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10	Attorneys for Plaintiff					
11	SUPERIOR COURT OF CALIFORNIA					
12	COUNTY OF SAN DIEGO					
13						
14	THE PEOPLE OF THE STATE OF CALIFORNIA,	Case No.				
15	ex rel. BILL LOCKYER, ATTORNEY GENERAL OF THE STATE OF	COMPLAINT FOR				
16	CALIFORNIA,	INJUNCTION, CIVIL PENALTIES, AND OTHER				
17	Plaintiff,	RELIEF (Bus. & Prof. Code, §§ 17200, 17500 and Rev. and Tax.				
18	v. Code, § 30101.7(d))					
19	CYCO.NET, Inc., a New Mexico corporation, doing business as WWW.CYCOCIGS.COM and					
20	WWW.AABAKISMOKES.COM; RICHARD A. URREA, an individual, and DOES 1 through 15,					
20 21	WWW.AABAKISMOKES.COM; RICHARD A. URREA, an individual, and DOES 1 through 15, inclusive,					
	WWW.AABAKISMOKES.COM; RICHARD A. URREA, an individual, and DOES 1 through 15,					
21	WWW.AABAKISMOKES.COM; RICHARD A. URREA, an individual, and DOES 1 through 15, inclusive, Defendants.	Lockver Attorney General of the State				
21 22	WWW.AABAKISMOKES.COM; RICHARD A. URREA, an individual, and DOES 1 through 15, inclusive, Defendants. The People of the State of California, through Bill					
21 22 23	WWW.AABAKISMOKES.COM; RICHARD A. URREA, an individual, and DOES 1 through 15, inclusive, Defendants. The People of the State of California, through Bill of California, hereby allege on information and belief as foll					
21 22 23 24	WWW.AABAKISMOKES.COM; RICHARD A. URREA, an individual, and DOES 1 through 15, inclusive, Defendants. The People of the State of California, through Bill of California, hereby allege on information and belief as foll <u>INTRODUCTION</u>	ows:				
 21 22 23 24 25 	WWW.AABAKISMOKES.COM; RICHARD A. URREA, an individual, and DOES 1 through 15, inclusive, Defendants. The People of the State of California, through Bill of California, hereby allege on information and belief as foll <u>INTRODUCTION</u> Youth smoking is a serious pediatric health proble	ows: em in California and the rest of the				
 21 22 23 24 25 26 	WWW.AABAKISMOKES.COM; RICHARD A. URREA, an individual, and DOES 1 through 15, inclusive, Defendants. The People of the State of California, through Bill of California, hereby allege on information and belief as foll <u>INTRODUCTION</u>	ows: em in California and the rest of the as children. Every day in the United				

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

21 Defendants, in violation of state law, also fail or refuse either to pay taxes owed on cigarettes shipped into California or notify purchasers that they are responsible for taxes owed. In 22 23 violation of federal law, defendants fail or refuse to report the shipments of cigarettes into the 24 state, including the identity of the purchasers, to the California Board of Equalization, the entity responsible for collecting those taxes. Defendants further induce consumers to purchase 25 26 cigarettes from defendants by misrepresenting both defendants obligation to report to the BOE 27 the shipment of cigarettes into California and consumers' obligation to pay taxes on those 28 cigarettes.

The People also bring this action pursuant to California's unfair competition laws, to 1 2 protect the public from defendants' misleading, unlawful, unfair, and fraudulent business 3 practices. These practices include selling cigarettes to children, failing or refusing to institute 4 adequate procedures and safeguards to ensure that children cannot buy cigarettes from their web 5 site and that cigarettes cannot be delivered to children, failing or refusing to comply with federal reporting requirements with respect to their Internet cigarette sales to California consumers, and 6 making deceptive or misleading statements concerning defendants' obligation to comply with 7 8 federal reporting laws and consumers' obligation to pay California taxes on cigarettes purchased 9 from defendants over the Internet. Defendants' conduct also violates a statute, effective January 10 1, 2003, enacted for the purpose of ensuring compliance with specific requirements concerning payment of applicable state taxes for cigarettes purchased over the Internet or by mail order. 11

