

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Laura Kaplan (State Bar # 64264) California Attorney General's Office 1300 I St., Sacramento, CA 95814 TELEPHONE NO.: (916) 323-3822 FAX NO.: (916) 327-2319 ATTORNEY FOR (Name): The People of the State of California, Plaintiff	FOR COURT USE ONLY		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 North Hill St. MAILING ADDRESS: Los Angeles, CA 90012 CITY AND ZIP CODE: BRANCH NAME: Central Branch			
CASE NAME: <p style="text-align: center;">People v. Scott Maybee, et al.</p>			
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; padding: 5px;"> CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </td> <td style="width:50%; padding: 5px;"> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) </td> </tr> </table>	CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: JUDGE: DEPT:
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Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify):
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 5, 2008

Laura Kaplan
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF LOS ANGELES

13 **THE PEOPLE OF THE STATE OF CALIFORNIA,**
14 **ex rel. EDMUND G. BROWN JR., ATTORNEY**
15 **GENERAL OF THE STATE OF CALIFORNIA,**

15 Plaintiff,

16 v.

17 **SCOTT B. MAYBEE individually and doing**
18 **business as SMARTSMOKER.COM,**
19 **BUYCHEAPCIGARETTES.COM,**
20 **ORDERSMOKESDIRECT.COM, GREAT WOLF**
21 **TOBACCO MART, and DOES 1 through 100,**
22 **inclusive,**

21 Defendants.

**COMPLAINT FOR
INJUNCTION, CIVIL
PENALTIES, AND OTHER
RELIEF (Rev. & Tax Code §§
30165.1 and 30101.7(d), Health
& Safety Code §§ 14951 and
14952, and Bus. & Prof. Code
§§ 17200 and 22963(b)(2) and
(3))**

23 The People of the State of California, through Edmund G. Brown Jr., Attorney General
24 of the State of California, hereby allege on information and belief as follows:

25 **BACKGROUND**

26 On November 23, 1998, leading United States tobacco product manufacturers entered
27 into the Master Settlement Agreement (MSA) with the State of California. The MSA obligates
28 these manufacturers, in return for a release of past, present and certain future claims against

1
2 them, as described therein, to, among other things, pay substantial sums to the State (tied in part
3 to their volume of sales).

4 In 1999, the California Legislature found that cigarette smoking presents serious public
5 health and financial concerns to California and enacted Health and Safety Code sections 104555-
6 104557 (also known as the ‘reserve fund statute’). The legislation required that nonparticipating
7 manufacturers (NPMs) must either become participants^{1/} in the MSA, or deposit a specific
8 amount of money into a qualified escrow fund, as required by section 104557(a)(1) and (2). The
9 statute ensures that NPMs pay the same amount of money into escrow as they would be required
10 to pay if they were signatories to the MSA.

11 In 2003, the California Legislature determined that violations of the reserve fund
12 statute threatened not only the integrity of California’s agreement with the tobacco
13 manufacturers, but also the fiscal soundness of the state and public health, and responded with
14 legislation to help prevent such violations through the adoption of the Tobacco Directory Law,^{2/}
15 also known as California’s Complementary Act, Revenue and Taxation Code section 30165.1.
16 This law provides that every tobacco product manufacturer whose cigarettes are sold in
17 California, whether directly, or indirectly through an intermediary, such as a distributor or a
18 retailer, must certify each year to the Attorney General that the tobacco product manufacturer is
19 either a participating manufacturer or an NPM in full compliance with article 3 (commencing
20 with section 104555) of chapter 1 of part 3 of division 103 of the Health and Safety Code. The
21 Attorney General may not include or retain in the directory the name or brand families of any
22 NPM that fails to comply with Health and Safety Code section 104557. Section 30165.1(e)(2)
23 prohibits the sale of cigarettes in California unless both the brand family and the manufacturer
24 are listed on the Attorney General’s directory.

25
26 1. A “participating manufacturer” is a tobacco product manufacturer that is or becomes a
27 signatory to the November 23, 1998, Master Settlement Agreement (“MSA”) entered into by the
28 State of California and the leading United States tobacco product manufacturers.

2. Forty-four states have enacted Complementary Act legislation.

1
2 In 2002, the Legislature enacted two remote sales statutes, Revenue & Taxation Code
3 section 30101.7 and Business and Professions Code section 22963, prohibiting non-face-to-face
4 cigarette and/or tobacco sales (e.g., over the Internet, by mail order, etc.), except under certain
5 specified circumstances. The purpose of these laws is to facilitate the collection of taxes and
6 prevent cigarettes from getting into the hands of children, respectively.

