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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO

12
13 PEOPLE OF THE STATE OF CALIFORNIA
ex rel. BILL LOCKYER, ATTORNEY GENERAL
14 OF THE STATE OF CALIFORNIA,

15 Plaintiff,

16 v.

17 R.J. REYNOLDS TOBACCO COMPANY, a New
Jersey corporation,

18 Defendant.

General Civil

Case No.:

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22 **COMPLAINT FOR
ENFORCEMENT OF THE
TOBACCO MASTER
SETTLEMENT AGREEMENT**

(Outdoor Ads)

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28 The People of the State of California, by and through Bill Lockyer, Attorney
General of the State of California, allege on information and belief:

INTRODUCTION

1. In November 1998, the People of the State of California through the
Attorney General (“the People”) and the major U.S. tobacco companies, including defendant R.J.
Reynolds Tobacco Company (“Reynolds”), stipulated to the entry of a Consent Decree and Final
Judgment (“Consent Decree”) and signed the Master Settlement Agreement (“MSA”) settling the
State’s landmark litigation against the tobacco companies, People of the State of California, et al.

1 750,000 fans who visit Sears Point Raceway annually. This advertising is also visible to the
2 millions of people viewing television coverage of events at the track.

3 5. Since 1989, Sears Point Raceway has featured “Wednesday Night Drags” to
4 provide young people and others the opportunity to race on the track, not the street. An average
5 of three hundred (300) vehicles participate each week. In 2001, the 32 weeks of drag racing runs
6 from March 3 through November 17. One racing category is “High School Students.” The top
7 two racers in the High School division qualify to race in the “Top the Cops” program in which
8 high school students, in a variety of suped-up cars, line up alongside police officers in patrol cars
9 to race down a drag strip.

10 6. For more than five years, Sears Point Raceway has conducted a High School
11 Safe Driver program. Four hundred (400) students from eight San Francisco Bay Area high
12 schools are invited to Sears Point Raceway for the four-day program.

13 7. Sears Point Raceway encourages children to attend its events by offering free
14 admission or discounted ticket prices for children. For example, during the 2001 season, events
15 which children 12 and under may attend for free include the Wednesday Night Drags, AMA
16 Superbike Challenge, NHRA Festival of Fire, AMA Vintage Motorcycle Days West, Chrysler-
17 Jeep Wine Country Classic Vintage Car Races, and American Le Mans Series. Tickets for
18 children 12 and under are significantly discounted for the Dodge/Save Mart 350 NASCAR
19 Winston Cup and NHRA Fram Autolite Nationals.

20 8. Pomona Raceway in Los Angeles County, California (“Pomona Raceway”)
21 is part of the Los Angeles County Fair and Exposition Complex (“Fairplex”), which hosts more
22 than three hundred (300) events each year, bringing in nearly 3 million visitors. In addition to
23 auto racing, the Fairplax is the site of numerous other family events such as the Los Angeles
24 County Fair, the Family Expo, Easter Sunday Services, America’s Family Pet Expo, and the
25 Police and Family Security Expo. Pomona Raceway seats 40,000 people and is home to
26 nationally televised events.

27 9. Pomona Raceway hosts NHRA Junior Drag Racing events in which all race
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1 drivers are as young as 8 years old and no older than 17 years old. In 2001, NHRA Junior Drag
2 Racing points races are scheduled for weekends in March through July at Pomona Raceway.

3 10. Children are encouraged to attend Pomona Raceway events through the
4 offering of free admission or discounted ticket prices. For example, during the 2000 and 2001
5 seasons, tickets for the NHRA Winston Drag Racing AutoZone Winternationals were offered at
6 reduced prices for children ages 6-12 years and further reduced prices or free for children 5 years
7 and younger. Admission to the NHRA Junior Drag Races is free to all spectators.

8 11. NHRA markets its events to children and families. Children of all ages may
9 join the NHRA Junior Drag Racing League. All drivers in this league are ages 8 to 17 years old.
10 NHRA's Youth and Education Services division offers programs for students in kindergarten
11 through college. NHRA-licensed merchandise includes items such as baby bibs, teddy bears,
12 plastic dragster cars, and clothing in children's sizes.

13 **PARTIES**

14 12. Bill Lockyer is the duly elected Attorney General of the State of California.
15 Pursuant to section VII(c) of the MSA, the Attorney General is authorized to bring actions in this
16 Court on behalf of the People of the State of California to enforce, and to obtain relief for
17 violations of, the MSA.

18 13. Defendant Reynolds is a manufacturer of Tobacco Products and a party to
19 the MSA. Reynolds promotes and distributes its Tobacco Products, including Winston brand
20 cigarettes, in the State of California.

21 **JURISDICTION AND VENUE**

22 14. This Court has retained exclusive jurisdiction for the purposes of
23 implementing and enforcing the MSA. (Consent Decree, § VI.A; MSA, § VII(a).)

