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10	SUPERIOR COURT OF CALIFORNIA
11	COUNTY OF SAN DIEGO
12	COUNT OF SAN DIEGO
13	THE PEOPLE OF THE STATE OF CALIFORNIA, Case No.
14	ex rel. BILL LOCKYER, ATTORNEY GENERAL OF THE STATE OF COMPLAINT FOR
15	CALIFORNIA, INJUNCTION, CIVIL PENALTIES, AND OTHER
16	Plaintiff, RELIEF (Bus. & Prof. Code, §§ 17200, 17500 and Rev. and Tax.
17	v. Code, § 30101.7(d))
18	LLP ENTERPRISES, Inc., a Virginia corporation, doing business as CIGOUTLET-THE TOBACCO
19	STORE, WWW.CIGOUTLET.COM and WWW.AFFORDABLECIGS.COM ADIB
20	MOGRABI, an individual, and DOES 1 through 15, inclusive,
21	Defendants.
22	
23	The People of the State of California, through Bill Lockyer, Attorney General of the State
24	of California, hereby allege on information and belief as follows:
25	INTRODUCTION
26	Youth smoking is a serious pediatric health problem in California and the rest of the
27	nation. More than 80% of regular smokers began smoking as children. Every day in the United
28	States more than 2,000 children begin smoking cigarettes, and one-third of those children will one
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day die from tobacco-related disease. It has been shown that the younger a person begins
smoking, the more likely it is that he or she will be unable to quit in later life and will suffer a
disease attributable to tobacco use. Recent studies indicate that youth demonstrate signs of
addiction after smoking only a few cigarettes. Exacerbating these problems, an estimated 690
million packs of cigarettes are sold illegally to children each year nationwide.

Defendants are cigarette sellers who advertise and sell cigarettes over the Internet to 6 7 California consumers and consumers in other states. Defendants state on one of their web sites 8 that purchasers must be 18 and on another that purchasers must be 21 to purchase and receive 9 deliver of cigarettes from defendants. However, defendants in fact facilitate and promote the 10 purchase of cigarettes by children because neither defendants' web site nor its delivery procedures require face-to-face delivery or otherwise adequate verification of age and identity of would-be 11 12 purchasers. The People have documented that defendants have sold cigarettes to children in 13 California from their web sites on 8 occasions. The People have informed defendants on several occasions that the People have documented such sales. Defendants have been similarly informed 14 15 by New York City on a different occasion. Notwithstanding the fact that they have been so notified, defendants have not taken adequate precautions to ensure that children cannot purchase 16 17 and receive delivery of cigarettes from their web site. Specifically, defendants fail or refuse to put 18 in place effective safeguards so as to prevent or seriously discourage further sales to minors. By 19 refusing to do so and completing sales of cigarettes to minors, defendants are encouraging and allowing children to purchase cigarettes from their web sites thus undermining the State's efforts 20 21 to reduce smoking by minors.

Defendants, in violation of state law, also fail or refuse to either pay taxes owed on cigarettes shipped into California or notify purchasers that they are responsible for taxes owed. In violation of federal law, defendants fail or refuse to report the shipments of cigarettes into the state, including the identity of the purchasers, to the California Board of Equalization ("BOE"), the entity responsible for collecting those taxes. Defendants induce consumers to purchase their cigarettes by representing or implying that defendants do not have to report shipments of /// cigarettes into California and the California consumers' obligation to the BOE are not required to
 pay taxes on cigarettes purchased over the Internet from defendants and shipped into California.

3 The People also bring this action pursuant to California's unfair competition statutes, to 4 protect the public from defendants' misleading, unlawful, unfair, and fraudulent business 5 practices. These practices include selling cigarettes to children, failing or refusing to institute adequate procedures and safeguards to ensure that children cannot buy cigarettes from their web 6 7 sites and that cigarettes cannot be delivered to children, failing or refusing to comply with federal 8 reporting requirements with respect to their Internet cigarette sales to California consumers, and 9 making deceptive or misleading statements concerning defendants' obligation to comply with 10 these federal reporting laws and consumers' obligation to pay California taxes on cigarettes 11 purchased from defendants over the Internet. Defendants' conduct also violates a statute, 12 effective January 1, 2003, enacted for the purpose of ensuring compliance with federal reporting 13 laws for cigarettes purchased over the Internet or by mail order.