7 Since at least January 1, 2005, defendant **SCOTT B. MAYBEE** has sold millions of
8 cigarettes that are not listed on California's Tobacco Directory (the directory), in violation of
9 California's Complementary Act. During that same time period, defendant has also violated and
10 continues to violate California's remote tobacco and cigarette sales laws. Defendant has sold his
11 tobacco products to California consumers over the Internet and by mail order while refusing to
12 comply with statutory restrictions designed to prevent children from obtaining tobacco products.
13 He has also violated California's fire-safe cigarette laws since 2007 by knowingly selling
14 cigarettes that have not been certified to be fire safe. Notwithstanding the fact that defendant was
15 advised by the people in a letter in February 2008, that his numerous online tobacco sales to
16 California consumers violated the directory, fire-safe, and remote tobacco sales laws, violations
17 continue.

18 Defendant **MAYBEE** has been aided in his illegal activities by two California
19 businesses, Electronic Clearing House, Inc., a third party processor ("ECHO" or "TPP"), and
20 First Regional Bank ("the bank"). By aiding and abetting defendant Maybee's illegal activities,
21 financially and otherwise, these entities have made possible defendant's numerous violations of
22 the law over at least a three year period.

23 **PARTIES**

24 1. The People of the State of California act through their duly elected Attorney
25 General, Edward G. Brown Jr., who is the chief law officer of the State. (Cal. Const., art. 5,
26 § 13.) The Attorney General is authorized to bring actions to enforce Revenue and Taxation
27 Code section 30165.1.

28 2. The Attorney General is also authorized by Revenue and Taxation Code section,
30101.7 subdivision (f) to bring actions to facilitate the collection of all applicable state surtaxes

1 and state sales or use taxes on cigarettes sold to California residents over the Internet or by mail
2 order.

3
4 3. Health and Safety Code section 14955(f) authorizes the Attorney General to bring
5 actions on behalf of the people of the state to restrain violations of the California Cigarette Fire
6 Safety and Firefighter Protection Act (Health and Safety Code sections 14950 - 14960) when
7 tobacco companies sell cigarettes that are not tested and certified as meeting fire safety standards
8 (sections 14951 and 14952.)

9 4. Business and Professions Code section 17204 authorizes the Attorney General to
10 bring actions to enforce the California Unfair Competition Law (Bus. & Prof. Code § 17200 et
11 seq.).

12 5. Defendant **SCOTT B. MAYBEE** (hereinafter "**MAYBEE**") is, and at all
13 relevant times was, an out-of-state individual cigarette retailer doing business under various
14 names, including, smartsmoker.com, buycheapcigarettes.com, ordersmokesdirect.com, and
15 greatwolftobaccomart.com, (hereinafter "**MAYBEE**" or "defendant") with his principal place of
16 business at 1346 Brant Collins, North Collins, New York, who has advertised and has sold
17 cigarettes (as defined in section 104556(d)), and other tobacco products (as defined by Business
18 and Professions Code section 22962(a)(3)) over the Internet and by mail order directly or
19 indirectly, to consumers in California and, accordingly, has transacted business within the State
20 of California.

21 6. The true names and capacities of defendants sued in the Complaint under the
22 fictitious names of DOES 1 through 100, inclusive, are unknown to plaintiff who therefore sues
23 such defendants by such fictitious names. Plaintiff will amend this complaint to show the true
24 names of each when the same has been ascertained. Defendants sued herein as DOES 1 through
25 100 are, and at all relevant times were, engaged with **MAYBEE** in the activities and conduct
26 complained of herein.

27 7. Whenever reference is made in this Complaint to any act of **MAYBEE**, or his
28 web sites, such allegations shall mean that **MAYBEE** through his agents, employees, or
representatives, did or authorized such acts while actively engaged in the management, direction

1 or control of the affairs of **MAYBEE's** non-face-to-face cigarette and tobacco sales and while
2 acting within the scope and course of their duties.

3
4 8. At all relevant times, each of the defendants has acted as an agent, representative,
5 employee, servant, partner, franchisee, affiliate, successor or joint venturer of each of the other
6 defendants and has acted within the course and scope of such agency, representation,
7 employment, service, partnership, franchise or joint venture.

8 **JURISDICTION**

9 9. The violations of law alleged in this Complaint occurred in Los Angeles County
10 and in other counties in California or occurred outside of California but were intended by
11 defendants to influence prospective purchasers in California. This court has personal jurisdiction
12 over defendant **MAYBEE** because he knowingly contracted to sell, sold, and profited from the
13 sale of cigarettes to consumers within the state of California, thus transacting business within this
14 state and purposely and voluntarily availing himself of the privilege of conducting activities
15 within California.

16 **NATURE OF THE CASE**

17 10. This is a civil action for injunctive relief and civil penalties to prohibit defendant
18 **SCOTT MAYBEE** from continuing to sell cigarettes or tobacco products of manufacturers or
19 brand families not included in the California Tobacco Directory. The tobacco product
20 manufacturers whose cigarettes defendant sells are not signatories to the MSA nor have they
21 placed into a qualified escrow account the funds necessary to comply with Health and Safety
22 Code section 104557. Consequently, pursuant to Revenue and Taxation Code section
23 30165.1(c)(2)(A), the Attorney General did not include or retain in the directory the name or
24 brand families of any of these tobacco product manufacturers. Defendant has sold cigarettes of
25 these tobacco product manufacturers or brand families not included in the directory, in violation
26 of Revenue and Taxation Code section 30165.1(e)(2).

