

November 16, 2004

The Honorable Mark W. Everson
Commissioner, Internal Revenue Service (N:C)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

**Re: The Center for Consumer Freedom, EIN 26-0006579,
formerly known as The Guest Choice Network, EIN 52-2170218**

Dear Commissioner Everson:

Citizens for Responsibility and Ethics in Washington respectfully requests an immediate Internal Revenue Service investigation into multiple and continuing activities on the part of The Center for Consumer Freedom (“CCF”), a District of Columbia nonprofit corporation exempt from taxation pursuant to Internal Revenue Code (“Code”) §501(c)(3), which require revocation of its tax-exempt status and the imposition of appropriate taxes and penalties, along with such additional proceedings as the IRS may deem appropriate.

As set forth below, CCF has:

- a. engaged in prohibited electioneering by openly opposing the presidential and congressional candidacies of Dennis Kucinich;
- b. made substantial, suspect payments constituting prohibited private inurement (and excess benefit compensation) to its founder, director, president, and executive director Richard Berman, and his wholly-owned for-profit entity, Berman & Co., Inc. When aggregated with other payments by other alleged exempt organizations controlled by Berman, these payments total nearly \$7 million and seventy-two percent (72%) of the exempt organizations’ total expenses since 1997; and
- c. continuously engaged in substantial non-exempt activities, as detailed herein.

We believe that this request is particularly timely and relevant to the IRS’ current aggressive initiative to scrutinize exempt organization transactions, especially excessive executive compensation and lucrative contracts between exempt organizations and insiders and/or companies operated or controlled by those insiders, as announced in your June 22, 2004, testimony before the U.S. Senate Committee on Finance and in the IRS’ August 10, 2004, announcement of the initiative. We thank you in advance for your consideration.

I. CCF has Repeatedly Opposed the Presidential and Congressional Candidacies of Dennis Kucinich Contrary to the Code’s Electioneering Prohibition.

As demonstrated by the following examples, CCF blatantly and repeatedly opposed the candidacies of Dennis Kucinich for both President of the United States and for the 10th Congressional District of Ohio in editorials posted to its Internet Web site, www.consumerfreedom.com, and likely distributed to media outlets around the U.S.

A. “Presidential Candidate Leading Opponent of Biotech,” February 18, 2003.¹

The title of this editorial demonstrates that it was directed against Mr. Kucinich in his capacity as a presidential candidate. It then derisively identifies Mr. Kucinich not as a Democrat from Ohio (D-OH) as is the standard practice, but, rather, as “(D-Greenpeace),” thereby attempting to malign him by suggesting he is beholden to and/or represents the interests solely of Greenpeace, the well-known environmental protection organization. In describing Mr. Kucinich’s background, CCF then quotes only from derogatory press accounts which variously describe him as “brutal,” “vain,” a “yappy little demagog [sic],” and “an obnoxious little twerp.” This exclusive focus on negative – in some cases, viciously negative – accounts of Mr. Kucinich can only be interpreted as strident opposition to his candidacy. To make its opposition all the more evident, in the final sentence of the second paragraph, CCF then asks rhetorically and scornfully, “Is this a guy you’d want as commander-in-chief?”

After then criticizing Mr. Kucinich’s positions on genetically enhanced foods, CCF derisively states: “It seems possible that Kucinich has been consuming ‘a weird commercial potion’ of one kind or another. That’s as good an explanation as any for this Luddite’s ravings.” The Luddite reference is to the early 19th century group of English workmen who attempted to prevent the use of labor-saving machinery by destroying it. It is synonymous with the adjective Luddism, meaning half-witted, according to *Webster’s Third New Unabridged International Dictionary*. The only reasonable interpretation of these statements and the editorial as a whole is that it was published in clear opposition to Mr. Kucinich’s presidential candidacy in violation of Code §501(c)(3).

B. “The Madness Of King Dennis,” March 11, 2003.²

In this purported “update” on Mr. Kucinich, CCF again begins with the sarcastic and derogatory affiliation reference of “(D-Greenpeace),” rather than the accurate (D-OH). CCF then identifies Mr. Kucinich as “the nutty Presidential candidate,” a statement clearly in opposition to his candidacy. After derisively discussing selective negative quotes by Mr. Kucinich, and providing an obviously slanted view of some of Mr. Kucinich’s purported advisors, CCF states:

The nation's policy on genetically enhanced foods is, in part, in the hands of a guy whose advisors talk to trees and explore 'multi-incarnational' dimensions. Perhaps the worst of it is that Kucinich claims to represent regular people. 'I started in the ward clubs of Cleveland, and I don't forget that. My politics come from the neighborhoods of the city.' The same city, we might add, that went bankrupt during his tenure as mayor. **Perhaps the Ohians [sic] from his district should show some 'starlit magic' by sending this wacko looking for a new job next November.**

The underlined statement is obviously and unmistakably a statement in opposition to his candidacy for re-election to Congress for the 10th District of Ohio, which, of course, is consistent with the entire article which is a clear statement in opposition to his presidential candidacy. All of this is a flagrant violation of the anti-electioneering prohibition of Code §501(c)(3).

C. "Agricultural Stardust in the White House?," July 14, 2003.³

Continuing its opposition to Mr. Kucinich's candidacies, CCF then published this editorial, which begins by telling the reader that the article is directed against "Presidential candidate Dennis Kucinich (D-Greenpeace) ..." While editorializing against Mr. Kucinich, CCF again repeats the Luddite, or half-wit, insult by stating: "But some of Kucinich's proposals go where few Luddites have gone before ..." After reviewing three of Mr. Kucinich's purported proposals in an obviously slanted and derogatory fashion, CCF concludes by stating:

We can only guess that Kucinich decided to sponsor this legislation after concluding (in his words): "[W]hen you see spiritual principles form the basis of active citizenship, you are reminded once again of the merging of stardust and spirit. There is creativity. There is magic. There is alchemy."

When taken together with the sarcastic title, "Agricultural Stardust in the White House?", and in context with the entire editorial, CCF's unmistakable purpose is to oppose Mr. Kucinich's presidential candidacy, in violation of Code §501(c)(3).

D. "Our Week In Review," July 18, 2003.⁴

A regular feature of CCF's Web site, www.consumerfreedom.com, is a section entitled "Our Week In Review," which contains links to editorials published by CCF during the preceding week. On July 18, 2003, CCF attempted to draw further attention to its July 14, 2003, editorial, "Agricultural Stardust in the White House?," by stating that if visitors had read its Daily Headlines for that week "[y]ou've read about nutty presidential hopeful Dennis Kucinich's stealth campaign against biotech crops." This derogatory statement, standing alone, and in the context of the referenced editorial to which it is linked, again clearly demonstrate CCF's active involvement in opposition to Mr. Kucinich's presidential candidacy in violation of Code §501(c)(3).