14

PARTIES

1. 15 Bill Lockyer is the duly elected Attorney General of the State of California and is the chief law enforcement officer of the state (Cal. Const., art. 5 § 13.) He is authorized by 16 17 Business and Professions Code sections 17204 and 17206 to bring actions, in his official capacity, 18 to enforce the state's statutes regulating unfair competition. He is also authorized by Revenue 19 and Taxation Code section 30101.7, subdivision (e) to bring actions to facilitate the collection of 20 all applicable state surtaxes and sales or use taxes on cigarettes sold to California residents over 21 the Internet or by mail order. Additionally, he is authorized to assess civil penalties against any 22 entity violating Business and Professions Code section 22963 which, among other things, 23 prohibits both distribution of tobacco products directly or indirectly to persons under the age of 24 18 through common carriers, and delivery of tobacco products to an address other than the consumer's verified billing address. 25 26 2. Defendants, LLP ENTERPRISES, Inc., a Virginia corporation doing business as

27 CIGOUTLET-THE TOBACCO STORE, WWW.CIGOUTLET.COM and

28 WWW.AFFORDABLECIGS.COM (collectively referred to as "CigOutlet"), and ADIB

MOGRABI, an individual, are cigarette retailers who advertise and sell cigarettes over the
 Internet to California residents. Defendants receive Internet orders from California residents and
 ship the orders by common carrier to California.

3. CigOutlet is, and during the relevant time period was, a Virginia corporation with
its principal place of business located at 1303 Grumman Drive, Richmond, Virginia. CigOutlet
also owns or controls a retail cigarette outlet known as "CigOutlet-The Tobacco Store," located
in Richmond, Virginia. CigOutlet sells cigarettes over the Internet by operating web sites at
www.cigoutlet.com and www.affordablecigs.com through which cigarettes are advertised and
sold to California residents.

Defendant Adib Mograbi ("Mograbi") is and at all relevant times was, President
 and Director of LLP Enterprises, Inc. In such capacity, and as an individual, Mograbi controls,
 manages, supervises, and directs the operations and activities of LLP Enterprises, Inc.

5. The true names and capacities of the defendants sued herein under the fictitious
names of Does One through Fifteen, inclusive, are unknown to plaintiff who therefore sues
defendants by such fictitious names. Plaintiff will amend its complaint to show the true names of
such defendants when the same have been ascertained. Plaintiff is informed and believes and upon
such information and belief alleges, that each of the defendants designated herein as a DOE is
legally responsible in some manner for the events and happenings alleged in this complaint.

19

JURISDICTION AND VENUE

6. The violations of law alleged in this Complaint occurred in San Diego County and in other counties in California or occurred outside of California but were intended by defendants to influence prospective purchasers in California. Defendants purposefully and voluntarily directed their activities toward California consumers and purposefully availed themselves of the privilege of conducting business in California by both soliciting and transacting business in California. Defendants have intentionally targeted California and have sold cigarettes to consumers in San Diego and in other counties in the State of California.

- 27 ///
- 28 ///

FACTUAL ALLEGATIONS 1 2 Sales of cigarettes to minors 3 7. Pursuant to Penal Code section 308(a), every person, firm or corporation which knowingly or under circumstances in which it has knowledge, or should have grounds for 4 5 knowledge, sells cigarettes to persons under the age of 18 years is subject either to a misdemeanor criminal action or to a civil action punishable by a fine. 6 7 Defendants have knowledge or grounds for knowledge that they are selling 8. 8 cigarettes to children from its web sites. Defendants were notified in writing by Plaintiff's 9 attorney that since on or before August 2001, CigOutlet has sold cigarettes from its web sites to children in California on numerous occasions. CigOutlet does not have adequate procedures and 10 safeguards in place to ensure that minors cannot receive cigarettes purchased from its web sites. 11 12 9. The People, along with 39 other states, sent a letter to defendants on September 13 16, 2002, informing them that they had information documenting sales to minors from CigOutlet's web sites and asking defendants to immediately review their web site in light of the legal 14 requirements prohibiting the sales of cigarettes to minors. (A copy of this letter is attached as 15 Exhibit "A" and incorporated herein by reference.) Defendants did not respond to this letter, nor 16 17 did they change their procedures and practices to ensure that children cannot readily purchase 18 cigarettes from their web site. 19 10. The People sent another letter to defendants on January 23, 2003 informing them 20 that the California Attorney General had documented sales of cigarettes to minors from their web sites on seven occasions beginning in August 2001, and that the New York City Department of 21 Consumer Affairs had documented and notified CigOutlet that a minor placed an order for and 22 23 received delivery of cigarettes without being asked to provide independent age verification. (A copy of this letter is attached as Exhibit "B" and incorporated herein by reference.) The People 24 also requested that Defendants enter into a settlement agreement ("agreement") between 25 defendants and a significant number of concerned states. A copy of the proposed agreement 26 27 setting forth procedures to ensure that children could not purchase cigarettes from their web sites 28 ///

was included in the January 2003 letter. Although defendants received this letter, defendants did
 not respond in any way.

