexistence in determining whether to ~~purchase or~~ smoke purchase, smoke -or otherwise consume cigarettes or try to stop doing so ~~eigarettes, or~~ (3) the Defendants, Covered Person or Entity making the representation knows or has reason to know or believe that its direct and likely indirect recipients will regard ~~s~~ or ~~is-are~~ likely to regard the matter as important in determining whether to purchase, ~~eigarettes or to smoke,~~ or otherwise consume cigarettes or to try to stop doing so, even if a reasonable person would not so regard it, (4) involves health, safety, exposure or other areas related to exposure to or the health risks of secondhand smoke, or (5) relates to the effectiveness of any tobacco use cessation program,

treatment, or strategy or to any other programs or strategies for preventing and reducing tobacco use or exposure to secondhand smoke.

D. ~~Consistent with the Court's finding of liability on the part of the Defendants, in addition to the general prohibitions set out above, Defendants are specifically prohibited from:~~ distorting ~~Distorting~~ or misrepresenting any of the conclusions reached in any ~~of the~~ published ~~Reports~~ reports of the Surgeon General of the United States ~~.b. — Upon publication of any Report of the Surgeon General of the United States relating to the health risks, or other harms, from smoking or other tobacco use or from exposure to secondhand smoke; the addictiveness of tobacco use or nicotine; the relative health risks from different types, brands, or subbrands of cigarettes; or effective programs and strategies for preventing or reducing smoking, other tobacco use, and related harms and costs on the Health Consequences of Smoking~~ after the effective date of the Final Judgment and Order; ~~or and for its duration, Defendants are prohibited from~~ distorting or misrepresenting any of the conclusions reached in any such Report ~~of the Surgeon General~~ as of its date of publication.

E. Failing to publicly disclose any information concerning an actual or potential health or safety risk of smoking or secondhand smoke with which a reasonable consumer of cigarettes, including youth, -would be concerned or attach importance to its existence or nonexistence in determining whether to purchase or smoke cigarettes or to try to stop doing so.

F. Explicitly or implicitly Conveying any representing directly or indirectly in the brand name, labeling, express or implied health message or health descriptor for any cigarette brand in the brand name or on any packaging, advertising or other promotional, informational or other material that any cigarette brand reduces exposure of smokers or nonsmokers to or contains reduced levels of any component of cigarette smoke or potentially

reduces the adverse health effects of smoking or exposure to secondhand smoke. Forbidden health descriptors include the words “light,” “ultra light,” “mild,” “natural,” “low,” “low-tar,” and any other descriptors which reasonably could be expected to result in a consumer’s believing that the cigarette brand or subbrand may result in a lower risk of disease or is less hazardous than other cigarettes. Defendants are also prohibited from representing directly, indirectly or by implication, in advertising, promotional, informational or other material, public statements or by any other means, that low-tar and/or low-nicotine cigarettes may result in a lower risk of disease or are less hazardous than other cigarettes to either smokers or nonsmokers exposed to secondhand smoke from these cigarettes.

G. Engaging in any marketing activities which the IO finds have the effect of marketing cigarettes in a manner appealing to youth in the United States. In addition, beginning on the date of this Final Judgment and Order:

1. No Defendant shall utilize any Price Promotion in the marketing of the top five cigarette brands smoked by youth aged 12 to 20 as determined by the NSDUH. Defendants shall have 60 days from the issuance of a new NSDUH report to cease any Price Promotions in the marketing of any cigarette brands which enter the top five youth brands in that NSDUH report.
2. No Defendant shall ~~be permitted to~~ market, manufacture or distribute cigarettes in packs containing fewer than 20 cigarettes (“kiddie packs”), whether distribution is to wholesalers, retailers or any other purchaser or distributor.

3. No Defendant ~~may~~shall engage in any Motor Sports Brand Name Sponsorship or any brand name sponsorship that results in exposure to youth, by any means, of a brand name sold in the United States, whether the exposure is intended by the Defendant or not. This restriction applies to Brand Name Sponsorships of events held in the United States and events held internationally, if the sponsorship results in exposure to youth, in the United States by any means, of a brand name sold in the United States, whether the exposure is intended by the Defendant or not. All Defendants must take commercially reasonable steps against third party activity that results in the brand name exposure described in this paragraph. No Defendant shall create or use corporate names that are the same or reasonably similar to cigarette brands to be used in sponsorship of such events.
4. No Defendant ~~may~~shall market, distribute, or offer for sale or distribution in the United States any cigarette or any component part thereof (including but not limited to the tobacco, paper, or filter), which contains a constituent (including a smoke constituent) or additive that produces a natural or artificial flavor (other than tobacco or menthol) which is a Distinguishing Flavor of the tobacco product or tobacco smoke.
5. No defendant shall advertise or cause to be advertised, disseminate or cause to be disseminated any advertising for cigarettes, or any brand of cigarettes that is not limited to black text on a white background:

- a. in any publication, magazine, or periodical that is read by more than two million youth as measured by competent and reliable survey evidence approved by the IO or whose youth readers constitute 15% or more of the total readership as measured by competent and reliable survey evidence approved by the IO;
- b. in any retail outlet open to youth or on any such retail outlet's property; or
- c. on any website accessible by youth.