E. The Code clearly and strictly prohibits electioneering.

In order to qualify for tax exemption under Code §501(c)(3), an organization must not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office. Treas. Reg. §1.501(c)(3)-1(c)(3)(i) provides that an “action” organization, defined in Treas. Reg. §1.501(c)(3)-1(c)(3)(iii), is not an organization described in Code §501(c)(3).

Treas. Reg. §1.501(c)(3)-1(c)(3)(iii) provides that an organization is an “action” organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term, “candidate for public office,” means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office is national, state, or local.

Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements on behalf of or in opposition to such a candidate.

Unlike lobbying restrictions, the statutory prohibition against electioneering is *absolute*. In *United States v. Dykema*, 666 F.2d 1096, 1101 (7th Cir. 1981), cert. denied, 456 U.S. 983 (1982), the Seventh Circuit stated: “It should be noted that exemption is lost . . . by participation in any political campaign on behalf of any candidate for public office. It need not form a substantial part of the organization’s activities.”

The Second Circuit agreed with this position when it held that an organization did not qualify as a Code §501(c)(3) organization because it rated judicial candidates as a very minor part of its total activities. *Association of the Bar of the City of New York v. Commissioner*, 858 F.2d 876 (2d Cir. 1988), cert. denied, 490 U.S. 1030 (1989). The court rejected the organization’s contention that the substantiality requirement from the lobbying activity limitations be applied to the political campaign activity restriction. Citing *United States v. Naftalin*, 441 U.S. 768, 773 (1979), the court stated: “The short answer [to this argument] is that Congress did not write the statute that way.” *Id.* at 881. The court noted that the Code §501(c)(3) prohibition against participation or intervention in political campaigns was added some twenty years after the statutory restriction on lobbying. Therefore, the court concluded: “Had Congress intended the added exception to apply only to those organizations that devote a substantial part of their activity to participation in political campaigns, it easily could have said so. It did not.” *Id.* at 881. Furthermore, the court noted, both houses of Congress, in their Committee Reports on the Tax Reform Act of 1969, explicitly differentiated the scope of the two proscriptions: “[A]lthough the present provisions of Code §501(c)(3) permit some degree of influencing legislation by a Code §501(c)(3) organization, it provides that no degree of support for an individual’s candidacy is permitted.” *Id.* at 881, citing H.R. 91-413, 91st Cong., 1st Sess.

32 (1969), 1969-3 C.B. 200, 221; S. Rep. No. 91-552, 91st Cong., 1st Sess. 47 (1969), 1969-3 C.B. 423, 454.

Intervention or participation in a political campaign is to be determined from all of the facts and circumstances of a case. Rev. Rul. 78-248, 1978-1 C.B. 154. In *Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849 (10th Cir. 1972), the exemption of a Code §501(c)(3) organization was revoked when it used its publications and broadcasts *to attack some candidates and support others* even though it did not formally endorse specific candidates.

The foregoing examples of CCF's prohibited electioneering require the immediate revocation of its exempt status in accordance with *Branch Ministries, et al. v. Rosotti*, 211 F.3d 137 (D.C. Cir. 2000), affirming 40 F.Supp.2d 15 (D.D.C. 1999). CCF's editorials against Mr. Kucinich's candidacies are indistinguishable from the Church at Pierce Creek's newspaper advertisements against then-governor Bill Clinton's presidential candidacy that warned in their headlines, "Christians Beware" and asserted that Mr. Clinton's positions concerning abortion, homosexuality, and the distribution of condoms to teenagers in schools violated Biblical precepts. These advertisements rightly required revocation of the Church's tax-exempt status. CCF's editorials against Mr. Kucinich's candidacy require the same result.

It is possible, and perhaps likely, that CCF has made other written or oral statements against the candidacies of Mr. Kucinich and others and we encourage the IRS to examine all other CCF writings and statements for further illegal electioneering conduct.

II. CCF Has Provided Private Inurement and Excess Benefits to Richard Berman, Who is Its Founder and President, and to Berman's Wholly-Owned For-Profit Lobbying and Public Relations Firm, Berman & Co., Inc. ("BCI").

A. The insidious relationship between Richard Berman, Berman & Co., Inc., The Guest Choice Network, and CCF.

Richard Berman ("Berman") is the president and sole owner of a for-profit lobbying and public relations firm in Washington, D.C. known as Berman & Co., Inc. ("BCI") which serves the interests of the tobacco, alcohol, and chain restaurant industries. Berman is an employee of BCI. BCI's office is currently located at 1775 Pennsylvania Avenue, N.W., Suite 1200, Washington, D.C. 20006.

In March 1999, Berman incorporated The Guest Choice Network ("GCN"), a Washington, D.C. nonprofit corporation.⁵ According to GCN's IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, GCN purportedly "educates the public about threats to freedom in the hospitality and entertainment industries."⁶ The Form 1023 also provides that "[a]ll activities of [GCN] are undertaken by employees of [BCI], which is contracted to

manage GCN’s activities.”⁷ In identifying “Related Organizations,” GCN’s Form 1023 further admits that “GCN was incorporated by, and is currently led and managed by, employees of [BCI]. The activities now conducted by [GCN] were formerly conducted by [BCI].”⁸

GCN obtained tax-exempt status in September 2000.⁹ and GCN had **zero employees** during 1999-2001.¹⁰ Berman dissolved GCN in December 2001.¹¹ Berman was one of the original directors of GCN and served as a director and as GCN’s president and executive director throughout its operations.

CCF is the successor to GCN. Upon dissolution of GCN in 2001, Berman founded CCF and informed GCN constituents that “The Guest Choice Network is now the Center for Consumer Freedom—at ConsumerFreedom.com.”¹² Since its founding, Berman has served as a director and as the president and executive director of CCF. Like GCN, CCF reports zero employees since its founding.¹³ The operations of both GCN and CCF were and are conducted from the exact same suite containing the BCI offices.¹⁴ Berman alone has signatory power over CCF funds, *i.e.*, he is the sole person authorized to sign checks.¹⁵

For purposes of private inurement analysis, (i) vis-à-vis CCF and GCN, both Berman and BCI are “insiders” under Code §501(c)(3); (ii) neither Berman nor BCI is an intended beneficiary of CCF’s or GCN’s alleged exempt activities; and, therefore, (iii) no part of CCF’s or GCN’s income should inure to the benefit of Berman or BCI. However, as demonstrated in the following section, GCN, CCF, and other related exempt organizations controlled by Berman have violated the private inurement prohibition by paying enormous sums to BCI over the years. This private inurement requires the revocation of CCF’s tax-exempt status, the imposition of fines and penalties against CCF, and an investigation into the other exempt organizations under Berman’s control.