3 11. The People documented yet another sale made to a minor by defendants from one
4 of its web sites in February 2003.

5

Internet Cigarette Sales-Excise Tax Evasion

Pursuant to Revenue and Taxation Code section 30101.7(d), if an out-of-state
retailer does not collect and remit the tax to the State, the consumer purchasing the cigarettes is
ultimately liable for the excise tax. Because CigOutlet does not collect and remit any of the
applicable California taxes, California consumers who purchase cigarettes from CigOutlet are
responsible for paying these taxes directly to the State.

- 13. Pursuant to the Jenkins Act, 15 U.S.C. section 375 et seq. ("Jenkins Act"), 11 12 vendors who sell and ship cigarettes in interstate commerce other than to a licensed distributor 13 must register with the tobacco tax administrator of each state shipped to and, on a monthly basis, report (1) the name and address of the persons to whom cigarette shipments were made, (2) the 14 brands of cigarettes shipped, and (3) the quantities of cigarettes shipped. Reports must be filed no 15 16 later than the 10th day of each calendar month, reporting each and every cigarette shipment made 17 to the state during the previous calendar month. The seller's registration must list the seller's 18 name, trade name, and the address of all business locations.
- 19 14. The Board of Equalization ("BOE"), the California taxing entity responsible for
 20 collecting cigarette taxes, sends letters to out-of-state distributors, companies, or agencies selling
 21 cigarettes to California consumers when it learns that these entities have not reported shipments
 22 of cigarettes in compliance with the Jenkins Act. Such a letter is referred to as a "Jenkins Act"
 23 letter. If the BOE does not receive a response, it will routinely send a follow-up letter requesting
 24 compliance from the entities.

15. The BOE sent a Jenkins Act letter to CigOutlet on October 7, 1999 requesting that
the company report all its shipments of cigarettes to California consumers as required by the
Jenkins Act. (A copy of this letter is attached as Exhibit "C" and incorporated herein.)
///

16. Although CigOutlet filed a Jenkins Act report on August 1, 1999, CigOutlet has 1 2 failed or refused to file any reports with the BOE, since that time, of shipments of cigarettes to 3 California consumers as required by section 376 of the Jenkins Act. 17. Defendants represent or imply that they do not and will not comply with the 4 5 Jenkins Act. For example, defendants state on their web site that "We do not sell, share or divulge any customer information to anyone for any reason." 6 7 **Deceptive Advertising** 8 18. At all times relevant to this action, defendants were and are required by the Jenkins 9 Act to report shipments of cigarettes into California to the BOE so that the BOE can collect state taxes on those cigarettes. 10 19. Defendants misrepresent or imply through false and misleading statements on their 11 web sites that they do not have to comply with the Jenkins Act's reporting requirements. For 12 13 example, defendants state on their affordablecigs.com web site that "It is the responsibility of the buyer to ascertain and comply with any laws in regard to the purchase and use of any cigarette 14 products . . ." 15 16 20. To induce consumers to purchase cigarettes from their web sites, defendants do not inform prospective California purchasers of their obligation to pay California taxes on the 17 18 cigarettes they purchase from CigOutlet. Those taxes amount to \$0.87 per package of twenty 19 cigarettes or \$8.70 per carton. Virginia imposes one of the lowest excise taxes in the country -20 \$0.025 per pack or \$0.25 per carton. A California resident may purchase from CigOutlet located 21 in Virginia and pay a price that represents an apparent savings of \$8.45 per carton. 22 21. Further defendants represent or imply through their web sites that federal law 23 exempts California consumers from paying California taxes on cigarette products purchased for 24 personal consumption from an out-of-state retailer even though the cigarette products are shipped 25 into California. For example, defendants state on their web site that, "...federal legislation permits the purchase of cigarette products for personal consumption from out-of-state." 26 27 22 Defendants also falsely imply through statements on their web sites that California 28 consumers are not required to pay California taxes on the cigarettes they purchase from 7 Complaint for Injunction, Civil Penalties, and Other Relief

defendants' web sites. For example, defendants state that, "Transfer to the title of goods takes
 place in Virginia and Affordablecigs.com will charge sales tax if the order is being shipped to . . .
 Virginia".

