Image: Superior Court of California - County of San Diego Superior Court of California - County of San Diego Superior Court of California - County of San Diego Superior Court of California - County of San Diego Superior Court of California - County of San Diego Case No. Gic 808195 Superior Court of the State of California, excel Bill Lockyer, an Individual, and DOES 1 Superior Court of Case No. Gic 808195 Superior Court of Case Not Report of Case Not Court of Case No. Gic 808195 Superior Case Not Report of Case Not Court of Case Not Court of Case Not Report of Case Not Re			
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over Defendants eSmokes and Kirschner.

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2 2. Pursuant to Business and Professions Code Section, 17203 and 17535, Defendant
3 Kirschner, except as provided in Paragraph 8, below, and Defendant Smokes, including its
4 officers, directors, and agents if at the time of the violation of this Final Judgment they are
5 employed by eSmokes, Inc., and all successors in interest and assignces of eSmokes, Inc. as
6 further provided in Paragraph 8, below, are hereby permanently enjoined and restrained from
7 directly or indirectly shipping cigarettes and other tobacco products sold in a non-face-to-face
8 manner into the state of California.

Without admitting any violations, pursuant to Business and Professions Code
Sections 17203 and 17535, defendants shall do the following:

(a) Within five (5) days of the signing of the Stipulated Final Judgment and
 Permanent Injunction ("Stipulated Final Judgment"), defendants shall permanently cease and
 desist from shipping tobacco products sold in non-face-to-face transactions to consumers located
 in the State of California and will exercise best efforts to ensure there is no inadvertent shipment;

(b) Within five (5) days of the signing of the Stipulated Final Judgment,
defendants shall place a statement, clearly and conspicuously, on each and every web site that
defendants own or operate in which defendants sell or offer to sell tobacco products in non-faceto-face transactions to California consumers, so that the system will reject any attempted order
where the shipping address is located in the State of California;

20 (c) Within five (5) days of the signing of the Stir ulated Final Judgment, 21 defendants shall configure each and every web site that defendants own or operate in which 22 defendants sell or offer to sell tobacco products in non-face-to-face transactions to California 23 consumers so that the system will reject any attempted orders where the shipping address input 24 by the consumer is located within the State of California. If a poter tial customer tries to place an 25 order for which the shipping address is located in the State of California, the web site will (1) 26 reject the order as indicated above and (2) immediately notify the consumer that defendants do 27not ship to California; and the order will not be processed.

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(d) In addition to the above, defendants agree to take other reasonable steps to

prevent non face-to-face sales of cigarettes and other tobacco products to persons located in
 California and to assure that shipments of cigarettes or other tobacco products are not shipped to
 an address in the State of California.

(e) Within five (5) days of the signing of the Stipulated Final Judgment,
defendants shall adopt written policies and procedures to prevent non-face-to-face sales of
cigarettes and other tobacco products to consumers in the State of California and that ensure that
their web sites do not ship cigarettes or other tobacco products into the State of California and
shall provide a copy of the policies and procedures to each employee with any responsibility in
the sale or shipment of cigarettes into the State of California;

(f) Within thirty (30) days of signing the Stipulated Final Judgment,
 defendants shall provide Laura Kaplan, attorney for the people, a copy of the written policies and
 procedures described in the preceding subparagraph and shall identify the steps taken to give
 effect to subparagraphs 3(a) through 3(e) inclusive;

4. (A) Defendant eSmokes, Inc. shall pay the People the sum of \$475,000, within
15 twenty (20) days from the date the Stipulation for Entry of Final Judgment is executed by all
parties and the Stipulated Final Judgment and Permanent Injunction is signed by the Court.

17 At the request of the People, and without Defendants admitting that the (B) 18 following allocation is appropriate or proper, of the total sum of \$475,000, \$285,000 shall be 19 allocated in the following manner: \$95,000 pursuant to the Unfair Competition Law (Business 20 and Professions Code Sections 17206 and 17536), \$95,000 pursuant to Business and Professions 21 Code Section 22963, and \$95,000 pursuant to Revenue and Taxation Code Section 30101.7(e) 22 without any acknowledgement of any violation of such statutes. The remaining \$190,000 shall 23 constitute reimbursement of the Attorney General's investigative costs and attorney fees. The 24 latter amount shall be deposited into the Attorney General's Public Rights Division Special Law 25 Enforcement Fund from which the Attorney General shall reimburs the National Association of Attorneys General any monies previously received or costs paid via grant support of this 26litigation, and any remaining funds shall be used for enforcement of Business & Professions 2728 Code Sections 17200, 17500 and 22963 and Revenue & Taxation Code Section 30101.7 or other

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tobacco-related laws and regulations. The Defendants do not admit any violation of the above
code sections or any law whatsoever.