27 11. The People also seek injunctive relief and civil penalties based on defendant
28 **MAYBEE's** violation of Revenue and Taxation Code section 30101.7(d) which prohibits a
cigarette seller from engaging in non-face-to-face cigarette sales to a person in California unless

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2 both of the following conditions are met: (1) the seller complies with the Jenkins Act *and*
3 (2) *either* all applicable taxes on the cigarettes have been paid *or* the seller includes on the
4 outside of the cigarette shipping container for any cigarettes shipped to a California resident a
5 specified message notifying the purchaser that the seller has reported the sale to the state tax
6 collection agency and that the purchaser is liable for all applicable unpaid state taxes on the
7 cigarettes.

8 12. The People also seek civil penalties pursuant to Business and Professions Code
9 section 22963(f) based on defendant **MAYBEE**'s sales of tobacco products directly to California
10 consumers in the state through the United States Postal Service, or by other public or private
11 postal or package delivery service, including orders placed by mail, telephone, facsimile,
12 transmission, or the Internet, in which defendant did not: (1) impose a two-carton minimum on
13 each order of cigarettes and submit to each credit card acquiring company with which it has
14 credit card sales, identification information in an appropriate form and format so that the words
15 "tobacco product" may be printed in the purchaser's credit card statement when a purchase of a
16 tobacco product is made by credit card, as required by subsection (b)(2), and (2) make a
17 telephone call after 5 p.m. to each purchaser confirming the order *prior* to shipping the tobacco
18 products, as required by subdivision (b)(3).

19 13. The People also seek, pursuant to section 14955, an injunction prohibiting
20 defendant **MAYBEE** from selling any cigarettes in California directly or through a distributor,
21 retailer, or other intermediary that have not been tested and certified as meeting fire safety
22 standards of sections 14951 and 14952.

23 14. The People also seek an injunction and civil penalties against defendant for
24 violating and continuing to violate the Unfair Competition Law (Bus. & Prof. Code, § 17200 et
25 seq.) by engaging in the unlawful business practices referred to in paragraphs 10-13, above.

26 15. The People seek a judgment awarding the People reimbursement for costs it has
27 incurred and will incur, in bringing this action to enforce compliance with Health and Safety
28 Code sections 14951 and 14952, the Unfair Competition Law, and Revenue and Taxation Code
section 30165.1. Both section 14955(f) and Revenue and Taxation Code section 30165.1(p)

1 provide that the state is entitled to recover the costs of investigation, expert witness fees, costs of
2 the action, and reasonable attorney's fees.

3
4 16. Finally, the People seek a judgment awarding the People reimbursement for its
5 fees and costs, including reasonable attorney's fees, pursuant to Code of Civil Procedure section
6 1021.8. That section provides that whenever the Attorney General prevails in a civil action to
7 enforce certain statutes, including Business and Professions Code section 22963 and Revenue
8 and Taxation Code section 30101.7, the court shall award to the Attorney General all costs of
9 investigating and prosecuting the action, including expert fees, reasonable attorney's fees and
10 costs.

11 **FACTUAL ALLEGATIONS**

12 17. Defendant Scott B. **MAYBEE** sells cigarettes and other tobacco products at
13 retail over the Internet, by mail order, and by other non-face-to-face means, to California
14 consumers through his web sites, including smartsmoker.com, ordersmokesdirect.com,
15 buycheapcigarettes.com, greatwolftobaccomart.com.

16 18. Since at least January 1, 2005, defendant has shipped or caused to be shipped
17 these cigarettes and other tobacco products by the United States Postal Service (USPS), or by a
18 private package delivery service such as United Parcel Service (UPS) to California consumers.

19 19. Defendant is not registered to do business in the State of California nor does he
20 have a registered agent for service of process.

21 20. According to reports defendant **MAYBEE** provided to the California Board of
22 Equalization (Board) pursuant to the Jenkins Act, 15 U.S.C. §§ 375-78 (2007), for the period
23 January 1, 2005, through December 31, 2007, defendant transacted business in the State of
24 California by selling at least 173,000,000 cigarettes at retail to California consumers and
25 shipping these cigarettes to individual California consumers. Defendant **MAYBEE** conducted
26 these retail cigarette sales via his web sites, including smartsmoker.com,
27 buycheapcigarettes.com, ordersmokes direct.com, and greatwolftobaccomart.com.

28 21. Each of defendant's identified web sites invites customers to place orders for
cigarettes or tobacco products at the web site itself or through a phone number, fax number, e-

1 mail address or U.S. mail address listed on each web site.

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3 22. California consumers who buy cigarettes or other tobacco products from
4 defendant place their orders directly at one of the web sites referenced in paragraph 20 or through
5 a phone number, a fax number, e-mail address, or U.S. mail address listed on each web site.

