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10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN DIEGO
12

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

16 Plaintiff,

17 v.

18 **LLP ENTERPRISES, Inc., a Virginia corporation,**
19 **doing business as CIGOUTLET-THE TOBACCO**
20 **STORE, WWW.CIGOUTLET.COM and**
21 **WWW.AFFORDABLECIGS.COM ADIB**
22 **MOGRABI, an individual, and DOES 1 through 15,**
inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR
INJUNCTION, CIVIL
PENALTIES, AND OTHER
RELIEF (Bus. & Prof. Code, §§
17200, 17500 and Rev. and Tax.
Code, § 30101.7(d))**

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

1 day die from tobacco-related disease. It has been shown that the younger a person begins
2 smoking, the more likely it is that he or she will be unable to quit in later life and will suffer a
3 disease attributable to tobacco use. Recent studies indicate that youth demonstrate signs of
4 addiction after smoking only a few cigarettes. Exacerbating these problems, an estimated 690
5 million packs of cigarettes are sold illegally to children each year nationwide.

6 Defendants are cigarette sellers who advertise and sell cigarettes over the Internet to
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
11 require face-to-face delivery or otherwise adequate verification of age and identity of would-be
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
14 occasions that the People have documented such sales. Defendants have been similarly informed
15 by New York City on a different occasion. Notwithstanding the fact that they have been so
16 notified, defendants have not taken adequate precautions to ensure that children cannot purchase
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
20 allowing children to purchase cigarettes from their web sites thus undermining the State's efforts
21 to reduce smoking by minors.

22 Defendants, in violation of state law, also fail or refuse to either pay taxes owed on
23 cigarettes shipped into California or notify purchasers that they are responsible for taxes owed. In
24 violation of federal law, defendants fail or refuse to report the shipments of cigarettes into the
25 state, including the identity of the purchasers, to the California Board of Equalization ("BOE"),
26 the entity responsible for collecting those taxes. Defendants induce consumers to purchase their
27 cigarettes by representing or implying that defendants do not have to report shipments of

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

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

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

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

19 **JURISDICTION AND VENUE**

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

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1 **FACTUAL ALLEGATIONS**

2 **Sales of cigarettes to minors**

3 7. Pursuant to Penal Code section 308(a), every person, firm or corporation which
4 knowingly or under circumstances in which it has knowledge, or should have grounds for
5 knowledge, sells cigarettes to persons under the age of 18 years is subject either to a
6 misdemeanor criminal action or to a civil action punishable by a fine.

7 8. Defendants have knowledge or grounds for knowledge that they are selling
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
10 children in California on numerous occasions. CigOutlet does not have adequate procedures and
11 safeguards in place to ensure that minors cannot receive cigarettes purchased from its web sites.

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
14 web sites and asking defendants to immediately review their web site in light of the legal
15 requirements prohibiting the sales of cigarettes to minors. (A copy of this letter is attached as
16 Exhibit "A" and incorporated herein by reference.) Defendants did not respond to this letter, nor
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
21 sites on seven occasions beginning in August 2001, and that the New York City Department of
22 Consumer Affairs had documented and notified CigOutlet that a minor placed an order for and
23 received delivery of cigarettes without being asked to provide independent age verification. (A
24 copy of this letter is attached as Exhibit "B" and incorporated herein by reference.) The People
25 also requested that Defendants enter into a settlement agreement ("agreement") between
26 defendants and a significant number of concerned states. A copy of the proposed agreement
27 setting forth procedures to ensure that children could not purchase cigarettes from their web sites

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1 was included in the January 2003 letter. Although defendants received this letter, defendants did
2 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**

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

11 13. Pursuant to the Jenkins Act, 15 U.S.C. section 375 et seq. (“Jenkins Act”),
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,
14 report (1) the name and address of the persons to whom cigarette shipments were made, (2) the
15 brands of cigarettes shipped, and (3) the quantities of cigarettes shipped. Reports must be filed no
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.

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

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

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

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

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

13 (c) Defendants' implication that California taxes need not be paid because
14 transfer of title to goods takes place in Virginia is erroneous and/or irrelevant because by law
15 consumers obligation to pay taxes on cigarettes purchased from defendants over the Internet is
16 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
27 SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU
28 RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL
LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX
COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS.

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:

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)