6. No defendant shall include or continue to include in any Consumer Marketing Database any information or records pertaining to any youth or to any person the defendant did not directly identify and verify as not being a youth at the time the data was first collected. The IO shall establish a procedure by which the Defendants shall identify and verify that all new entries of individuals to any consumer marketing database are not youth. Defendants shall purge each of their Consumer Marketing databases in accordance with this paragraph and the IO shall periodically confirm, including through unannounced compliance checks, that the databases conform to this paragraph.

H. Entering into any relationship with any other person, or providing any payments or other support to any other person, that has the purpose or effect of limiting, suppressing, or distorting research or the production or distribution of information regarding:

1. the addictiveness, health hazards, or other harms from the use of cigarettes;

2. the effectiveness of cessation treatments or strategies;
3. the effects of secondhand smoke or the effects of legal prohibitions designed to reduce or eliminate exposure to secondhand smoke; or
4. the effectiveness of public or private strategies designed or intended to prevent or reduce tobacco use or its harms.

Nothing in this prohibition shall be deemed to preclude any defendant from entering into any joint defense or joint legal interest agreement or arrangement (whether or not in writing), or from asserting any privilege pursuant thereto; or to impose any affirmative obligation on any defendant to conduct, fund, or otherwise support any research.

I. Taking any action, directly or indirectly, to promote, fund, support, encourage, facilitate, or permit any third party – including but not limited to any affiliate, subsidiary, or parent company -- to take any action that would be a violation of this Final Judgment and Order if taken by the defendant, itself. If any defendant becomes aware of any such third-party activity that would be prohibited by this Order if done by the defendant, itself, the defendant shall promptly take all reasonably available measures to stop that third party activity, including but not limited to taking legal action against the third party for unauthorized use of the defendant's trademarks.

J. ~~From obstructing~~ Obstructing or otherwise interfering with the activities and duties of the court-appointed officers and their supporting personnel described in Section VI below, with the entities identified in Section IV above to administer the cessation and education programs, or with the purposes of this Final Judgment and Order.

VI. Compliance and Enforcement Procedures

A. Selection of Court Appointed Officers and Qualifications

1. The District Court shall appoint an Independent Investigations Officer (“IO”) and an Independent Hearing Officer (“IHO”), described in Section VI.C and D below. The United States and the Plaintiff Intervenors shall each propose to the District Court three persons for each open position within 30 days of the date of this Final Judgment and Order. The District Court shall consider the persons suggested ~~by the United States~~ but shall not be required to select from those who are proposed.

2. If a vacancy in either of the court-appointed positions occurs, the District Court shall notify the parties of the vacancy and the procedures set forth above in Section VI.A(1) shall apply to select a replacement.

3. The court-appointed officers shall be highly qualified attorneys with substantial judicial, government, or private sector experience and be free of any conflict of interest. Neither the court appointed officers nor any law firms or other organization with which they were previously associated shall have represented defendants or any other tobacco company or received any payments or other support from any defendant or other tobacco company during the two year period prior to appointment under this section; and all court-appointed officers, and any person hired or otherwise retained by the court-appointed officers, shall sign a binding legal agreement that they will not, for at least one year after finishing their work pursuant to this order, receive any payments or support from any defendants or any other tobacco company.

4. The IO (and any attorneys on his or her staff) shall be subject to the D.C. Rules of Professional Conduct, including their conflict of interest rules (Rules 1.7 to 1.11). The IHO shall be subject to the Code of Conduct for United States Judges to the same ~~the~~ extent as a judge pro

tempore (discussed in “Compliance with the Code of Conduct,” Section B), including its conflict of interest rules (Canon 3C). The IHO’s staff shall be subject to the Code of Conduct for Judicial Employees of the U.S. Judicial Conference, including its conflict of interest rules (Canon 3F).

B. Duration of Authority

The authority of the court-appointed officers referenced above shall continue throughout the period of enforcement of the Final Judgment and Order, or until further order of the District Court.

C. Authority of the Independent Investigations Officer

1. The court-appointed Independent Investigations Officer (hereinafter “IO”) shall have the authority and duty to supervise the implementation of the court-ordered relief (hereinafter “relief”), including, but not limited to, the following:

- a. To hire and/or retain personnel, including attorneys, investigators, accountants, consultants, experts, including but not limited to scientific or marketing experts, or any other personnel reasonably necessary to assist the IO in carrying out his or her duties and responsibilities pursuant to the Final Judgment and Order.
- b. Pursuant to the procedures set forth below in Section VI.E, to investigate, bring charges and seek remedies and sanctions against any Defendant, Covered Person or Entity for any violation of the IO’s Final Orders or any violation of the Final Judgment and Order, or obstructing or otherwise interfering with the court-appointed officers’ execution of their duties and authority.
- c. To investigate, bring charges and seek remedies and sanctions for any

violation by any entity or person receiving funds pursuant to the Final Judgment and Order, ~~of the Final Judgment and Order~~, or for any violation of the conditions placed on the use of the funds, or obstructing or otherwise interfering with the court-appointed officers' execution of their duties and authority.