5. The check required to be paid pursuant to paragraph 4 shall be made payable to:
"The California Department of Justice," and sent to the attention of I aura Kaplan, Deputy
Autorney General, Department of Justice, 1300 I Street, P.O. Box 944255, Sacramento, CA
94244-2550.

7 6. Within sixty (60) days of the signing of this Stipulated Final Judgment, defendant 8 eSmokes, Inc. shall file with the California Board of Equalization all invoices containing the 9 information identifying the person(s), the shipping address(s), ordering address(s), home 10address(s), quantity and type of cigarettes, the shipping dates, and the order date covering each 11 and every shipment of cigarettes made to California since January 1, 2000, pursuant to 15 U.S.C. 12 § 376 ("Jenkins Act reports"). The Jenkins Act reports should be sent to: California Board of 13 Equalization ("CBE"), Attention: Victor Day, Principal Compliance Supervisor, 450 N Street, 14 MIC 56, Sacramento, CA 94279-0056, or to any other address directed by the CBE, in writing. 15 7. In the event of a violation of this Stipulated Final Jucgment, defendants shall pay 16 as a penalty to the People five thousand dollars (\$5,000) for each violation. For purposes of this 17 Stipulated Final Judgment, a violation of the Stipulated Final Judgment shall occur if an order for 18 cigarettes or other tobacco products submitted to a business that defendants own or operate in 19 which defendants sell or offer to sell tobacco products in non-face-to-face transaction, results in the knowing delivery of cigarettes or other tobacco products to an address within the State of 2021 California or such delivery was the direct result of a failure by defendants to enforce and give 22 effect to the preventative procedures identified in and implemented pursuant to paragraph 3 23 above. The fact of such delivery shall constitute presumptive proof of a violation of this Final 24 Judgment and defendants shall have the burden of showing that the sale and delivery was 25 inadvertent. Each delivery shall constitute a separate violation. The following persons shall be deemed bound by this Stipulated Final Judgment 26 8.

and, as applicable, shall perform the following specific obligations under the Permanent
Injunction:

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(a) Defendant eSmokes, Inc. shall resolve to enter into the St pulation for Entry of Final
 Judgment, and the formal resolution shall be recorded in the minute book of the corporation and
 anserted into the corporate records of minutes and resolutions. The resolution shall include a
 conformed copy of the signed Stipulated Final Judgment so that any and all successors or
 assignees of the company will take their interest subject to this Stipulated Final Judgment.

(b) Further, in the event that eSmokes, Inc. changes its name the newly named entity
shall be deemed to have notice and shall be bound by the Stipulation for Entry of Final Judgment
and this Stipulated Final Judgment.

9 (c) In the event that eSmokes, Inc. or a successor in interest or assignee of eSmokes, Inc.,
0 or a successor by virtue of change of name, violates the Stipulation for Entry of Final Judgment
1 and/or the Stipulated Final Judgment, the directors of eSmokes which are directors at the time of
2 an alleged future violation are deemed to be on notice of the Stipulat on for Entry of Final
3 Judgment and the Stipulated Final Judgment.

(d) Defendant Kirschner is hereby permanently enjoined and restrained from directly or
indirectly shipping cigarettes and other tobacco products sold in a non-face-to-face manner into
the state of California unless the transaction is in full compliance with all State of California and
Federal statutes regulating these transactions.

18 9 The Court accepts that this Judgment is a compromise of disputed litigation and
acknowledges that by entry into the Judgment and Permanent Injunction no defendant admits
any liability obligation or wrongdoing of any kind.

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]	10. The Court retains jurisdiction for the purpose of enabling any party to this	
2	Judgment and Permanent Injunction to apply to the Court at any time for such further orders and	
3	directions as may be necessary and appropriate for the construction cr carrying out of this Final	
4	Judgment, for the modification or termination of any of its injunctive provisions, for the	
5	enforcement of any of its provisions, or for punishment of any violations of its provisions.	
6	JAN 0 3 2005	
7	Dated: Deventor2004	
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- 9	RICHARD E.L. STF AUSS	
10	Honorable Richard E.L. Strauss	
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name:People of the Sate of California v. eSmokes, Inc., et al.No.:San Diego County Superior Court, Case No.: GIC 808195

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar which member's direction this service is made. I am 18 years of age and older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On <u>December 30, 2004</u>, I served the attached, STIPULATION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at San Diego, addressed as follows:

Charles V. Berwanger Gordon & Rees, LLP 101 West Broadway, Suite 1600 San Diego, CA 92101 Attorneys for Defendants

Larry Davidson Gordon & Reese 4695 MacArthur Court Newport Beach, CA 92660 Attorneys for Defendants

James Marcus Vernon Attorney at Law P.O. Box 6474 Clearwater, FL 33758 Attorneys for Defendants

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on <u>December 30, 2004</u> at San Diego, California.

Sher McBrearty

Declarant

Signature

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