B. CCF’s and The Guest Choice Network’s extensive payments to Berman and BCI.

Throughout their respective histories, GCN and CCF have paid large sums to BCI ostensibly for what are cryptically described as “management services,” including “research, communications and general and administrative services.”¹⁶ The payments to BCI between only 2000-2002 total \$1,791,582 and the payments to Berman (and his family members) total \$116,250, for a grand total of payments to “private individuals” totaling \$1,907,832, as set forth in the following table:

<u>Year</u>	<u>Entity</u>	<u>Payments to BCI</u>	<u>Payments to Berman</u>
2000	GCN	\$ 312,709 ¹⁷	\$ 34,750 ¹⁸
2001	GCN	\$ 191,479 ¹⁹	\$ 16,675 ²⁰

2002	CCF	<u>\$1,287,394²¹</u>	<u>\$ 64,825²²</u>
Totals		\$1,791,582	\$ 116,250

In 2000, the total payments to BCI and Berman in the amount of \$347,459 represented sixty-nine percent (69%) of GCN's total annual expenditures.²³

In 2001, the total payments to BCI and Berman in the amount of \$208,154 represented ninety-six percent (96%) of GCN's total annual expenditures.²⁴

In 2002, the total payments to BCI and Berman in the amount of \$1,352,219 represented sixty-nine percent (69%) of CCF's total annual expenditures.²⁵

Based upon these figures, it is clear that GCN and CCF provided private inurement to Berman and BCI and that GCN and CCF were established and served as mere conduits through which BCI and Berman channeled nearly \$2 million in tax-exempt contributions (\$1,791,582 + \$116,250 = \$1,907,832) in order to conduct their for-profit, wholly-owned lobbying and public relations consulting business.

C. The IRS was already concerned about the insider transactions between CCF and BCI when CCF sought exempt status.

In a letter to CCF dated April 2, 2002, the IRS requested more information in considering CCF's exemption application, including, *inter alia*, a copy of CCF's agreement with BCI, a detailed explanation how CCF would decide the fee rate, and an explanation of why BCI's management was necessary to achieving CCF's exempt purpose.²⁶ In its reply, CCF provided a copy of its contract with BCI²⁷ and attempted to justify the arrangement by claiming that BCI was needed to manage CCF "because of the great knowledge and resources available within [BCI] ... about the issues that CCF deals with on a daily basis."²⁸ In essence, therefore, Berman, as president, executive director, and a director of CCF, certified that his wholly-owned company, BCI, was vital to the operations of the charity he controlled. CCF then contended that "[i]t would be cost-prohibitive for CCF to employ these individuals directly."²⁹

However, in direct contradiction to this assertion, the contract specifies and CCF admits that the hourly rate paid by CCF for the services of BCI employees is:

calculated by adding the number of hours worked by individual [BCI] employees on CCF activities and multiplying that total by each employees' [sic] respective billing rates. Each employee's billing rate is determined by dividing their annual gross salary by 52 weeks per year and then dividing that figure again by 40 hours per week. **This hourly salary rate is then multiplied by a factor of 3** for each employee to obtain the respective billing rates per employee. Billing rates include an appropriate share of office overhead expense such as rent, computer,

equipment and maintenance contracts, utilities, repairs and maintenance in addition to salary, payroll taxes, insurance, benefits **and profit**.³⁰

This rate calculation appears to follow the well-known “rule of 3’s” in determining hourly rates for professional services in which one third of the rate covers the salary and benefits of the employees providing the service, one third covers overhead related to that employee and office operations, and the remaining one third constitutes profit to BCI. It defies reason for CCF to suggest that it is more expensive to hire employees to whom it need not pay a profit margin rather than hire BCI for the same services and pay at least one-third more for those very same services in the form of profits to BCI. Moreover, this is an exclusive contract, with BCI acknowledging that “during the term of this agreement [CCF] will not look to any other party to perform these services.”³¹ The contract is signed by Berman on behalf of both BCI and CCF.³²

Upon receiving the contract, and based upon continuing concerns about the arrangement between CCF and BCI, the IRS, in a letter dated May 9, 2002, required CCF’s board of directors to execute a resolution stating:

We agree to take an active part in the decision making as directors. As a board we will, as appropriate, approve contracts, agreements for services and budgets. We are aware of the intermediate sanctions that can be imposed by the Internal Revenue Service on us as individuals if we approve transactions with insiders which result in excessive economic benefit to those insiders.³³

Giving lip service to the IRS, CCF’s board passed a Unanimous Consent Resolution containing the required language, but also resolving to pay Berman’s son, David Berman, \$100 per day for contracted “investigative research projects.”³⁴ Despite the obvious conflict of interest inherent in the decision to hire his son as a contractor, Berman did not recuse himself from that consideration as evidenced by his signature on the resolution.³⁵

The IRS letter of May 9 also asked CCF to:

Please explain procedures you will have, and documentation you will maintain, to approve compensation to, and any transactions with, board members, officers or their relatives to ensure compensation is reasonable and any transactions would be at fair market value. You must keep sufficient documentation to show proper approval of, and to support, any such transactions or individuals who approve the transaction could be subject to intermediate sanctions if the transaction resulted in excessive economic benefit to the insider.³⁶

The May 9 letter also required CCF to explain how the value of the contract with BCI was determined to be reasonable.³⁷

In its response, CCF acknowledged that BCI “is under contract for management services,” but then admitted that **“[w]e currently have no minutes approving this**

compensation arrangement, but plan to submit it to the full Board of Directors immediately for written approval.³⁸ Moreover, it appears that CCF did not seek competitive bids from other potential service providers before contracting with Berman's wholly-owned BCI. Rather, CCF admits that **“[w]e determined that the amount to be paid under the contract is fair market value based upon our advisement from an independent certified public accounting firm of the proper billing rate equation commonly used in practice.”**³⁹ In other words, CCF agreed to pay BCI an hourly rate that was more expensive than if it hired its own employees for the services provided not because it was a *rate* determined by any arm's-length bid process, but rather, simply because their accountant told them that the *equation or formula* used to calculate the hourly rate (the rule of 3's) was standard in the industry.

CCF then gave additional lip service to the procedures it allegedly intended to follow going forward by pledging “to establish procedures” in which the disinterested members of the board of directors would obtain and rely on “appropriate data as to comparability” and “adequately document its decisions,” including the terms of insider transactions, the identities of those board members who voted on the transaction and those that recused themselves, and the comparability data obtained and relied on, including a description of how it was obtained.⁴⁰ In response to a May 9, 2002 letter from the IRS requesting information regarding conflicts of interest, CCF disclosed its financial relationship with Berman & Company and with David Berman, son of Richard Berman, but CCF failed to disclose its relationships with the other board members and entities with whom it has financial relationships.

In fact, it appears that at least four of the five CCF board members (including Berman) have potential conflicts of interest relating to BCI. Berman's conflict as the sole owner of BCI is obvious. John Doyle is conflicted because, as the Communications Director of CCF, he is an employee of Berman as CCF's president and executive director, thus calling into question Doyle's independent judgment. Jacob Dweck is also a member of the board of directors of the Employment Policy Institute, another purported nonprofit of which Berman is the president, executive director and a director. As described below, EPI, like CCF, has no employees and contracts with BCI for all of its services. It defies credulity to suggest that Dweck is independent in these circumstances. Finally, Allison Whitesides is a legislative affairs representative for the National Restaurant Association, an industry trade group that likely contracts with BCI for consulting or government relations services, and that derives direct benefit from the activities carried out by BCI on behalf of CCF, as described in detail below.