- d. To have complete and unfettered access to, and the right, upon reasonable notice to the person or entity involved, to inspect and/or copy any and all books, records, accounts, correspondence, files and other documents (including electronic documents), and to test or sample any tangible things in the possession, custody or control of any Defendant, Covered Person or Entity, or any person receiving funds pursuant to the Final Judgment and Order; and shall have authority to enter upon any land, property, or other premises in the possession or control of any Defendant or any person receiving funds pursuant to the Final Judgment and Order for purposes of carrying out his or her responsibilities under the Final Judgment and Order. The IO shall have the authority to interview current or former directors, officers, agents (including attorneys), servants, representatives or employees of any Defendant, or of any entity or person receiving funds pursuant to this Final Judgment and Order. Upon reasonable notice, the IO may compel the sworn statement or oral deposition of any current director, officer, agent (including attorneys), servant, representative or employee of any Defendant, or of any entity or person receiving funds pursuant to the Final Judgment and Order.

e. The IO shall have the same subpoena power as a party to an action in the District Court, including 28 U.S.C. § 1783. The IO shall not have the right to take and compel the sworn statement or oral deposition or to subpoena any agent (including attorney), servant, representative or employee of the United States, or to inspect, copy or subpoena books, records, accounts, correspondence, files and other documents (including electronic documents) in the possession, custody or control of the United States.

f. To monitor the following types of activities of Defendants, in addition to any other types of activity of Defendants that the IO determines needs monitoring:

ii.i. advertising, other marketing practices and marketing transactions and statements of the Defendants disseminated to the public in the United States and current marketing plans, and, pursuant to the procedures set forth below in Section VI.E., to issue Final Orders prohibiting the continuation of any such advertising, other marketing practices, or statements, and/or to rescind any such marketing transactions which the IO determines are violative of any provision of the Final Judgment and Order or the relief specified herein; and where appropriate to seek sanctions for such conduct. The IO is not responsible for previewing or pre-clearing Defendants' advertising, marketing practices, ~~marketing~~ transactions or plans, or statements disseminated to the public before they are made. After reviewing current marketing plans, the

IO shall provide the American Legacy Foundation and the Cessation Administrative Organization such information, as appropriate, which assist those entities in administering their programs pursuant to Sections IV (B) and (C).

ii. Contributions, grants, contracts, or any other payments to third parties which carry out activities that Defendants are prohibited from undertaking, and, pursuant to the procedures set forth below in Section VI.E., to issue Final Orders prohibiting the continuation of any such activity and/or halting any behaviors which the IO determines are violative of any provision of the Final Judgment and Order or the relief specified herein; and where appropriate to seek sanctions for such conduct.

iii. use of international subsidiaries, affiliates or agents to undertake activities prohibited by the Court's order, and, pursuant to the procedures set forth below in Section VI.E., to issue Final Orders prohibiting the continuation of any such activity and/or halting any behaviors which the IO determines are violative of any provision of the Final Judgment and Order or the relief specified herein; and where appropriate to seek sanctions for such conduct.

iv. internal company business practices regarding the companies' compliance with youth smoking reduction targets and, pursuant to the procedures set forth below in Section VI.E., to issue Final Orders prohibiting the continuation of any such activity and/or halting any

behaviors which the IO determines are violative of any provision of the Final Judgment and Order or the relief specified herein; and where appropriate to seek sanctions for such conduct.

v. any activity designed directly or indirectly to keep people smoking or to encourage youth initiation by

(a) undermining the Smoking Cessation and Outreach program or the Public Education and Countermarketing programs, or

(b) conducting youth tobacco use prevention programs that do not influence youth not to initiate or use tobacco,

and, pursuant to the procedures set forth below in Section VI.E., to issue Final Orders prohibiting the continuation of any such activity and/or halting any behaviors which the IO determines are violative of any provision of the Final Judgment and Order or the relief specified herein; and where appropriate to seek sanctions for such conduct.

vi. internal corporate communications and other business practices as the IO deems necessary to ensure that employee education regarding the Court's order and its consequences on future corporate business practices has occurred.

g. To create a procedure by which comments from the public and other concerned parties regarding activities by Defendants are submitted for consideration to the IO.