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PARTIES

13 1. 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 14 15 Business and Professions Code sections 17204 and 17206 to bring actions, in his official capacity, to enforce the state's statutes regulating unfair competition. He is also authorized by Revenue 16 17 and Taxation Code section 30101.7, subdivision (e) to bring actions to facilitate the collection of 18 all applicable state surtaxes and sales or use taxes on cigarettes sold to California residents over 19 the Internet or by mail order. Additionally, he is authorized to assess civil penalties against any entity violating Business and Professions Code section 22963 which, among other things, 20 21 prohibits both distribution of tobacco products directly or indirectly to persons under the age of 18 through common carriers and delivery of tobacco products to an address other than the 22 23

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consumer's verified billing address.
2. Defendants, CYCO.NET, Inc., a New Mexico corporation doing business as
WWW.CYCOCIGS.COM and WWW.AABAKISMOKES.COM (collectively referred to as

26 "Cyco.net"), and RICHARD A. UREA, an individual, are cigarette retailers who advertise and
27 sell cigarettes over the Internet to California residents. Defendants receive Internet orders from
28 California residents and ship the orders by common carrier to California.

Complaint for Injunction, Civil Penalties, and Other Relief

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3. Cyco.net is, and during the relevant time period was, a New Mexico corporation 1 2 with its principal place of business located at 4201 Yale Boulevard NE, Suite G, Albuquerque, 3 New Mexico 87107. Cyco.net sells cigarettes over the Internet by operating web sites at 4 www.cycocigs.com and www.aabismokes.com through which cigarettes are advertised and sold 5 to California residents.

4. Defendant Richard A. Urrea ("Urrea") is and at all relevant times was, President of 6 7 Cyco.net., Inc. In such capacity, and as an individual, Urrea controls, manages, supervises, and 8 directs the operations and activities of Cyco.net, Inc.

9 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 10 defendants by such fictitious names. Plaintiff will amend its complaint to show the true names of 11 12 such defendants when the same have been ascertained. Plaintiff is informed and believes and upon 13 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. 14

15

JURISDICTION AND VENUE

16 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 17 18 to influence prospective purchasers in California. Defendants purposefully and voluntarily 19 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 20 21 California. Defendants have intentionally targeted California and have sold cigarettes to 22 consumers in San Diego and in other counties in the State of California. 23

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FACTUAL ALLEGATIONS

Sales of cigarettes to minors

25 7. Pursuant to Penal Code section 308(a), every person, firm or corporation which 26 knowingly or under circumstances in which it has knowledge, or should have grounds for 27 knowledge, sells cigarettes to persons under the age of 18 years is subject either to a 28 misdemeanor criminal action or to a civil action punishable by a fine.

8. Defendants have knowledge or grounds for knowledge that they are selling
 cigarettes to children from their web sites. Defendants were notified in writing by plaintiff's
 attorney that since on or before July 2001, defendants have sold cigarettes from their web sites to
 children in California on numerous occasions. Defendants do not have adequate procedures and
 safeguards in place to ensure that minors cannot receive cigarettes purchased from the web sites.

9. The People, along with 39 other states sent a letter to defendants on September
16, 2002, informing defendants that the states had information documenting sales to minors from
defendant's web sites and asking defendants to immediately review their web sites in light of the
state's laws prohibiting the sale of cigarettes to minors. (A copy of this letter is attached as
Exhibit "A" and incorporated herein by reference.) Defendants did not respond to this letter nor
did they change their procedures and practices to ensure that children cannot readily purchase
cigarettes from their web site.

13 10. The People sent another letter to defendants on January 23, 2003, informing them that the California Attorney General had documented sales of cigarettes to minors from 14 defendants' web site on eight occasions beginning in July 2001, and that the New York City 15 Department of Consumer Affairs had documented and notified Cyco.net that a minor had placed 16 17 an order for and received delivery of cigarettes without being asked to provide independent age 18 verification. (A copy of this letter is attached as Exhibit "B" and incorporated herein by 19 reference.) The People also requested that Defendants enter into a settlement agreement 20 ("agreement") between defendants and a significant number of concerned states. A copy of the 21 proposed agreement setting forth procedures to ensure that children could not purchase cigarettes 22 from their web sites was included in the January 2003 letter. Although defendants received this 23 letter, defendants did not respond in any way.