6 23. The cigarettes or other tobacco products ordered from defendant are delivered by
7 him into California to California purchasers by use of the mail or a delivery service.

8 24. A huge number of defendant's cigarette sales violate the Complementary Act.
9 Indeed, of the approximately 173,000,000 cigarettes that defendant reportedly sold at retail and
10 shipped to individual California consumers from January 1, 2005, through December 31, 2007,
11 approximately 102,000,000 of these cigarettes, or 59 percent of all defendant's cigarette sales,
12 were cigarettes of brand families and tobacco product manufacturers that were not and are not on
13 the California directory.

14 25. Specifically, from January 1, 2005, through December 31, 2007, defendant sold at
15 retail and shipped into California cartons of the following cigarette brand families which were
16 purchased by California consumers from defendant's web sites: Skydancer, Kingsley, Tucson,
17 Yes, Niagra, Score, Lakes, One, Double Diamond, Texas Republic, Parker, Yukon, Esquire,
18 Opal, Smokers pride, Bridgeport, Silver Creek, Infinity, Heron and Eagle. These cigarettes and
19 the tobacco product manufacturers that manufactured them were not included in the directory as
20 of the dates of these sales.

21 26. No person may sell cigarettes in California unless they have been tested and
22 certified as meeting the fire safety requirements of California Health and Safety Code sections
23 14951 and 14952.

24 27. Since February 1, 2007, defendant **MAYBEE** has been selling cigarettes to
25 California consumers that are not fire-safe, as required by California health and Safety Code
26 sections 14951 and 14952.

27 28. California Revenue and Taxation Code section 30101.7(d) requires that a person
28 may engage in non-face-to-face sales of cigarettes to California consumers provided that *either* of
the following conditions is met:

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

(2) The seller includes, on the outside of the shipping container for any cigarettes shipped to a resident in California from any source in the United States, an externally visible and easily legible notice located on the same side of the shipping container as the address to which the package is delivered:

“IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU 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. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES.”

29. Since at least January 1, 2005, defendant **MAYBEE** has violated Revenue and Taxation Code section 30101.7(d) by failing either to pay applicable California taxes on sales of cigarettes shipped to California residents in the state or including the specified notice in an externally visible and easily legible manner on the outside of the cigarette shipping container.

30. Business and Professions Code section 22963(b)(2) requires, in the case of a sale, that any person selling tobacco products directly to a California consumer through the United States Postal Service (USPS), or by any public or private postal service or package delivery service, including orders placed through the Internet or other non-face-to-face means must, among other things, submit to each credit card acquiring company with which it has credit card sales, identification information in an appropriate form and format so that the words “tobacco product” may be printed in the purchaser’s credit card statement when a purchase of a tobacco product is made by credit card payment. This section also requires a seller to impose a two-carton minimum on each order of cigarettes.

31. Since at least January 1, 2005, defendant has violated Business and Professions Code section 22963(b)(2) by failing to impose a two-carton minimum on each order of cigarettes, or provide identification information in an appropriate format to each credit card acquiring company with which it has credit card sales.

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2 32. Business and Professions Code section 22963(b)(3) also requires, in the case of a
3 sale, that any person selling tobacco products directly to a California consumer through the
4 United States Postal Service, or by any public or private postal service or package delivery
5 service, including orders placed through the Internet, or other non-face-to-face means, shall
6 telephone the purchaser after 5 p.m. by a person-to-person call or a recorded message, confirming
7 the order *prior* to shipping the tobacco products. Since at least January 1, 2005, defendant has
8 failed to comply with that provision by failing or refusing to confirm the sale prior to shipping
9 the tobacco products.

10 33. In May 2006, the National Automated Clearing House Association (NACHA)^{3/}
11 issued an Operations Bulletin to its members informing them that the National Association of
12 Attorneys General (NAAG) requested NACHA's assistance in its efforts to stop the illegal sale
13 of tobacco products over the Internet. The Bulletin listed the reasons why virtually all online
14 tobacco sales are illegal. The Bulletin: (1) asks NACHA members to refuse to provide
15 electronic payment processing services to Internet tobacco retailers engaged in illegal sales;
16 (2) strongly encourages originating banks (Originating Deposit Financial Institutions or ODFIs)
17 to review their internal procedures to ensure that they have adequate procedures in place to know
18 their customers, and that those customers are engaging in responsible business practices;
19 (3) warns ODFIs that when their customer is a TPP, the ODFI does not have a direct relationship
20 with the Originator (in our case, the tobacco retailer), making it difficult to know the Originator's
21 business or the risk associated with that business; (4) warns ODFIs that to minimize their risk
22 and potential liability for ACH entries initiated through a TPP, ODFIs should also employ
23 practices and procedures to know their customers' customers (i.e., Originators on whose behalf
24 the ODFI is processing); and (5) strongly encourages ACH participants to establish business
25

26 3. NACHA is a not-for-profit association representing more than 11,000 financial
27 institutions through direct memberships and a network of regional payments associations and 585
28 organizations through its industry councils. NACHA develops operating rules and business practices
for the Automated Clearing House (ACH) Network and for electronic payments in areas including
Internet commerce, e-checks and the like.