- h. To attend any meeting of senior management or of directors of any Defendants.
- hi. To require the Defendants to educate employees regarding whistleblower protections regarding any employee who reports a violation of the Court's order or any other misconduct on the part of Defendants. The IO shall have the authority to require an anonymous reporting system, including but not limited to an email address and toll-free number, that can be used to report remedy order violations to the IO.
- j. To recommend removal of any director, officer, ~~employee or~~ other member of senior management, or employee of any Defendant who was found after due notice and an adjudicatory proceeding pursuant to Section VI.E, or by default, to have acted in concert with one or more named Defendants in committing a civil RICO violation, or to have known about an ongoing or pending violation of RICO or any other law by defendant and not taken any action to prevent or stop it or to report it to relevant government officials. or the person was found, after due notice and an adjudicatory proceeding pursuant to Section VI.E, or by default, to have violated a provision of this Final Judgment and Order.
- ik. To review the operations of each entity receiving funds pursuant to Sections IV.B and IV.C of the Final Judgment and Order and to recommend procedures and measures that would facilitate or otherwise assist in accomplishing the purposes of the Final Judgment and Order.

jl. To retain an independent auditor or auditors to perform audits, on reasonable notice to the person or entity to be audited, upon the books and records of any Defendant and any entity and person funded pursuant to the Final Judgment and Order except the United States, to assist the IO in carrying out his or her responsibilities under the Final Judgment and Order.

km. To request, but not require, the United States Department of Justice to provide legal assistance in the execution of the IO's duties and responsibilities, and to refer any matter to the United States Department of Justice for appropriate action.

ln. To take any appropriate measure, including initiating or defending a lawsuit, to enforce Sections VI.C.1.d and VI.C.1.e above.

mo. To recommend sanctions against any Defendant, Covered Person or Entity for any violation of this Final Judgment and Order or to impose sanctions as part of any Final Order. Sanctions may include fines, which may but need not be imposed as a daily fine for each day until the Defendant, Covered Person or Entity comes into full compliance with the IO's Final Order described above. There shall be no limit to a fine, so long as it is not grossly disproportionate to the violations addressed, except that where penalties for violations are specifically set out in Section IV.B and IV.D, the specified penalties shall apply.

2. Every four months, the IO shall submit to the District Court and all the parties a written status report documenting the IO's activities and the progress being made towards

implementing the Final Judgment and Order.

3. The public shall have access to the IO's written status reports, except that the IO may submit portions of his or her status reports under seal where appropriate.

4. The IO shall have the authority, with notice to the parties, to apply to the District Court to take any and all other actions that are necessary and proper to perform his or her responsibilities under the Final Judgment and Order.

D. Authority of the Independent Hearing Officer

1. The Independent Hearing Officer ("IHO") shall have the authority to adjudicate, pursuant to the procedures set forth in Section VI.E. below, any complaint brought by the IO or Final Order addressing an alleged violation of the Final Judgment and Order, or any dispute arising under or related to any of the IO's recommendations made pursuant to Sections VI.C.1.hj or VI.C.1.ik.

2. The IHO shall have the authority to hire and/or retain personnel as reasonably necessary to assist the IHO in carrying out his or her duties and responsibilities pursuant to the Final Judgment and Order.

E. Procedural Rules

1. Notice of Intent to File Complaint or Final Order Concerning a Defendant, Covered Person or Entity

a. Prior to filing a written complaint or Final Order, the IO shall give pre-filing written notice as set forth below. The IO shall provide the Defendant, Covered Person or Entity (and the United States Liaison) written notice of his or her intent to file a written complaint alleging that a Defendant, Covered Person or Entity has (1) violated any provision of the

Final Judgment and Order, or (2) failed to implement a recommendation made pursuant to Section VI.C.1.hj. The IO shall also provide the Defendant, Covered Person or Entity (and the United States Liaison) written notice of his or her intent to issue a Final Order prohibiting or rescinding any matter proscribed under Section VI.C.1.f above. The pre-filing notice will specify any sanction that the IO intends to seek in the written complaint or Final Order. No pre-filing notice is required if the IO determines that the claimed violation involves a willful or intentional violation of the Final Judgment and Order.

- b. The Defendant, Covered Person or Entity shall have fourteen (14) days from service of the pre-filing notice to remedy or correct all of the alleged defects.
- c. Upon expiration of the 14-day period, if the IO concludes, in his or her sole discretion, that the Defendant, Covered Person or Entity has failed to take satisfactory action to remedy the defects specified in the IO's pre-filing Notice, the IO shall promptly serve upon the Defendant, Covered Person or Entity a written complaint alleging a violation of the Final Judgment and Order or failure to implement a recommendation made pursuant to Section VI.C.1.hj, or a written Final Order prohibiting or rescinding specified conduct pursuant to Section VI.C.1.f (and serve a copy upon the United States Liaison). Any written complaint or Final

Order shall be made available to the public and shall specify any fine or sanction that the IO seeks. Any fine or sanction shall not be grossly disproportionate to the violations addressed.

- d. If upon expiration of the 14-day period, the IO concludes, in his or her sole discretion, that the Covered Person or Entity has taken satisfactory action to remedy the defects specified in the IO's Notice, the IO shall promptly serve upon the Defendant, Covered Person or Entity and the United States Liaison notice of the IO's conclusion and make that notice available to the public. In that event, the United States may seek any relief it believes is appropriate from the IHO with notice to affected parties. Nothing in these procedural rules shall preclude the United States from exercising any enforcement action it deems necessary to effectuate the terms of the Final Judgment and Order.