24 15. The People are authorized to bring an action in this Court to enforce the
25 terms of the MSA. (MSA, § VII(c)(1).)

26 **RELEVANT MASTER SETTLEMENT AGREEMENT PROVISIONS**

27 16. Section III(d) of the MSA states that "Each Participating Manufacturer
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1 shall discontinue Outdoor Advertising . . . advertising Tobacco Products within the Settling States
2 as set forth herein.”

3 17. Section II(ii) of the MSA defines “Outdoor Advertising” by stating, in
4 relevant part:

5 “‘Outdoor Advertising’ means (1) billboards, (2) signs and placards in
6 arenas, stadiums, shopping malls and Video Game Arcades (whether any of the
7 foregoing are open air or enclosed) (but not including any such sign or placard
8 located in an Adult-Only Facility), and (3) any other advertisements placed (A)
9 outdoors, or (B) on the inside surface of a window facing outward.”

10 18. The MSA allows a limited exception to the section III(d) ban on Outdoor
11 Advertising. Section III(c)(3)(E)(ii) of the MSA states:

12 “(E) nothing contained in the provisions of subsection III(d) shall . . .
13 (ii) apply to Outdoor Advertising advertising the Brand Name Sponsorship, to the
14 extent that such Outdoor Advertising is placed at the site of a Brand Name
15 Sponsorship no more than 90 days before the start of the initial sponsored event, is
16 removed within 10 days after the end of the last sponsored event, and is not
17 prohibited by subsection (3)(A) above.”

18 **FACTUAL ALLEGATIONS**

19 19. Reynolds is a “Participating Manufacturer” as that term is defined in section
20 II(jj) of the MSA.

21 20. California is a “Settling State” as that term is defined in section II(qq) of the
22 MSA.

23 21. As part of its promotion of its Winston brand of cigarettes, Reynolds
24 sponsors the NASCAR Winston Cup Series, the NASCAR Winston West Series, and the NHRA
25 Winston Drag Racing Series.

26 **Sears Point Raceway**

27 22. The following is the schedule for the only NASCAR Winston Cup Series
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1 events at Sears Point Raceway during 1999, 2000, and 2001:

2 June 25-27, 1999

3 June 23-25, 2000

4 June 21-24, 2001

5 23. The following is the schedule for the only NHRA Winston Drag Racing
6 Series events at Sears Point Raceway during 1999, 2000, and 2001:

7 August 6-8, 1999

8 August 4-6, 2000

9 August 3-5, 2001

10 24. Beginning at a date unknown to the People, but possibly since the MSA was
11 executed in November 1998, and continuing to the present, Outdoor Advertising stating
12 “NASCAR Winston Cup Series” and “NHRA Winston Drag Racing Series” has been displayed at
13 Sears Point Raceway year-round.

14 25. The photographs attached as Exhibits A, B, and C hereto and incorporated
15 herein accurately depict Outdoor Advertising at Sears Point Raceway.

16 **Pomona Raceway**

17 26. The following is the schedule for the only NHRA Winston Drag Racing
18 Series events at Pomona Raceway during 1999, 2000, and 2001:

19 February 4-7 & August 6-8, 1999

20 February 3-6 & August 4-6, 2000

21 February 1-4 & July 5-7 & August 3-5, 2001

22 27. Beginning at a date unknown to the People, but possibly since the MSA was
23 executed in November 1998, and continuing to the present, Outdoor Advertising stating “NHRA
24 Winston Drag Racing Series” has been displayed at Pomona Raceway year-round.

25 28. The photographs attached as Exhibits D, E, and F hereto and incorporated
26 herein accurately depict Outdoor Advertising at Pomona Raceway.

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1 **Reynolds Controls the Outdoor Advertising**

2 29. Reynolds or its agents, employees, representatives, affiliates, or wholly-
3 owned subsidiaries, placed or caused to be placed the Winston sponsorship Outdoor Advertising
4 which is at Sears Point Raceway and Pomona Raceway.

5 30. Reynolds is the owner, directly or indirectly through its agents, employees,
6 representatives, wholly-owned subsidiaries, or affiliates (including, without limitation, GMB,
7 Inc.), of one or more federally registered trademarks of the word "Winston" in connection with
8 cigarettes.

9 31. Reynolds has used one or more of its Winston trademarks in commerce in
10 connection with the sale or marketing of cigarettes since at least 1952.

11 32. Reynolds is also the senior user and common law owner of the distinctive
12 red and white Winston trade dress for Winston brand cigarettes (the "Winston Trade Dress").

13 33. Reynolds is the owner of the federally registered trademarks "Winston Cup"
14 and "Winston Racing Series."