In the face of their representations acknowledging the penalties for private inurement, their apparent conflicts of interest, and contrary to any standard of reasonableness, **CCF paid BCI \$1,287,394 in 2002, as set forth above, pursuant to a contract:**

- **signed by Berman for both CCF and BCI;**
- **ratified by the CCF board of directors after its execution;**

- **without any competitive bid process; and**
- **paying for-profit hourly rates that were likely at least one-third higher than the cost would have been to CCF if it had hired employees to perform the same “management services.”**

These are the classic indicia of an insider transaction resulting in prohibited private inurement. The extent of the same private inurement to BCI and Berman for 2003 is presently unknown since CCF thus far has failed to file its Form 990 for that year, having requested a filing extension until November 14, 2004.

D. Berman and BCI also received prohibited private inurement from the Employment Policies Institute, another of their nonprofit front groups.

Berman is also the founder, director, president and executive director of the Employment Policies Institute (“EPI”), an ostensible §501(c)(3) organization which supposedly has and for its charitable purpose provides educational and research services “studying public policy issues surrounding employment growth,” particularly “issues that affect entry-level employment.”⁴¹ EPI currently has no employees and it had only one reported employee from 1997-2001. In addition, EPI is located in BCI’s office suite, which is the identical office from which Berman and BCI operate GCN and CCF. As with GCN and CCF, Berman appears to have used EPI as a conduit to funnel tax-exempt contributions to himself and his for-profit wholly-owned company, BCI. The same pattern and practice is present.

During the period 1997-2002, EPI paid BCI and Berman the incomprehensible total of \$4,893,490, an average of \$815,581 per year, as set forth in the following table.⁴²

<u>Year</u>	<u>Entity</u>	<u>Payments to BCI</u>	<u>Payments to Berman</u>
1997	EPI	\$ 459,058	\$ 163,967
1998	EPI	\$ 847,469	\$ 163,967
1999	EPI	\$ 508,173	\$ 163,026
2000	EPI	\$ 717,812	\$ 165,766
2001	EPI	\$ 988,692	\$
2002	EPI	\$ <u>715,560</u>	\$ _____
Totals		\$4,236,764	\$ 656,726

The identical payments to Berman in 1997 and 1998 were reported as compensation for an average of only eight (8) hours of work per week.⁴³ Based on a fifty-week year, the payments of \$163,967 equal an hourly rate of \$409.92, or an annual salary equivalent of \$819,835.⁴⁴

Similarly, the payments to Berman in 1999 and 2000 were reported as compensation for an average of only twenty-eight (28) hours of work per week.⁴⁵ Based on a fifty-week year, the 1999 payment of \$163,026 equals the hourly rate of \$116.45, or an annual salary equivalent of \$233,127. The 2000 payment of \$165,766 equals an hourly rate of \$118.40, or an annual salary equivalent of \$237,045.⁴⁶

In 1997, the total payments to BCI and Berman in the amount of \$623,025 represented eighty-one percent (81%) of EPI's total annual expenditures.⁴⁷

In 1998, the total payments to BCI and Berman in the amount of \$1,011,436 represented eighty-two percent (82%) of EPI's total annual expenditures.⁴⁸

In 1999, the total payments to BCI and Berman in the amount of \$671,199 represented sixty-two percent (62%) of EPI's total annual expenditures.⁴⁹

In 2000, the total payments to BCI and Berman in the amount of \$883,578 represented seventy-two percent (72%) of EPI's total annual expenditures.⁵⁰

In 2001, the total payments to BCI in the amount of \$988,692 represented sixty-eight percent (68%) of EPI's total annual expenditures.⁵¹

In 2002, the total payments to BCI in the amount of \$715,560 represented seventy-three percent (73%) of EPI's total annual expenditures.⁵²

When combined, the payments to Berman and BCI by GCN, CCF, and EPI from 1997-2002 total \$6,801,322, or seventy-two percent (72%) of the \$9,505,384 combined annual expenditures of those supposedly tax-exempt organizations.

These payments and the incestuous relationship between Berman, BCI, GCN, CCF, and EPI also strongly suggest that these players were not engaged in the requisite truly arm's-length transactions in concocting these exorbitant payment schemes in further violation of the private inurement prohibition. We respectfully suggest that the facts and circumstances surrounding the negotiations (if any), contracts (if any), and other arrangements by which Berman and his wholly-owned BCI received these payments from these and possibly other allegedly tax-exempt organizations which he founded and controls will disclose additional evidence of private inurement.

E. The private inurement prohibition.

Pursuant to Code §501(c)(3), CCF may be exempt from federal income tax only so long as “no part of [its] net earnings . . . inures to the benefit of any private shareholder or individual.” The term “net earnings” is not interpreted literally, and any unjust enrichment, whether from gross or net earnings, can constitute inurement. *Harding Hospital, Inc. v. United States*, 505 F.2d 1068, 1072 (6th Cir. 1974); *People of God Community v. Commissioner*, 75 T.C. 127, 133 (1980). The terms “private shareholder or individual” refer to “persons who have a personal and private interest in the payor organization.” *People of God Community*, 75 T.C. at 133; Treas. Reg. §1.501(a)-1(c). Moreover, Treas. Reg. §1.501(c)(3)-1(d)(1)(ii) provides that an organization must “establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, . . . or persons controlled, directly or indirectly, by such private interests.” The term “private” is also used in this context to distinguish private individuals from “the general public, the supposed beneficiary of . . . an institution devoted exclusively to public betterment.” *Kemper Military School v. Crutchley*, 274 F.125, 127 (W.D. Mo. 1921).

The question of inurement is factual, and CCF bears the burden of proving beyond doubt that its exemption should not be revoked. Treas. Reg. §1.501(c)(3)-1(d)(1)(ii); *Church of Scientology of California v. Commissioner*, 823 F.2d 1310, 1317 (9th Cir. 1987), cert. denied, 486 U.S. 1015 (1988), citing *Church by Mail, Inc. v. Commissioner*, 765 F.2d 1387, 1391 (9th Cir. 1985). This burden is especially onerous “in situations where there is a great potential for abuse created by one individual’s control of the [organization].” CCF “must come forward with candid disclosure of the facts” regarding all relevant aspects of this inquiry. *Church of Scientology*, 823 F.2d at 1317, citing *Bubbling Well Church of Universal Love v. Commissioner*, 670 F.2d 104, 105 (9th Cir. 1981). Doubts concerning the relevant facts must be resolved in favor of revocation. *Church of Scientology*, 823 F.2d at 1317, citing *Harding Hospital*, 505 F.2d at 1071.