1 practices that ensure that ACH transactions do not facilitate illegal activity.^{4/} The TPP and the
2 bank that assisted defendant **MAYBEE** in his illegal activities process both credit card and ACH
3 transactions, and have refused to implement the type of due diligence procedures recommended
4 in the NACHA Bulletin.

5
6 34. Since 2005, both the TPP and the bank, have facilitated defendant's illegal
7 tobacco sales. Both entities have had actual knowledge that **MAYBEE** was violating California
8 law since at least mid-2006. In July, 2006, the People first learned that the bank and the TPP
9 were facilitating illegal online tobacco sales when cigarettes were purchased with a Visa card
10 from a web site called cigarettes-com.com. The tobacco retailer did not comply with the federal
11 Jenkins Act, the order-confirmation or minimum-carton-purchase requirements of Business &
12 Professions Code section 22963 or with any of the provisions of Revenue and Taxation Code
13 section 30101.7. The People asked the TPP and the bank to stop facilitating
14 cigarettes.com.com's illegal online tobacco sales. Both the bank and the TPP refused to do so.

15 35. On September 18, 2006, the New York Attorney General's Office sent a letter to
16 the TPP's Chief Operating Officer ("COO") informing him of the states' Internet enforcement
17 efforts, and specifically setting forth in detail the reasons why defendant **MAYBEE** was
18 violating the laws of five states through Internet sales of cigarettes through his web sites,
19 smartsmoker.com, buycheapcigarettes.com and ordersmokesdirect.com. The New York Attorney
20 General's Office also informed the COO, in that same letter that 19 states have legislation that
21 either restrict or prohibit the sale and/or shipment of cigarettes purchased through the Internet,
22 and to the extent that **MAYBEE** is not complying with the licensing, shipping and notice
23 requirements in those states (including California), he is operating in violation of the law when
24 he ships cigarettes into those states. After the TPP passed along the letter to the bank, the bank
25 sent Visa a letter declining to terminate Mr. **MAYBEE**.

26
27 4. Western Payments Alliance (WesPay), a NACHA regional association, distributed this
28 Bulletin to its members in June 2006. The bank that assisted defendant **MAYBEE** is a member of
WesPay.

1
2 36. In mid-2007 the People received documentation from the Board that **MAYBEE**
3 had sold millions of cigarettes in this state that are not on California's Tobacco Directory.

4 37. The People served administrative subpoenas on the TPP and the bank in June and
5 November 2007, respectively. Shortly after receiving the subpoena, the TPP agreed to stop
6 processing Internet tobacco sales. The bank representatives agreed to stop processing online
7 tobacco sales. Nonetheless, after learning that the TPP would no longer process **MAYBEE's**
8 illegal tobacco sales, a high-level bank representative assisted Mr. **MAYBEE** in finding another
9 third party processor, thus continuing to facilitate Mr. **MAYBEE's** unlawful activities. The
10 People once again told the bank representatives via a letter to the bank's attorney that defendant
11 was violating California's directory and remote sales laws. (See letter to Gary Horgan dated
12 November 16, 2007, attached as Exhibit A.) The People, in that letter, stated their concern that
13 the bank was continuing to facilitate defendant's unlawful activity by obtaining a new TPP,
14 notwithstanding, knowledge by the bank's high-level representatives that the TPP had terminated
15 defendant because of his illegal online tobacco sales.

16 38. In December 2007, representatives from the California and Idaho Attorneys
17 General, the bank, and others participated in a conference call in which the People's attorney
18 once again asked that the bank stop facilitating defendant's illegal online tobacco sales and
19 implement the People's proposed due diligence procedures to ensure that the bank did not
20 inadvertently continue to facilitate such sales. The bank refused.

21 39. In December 2007, the People conducted a sting of one of **MAYBEE's** web sites,
22 smartsmoker.com, and purchased a carton of Seneca brand cigarettes using a MasterCard. That
23 sale violated the following California laws: (a) Seneca brand cigarettes are not listed on
24 California's Tobacco Directory, as required by Revenue & Taxation Code section 30165.1; (b)
25 the seller did not confirm the order nor did he impose the minimum purchase requirement, as
26 required by Business & Professions Code section 22963(b)(2) and (3); (c) Seneca Brand are not
27 fire-safe, as required by Health & Safety Code section 14951; and (d) the seller neither paid all
28 applicable taxes owed on the cigarettes nor put the specified notice on the outside of the cigarette
shipping container notifying the purchaser that he or she is legally responsible for all applicable

1
2 unpaid taxes on the cigarettes, as required by Revenue & Taxation Code section 30101.7(d)(2)
3 and (3).