15 34. In Outdoor Advertising for its Brand Name Sponsorships, Reynolds
16 typically causes the Winston trademark to appear in the same color scheme and with the same
17 lettering that it uses in the Winston Trade Dress to promote Winston Brand cigarettes. Reynolds'
18 intent in doing so is to enhance recognition for its Winston brand cigarettes.

19 35. Reynolds owns the right to control the use and appearance in commerce of
20 all of its trademarks and of the Winston Trade Dress.

21 36. Reynolds owns the right to control specifically where and when its
22 trademarks and the Winston Trade Dress may appear in advertisements.

23 37. One or more of Reynolds' Winston trademarks and the Winston Trade Dress
24 appear on the Outdoor Advertising which is at Sears Point Raceway and Pomona Raceway year-
25 round.

26 38. The appearance of one or more of Reynolds' Winston trademarks and the
27 Winston Trade Dress on the Outdoor Advertising at Sears Point Raceway and Pomona Raceway

1 is expressly or implicitly authorized by Reynolds.

2 39. Alternatively, such appearance is unauthorized by Reynolds and therefore in
3 violation of trademark and trade dress rights that Reynolds owns or controls.

4 40. As owner of the Winston trademarks and the Winston Trade Dress,
5 Reynolds, its agents, employees, representatives, affiliates, and/or wholly-owned subsidiaries,
6 have the right to demand the removal or covering of Outdoor Advertising for its Winston-
7 sponsored events during times when the MSA does not authorize such Outdoor Advertising.

8 41. Reynolds, its agents, employees, representatives, affiliates or wholly-owned
9 subsidiaries have a contractual right to remove or modify, or require the removal or modification
10 of, Outdoor Advertising for Winston-sponsored events at Sears Point Raceway and Pomona
11 Raceway.

12 42. Sports Marketing Enterprises ("SME") is a unit within or wholly owned
13 subsidiary of Reynolds. Contracts between SME and Sears Point Raceway, and between SME
14 and Pomona Raceway, provide that SME has the right, at any time, to modify or require
15 modification of advertising on any and all signage or displays for Winston-sponsored events.

16 43. Section III(i) of the MSA requires Reynolds to "promptly take commercially
17 reasonable steps against" third-party activity involving use of any Brand Name "in a manner
18 prohibited by [the MSA] if done by [Reynolds] itself."

19 44. If the appearance at Sears Point Raceway and Pomona Raceway of
20 Winston-sponsorship Outdoor Advertising which the MSA prohibits is third-party activity,
21 Reynolds has breached section III(i) of the MSA by failing to take commercially reasonable steps
22 to prevent the appearance of such advertising.

23 **Settling States' Efforts to Resolve the Violations**

24 45. Representatives of the Settling States have tried to resolve with defendant
25 Reynolds the MSA violations alleged in this Complaint.

26 a. On August 17, 2000, the California Attorney General's Office wrote to
27 Reynolds concerning a number of large, prominent signs at California's Sears Point Raceway

1 Name Sponsorships.

2 46. On February 16, 2001, the Attorney General of California and the Attorneys
3 Generals of the other Settling States of Arizona, Connecticut, Guam, Hawaii, Iowa, Kansas,
4 Louisiana, Maine, Maryland, Michigan, New Mexico, New York, North Dakota, Ohio,
5 Oklahoma, Oregon, Pennsylvania, Utah, Vermont, and Washington gave Reynolds a 30-day
6 notice, pursuant to section VII(c)(2) of the MSA, of the intention of California and other states to
7 initiate proceedings concerning Reynolds' violations of the MSA's restrictions on Outdoor
8 Advertising ("Notice"). A copy of the Notice is Exhibit G to this Complaint and incorporated
9 herein.

10 47. Communications between Settling States and Reynolds since the sending of
11 the Notice have not resolved this matter.

12 **CAUSE OF ACTION**

13 48. The People reallege and incorporate paragraphs 1 through 47, inclusive, as
14 though fully set forth herein.

15 49. Reynolds has violated and continues to violate the MSA including, but not
16 limited to sections III(d) and/or III(i), by engaging in Outdoor Advertising at Sears Point
17 Raceway and Pomona Raceway for its Winston-sponsored series during times when the MSA
18 prohibits such Outdoor Advertising.

19 50. Section III(c)(3)(E)(ii) of the MSA does not authorize Reynolds to engage
20 in year-round Outdoor Advertising at Sears Point Raceway and Pomona Raceway for its
21 Winston-sponsored series.

22 51. As set forth above, despite repeated demands, Reynolds has refused to cease
23 and desist from engaging in year-round Outdoor Advertising for its Winston-sponsored series.

24 52. Unless compelled by this Court, Reynolds will continue to engage in
25 Outdoor Advertising at race tracks in California, which violates section III(d) of the MSA.