The Ninth Circuit upheld the denial of tax-exempt status to a church where the two evangelists who ran it also owned the advertising agency that provided the church’s printing and mailing services and the evangelists’ salaries paid by the church and the agency were found to be excessive. *Church by Mail*, 765 F.2d at 1393. The court refused to confine its analysis to the church’s income and considered all the agency’s payments to the evangelists and members of their families, concluding that the church was “operated for the substantial non-exempt purpose of providing a market for [the for-profit company’s] services” and that it had failed to carry its burden of proving otherwise. *Id.* at 1391-93.

In *est of Hawaii v. Commissioner*, 71 T.C. 1067 (1979), aff’d., 647 F.2d 170 (9th Cir. 1981), the Tax Court and the Ninth Circuit affirmed the IRS’ denial of tax-exempt status to *est of Hawaii*, an organization formed to conduct training programs developed by for-profit corporation EST, Inc., for fees, from which *est* paid a franchise fee to EST,

Inc. est argued that the franchise payments were necessary expenses and that it was entirely independent of EST, Inc., but the Tax Court found that under such circumstances, “it cannot be said that petitioner has made payments to a corporation with which it had no connection,” and that since the existence of training franchises like est was essential to EST, Inc.’s generation of income, est was itself engaged in commercial activity for EST, Inc.’s benefit. *Id.* at 1080.

Both est and Church by Mail argued, to no avail, that their dealings with the for-profit entities were for the provision of ordinary and necessary services and should not be considered private inurement. However, the IRS and the courts must look at the whole situation, and “the critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the [nonprofit].” *Church by Mail*, 765 F.2d at 1392; *est of Hawaii*, 71 T.C. at 1080-81; *Presbyterian and Reformed Publishing Co. v. Commissioner*, 743 F.2d 148, 155 (3rd Cir. 1984) (courts must look to all objective factors to discern a corporate actor’s intent); *United States v. Dykema*, 666 F.2d 1096, 1100 (7th Cir. 1981), cert. denied, 456 US. 983 (1982) (“it is necessary and proper for the IRS to survey all the activities of the organization” to determine whether a non-exempt purpose is furthered).

Other cases in which economic benefits to insiders constituted inurement include *Hall v. Commissioner*, 729 F.2d 632, 634 (9th Cir. 1984) (affirming denial of tax-exempt status to a church because its major purpose was to funnel rental allowances to the individuals who controlled it), and *Anclote Psychiatric Center, Inc. v. Commissioner*, 76 T.C.M. (CCH) 175 (1998) (upholding the IRS’ revocation of the organization’s tax-exempt status because the organization sold its hospital for less than fair market value to the for-profit corporation formed and wholly owned by board members of the organization).

Inurement can result from excessive salaries, excessive rents, and the distribution of various sorts of benefits. *See ex.*, *Presbyterian and Reformed Publishing Co.*, 743 F.2d 148; *Church of Scientology*, 823 F.2d at 1316, *citing Bubbling Well*, 670 F.2d at 105 (holding that the church “supplied no evidence showing that the payments to its controlling members were reasonable”). In addition to excessive salaries, inurement can result from receipt of less than fair market value in sales or exchanges of property, *Sonora Community Hospital v. Commissioner*, 46 T.C. 519 (1966); *Anclote Psychiatric Center*, 76 T.C.M. (CCH) 175 (1998); paying ten percent of an organizations’ gross income to its founder, *Founding Church of Scientology v. United States*, 412 F.2d 1197 (Ct. Cl. 1969), cert. denied 397 U.S. 1009 (1970); and/or furnishing reports and surveys to members, *General Contractors’ Ass’n of Milwaukee v. United States*, 202 F.2d 633 (7th Cir. 1953).

Courts and the IRS look to the potential for “unfettered control” as evidence of abuse and emphasize the importance of arm’s-length negotiations in questions of inurement. Even in the absence of evidence of abuse, “unaccounted for diversions of a charitable

organization's resources by one who has complete and unfettered control can constitute inurement." *Church of Scientology*, 823 F.2d at 13, 16-17 (noting that "excessive compensation and potential for abuse, even absent a showing of actual abuse, will constitute inurement"), citing *Parker v. Commissioner*, 365 F.2d 792, 799 (8th Cir. 1966), cert. denied, 385 U.S. 1026 (1967) (holding that where founder had "complete and unfettered control," Commissioner could assume that unexplained withdrawals from exempt organization inured to founder); *Bubbling Well Church*, 670 F.2d at 105 (noting that potential for abuse is created by private individuals' control of a tax-exempt organization).

Private inurement will also be found in the absence of truly arm's-length negotiations of resulting contracts. See, *United Cancer Council, Inc. v. Commissioner*, 165 F.3d 1173, 1176 (7th Cir. 1999); Rev. Rul. 69-383, 1969-2 C.B. 113.

The foregoing payments to Berman and BCI by GCN, CCF, and EPI totaling nearly \$7 million between 1997-2002 clearly constitute private inurement in violation of Code §501(c)(3) and requires revocation of CCF's and EPI's tax-exempt status.

F. The payments to Berman and BCI also constitute improper "excess benefit transactions" that should be subjected to excise taxes mandated by the Code.

Code §4958 imposes excise taxes of up to two hundred percent (200%) on "excess benefit transactions" between §501(c)(3) tax-exempt organizations and "disqualified persons." An "excess benefit transaction" is a transaction in which "an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit." *Id.* Treas. Reg. §4958-4(b)(1)(ii) defines "reasonable compensation" as the fair market value of economic benefits received for the performance of services, that is, "the amount that would ordinarily be paid for like services by like enterprises (whether taxable or tax-exempt) under like circumstances."

A "disqualified person" is any person in a position to exercise substantial influence over the organization, or an entity controlled by such a person. *Id.* According to Treas. Reg. §53.4958-3(c), an organization's chief executive officer or other governing official is a person with "substantial influence" over an organization. Berman, as a director, and as the president and executive director of GCN, CCF, and EPI, is clearly a disqualified person regarding those entities.

Code §4958 defines "control" of an entity as having more than thirty-five percent (35%) voting power in the entity. Thus, BCI, which is wholly-owned by Berman, is also a disqualified person under §4958 in relation to GCN, CCF, and EPI. Therefore, the foregoing payments by those entities to Berman and BCI require investigation with strictest scrutiny to determine exactly what services allegedly were provided by Berman

and BCI in exchange for the exorbitant payments, and whether the entities received fair market value for those services.

On their face, and at the very least, the payments to Berman by EPI during 1997 and 1998, for an average of only eight (8) hours of work per week at an annual salary rate of \$819,835 are grossly excessive by any reasonable interpretation. In addition, the cryptic statement that BCI “performs management services” including “research, communications and general administrative services” as set forth in each organization’s Form 990, requires intensive scrutiny to determine exactly what services were provided and how much was paid by each entity for each such service.