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Internet Cigarette Sales-Excise Tax Evasion

11. 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 Cyco.net does not collect and remit any of the
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applicable California taxes, California consumers who purchase cigarettes from Cyco.net are
 responsible for paying these taxes directly to the state.

3 12. Pursuant to the Jenkins Act, 15 U.S.C. section 375 et seq. ("Jenkins Act"), vendors who sell and ship cigarettes in interstate commerce other than to a licensed distributor 4 5 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 6 brands of cigarettes shipped, and (3) the quantities of cigarettes shipped. Reports must be filed no 7 later than the 10th day of each calendar month, reporting each and every cigarette shipment made 8 9 to the state during the previous calendar month. The seller's registration must list the seller's name, trade name, and the address of all business locations. 10

11 13. The Board of Equalization ("BOE"), the California taxing entity responsible for
12 collecting cigarette taxes, sends letters to out-of-state distributors, companies, or agencies selling
13 cigarettes to California consumers when it learns that these entities have not reported shipments
14 of cigarettes in compliance with the Jenkins Act. Such a letter is referred to as a "Jenkins Act"
15 letter. If the BOE does not receive a response, it will routinely send a follow-up letter requesting
16 compliance from the entities.

17 14. The BOE sent a Jenkins Act letter to Cyco.net on January 21, 2003, requesting
18 that the company report all its shipments of cigarettes to California consumers as required by the
19 Jenkins Act. Cyco.net did not respond to this letter. (A copy of that letter is attached, as Exhibit
20 "C", and incorporated herein by reference.)

21 15. Cyco.net has failed or refused to file any reports with the BOE, at any time, of
22 shipments of cigarettes to California consumers, as required by section 376 of the Jenkins Act.

23

Deceptive Advertising

24 16. At times relevant to this action, defendants were and are required by the Jenkins
25 Act to report shipments of cigarettes into California to the BOE so that the BOE can collect state
26 taxes on those cigarettes.

27 17. Defendants represent or imply through false and misleading statements on their
28 web sites that they are not required to comply with the Jenkins Act's reporting requirements. For

example, defendants state on their 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 products."

18. To induce consumers to purchase cigarettes from its web sites, defendants have
not and do not presently inform prospective California purchasers of their obligation to pay
California taxes on the cigarettes they purchase from Cyco.net. Those taxes amount to \$0.87 per
package of twenty cigarettes or \$8.70 per carton. New Mexico imposes a much lower excise tax
on cigarettes than California, \$ 0.21 per pack or \$2.10 per carton resulting in an apparent savings
of \$6.60 per carton for would-be California purchasers.

9 19. Further, Cyco.net misrepresents the obligation of potential purchasers in California
10 to pay California taxes on cigarettes purchased through defendants' web sites. Although
11 defendants presently inform potential purchasers that they may want to contact their state
12 authority to determine their tax liability, defendants, through statements on their web sites, imply
13 that California consumers do not have to pay California taxes on cigarettes purchased from
14 defendants over the Internet. For example, defendants represent that "Transfer of title to the
15 goods being sold in this order is taking place in the State of New Mexico."

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

(a) Defendants' representation concerning responsibility for tax law compliance
implies that defendants are not responsible for ascertaining and complying with the relevant tax
laws concerning cigarette products and that the burden of doing so rests with the purchaser. In
fact, pursuant to the Jenkins Act, it is the responsibility of the seller to report shipments of
tobacco products into California;

(b) Pursuant to Revenue and Taxation 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 Cyco.net 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; and

(c) Defendants' implication that California taxes need not be paid because the sale
takes place in New Mexico is erroneous and/or irrelevant because by law, consumers are