4 40. Based on the continuing violations and the bank's refusal to stop aiding and
5 abetting defendant's illegal activities, the people notified MasterCard of the illegal online
6 tobacco purchases and asked MasterCard to direct the bank to cease doing business with
7 **MAYBEE**. When MasterCard contacted the bank about the People's request, the bank sent
8 MasterCard a letter from Alcohol, Tobacco and Firearms & Explosives indicating that
9 **MAYBEE** was in compliance with *federal* law. The bank representatives did not mention the
10 numerous written and oral warnings the People had previously given the bank describing
11 **MAYBEE**'s violations of *state* law. After the People provided MasterCard with their
12 November 16, 2007, letter to the bank's attorney documenting Mr. **MAYBEE**'s violations of
13 California laws, MasterCard directed the bank to cease MasterCard transactions with **MAYBEE**,
14 imposed a \$30,000 penalty, and informed the bank that an additional monthly fine of \$25,000
15 would be imposed if the transactions did not cease. Finally, as a result of MasterCard's actions,
16 the bank advised Mr. Maybee and his attorney that it was terminating all its MasterCard dealings
17 with **MAYBEE**.

18 41. The bank has refused to implement any of the necessary due diligence procedures,
19 taking the position that the TPP, not the bank, is liable if, for example, the Originator (tobacco
20 retailer) engages in fraud or other illegal activity. The TPP also refused to implement such
21 procedures, especially with regard to other TPPs it does business with.

22 42. The TPP and the bank were warned repeatedly both orally and in writing by the
23 California Attorney General and the New York Attorney General's Office that defendant's online
24 tobacco sales were illegal. Both chose to ignore those warnings and continued to facilitate the
25 illegal conduct.

26 43. Both the TPP and the bank substantially assisted defendant **MAYBEE**'s illegal
27 conduct by providing him with the means for continuing this illegal activity. The bank, in
28 particular, aided and abetted **MAYBEE** in his illicit business enterprise, above and beyond
providing normal business services, by obtaining a new TPP for **MAYBEE** and attempting to

1
2 deceive MasterCard by creating the impression that defendant was in compliance with the law
3 even after the bank knew this was not true as to state law. The purpose of this deception was to
4 allow the bank to continue to reap profits from defendant's illicit business.

5 44. On February 7, 2008, the California Attorney General sent a letter to
6 Mr. **MAYBEE** and his attorney, notifying them of the California laws Mr. **MAYBEE** was
7 violating in connection with his online cigarette sales to California consumers. The letter asked
8 that he immediately comply with California law or stop doing business in California, so as not to
9 incur further monetary penalties. (See letter attached as Exhibit B.) The violations continue.

10 **FIRST CAUSE OF ACTION**

11 **(California Complementary Act)**

12 45. Plaintiff realleges and incorporates by reference paragraphs 1 through 44 of this
13 Complaint

14 46. Since at least January 1, 2005 defendant has sold at least 102,000,000 cigarettes
15 of product manufacturers or brand families not included in the directory. Defendant's retail sales
16 of cigarettes of tobacco product manufacturers or brand families that are not included in
17 California's directory violate Revenue and Taxation Code section 30165.1(c), 30165.1(e)(2) and
18 (3).

19 **SECOND CAUSE OF ACTION**

20 **(Violations of California Cigarette Fire Safety and Firefighter Protection Act)**

21 47. The People reallege and incorporate by reference paragraphs 1 through 46 of this
22 Complaint.

23 48. Section 14951(a) of the California Cigarette Fire Safety and Firefighter
24 Protection Act prohibits any person from selling, offering, or possessing for sale in California
25 cigarettes not in compliance with the testing, certification and marking requirements of
26 subdivision (a) of section 14952, subdivision (b) of section 14952, 14953 and 14954 of the
27 California Cigarette Fire Safety and Firefighter Protection Act,.

28 49. The People are informed and believe that the cigarettes Defendant **MAYBEE**
has sold to California consumers since at least February 1, 2007, have not been tested and

1 certified by the manufacturers of those cigarettes to meet the fire safety requirements of the
2 California Cigarette Fire Safety and Firefighter Protection Act, specifically sections 14951 and
3 14952.
4

5 **THIRD CAUSE OF ACTION**

6 **(Failure to Either Pay Cigarette Taxes or Notify California Purchasers of Their Cigarette** 7 **Tax Obligations, in Violation of Revenue and Taxation Code section 30101.7(d))**

8 50. The People reallege and incorporate by reference, paragraphs 1 through 49, of
9 this Complaint.

10 51. Since at least January 1, 2005, defendant has sold at least 173,000,000 cigarettes
11 to California consumers over the Internet, by mail order or by other non-face-to-face means
12 without satisfying either of the following conditions required by Revenue and Taxation Code
13 section 30101.7: (1) paying all applicable California taxes or (2) including on the outside of the
14 shipping container for any cigarettes shipped to a California resident from any source in the
15 United States an externally visible and easily legible notice located on the same side of the
16 shipping container as the address to which the package is delivered.