III. CCF’s Tax-Exempt Status Should Be Revoked Because It Does Not Engage In Charitable Activities.

It is apparent from previously secret tobacco company documents, whistleblower-released contribution records, and CCF’s own statements that both CCF and GCN were formed and have been consistently operated for the benefit of the commercial interests of tobacco, alcohol, and chain restaurant clients of BCI, not for the general public’s benefit. In essence, these purportedly nonprofit entities are a mere extension of BCI that conduct grassroots lobbying, public relations, and advertising services directed against the charitable and social welfare organizations that oppose the policies and practices of those industries. Such activity is not remotely charitable and requires revocation of CCF’s exempt status.

A. The secret Philip Morris USA documents and the active CCF connection.

As part of the global tobacco litigation settlement, tobacco companies have disgorged previously secret, internal documents relating to numerous aspects of their operations. Philip Morris USA is one such company whose documents can be found on the Web site created for this purpose at www.pmdocs.com. Among the documents disclosed by Philip Morris is correspondence from Berman on behalf of BCI, and internal Philip Morris memoranda that conclusively demonstrate that CCF and GCN were created and operated expressly for the purpose of trying to protect the interests of the tobacco, alcohol, and chain restaurant industries, all within the guise of “consumer freedom.”⁵³ The documents also disclose their attempts to keep the entire operation secret so that its true purpose could not be discovered.

1. The true purpose behind the creation and operation of The Guest Choice Network/CCF.

Berman launched GCN in 1995 as a program of BCI, nearly four years before GCN was incorporated. In a series of letters and meetings, Berman pitched his program to Philip Morris by disclosing its true for-profit industry protection mission in this way:

The concept is to unite the restaurant and hospitality industries in a campaign to defend their consumers and marketing programs against attacks from anti-smoking, anti-drinking, anti-meat, etc. activists ... A multi-industry Advisory Council will help shape our message and direct our efforts as the program moves forward. In addition, a strong media component will simultaneously spread our message and attract **new membership throughout the trade** and (limited) general media. The last and perhaps most vital component of the *Guest Choice Network* will be the grassroots network comprised of **local coalitions**.⁵⁴

In a May 24, 1996, letter to Philip Morris, Berman again clearly disclosed the secret, true purpose of GCN/CCF in nearly identical terms, stating:

[T]he Guest Choice Network ... was formed to work with the restaurant and hospitality industries in order to defend their consumer and marketing programs against attacks from anti-smoking, anti-drinking, anti-meat, etc. activists⁵⁵

Berman further described GCN in a letter to Philip Morris dated September 5, 1995, as the replacement for the tobacco industry's existing "Accommodation Project" ("AP") marketing program that camouflaged its tobacco-peddling self-interest in the guise of defending "smokers rights":

In general, we suggest a new test approach that operates alongside the AP....

The program would obviously carry a different name which we suggest should be "Guest Choice" (GC). While "Accommodation" is perceived to accept smoking, "Guest Choice" defends consumer rights

GC has another big advantage over the AP. **It can be sold to industry operators** as being potentially broader than smoking. Food and drink issues are continually being toyed with by government. GC therefore becomes easily understood as another "Government Choice vs Guest Choice" paradigm that taps into existing strongly held beliefs.

The information flow that the AP provides through newsletters is good but should be improved on in many ways that are **sensitive to the industry**. With a better communication tool, the eventual goal of successful grass roots activism can be leveraged much more successfully. In the end, our observations and analysis have led us to see the AP as a pro-smoking program

GC can be established as a program but more properly positioned as a consumer philosophy. As one operator reflected to me, he could comfortably say, "Proudly known as an establishment that protects 'Guest Choice'." He was not so inclined on "Accommodation."⁵⁶

An internal Philip Morris memo dated December 15, 1995, which recommends Philip Morris' funding of GCN, further reinforces GCN's/CCF's true purpose, stating "[t]he goal of *The Guest Choice Network* is to educate members of the hospitality industry on all issues that affect their business The funds will be used to form alliances, educate, and to solicit other sponsors in the program."⁵⁷ The hand-written notes of one of the memo's recipients disclose Philip Morris' desire to keep its involvement secret:

- We don't want reportable activities, therefore we can't direct him / can't tell him what to do – he needs to drive actions himself.
- No control on our end
- Minimize written corresp.⁵⁸

In another internal memo dated October 19, 1995, Philip Morris further described GCN's tobacco-industry benefiting purpose:

He approached our challenge of gaining participation in The Accommodation Program from a different angle, and arrived at a somewhat different solution which he believes would be **more appropriate for the industry leader mentality**. His proposed solution would broaden the focus of the "smoking issue," and expand into the bigger picture of over-regulation.⁵⁹

Among the information provided by Berman was a summary of the planned GCN "Newsletter Features, Protecting 'choices' (60% to 70% smoking focus)" which would include "Issues Research," and "Investigative 'Anti' Research,"⁶⁰ and his planned "Network Structure" that included:

Philip Morris
Berman and Company
Multi-Industry Advisory Council
National Network Membership
Local Grassroots
"Swat Team" Leaders.⁶¹

Berman provided Philip Morris with occasional updated lists of GCN "Supporters" that read like a who's-who of tobacco, alcohol and chain restaurant interests, and many of whom are also BCI clients (identified with an asterisk), including: Philip Morris U.S.A., National Smokers Alliance, Anheuser-Busch, Inc., Ale House, Brinker International, Inc.*, Cracker Barrel Old Country Store, Inc.*, Friday's Hospitality Worldwide, Inc.*, Hooters of America, Inc.*, IHOP Corporation*, Luby's Cafeterias, Inc.*, Marie Callender Pie Shops, Inc.*, Morton's Restaurant Group, Inc.*, Outback Steakhouse, Inc.*, Perkins Family Restaurants, L.P.*, Shoney's, Inc.*, UNO Restaurant Corporation*, and VICORP Restaurants, Inc.*⁶²

Berman also supplied Philip Morris with updated lists of GCN's "Advisory Panel," all of which identify the exclusively private-industry interests represented by GCN/CCF.⁶³

On December 21, 1995, Philip Morris pledged \$600,000 to GCN in furtherance of its secret mission:

"to be used to form alliances, solicit other sponsors in this program and build the base of knowledge you need to be successful. We are particularly interested in your efforts to educate the members of the hospitality industry on all issues that affect their business. We hope that the participation by us and others will form the foundation for a more informed hospitality industry."⁶⁴

In fact, between December 1995 and November 1998, Philip Morris contributed \$2.5 million to this clandestine industry marketing program misleadingly named GCN/CCF.⁶⁵

Finally, the secret documents contain Berman's timeline for GCN/CCF activities, including the plan in 1999 to "[s]hift to public 'choice' group."⁶⁶ This document even more clearly spells out the plan to put GCN and CCF forward as a nonprofit façade behind which the for-profit industries would attempt to hide their anti-activist advertising and attack campaigns, all contrary to any reasonable interpretation of charitable, tax-exempt activities.

B. The identity of CCF's contributors further disclose its true private, for-profit purpose.

According to the Center for Media and Democracy, a whistleblower provided that organization with the list of tobacco, alcohol, restaurant and other industry contributors to GCN and CCF prior to 2001 and for 2002.⁶⁷ We believe that a thorough investigation of the sources of GCN's/CCF's revenue will disclose the nearly exclusive funding by industry forces for whom CCF does their bidding.