4

23. Defendants' representations are false and misleading for the following reasons:

(a) Pursuant to Revenue and Tax Code sections 30008, 30009 and 30109,
California taxes are imposed and collected on the first distribution of untaxed cigarettes in the
state. This means that since Smokin4Less does not pay taxes on cigarettes purchased from its
web sites and shipped to consumers in California, the California consumer must pay all taxes
owed on the cigarettes;

(b) Federal law does not exempt California consumers from paying California
taxes on cigarettes purchased for personal consumption outside of the state but shipped into the
State; and

(c) Defendants' implication that California taxes need not be paid because
transfer of title to goods takes place in Virginia is erroneous and/or irrelevant because by law
consumers obligation to pay taxes on cigarettes purchased from defendants over the Internet is
based on the shipments of cigarettes into California, not the alleged location of the transaction.

17

Failure to Notify California Purchasers of Tax Obligations

18 24. Effective January 1, 2003, California Revenue and Taxation Code section 30101.7(d)
19 requires that a person may engage in non-face-to-face sales of cigarettes to California consumers
20 provided that either of the following conditions is met:

21 (1) All applicable California taxes on the cigarettes have been paid, or

22 (2) The seller includes, on the outside of the shipping container for any cigarettes shipped

23 to a resident in California from any source in the United States, an externally visible and easily

24 legible notice located on the same side of the shipped container as the address to which the

- 25 package is delivered as follows:
- 26 "IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU
 27 RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX
 28 COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS.

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1	YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES."
2	Since January 1, 2003, CigOutlet has violated this law by failing to pay applicable taxes or to
3	inform California consumers of their obligation to pay all applicable unpaid taxes on the
4	cigarettes.
5	25. The failure of out-of-state-retailers like defendants to comply with federal
6	reporting laws, identifying the shipments of cigarettes into California and the identity of the
7	purchasers and notifying purchasers of their California tax obligations, has resulted in significant
8	loss of tax revenue to the state. The Board of Equalization estimates that for fiscal year 2001-
9 10	2002, California has currently lost approximately \$53.9 million evading taxes through sales of
10	cigarettes to California consumers over the Internet, by mail order and cross-border sales. This
11	figure represents the taxes owed on 61.9 million packs of cigarettes.
12 13	FIRST CAUSE OF ACTION
13	Business and Professions Code section 17500
14	<u>False or Misleading Advertising</u>
15	26. The People reallege and incorporate herein by reference, paragraphs 1 through 25,
17	inclusive, as though fully set forth herein.
18	27. Within the past three (3) years from the date of the filing of this Complaint,
19	defendants and their agents and representatives, have made or caused to be made, untrue or
20	misleading statements to members of the public, including potential customers purchasing
20	cigarettes from their web sites, in violation of section 17500 of the Business and Professions
22	Code, in order to induce them to purchase defendants' cigarettes from defendants. Said untrue or
22	misleading statements include, but are not limited to the following:
23 24	(a) Failing to disclose that defendants must comply with the Jenkins Act is
25	required;
25 26	(b) Representing or implying that CigOutlet is not required to comply with the
20 27	Jenkins Act's reporting requirements;
28	///
	Complaint for Injunction, Civil Penalties, and Other Relief 9