Complaint for Injunction, Civil Penalties, and Other Relief

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1	obligated to pay taxes on cigarettes purchased from defendants over the Internet and shipped into			
2	California.			
3	Failure to Notify California Purchasers of Tax Obligations			
4	20. Effective January 1, 2003, California Revenue and Taxation Code section 30101.7(d)			
5	requires that a person may engage in non-face-to-face sales of cigarettes to California consumers			
6	provided that either of the following conditions is met:			
7	(1) All applicable California taxes on the cigarettes have been paid, or			
8	(2) The seller includes, on the outside of the shipping container for any cigarettes shipped to			
9	a resident in California from any source in the United States, an externally visible and easily			
10	legible notice located on the same side of the shipped container as the address to which the			
11	package is delivered, as follows:			
12	"IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU			
13	RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL			
14 15	LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES."			
16	21. Since January 1, 2003, Cyco.net has violated Revenue and Taxation Code section			
17	30101.7(d) by failing to pay applicable California taxes on sales of cigarettes shipped to California			
18	residents in the state or to clearly inform California consumers of their obligation to pay all			
19	applicable unpaid taxes on the cigarettes.			
20	22. The failure of out-of-state-retailers, such as defendants, to comply with federal and			
21	state law by reporting shipments of cigarettes into California and the identity of the purchasers to			
22	the BOE and by notifying purchasers of their California tax obligations, has resulted in significant			
23	loss of tax revenue to the state. The BOE estimates for fiscal year 2001 - 2002, California lost			
24	approximately \$53.9 million through sales of cigarettes to California consumers over the Internet,			
25	by mail order and cross-border sales. This figure represents the taxes owed on 61.9 million packs			
26	of cigarettes.			
27	///			
28	///			
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1	FIRST CAUSE OF ACTION	
2	Business and Professions Code 17500	
3	False or Misleading Advertising	
4	23. The People reallege and incorporate herein by reference, paragraphs 1 through 22,	
5	inclusive, as though fully set forth herein.	
6	24. Within the past three (3) years from the date of the filing of this Complaint,	
7	defendants and their agents and representatives, have made or caused to be made, untrue or	
8	misleading statements to members of the public, including potential customers purchasing	
9	cigarettes from their web site, in violation of section 17500 of the Business and Professions Code,	
10	in order to induce them to purchase defendants' cigarettes. Said untrue or misleading statements	
11	include, but are not limited to the following:	
12	(a) Representing or implying that Cyco.net is not required to comply with the	
13	Jenkins Act's reporting requirements;	
14	(b) Representing or implying that California consumers are not required to pay	
15	taxes in California on cigarettes purchased from Cyco.net over the Internet; and	
16	(c) Advertising Cyco.net's cigarettes at a stated price but failing to inform	
17	California consumers that this stated price does not include California taxes.	
18	25. Defendants knew, or by the exercise of reasonable care should have known, that	
19	the statements set forth in paragraph 24 were untrue or misleading at the time such statements	
20	were made.	
21	SECOND CAUSE OF ACTION	
22	<u>Revenue and Taxation Code section 30101.7(d)</u> Failure to Notify California Purchasers of Their Tax Obligations	
23	randre to rothy Canforma rurchasers of ruch rax Obligations	
24	26. The People reallege and incorporate by reference, paragraphs 1 through 25,	
25	inclusive, as though fully set forth herein.	
26	27. Since January 1, 2003, Cyco.net has engaged and continues to engage in non-face-	
27	to-face sales of cigarettes to California consumers without satisfying either of the following	
28	conditions as required by Revenue and Taxation Code section 30101.7: (1) paying all applicable	
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1	California taxes or (2) including on the outside of the shipping container for any cigarettes		
2	shipped to a resident in California from any source in the United States an externally visible and		
3	easily legible notice located on the same side of the shipped container as the address to which the		
4	package is delivered, as required by Revenue and Taxation Code section 30101.7(d)		
5	THIRD CAUSE OF ACTION		
6	Business and Professions Code Section 17200		
7	Unfair or Unlawful Business Acts or Practices		
8	28. The People reallege and incorporate by reference, paragraphs 1 through 27,		
9	inclusive, as though fully set forth herein.		
10	29. The People are informed and believe, and upon such information and belief allege,		
11	that within the past four (4) years from the date of the filing of this Complaint, defendants, and		
12	each of them, engaged in acts of unfair competition, as defined in and prohibited by Business and		
13	Professions Code section 17200, by engaging in conduct which includes, but is not limited to:		
14	(a) Making untrue or misleading statements as referenced in paragraph 24 of this		
15	Complaint, in violation of Business and Professions Code section 17500;		
16	(b) Selling cigarettes over the Internet and delivering them by common carrier to		
17	California children since at least March 2001, in violation of Penal Code section 308(a);		
18	(c) Failing to maintain adequate or effective safeguards or procedures to ensure		
19	that children cannot purchase cigarettes from defendants' web sites and that cigarettes will not be		
20	delivered to children, in violation of Penal Code section 308(a);		
21	(d) Failing to report to the BOE shipments of cigarettes to California consumers		
22	as required by the Jenkins Act;		
23	(e) Representing or implying that consumers have an obligation to report the		
24	purchase of cigarettes when in fact it is the defendants' obligation; and		
25	(f) Failing either to pay the California taxes owed on cigarettes purchased by		
26	California consumers over the Internet from defendants or to clearly notify consumers that		
27	///		
28	defendants have reported the sale of cigarettes to the BOE and that the purchaser is responsible		
	Complaint for Injunction, Civil Penalties, and Other Relief 10		