2. Notice of Intent to File Complaint Against Entity Receiving Funding Pursuant to Section IV.~~(B)~~ or IV.~~(C)~~ for Failure to Implement a Recommendation Pursuant to Section VI.~~(C)~~.~~(1)~~.~~(ik)~~

- a. Prior to filing a written complaint alleging that an entity receiving funds pursuant to Section IV.B or IV.C has failed to implement a recommendation made pursuant to Section VI.C.1.~~ki~~, the IO shall provide the entity with written notice of his or her intent to take such action and a brief explanation of the basis for such action (and shall serve a copy upon the United States Liaison).
- b. An entity receiving funding pursuant to Section IV.B or IV.C shall have

twenty-one (21) days from service of such written notice of the IO's intent to remedy or correct the alleged failure to implement a recommendation set forth in said notice.

c. Upon expiration of the 21-day period, if the IO concludes, in his or her sole discretion, that the entity receiving funding pursuant to Section IV.B or IV.C has failed to remedy or correct the alleged failure to implement the recommendation made pursuant to Section VI.C.1.ik, the IO shall promptly serve upon the entity receiving funding pursuant to Section IV.B or IV.C a written complaint alleging failure to implement a recommendation made pursuant to Section VI.C.1.ik (and serve a copy upon the United States Liaison).

d. If upon expiration of the 21-day period, the IO concludes, in his or her sole discretion, that the entity receiving funding pursuant to Section IV.B or IV.C has taken or proposed satisfactory action to remedy the defects specified in the IO's Notice, the IO shall promptly serve upon the entity receiving funding pursuant to Section IV.B or IV.C (and the United States Liaison) notice of the IO's conclusion and make that notice available to the public.

3. The charged Defendant, Covered Person or Entity, or entity receiving funding pursuant to Section IV.B or IV.C shall have 14 days to submit a written response to the IO's written complaint or Final Order. Failure to file a timely response shall constitute waiver of the right to respond and shall result in the application of sanctions pursuant to Section VI.E.6 below.

4. Hearing Procedures. When a charged Defendant, Covered Person or Entity or

entity receiving funds pursuant to Section IV.B or IV.C contests an IO's written complaint or Final Order, the IHO shall conduct a hearing no later than 45 days following the response to the written complaint or Final Order. The following procedures shall be followed:

- a. A fair and impartial, public hearing shall be conducted before the Independent Hearing Officer.
- b. The charged Defendant, Covered Person or Entity or entity receiving funds pursuant to Section IV.B or IV.C is entitled to pre-hearing disclosure of the exhibits to be used at the hearing by the IO and statements of witnesses relevant to the charges in the possession of the IO; the IO is entitled to reciprocal disclosure of the same matters prior to the hearing.
- c. The charged Defendant, Covered Person or Entity or entity receiving funds pursuant to Section IV.B or IV.C may be represented by counsel.
- d. A hearing shall be conducted in a courtroom-like manner at a location designated by the IHO. If the hearing is an evidentiary hearing, the rules of evidence do not apply, and reliable hearsay, depositions and affidavits are admissible. Documents admitted in evidence shall be marked and made part of the record. Testimony in an evidentiary hearing shall be under oath. Questioning in an evidentiary hearing shall occur through direct and cross-examination. All hearings shall be transcribed by a certified court reporter, and a transcript of the hearing shall be filed with the IHO for inclusion in the record, which will be publicly available.
Objections and motions during a hearing shall be made and ruled upon

according to normal courtroom procedures in federal courts. Nothing herein shall prohibit the IHO from deciding contested matters by summary disposition on written or oral argument from the parties.

- e. The IHO shall have the authority to issue subpoenas, with nationwide service of process pursuant to 18 U.S.C. § 1965(c), sua sponte or at the request of the charged Defendant, Covered Person or Entity or entity receiving funding under Section IV.B. or IV.C, from this Court under this case name and number to any person or entity, including non-parties, for the purpose of compelling testimony and requiring the production of books, papers, records or other tangible objects at hearings conducted by the IHO. The IO is authorized to issue subpoenas in connection with hearings before the IHO with nationwide service of process pursuant to 18 U.S.C. § 1965(c), for the same purposes. The Court specifically finds that in order to ensure the just and expedient enforcement of this Final Judgment and Order, good cause exists for granting to the IO and the IHO the foregoing authority to issue subpoenas pursuant to 18 U.S.C. § 1965(c).
- f. The IHO may receive and consider, attaching such weight as he or she deems appropriate, the sworn testimony of any law enforcement officer regarding information given to a law enforcement agency by a reliable confidential source of information. In no instance shall such officer be required to reveal the identity of the confidential source of information.
- g. The IO bears the burden of proving by a preponderance of the evidence

any alleged violation of the Final Judgment and Order, entitlement to a Final Order, or failure to implement a recommendation.