17 **FOURTH CAUSE OF ACTION**

18 **(Failure to Both Provide Adequate Information to Credit Card Companies so Words** 19 **“Tobacco Products” Can Be Included on Credit Card Receipt and to Impose Two Carton** 20 **Minimum Purchase)**

21 52. The People reallege and incorporate by reference, paragraphs 1 through 51 of the
22 Complaint.

23 53. Since at least January 1, 2005, defendant has sold at least 173,000,000
24 cigarettes and shipped the cigarettes over the Internet, by mail order or other non-face-to-face
25 means directly to California consumers through USPS, or by a public or private postal service or
26 package delivery service, without doing the following: (a) submitting purchaser identification
27 information in the appropriate form and format to each credit card company with which
28 defendant has credit card sales, so that the words “tobacco product” may be printed on the
purchaser’s credit card statement, nor has defendant imposed a two-carton minimum on each

1 customer cigarette sale, in violation of Business and Professions code section 22963(b)(2); and
2 (b) defendant does not place a telephone call to the purchaser after 5 p.m. to verify the sale, prior
3 to shipping the tobacco products, in violation of section 22963(b)(3).
4

5 **FIFTH CAUSE OF ACTION**

6 **(Unfair or Unlawful Acts or Practices in Violation of Business and Professions Code**

7 **Section 17200**

8 54. The People reallege and incorporate by reference paragraphs 1 through 53 of the
9 Complaint.

10 55. Within the past four (4) years from the date of the filing of this Complaint,
11 defendants, and each of them, engaged in acts of unfair competition, as defined in and prohibited
12 by Business and Professions Code section 17200, by engaging in conduct which includes, but is
13 not limited to:

14 (a) Selling cigarettes whose brand family and manufacturer are not included on
15 the directory posted by the Attorney General pursuant to Revenue and Taxation Code sections
16 30165.1(e)(2) and (3);

17 (b) Failing either to pay California taxes owed on cigarettes purchased by
18 California consumers over the Internet or by mail order, or to include an externally visible and
19 easily legible specified notice on the outside of the cigarette shipping container clearly notifying
20 consumers that defendants have reported the sale of cigarettes to the state taxing entity, and that
21 the purchaser is responsible for the unpaid taxes, in violation of Revenue and Taxation Code
22 section 30101.7(d);

23 (c) Failing to impose a two-carton minimum and provide information to the
24 credit card company so that the phrase "tobacco products" can be put on the purchaser's credit
25 card receipt, in violation of Business and Professions Code section 22963(b)(2)

26 (d) Failing to make a telephone call to the purchaser after 5 p.m. confirming the
27 sale *prior* to shipping the tobacco products, in violation of Business and Professions Code,
28 section 22963(b)(3);

(e) Failing to test cigarettes and certify them as meeting fire safety standards

1
2 required by Health and Safety Code sections 14951 and 14952, before selling cigarettes to
3 California consumers; and

4 (f) Selling cigarettes in California whose manufacturers have neither registered
5 to do business in California, nor appointed a resident agent for service of process and provided
6 notice thereof, in violation of Revenue and Taxation Code section 30165.1(b)(3)(A) and (f).

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, The People pray for the following relief:

10 1. That pursuant to Business and Professions Code section 17203 and 17204,
11 defendants, their successors, employees, agents, representatives, and all other persons who are
12 acting in concert with them, be permanently enjoined from engaging in unfair competition as
13 defined in Business and Professions Code section and specifically enjoined from engaging in the
14 types of acts or practices set forth in the Fifth Cause of Action.

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

19 3. That defendants be required to pay the People civil penalties pursuant to Business
20 and Professions Code section 17206, the court assess a civil penalty of up to two thousand five
21 hundred dollars (\$2,500) against defendants for each violation of Business and Professions Code
22 section 17200 as alleged in the Fifth Cause of Action, as determined by proof in an amount of no
23 less than \$10,000,000.

24 4. That defendants be required to pay to the People civil penalties pursuant to the
25 schedule set forth in Revenue and Taxation Code section 30101.7(e), as determined by proof in
26 an amount no less than \$17,000,000.

27 5. That defendants be required to pay to the People civil penalties pursuant to the
28 schedule set forth in business and Professions Code section 22963(f) as determined by proof, in
an amount of no less than \$17,000,000.

6. That defendant **MAYBEE** appoint a resident agent for service of process in

1 California for any action to enforce any resulting injunction(s) and/or judgment in the instant
2 action.

3
4 7. Pursuant to Health and Safety Code section 14955a(a), the court assess a civil
5 penalty not to exceed ten thousand dollars (\$10,000) for each sale of cigarettes that have not been
6 tested and certified as meeting the fire safety requirements of the California Cigarette Fire Safety
7 and Firefighter Protection Act to be determined by proof, in an amount no less than \$5,000,000.