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27 **PRAYER FOR RELIEF**

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DATED: March 19, 2001

BILL LOCKYER
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By: _____
AMY HERTZ
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**California v. R.J. Reynolds Tobacco Complaint (Outdoor Ads)
Exhibit A**

**Sears Point Raceway
March 3, 2001**



**California v. R.J. Reynolds Tobacco Complaint (Outdoor Ads)
Exhibit B**

**Sears Point Raceway
March 3, 2001**



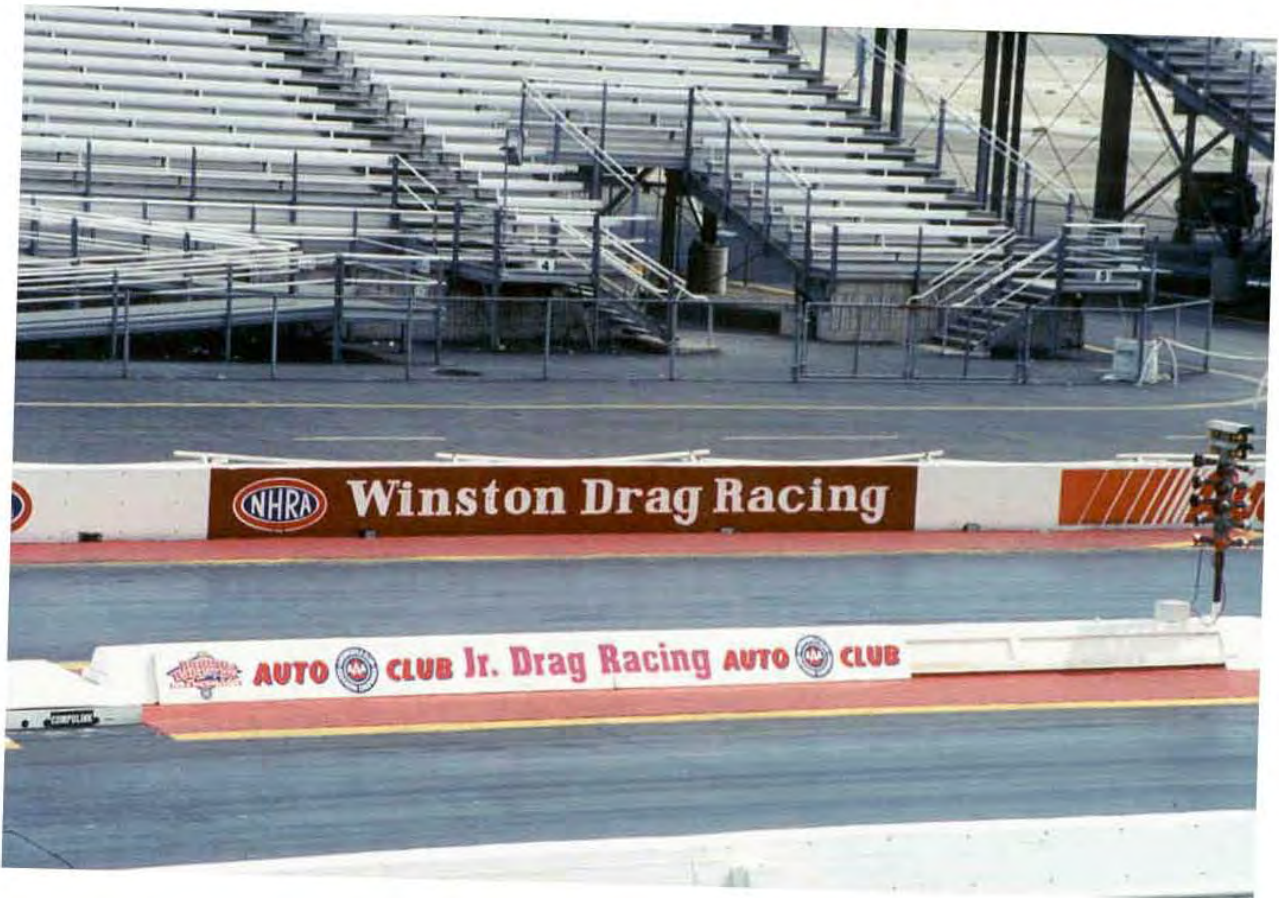
**California v. R.J. Reynolds Tobacco Complaint (Outdoor Ads)
Exhibit C**

**Sears Point Raceway
March 3, 2001**



**California v. R.J. Reynolds Tobacco Complaint (Outdoor Ads)
Exhibit D**

**Junior Drag Racing
Pomona Raceway
March 10, 2001**



**California v. R.J. Reynolds Tobacco Complaint (Outdoor Ads)
Exhibit E**

**Junior Drag Racing
Pomona Raceway
March 10, 2001**



**California v. R.J. Reynolds Tobacco Complaint (Outdoor Ads)
Exhibit F**

**Pomona Raceway
March 10, 2001**