- h. The IHO may require briefs and arguments on questions that arise during the hearing.
- i. The IHO shall render a written decision within 45 days of the conclusion of the hearing and shall file and serve a copy on all parties, any affected Covered Person or Entity, any relevant entity receiving funding under Section IV.B or IV.C, and the IO. The IHO's decision shall be publicly accessible, except for any portions that are placed under seal. In his or her written decision, the IHO may impose an additional fine as a sanction above and beyond any sought or imposed by the IO pursuant to Section VI.C.1.~~mo~~ or VI.E.1.a. Fines shall not be grossly disproportionate to the violations addressed.
- ~~ni~~. The IHO's written decision shall be final and binding on the parties, subject to review by the District Court as set forth below in Section VI.F.

5. Pleadings and Other Written Submissions. All pleadings regarding any matter before the IHO, including but not limited to written complaints, Final Orders, motions, and briefs, shall be filed with the District Court. The case caption in written submissions in matters before the IHO shall clearly indicate, directly beneath the case number, “[Referred to Independent Hearing Officer]”. Copies of all pleadings shall be served on opposing parties, the IO, and the United States Liaison.

6. Additional Procedural Rules. The IHO may issue additional procedural rules governing hearings and submissions before the IHO not inconsistent with any provision of the

Final Judgment and Order.

F. District Court Review of Decisions of the Independent Hearing Officer and Appeals

1. The District Court shall have exclusive jurisdiction to review any final decision or Final Order of the IHO and shall apply the same standard of review applicable to final federal agency action under the Administrative Procedure Act. See 5 U.S.C. §§ 701, et seq.

2. Any charged Defendant, Covered Person or Entity, or entity receiving funding pursuant to Section IV.B or IV.C that is aggrieved by an adverse final decision or Final Order of the Independent Hearing Officer may take an appeal to the District Court from an adverse final decision or Final Order of the Independent Hearing Officer by filing a written notice of objection (with service to the parties involved in the hearing, the United States Liaison, the IO and the IHO) with the District Court within 10 days after the decision or order appealed from is entered. The IO or the United States may take an appeal to the District Court from any final decision or Final Order of the IHO by following the same procedure.

3. The District Court shall have the sole discretion to determine additional procedures governing such objections.

4. Any appeal or further review of a decision by the District Court regarding its review of a final decision or Final Order of the IHO shall be as permitted by law.

G. Funding of the Court-Appointed Officers and Related Costs

1. The Defendants shall bear the entire cost of the activities of the court-appointed officers described above and their staffs and any person acting on their behalf.

2. Once every three months the IO and the IHO shall file with the District Court (and serve on the United States Liaison and each Defendant's Compliance Officer described

below in Section VI.~~J~~ and ~~K~~) an application for payment, including an itemized bill for their services and expenses with supporting material.

3. Each Defendant and the United States shall then have fourteen (14) days following receipt of the above application for payment in which to contest the bill before the District Court. The party contesting the bill has the burden of establishing that the challenged expense is unreasonable. The District Court may uphold, modify or reject the payment of the expense. If the District Court determines that a pattern of unreasonable challenges to expenses has developed, the District Court may limit the offending party's right to challenge expenditures. If no party has contested the expenditure upon expiration of the 14-day period, the expenditure (or any part that has not been contested) shall be paid by Defendants.

4. To provide for adequate funding of the enforcement of this Final Judgment and Order, the Defendants shall deposit \$10,000,000 into an account subject to control of the IO within five days of the appointment of the IO and Defendants shall maintain at least \$5,000,000 on deposit thereafter. The IO will thereafter be responsible, subject to the District Court's review set forth above, for allocating payments to all persons or entities entitled to compensation and payment.

H. Indemnification

The Defendants shall purchase a policy of insurance and/or bonds in an appropriate amount to protect the court-appointed officers and any person hired by or acting on their behalf from personal liability for any of their actions pursuant to the Final Judgment and Order. If such insurance is not available, or if the Defendants so elect, the Defendants shall indemnify the court-appointed officers, and any person hired by or acting on their behalf from personal liability (and costs incurred to defend against any claim of liability) for any of their

actions taken pursuant to this Final Judgment and Order. In addition, the court-appointed officers, and any person hired by or acting on their behalf, shall enjoy whatever immunity from personal liability may exist under the law for court officers.

I. Immunity of Court-Appointed Officers from Subpoena

The court-appointed officers shall be immune from subpoena by any Defendant, Covered Person or Entity. The court-appointed officers shall not respond to any subpoenas or requests for information about the performance of their assigned duties action, or disclose such information voluntarily, without leave of the District Court.

J. Designation of Defendants' Compliance Officers

1. Each Defendant, except for CTR and TI, shall designate, within 30 days of entry of this Final Judgment and Order, an internal Compliance Officer who shall be an employee of the Defendant with responsibility for ensuring compliance with this Final Judgment and Order. The position of Defendant's Compliance Officer shall be maintained throughout the duration of the enforcement of the Final Judgment and Order, until further order of the District Court. If there is any change to the identity of a Defendant's Compliance Officer, the Defendant must file a notice of the change with the District Court, with service on all parties, within 7 days of the change. Any vacancy in the position must be filled within 7 days.