1	(c) Representing or implying that California consumers are not required to pay
2	taxes in California on cigarettes purchased from CigOutlet over the Internet; and
3	(d) Advertising CigOutlet's cigarettes at a stated price but failing to inform
4	California consumers that this stated price does not include California taxes.
5	28. Defendants knew, or by the exercise of reasonable care should have known, that
6	the statements set forth in paragraph 27 were untrue or misleading at the time such statements
7	were made.
8	SECOND CAUSE OF ACTION
9	Revenue and Taxation Code section 30101.7(d)
10	Failure to Notify California Purchasers of Their Tax Obligations
11	29. The People reallege and incorporate by reference, paragraphs 1 through 28,
12	inclusive, as though fully set forth herein.
13	30. Since January 1, 2003, CigOutlet has engaged and continues to engage in non-
14	face-to-face sales of cigarettes to California consumers without satisfying either of the following
15	conditions: (1) paying all applicable California taxes or (2) including on the outside of the
16	shipping container for any cigarettes shipped to a resident in California from any source in the
17	United States an externally visible and easily legible notice located on the same side of the shipped
18	container as the address to which the package is delivered, as required by Revenue and Taxation
19	Code section 30101.7(d).
20	THIRD CAUSE OF ACTION
21	Business and Professions Code section 17200
22	Unfair or Unlawful Business Acts or Practices
23	31. The People reallege and incorporate by reference paragraphs 1 through 30,
24	inclusive, as though fully set forth herein.
25	32. Within the past four (4) years from the date of the filing of this Complaint,
26	defendants, and each of them, engaged in acts of unfair competition as defined in and prohibited
27	by Business and Professions Code section 17200 by engaging in conduct which includes, but is
28	not limited to:
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1	(a) Making untrue or misleading statements as referenced in paragraph 27 of this
2	Complaint, in violation of Business and Professions Code section 17500;
3	(b) Selling cigarettes over the Internet and delivering them by common carrier to
4	California children since at least March 2001, in violation of Penal Code section 308(a);
5	(c) Failing to maintain adequate or effective safeguards or procedures to ensure
6	that children cannot purchase cigarettes from their web site and that cigarettes will not be
7	delivered to children, in violation of Penal Code section 308(a);
8	(d) Failing to report to the BOE shipments of cigarettes to California consumers
9	as required by the Jenkins Act; and
10	(e) Failing to either pay the California taxes owed on cigarettes purchased by
11	California consumers over the Internet from CigOutlet or to clearly notify consumers that
12	defendants have reported the sale of cigarettes to the BOE and the purchaser is responsible for the
13	unpaid taxes, in violation of Revenue and Taxation Code section 30101.7(d).
14	WHEREFORE, the People respectfully pray that this Court grant the following relief:
15	1. Pursuant to Business and Professions Code section 17535, defendants, their
16	successors, employees, agents and representatives, and all other persons who are acting in concert
17	with them, be preliminarily and permanently enjoined from making untrue or misleading
18	statements in violation of Business and Professions Code section 17500 and be specifically
19	enjoined from making the untrue or misleading statements set third in the First Cause of Action.
20	2. Pursuant to Business and Professions Code section 17203, defendants, their
21	successors, employees, agents, representatives, and all other persons who are acting in concert
22	with them, be preliminarily and permanently enjoined from engaging in unfair competition as
23	defined in Business and Professions Code section 17200 and be specifically enjoined from
24	engaging in the types of acts or practices set forth in the Fourth Cause of Action.
25	3. Pursuant to Revenue and Taxation Code section 30101.7(e), defendants, their
26	successors, employees, agents, representatives, and all other persons who are acting in concert
27	with them, be preliminarily and permanently enjoined from failing to comply with Revenue and
28	Taxation Code section 30101.7(d)
	Complaint for Injunction, Civil Penalties, and Other Relief 11

1	4. That defendants be required to pay to the People civil penalties pursuant to
2	Business and Professions Code section 17536, \$2,500 for each violation proved at trial, in an
3	amount of no less than \$100,000.
4	5. That defendants be required to pay to the People civil penalties pursuant to
5	Business and Professions Code section 17206, \$2,500 for each violation proved at trial, in an
6	amount of no less than \$100,000.
7	6. That defendants be required to pay to the People civil penalties pursuant to the
8	schedule set forth in Revenue and Taxation Code section 30101.7(e), as determined by proof.
9	7. That defendants be required to pay to the People fees and costs, including
10	reasonable attorney's fees pursuant to Code of Civil Procedure section 1021.10.
11	8. That the Court grant such other and further relief as the Court deems just and
12	proper.
13	Dated: March 28, 2003
14	Respectfully submitted,
15	BILL LOCKYER Attorney General of the State of California
16	RICHARD M. FRANK Chief Assistant Attorney General
17	DENNIS ECKHART Senior Assistant Attorney General
18	MICHELLE L. FOGLIANI Deputy Attorney General
19	
20	LAURA KAPLAN
21	Deputy Attorney General Attorneys for The People of the State of
22 23	California, ex rel. Bill Lockyer, Attorney General of the State of California, Plaintiff
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