For example, in 2002, CCF received more than \$400,000 of its total contributions from twenty-six (26) corporate interests.⁶⁸

In 2001, GCN received total contributions of \$152,900, \$150,000 of which came from a single unnamed donor.⁶⁹

In 2000, GCN received total contributions of \$514,321, \$492,500 of which came from only seven (7) unnamed donors.⁷⁰

In 1999, GCN received total contributions of \$111,300, \$105,000 of which came from only six (6) unnamed donors.⁷¹

The identity of these donors will likely further demonstrate that GCN and CCF were mere shells for the for-profit tobacco and hospitality industries and were not organized for the public benefit.

C. CCF's own statements admit its true private business purpose.

In an effort to maintain its front as an organization purportedly protecting “consumer freedom,” CCF identifies itself on its Web site as “a nonprofit coalition of restaurants, food companies, and consumers working together to promote personal responsibility and protect consumer choices.” However, it continues to show its true colors in other written materials.

For example, in testimony before a U.S. House of Representatives Subcommittee in February 2002, Berman appeared for CCF “[o]n behalf of American restaurant operators and food producers.”⁷² No mention was made of consumers during his testimony directed against the activities of environmental and animal protection advocates critical of his and CCF's client companies.

Likewise, in a job advertisement posted on November 27, 2002, CCF purportedly sought to hire a research assistant. However, the job description identified CCF not as a nonprofit consumer protection research organization, but rather as an “[a]ggressive DC research and communications firm” and offered compensation “includ[ing a] profit sharing program.”⁷³ Since CCF does not have and never had any employees, it is obvious that BCI is the aggressive DC firm described and put forth as the alter ego of CCF in the job advertisement. Indeed, the advertisement must relate to BCI since, as a nonprofit organization, CCF has no profits to share in the advertised profit sharing program. We are confident that a thorough IRS investigation of CCF and BCI correspondence will disclose numerous similar examples showing CCF's true sham or front status for BCI clients and the for-profit industry interests they are seeking to protect from public criticism in violation of CCF's tax-exempt status.

Perhaps CCF's most telling admission of its for-profit purpose is found in its 2002 Form 990 Information Return. In response to question 52 on Schedule A, which requests information about CCF's affiliation with other organizations, **CCF responds that it is affiliated with the §501(c)(6) trade association called Consumer Freedom Coalition (“CFC”) and that “The [CCF] directs CFC's mission at the public level.”**⁷⁴ It is axiomatic that a trade association is not a §501(c)(3) organization organized for the general public benefit because, by definition, a trade association exists to benefit the interests of a particular industry. **Therefore, CCF admits that its purpose and function is to direct the non-charitable operations of a trade association in violation of Code §501(c)(3) and for which it has not sought and is not entitled to tax-exempt status.**

An even cursory, and certainly an in-depth, analysis of CCF's publications, issue advertisement, editorials, and public statements makes clear that CCF is not concerned with the public good as required of a §501(c)(3) organization, but rather with attacking

the charitable and social welfare organizations who oppose the policies of the tobacco, alcohol and chain restaurant industries. Those activities are not remotely charitable and require revocation of CCF's exempt status.

D. CCF's operations are not exempt purpose activities.

To qualify for tax-exempt status as a charitable organization, Code §501(c)(3) requires that an organization must be "organized and operated exclusively" for an exempt purpose. See also 26 C.F.R. §1.501(c)(3)-1(a). The United States Supreme Court has interpreted this exclusivity requirement to mean: "the presence of a single [non-exempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly [exempt] purposes." See, *Better Business Bureau v. United States*, 326 U.S. 279 (1945). The IRS has stated that Code §501(c)(3) mandates that "all the resources of the organization [are] to be applied to the pursuit of one or more of the exempt purposes therein specified. The presence of a single non-exempt purpose, if substantial in nature, will preclude exemption." Rev. Rul. 77-366, 1977-2 C.B. 192. Similarly, 26 C.F.R. §1.501(c)(3)-1(c)(1) states:

Operational test--(1) Primary activities. An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

See also Rev. Rul. 72-369, 1972-2 C.B. 245. Thus, a tax-exempt organization must operate primarily for its exempt purpose to remain exempt. See *Orange County Agricultural Society v. Comm.*, 55 T.C.M. (C.C.H.) 1602 (1988), aff'd, 893 F.2d 647 (2d Cir. 1990). As demonstrated above, CCF's activities are not remotely charitable.

IV. Conclusion.

Based upon the foregoing analysis, we respectfully request that the IRS revoke the tax-exempt status of the Center for Consumer Freedom for engaging in prohibited electioneering, for providing prohibited private inurement and excess benefits to its founder, director, president and executive director, Richard Berman, and to his wholly-owned for-profit lobbying and public relations firm, Berman & Co., Inc., and because it does not engage in charitable activities. We further request the imposition of all applicable fines and penalties and the pursuit of all other available civil and criminal remedies against those involved in the foregoing transactions.

Thank you for your consideration and please contact us if we can provide additional information or be of further assistance.

Sincerely,

Melanie Sloan
Executive Director
Citizens for Responsibility and
Ethics in Washington

Attachments

cc: The Honorable Charles Grassley (w/ attachments)
Chairman, Committee on Finance
United States Senate

The Honorable Max Baucus (w/ attachments)
Ranking Member, Committee on Finance
United States Senate

Steven T. Miller (w/ attachments)
Commissioner, TE/GE Division
Internal Revenue Service

Sarah Hall Ingram (w/o attachments)
Deputy Commissioner, TE/GE Division
Internal Revenue Service

Martha Sullivan (w/o attachments)
Director, Exempt Organizations Division
Internal Revenue Service

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 3.

⁴ Exhibit 4.

⁵ A copy of GCN's Articles of Incorporation are attached hereto as Exhibit 5. On January 9, 2001, GCN changed its name to the Guest Choice Network Foundation. For ease of reference, the GCN designation is used throughout this letter.

⁶ A copy of GCN's Form 1023 is attached hereto as Exhibit 6. See Section III of this letter for evidence that GCN and CCF were founded and have been operated not for charitable purposes, but to protect the private, for-profit interests of the tobacco, alcohol and chain restaurant industries.

⁷ See Exhibit 6, p. 26.

⁸ See Exhibit 6, p. 26.

⁹ A copy of the GCN IRS determination letter dated September 20, 2000, is attached hereto as Exhibit 7.

¹⁰ See line 90b of GCN's IRS 990 for the years 1999-2001, copies of which are attached hereto as Exhibits 8-10.

¹¹ Copies of the GCN Articles of Dissolution and Certificate of Dissolution are attached as Exhibit 11.

¹² See the notice attached hereto as Exhibit 12.

¹³ See line 90b of CCF's IRS Form 990 for the year 2002, a copy of which is attached hereto as Exhibit 13.