2. Each Defendant's Compliance Officer shall supervise that Defendant's activities to ensure that the Defendant complies with this Final Judgment and Order; and each defendant shall ensure that its Compliance Officer has full access for this purpose to all documents, communications, officers, employees, meetings, and materials of the defendant and any third parties working under its supervision or control.

3. Each Compliance Officer shall be responsible for performing the following

activities:

- a. Within 30 days after entry of this Final Judgment and Order, distributing a copy of the Final Judgment and Order to all officers, directors and senior managers of the respective Defendant and of any third parties under the defendants' supervision or control that engage in any activities on behalf of the defendant that relate to this Final Order and Judgment.
- b. Promptly distributing a copy of this Final Judgment and Order to any person who succeeds to a position described in Section VI.J.3.a above.
- c. Ensuring that those persons designated in Section VI.J.3.a above are annually briefed on the meaning and requirements of this Final Judgment and Order.
- d. Obtaining from each person designated in Section VI.J.3.a above an annual written, dated certification that he or she: (i) has read and agrees to abide by the terms of this Final Judgment and Order; and (ii) has been advised and understands that his or her failure to comply with this Final Judgment and Order may result in a fine, sanction, or finding of contempt of court.
- e. Maintaining a record of all persons to whom a copy of this Final Judgment and Order has been distributed and from whom the certification described in Section VI.J.3.a above has been obtained and providing the court-appointed IO and United States Liaison with a copy of the certifications.
- f. Receiving periodic status reports, notices of alleged violations, filed complaints, Final Orders, applications for payments described above and

any other communication from the court-appointed officers, the District Court and the United States concerning this Final Judgment and Order.

K. Designation of United States Liaison

1. Within 30 days of the entry of this Final Judgment and Order, the United States shall designate an attorney employed by the United States Department of Justice to be the Liaison with the District Court, the parties and the court-appointed officers regarding the enforcement of the Final Judgment and Order. The position of United States Liaison shall be maintained throughout the duration of the enforcement of the Final Judgment and Order, until further order of the District Court.

2. The United States Liaison shall be responsible for receiving copies of all periodic status reports, pre-filing notices of intent to issue written complaints and Final Orders, filed complaints, Final Orders, applications for payment described above and any other communication from the District Court, the court-appointed officers and the parties concerning this Final Judgment and Order and all other matters relating to the enforcement of the Final Judgment and Order.

L. Authority of the United States

1. The United States Department of Justice shall have the authority in its sole discretion to provide any assistance it deems appropriate to any of the court-appointed officers and/or their staffs, or anyone acting on their behalf in carrying out their duties and responsibilities pursuant to the Final Judgment and Order.

2. The United States Department of Justice shall have the authority in its sole discretion to intervene or participate in any matter before the Independent Hearing Officer or the District Court or any appeal arising under or relating to the Final Judgment and Order.

3. The United States Department of Justice shall have the authority in its sole discretion to appeal any decision of the Independent Hearing Officer to the District Court and to take any appeal or further review from a decision of the District Court as permitted by law.

4. The United States Department of Justice shall have the authority to prosecute contempt for any violation of the Final Judgment and Order and any order of the District Court.

VII. Miscellaneous Provisions [NO CHANGE]

A. No Third Party Rights

Nothing herein shall create or confer, or is intended to create or confer, any enforceable right, claim or benefit on the part of any person or entity other than on the parties hereto and the court-appointed officers established herein.

B. Future Actions

Nothing in this Final Judgment and Order shall preclude the United States, or any of its departments or agencies, from taking any appropriate action pursuant to any federal law or regulation, including but not limited to any criminal investigation or prosecution or civil action.

C. Cooperation

1. All Covered Persons and Entities and any entity and person receiving funds pursuant to the Final Judgment and Order shall cooperate fully with the court-appointed officers and their staffs and anyone acting on their behalf in the exercise of their duties and responsibilities pursuant to the Final Judgment and Order.

2. Whenever any party learns of any action or lawsuit in any other court that may involve a matter arising under or relating to this Final Judgment and Order, such party shall promptly notify the District Court, all other parties, and the IO of such action or lawsuit.

