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11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SAN DIEGO
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14 **THE PEOPLE OF THE STATE OF CALIFORNIA,**
15 **ex rel. BILL LOCKYER, ATTORNEY**
16 **GENERAL OF THE STATE OF**
17 **CALIFORNIA,**

Plaintiff,

18 v.

19 **CYCO.NET, Inc., a New Mexico corporation, doing**
20 **business as WWW.CYCOCIGS.COM and**
21 **WWW.AABAKISMOKES.COM; RICHARD A.**
22 **URREA, an individual, and DOES 1 through 15,**
23 **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))

24 The People of the State of California, through Bill Lockyer, Attorney General of the State
25 of California, hereby allege on information and belief as follows:

26 **INTRODUCTION**

27 Youth smoking is a serious pediatric health problem in California and the rest of the
28 nation. More than 80% of regular smokers began smoking as children. Every day in the United
States more than 2,000 children begin smoking cigarettes, and one-third of those children will die

1 one day 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 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
10 children because neither defendants' web sites nor their delivery procedures require face-to-face
11 delivery or otherwise adequate verification of age and identity of would-be purchasers.
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
14 occasions. Defendants have been similarly informed by New York City on another occasion.
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
20 from their web sites, thus undermining the state's efforts to reduce smoking by minors.

21 Defendants, in violation of state law, also fail or refuse either to pay taxes owed on
22 cigarettes shipped into California or notify purchasers that they are responsible for taxes owed. In
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
25 responsible for collecting those taxes. Defendants further induce consumers to purchase
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.

1 example, defendants state on their web site that it "... is the responsibility of the buyer to ascertain
2 and comply with any laws in regard to the purchase and use of any cigarette products."

3 18. To induce consumers to purchase cigarettes from its web sites, defendants have
4 not and do not presently inform prospective California purchasers of their obligation to pay
5 California taxes on the cigarettes they purchase from Cyco.net. Those taxes amount to \$0.87 per
6 package of twenty cigarettes or \$8.70 per carton. New Mexico imposes a much lower excise tax
7 on cigarettes than California, \$ 0.21 per pack or \$2.10 per carton resulting in an apparent savings
8 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."

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

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

22 (b) Pursuant to Revenue and Taxation Code sections 30008, 30009 and 30109,
23 California taxes are imposed and collected on the first distribution of untaxed cigarettes in the
24 state. This means that since Cyco.net does not pay taxes on cigarettes purchased from its web
25 sites and shipped to consumers in California, the California consumer must pay all taxes owed on
26 the cigarettes; and

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

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
13 SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU
14 RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL
15 LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX
16 COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS.
17 YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID
18 STATE TAXES ON THESE CIGARETTES."

19 21. Since January 1, 2003, Cyco.net has violated Revenue and Taxation Code section
20 30101.7(d) by failing to pay applicable California taxes on sales of cigarettes shipped to California
21 residents in the state or to clearly inform California consumers of their obligation to pay all
22 applicable unpaid taxes on the cigarettes.

23 22. The failure of out-of-state-retailers, such as defendants, to comply with federal and
24 state law by reporting shipments of cigarettes into California and the identity of the purchasers to
25 the BOE and by notifying purchasers of their California tax obligations, has resulted in significant
26 loss of tax revenue to the state. The BOE estimates for fiscal year 2001 - 2002, California lost
27 approximately \$53.9 million through sales of cigarettes to California consumers over the Internet,
28 by mail order and cross-border sales. This figure represents the taxes owed on 61.9 million packs
of cigarettes.

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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 **Revenue and Taxation Code section 30101.7(d)**
23 **Failure to Notify California Purchasers of Their Tax 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

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)

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6 **THIRD CAUSE OF ACTION**

7 **Business and Professions Code Section 17200**
8 **Unfair or Unlawful Business Acts or Practices**

9 28. The People reallege and incorporate by reference, paragraphs 1 through 27,
10 inclusive, as though fully set forth herein.

11 29. The People are informed and believe, and upon such information and belief allege,
12 that within the past four (4) years from the date of the filing of this Complaint, defendants, and
13 each of them, engaged in acts of unfair competition, as defined in and prohibited by Business and
14 Professions Code section 17200, by engaging in conduct which includes, but is not limited to:

15 (a) Making untrue or misleading statements as referenced in paragraph 24 of this
16 Complaint, in violation of Business and Professions Code section 17500;

17 (b) Selling cigarettes over the Internet and delivering them by common carrier to
18 California children since at least March 2001, in violation of Penal Code section 308(a);

19 (c) Failing to maintain adequate or effective safeguards or procedures to ensure
20 that children cannot purchase cigarettes from defendants' web sites and that cigarettes will not be
21 delivered to children, in violation of Penal Code section 308(a);

22 (d) Failing to report to the BOE shipments of cigarettes to California consumers
23 as required by the Jenkins Act;

24 (e) Representing or implying that consumers have an obligation to report the
25 purchase of cigarettes when in fact it is the defendants' obligation; and

26 (f) Failing either to pay the California taxes owed on cigarettes purchased by
27 California consumers over the Internet from defendants or to clearly notify consumers that

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defendants have reported the sale of cigarettes to the BOE and that the purchaser is responsible

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

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

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

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
10 with them, be preliminarily and permanently enjoined from engaging in unfair competition as
11 defined in Business and Professions Code section 17200 and be specifically enjoined from
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
14 successors, employees, agents, representatives, and all other persons who are acting in concert
15 with them, be preliminarily and permanently enjoined from failing to comply with Revenue and
16 Taxation Code section 30101.7(d)

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

23 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.

26 7. That defendants be required to pay to the People fees and costs, including
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

1 proper.

2 Dated: March 28, 2003

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Respectfully submitted,

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