¹⁴ See Exhibit 8, Schedule A, Part III, Line 2c, Statement 3; Exhibit 9, Schedule A, Part III, Line 2c, Statement 6; Exhibit 10, Schedule A, Part III, Line 2c, Statement 7; and Exhibit 13, Schedule A, Part III, Line 2c, Statement 12.

¹⁵ Copies of CCF's 2003 Virginia Form 102 and its 2002 Unified Registration Statement for Charitable Organizations (URS) are attached hereto as Exhibit 14. See 2003 Form 102, p. 2, item 15(a). See 2002 URS Addenda, p. 2, item 15.

¹⁶ See Exhibit 8, Schedule A, Part III, Line 2c, Statement 3; Exhibit 9, Part V, Statement 1; Exhibit 10, Schedule A, Part III, Line 2c, Statement 7; and Exhibit 13, Part V, Statement 1.

¹⁷ This figure includes \$56,632 in alleged, unidentified expense reimbursements. GCN 2000 Form 990, Schedule A, Part III, Line 2d, Statement 6. Exhibit 9.

¹⁸ This figure includes \$4,000 paid to Berman's son, David C. Berman, for "research and writing services." GCN 2000 Form 990, Schedule A, Part III, Line 2d, Statement 6. Exhibit 9.

¹⁹ This figure includes \$22,553 in alleged, unidentified expense reimbursements. GCN 2001 Form 990, Schedule A, Part III, Line 2d, Statement 7. Exhibit 10.

²⁰ This figure includes \$2,917 in alleged, unidentified expense reimbursements to Berman's wife, Dixie Berman, and \$1,100 to Berman's son, David C. Berman, for "research and writing services." GCN 2001 Form 990, Schedule A, Part III, Line 2d, Statement 7. Exhibit 10.

²¹ This figure includes \$242,841 in alleged, unidentified expense reimbursements, and \$83,951 in unexplained payments for *BCI employee benefits and* deferred compensation. CCF 2002 Form 990, Part V, p. 4. Exhibit 13.

²² This figure represents alleged, unidentified expense reimbursements. CCF 2002 Form 990, Schedule A, Part III, Line 2d, Statement 12. Exhibit 13.

²³ Exhibit 9, p.1, line 17.

²⁴ Exhibit 10, p. 1, line 17.

²⁵ Exhibit 13, p. 1, line 17.

²⁶ Exhibit 15, p. 3, paragraph 8.

²⁷ Exhibit 16.

²⁸ Exhibit 17, p. 3, paragraph 8.

²⁹ Id.

³⁰ Exhibit 16, p. 2, paragraph 2 (emphasis added).

³¹ Id., p. 1, Recitals.

³² Id., p. 5.

³³ Exhibit 18, p. 2, paragraph 1.

³⁴ Exhibit 19.

³⁵ Id.

³⁶ Exhibit 18, p. 2, paragraph 2.

³⁷ Id., p. 2, paragraph 3.

³⁸ Exhibit 20, p. 1, paragraph 3 (emphasis added).

³⁹ Id.

⁴⁰ Id., p. 1, paragraph 2.

⁴¹ See www.epionline.org/aboutepi.cfm, which is attached hereto as Exhibit 21.

⁴² These figures are taken from EPI's annual IRS Forms 990 for the referenced years, copies of which are attached hereto as Exhibits 22-27.

⁴³ Exhibits 22 and 23, Part V, p. 4.

⁴⁴ The fifty-week year assumes two weeks of vacation leave. Eight hours per week, multiplied by 50 weeks equals 400 hours per year. The sum paid to Berman of \$163,967 divided by 400 hours equals an hourly rate of \$409.92. A full-time work week consists of forty hours, or five times the number of hours per week that Berman allegedly worked for \$163,967. Therefore, \$163,967 multiplied by five equals the annual salary equivalent of \$819,835 for both 1997 and 1998.

⁴⁵ Exhibits 24 and 25, Part V, p. 4.

⁴⁶ These calculations were made using the same methodology as set forth in Endnote 44. Twenty-eight hours per week, multiplied by 50 weeks equals 1,400 hours per year. The sum paid to Berman of \$163,026 divided by 1,400 equals an hourly rate of \$116.45. A full-time forty-hour work week is 1.43 times the number of hours per week that Berman allegedly worked for \$163,026. Therefore, \$163,026 multiplied by 1.43 equals the annual salary equivalent of \$233,127 for 1999. The sum paid to Berman of \$165,766 divided by 1,400 equals an hourly rate of \$118.40. A full-time forty-hour work week is 1.43 times the number of hours per week that Berman allegedly worked for \$165,766. Therefore, \$165,766 multiplied by 1.43 equals the annual salary equivalent of \$237,045 for 2000.

⁴⁷ Exhibit 22, p.1, line 17.

⁴⁸ Exhibit 23, p.1, line 17.

⁴⁹ Exhibit 24, p.1, line 17.

⁵⁰ Exhibit 25, p.1, line 17.

⁵¹ Exhibit 26, p. 1, line 17.

⁵² Exhibit 27, p. 1, line 17.

⁵³ The relevant Philip Morris documents are attached hereto as Exhibit 28. Individual documents will be referred to by the stamped reference number found on each document.

⁵⁴ Exhibit 28, Document 2072395962, Letter from Berman to Barbara Trach, Philip Morris USA, December 11, 1995. Bold emphasis added.

⁵⁵ Exhibit 28, Document 2072395886. Bold emphasis added.

⁵⁶ Exhibit 28, Document 2072148834-2072148836. Bold emphasis added.

⁵⁷ Exhibit 28, Document 2072148761. Bold emphasis added.

⁵⁸ Id.

⁵⁹ Exhibit 28, Document 2072395887. Bold emphasis added.

⁶⁰ Exhibit 28, Document 2047824021 (also contains a stamp for 2047824022).

⁶¹ Exhibit 28, Document 2047824013.

⁶² Exhibit 28, Compare Document 2072395995, Berman and Company Client Companies, with Guest Choice Network Supporters and Members, Documents 2072396001, 2072395898, 2072395956, 2072395964, 2072395975, and 2072395974.

⁶³ See Exhibit 21, Documents 2072395899, 2072395957, 2070742827 (also bearing 2063532345), and 2072396002.

⁶⁴ Exhibit 28, Document 2072395963. Bold emphasis added.

⁶⁵ Exhibit 28, Documents 2072395963, 2072395967-71, and 2072396007.

⁶⁶ Exhibit 28, Document 2072396003.

⁶⁷ Those lists are attached hereto as Exhibit 29, p. 4.

⁶⁸ Exhibit 29, p. 6.

⁶⁹ Exhibit 10, Schedule B, Part 1.

⁷⁰ Exhibit 9, Schedule B, Part 1.

⁷¹ Exhibit 8, Schedule B, Part 1.

⁷² A copy of his testimony is attached hereto as Exhibit 30.

⁷³ A copy of the advertisement is attached hereto as Exhibit 31.

⁷⁴ Exhibit 13, p. 6.