D. Transfer of Tobacco Brands or Businesses

No Defendant may sell or otherwise transfer or permit the sale or transfer of any of its cigarette brands, brand names, cigarette product formulas or cigarette businesses (other than a sale or transfer of cigarette brands or brand names to be sold, product formulas to be used, or cigarette businesses to be conducted, by the acquiror or transferee exclusively outside of the United States) to any person or entity unless (1) such person or entity is already a Defendant subject to this Final Judgment and Order, or (2) prior to the sale or acquisition, such person or entity (a) agrees to assume and be subrogated to the obligations contained in Section IV.D, IV.F, V and VI and to be subject to the Enforcement provisions of Section VI of this Final Judgment and Order with respect to such cigarette brands, brand names, cigarette product formulas or businesses; (b) applies to the District Court submitting to the jurisdiction of the District Court; and (c) receives an Order from the District Court subjecting such person or entity to the provisions of this Final Judgment and Order as of the date of the sale or transfer. The District Court will not enter such an Order, and the sale or transfer of any Defendants' cigarette brands, brand names, cigarette product formulas or cigarette businesses (other than a sale or transfer of cigarette brands or brand names to be sold, product formulas to be used, or cigarette businesses to be conducted, by the acquiror or transferee exclusively outside of the United States) shall be prohibited, unless the District Court has first determined that such person or entity has the capability to comply with the obligations contained in Section IV of the Final Judgment and Order. The sale or transfer by a Defendant of any of its cigarette brands, brand names, cigarette product formulas or cigarette businesses shall not relieve the Defendant from its joint and several liability under this Final Judgment and Order.

E. Duration

1. This Final Judgment and Order shall remain in effect until further order of the

District Court.

2. At the time of such further order of the District Court terminating this Final Judgment and Order, the United States may apply to the District Court for an extension of the terms of this Final Judgment and Order of up to five years as to any Defendant(s) that are subject to a finding or findings of a pattern of violations.

F. Future Claims and Criminal Actions

Defendants may not rely on the substance and/or existence of this Final Judgment and Order as a defense in civil actions. The substance and existence of this Final Judgment and Order or compliance with its terms is not a defense to any criminal prosecution against any Covered Entity or Person.

G. Authority of the District Court

Nothing in this Final Judgment and Order shall limit the inherent power and authority of the District Court.

Entered: _____

Gladys Kessler
United States District Judge

ATTACHMENT A NO CHANGE

CORRECTIVE COMMUNICATIONS

Affirmative Statement on Health Effects

SMOKING KILLS. Smoking has been scientifically proven to cause many diseases that cause enormous suffering and death, including lung cancer, heart disease, and strokes. Cigarette addiction leads approximately one half of cigarette smokers in America to die prematurely.

Smoking harms nearly every organ in your body and worsens your health in many ways. Cigarette addiction leads approximately one half of cigarette smokers in America to die prematurely, often from diseases that cause enormous suffering.

Smoking causes women to have greater difficulty becoming pregnant, causes pregnant women to have more complications during pregnancy, and increases the chance of premature birth, stillbirth, and infant mortality. Cigarette addiction leads approximately one half of cigarette smokers in America to die prematurely.

Affirmative Statements on Secondhand Smoke (ETS)

Exposure to secondhand smoke causes lung cancer, heart disease, and other serious health problems in nonsmokers. Simply separating smokers and nonsmokers in the same airspace does not provide adequate protection from the adverse health effects of exposure to secondhand smoke.

Children exposed to secondhand smoke have an increased rate of serious health problems, including asthma and otitis media (ear infections) and Sudden Infant Death Syndrome. Simply separating smokers and nonsmokers in the same airspace does not provide adequate protection from the adverse health effects of exposure to secondhand smoke.

Affirmative Statement on Addiction:

Cigarette smoking is addictive because cigarettes deliver nicotine, an addictive drug. Like crack cocaine, nicotine goes from the lungs to the brain within seconds after a puff.

Cigarette smoking is addictive because cigarettes deliver nicotine, an addictive drug. One main reason that it is so hard to quit smoking is that nicotine from cigarettes actually changes the brain to crave nicotine.

Because of nicotine, smoking is as addictive and difficult to quit as other addictive drugs, including heroin, cocaine, and alcohol.

Affirmative Statement on “Low Tar” Cigarettes

Cigarettes sold as “low tar and low nicotine,” “light,” or “ultra-light” are just as harmful to health as “regular,” higher tar cigarettes.

Because nicotine is addictive, most “low tar” cigarette smokers smoke more intensely, take more puffs, smoke more cigarettes, or block the tiny ventilation holes in the filter, in order to get their required dose of nicotine.

Because of how they are made, smokers tend to inhale roughly the same amount of tar and nicotine from “low tar” cigarettes as they do from regular cigarettes. Smoking “low tar” cigarettes therefore does not reduce your risk of smoking-related disease.

The only way to reduce your risk of death and disease from smoking is to quit.

Corrective Statement on Youth Smoking

The vast majority of smokers begin smoking in middle or high school. Over seventy-five percent of smokers smoke their first cigarette before the age of 18. Most teenage smokers have the same symptoms of nicotine addiction as adult smokers, and want to quit smoking. The marketing of cigarettes is one of the reasons that adolescents and teenagers try smoking and become addicted to smoking.

Corrective Statement on the Effect of Marketing on Smoking Behavior

Cigarette marketing influences the smoking behavior of both young people and adults. Cigarette marketing is one of the reasons young people start and continue smoking. Among adults, cigarette marketing can encourage smokers to switch to “low tar” or “light” cigarettes, but “light” cigarettes are just as harmful to your health as regular, higher tar cigarettes. Cigarette marketing can also encourage smokers concerned about the health effects of smoking to continue smoking, rather than quitting smoking entirely.