for the unpaid taxes, in violation of Revenue and Taxation Code section 30101.7(d).

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WHEREFORE, the People respectfully pray that this Court grant the following relief:

3 1. Pursuant to Business and Professions Code section 17535, defendants, their successors, employees, agents and representatives, and all other persons who are acting in concert 4 5 with them, be preliminarily and permanently enjoined from making untrue or misleading statements in violation of Business and Professions Code section 17500 and be specifically 6 enjoined from making the untrue or misleading statements set forth in the First Cause of Action. 7

8 2. Pursuant to Business and Professions Code section 17203, defendants, their 9 successors, employees, agents, representatives, and all other persons who are acting in concert with them, be preliminarily and permanently enjoined from engaging in unfair competition as 10 defined in Business and Professions Code section 17200 and be specifically enjoined from 11 12 engaging in the types of acts or practices set forth in the Third Cause of Action.

13 3. Pursuant to Revenue and Taxation Code section 30101.7(e), defendants, their successors, employees, agents, representatives, and all other persons who are acting in concert 14 with them, be preliminarily and permanently enjoined from failing to comply with Revenue and 15 Taxation Code section 30101.7(d) 16

17 That defendants be required to pay to the People civil penalties pursuant to 4. 18 Business and Professions Code section 17536 of \$2,500 for each violation, as determined by 19 proof, in an amount of no less than \$100,000.

20 5. That defendants be required to pay to the People civil penalties pursuant to Business and Professions Code section 17206 of \$2,500 for each violation, as determined by 21 proof, in an amount of no less than \$100,000. 22

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6. That defendants be required to pay to the People civil penalties pursuant to the 24 schedule set forth in Revenue and Taxation Code section 30101.7(e), in an amount to be 25 determined by proof.

That defendants be required to pay to the People fees and costs, including 26 7. 27 reasonable attorney's fees pursuant to Code of Civil Procedure section 1021.10.

28 8. That the Court grant such other and further relief as the Court deems just and 11 Complaint for Injunction, Civil Penalties, and Other Relief

1	proper.	
2	Dated: March 28, 2003	
3		Respectfully submitted,
4		BILL LOCKYER
5		Attorney General of the State of California RICHARD M. FRANK
6		Chief Assistant Attorney General DENNIS ECKHART Senior Assistant Attorney General
7 8		MICHELLE L. FOGLIĂNI Deputy Attorney General
9		
10		LAURA KAPLAN Deputy Attorney General
11		Attorneys for The People of the State of
12		California, ex rel. Bill Lockyer, Attorney General of the State of California, Plaintiff
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