8 8. The court enjoin defendants from all sales of their cigarettes in California until
9 their cigarettes are tested and certified as meeting the fire safety requirements of the California
10 Cigarette Fire Safety and Firefighter Protection Act, as specified in section 14951.

11 9. The court retains jurisdiction in this matter.

12 10. That defendant **MAYBEE** be required to disclose any and all information
13 needed to enforce a judgment and/or injunction.

14 11. That the People recover the costs of investigation, expert witness fees, costs of
15 the action, and reasonable attorney's fees as provided in Health and Safety Code section
16 14955(f), Revenue and Taxation Code section 30165.1(p) and Code of Civil Procedure section
17 1021.8.

18 12. Such other and further relief as the court deems appropriate and just.

19 Dated: June 5, 2008

20 Respectfully submitted,

21 EDMUND G. BROWN JR.
Attorney General of the State of California

22 JANET GAARD
Chief Assistant Attorney General

23 DENNIS ECKHART
Senior Assistant Attorney General

24 

25 LAURA KAPLAN
26 Deputy Attorney General

27 Attorneys for Plaintiff

28

EXHIBIT A

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
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SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 323-3822
Facsimile: (916) 323-0813
E-Mail: Laura.kaplan@doj.ca.gov

November 16, 2007

Gary Horgan
Horgan & Rosen
23975 Park Sorrento, Suite 200
Calabasas, CA 91302

RE: In the matter of the Investigation of First Regional Bank

Dear Mr. Horgan:

As I mentioned in our telephone conversation today, I am willing to temporarily postpone requiring your client, First Regional Bank, to comply with our Administrative Subpoena if the bank is willing to immediately stop facilitating illegal online tobacco sales and implement the necessary due diligence procedures.

As I told you, First Regional's largest tobacco-selling customer, Scott Maybee, has sold millions of sticks of cigarettes to California consumers in violation of California Law, including Revenue and Taxation Code §30165.1 (Unlawful Sale of Tobacco Products in Violation of the California Tobacco directory Law) and Business and Professions Code § 22963 (Unlawful Sale of Tobacco Products to Minors). Additionally, you told me that one of First Regional's officers found a new third party processor to act as a liaison between Mr. Maybee and First Regional, notwithstanding the fact that he knew ECHO, the prior third party processor, had terminated Mr. Maybee as a client based on these illegal tobacco sales. Such action concerns me greatly. For these reasons, we need to stop this illegal activity as quickly as possible, and I need to be assured that First Regional will implement necessary due diligence procedures so as to ensure that it will not facilitate these illegal sales, whether inadvertently or otherwise, in the future.

I have included a generic Assurance of Discontinuance and Voluntary Compliance which sets out the due diligence requirements we would need the bank to agree to in order to settle this matter. I will be out of the office during the Thanksgiving week, so I would appreciate it if you would let me know by Monday, November 26th, if your client is willing to agree to these terms.

Sincerely,


LAURA KAPLAN
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

LK/ecl, Enclosures

EXHIBIT B

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



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February 7, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Scott Maybee
1346 Brant North Collins
North Collins, NY 14111

Margaret Murphy
Attorney at Law
54 Hollywood Ave.
Buffalo, NY 14220

RE: Notice of Unlawful Cigarette Sales in California

Dear Mr. Maybee:

The California Attorney General's Office has reviewed Jenkins Act reports filed by you between 2005 and 2007 on behalf of your web sites SmartSmoker, BuyCheapCigarettes, Great wolf tobacco Mart, and OrderSmokesDirect. Those reports, and other information that we reviewed, indicate that your cigarette sales to California consumers during that period of time violated multiple California laws, as is more specifically described below.

First, California Revenue and Taxation Code section 30165.1 prohibits the sale of cigarettes in California that are not included in the California Directory of Compliant Cigarettes and Roll-Your Own Brand Families (California Directory). Your Jenkins Act reports show you have sold millions of cigarettes of manufacturers that are not on the California Directory.

Second, you have sold cigarettes to California consumers over the Internet, by mail order or other remote means without complying with the order confirmation and minimum purchase requirements of California Business and Professions Code section 22963.

Third, you have sold cigarettes to California consumers without complying with California Revenue and Taxation Code section 30101.7 prohibiting non-face-to-face sales unless (1) the seller has fully complied with the Jenkins Act and (2) the seller has either paid all

Scott Maybee
February 7, 2008
Page 2

applicable California taxes on the cigarettes or has placed a specified notice on the outside of the cigarette shipping container notifying the purchaser that the seller has reported the sale pursuant to federal law and that the purchaser is legally responsible for all applicable unpaid states taxes on the cigarettes.

Fourth, we have reason to believe that since January 1, 2007, you have been selling cigarettes to California consumers that are not fire-safe, as required by California Health and Safety Code section 14951.

Fifth, each violation of the above-mentioned statutes also constitute a violation of California Business and Professions Code section 17200 (Unlawful, Unfair, or Fraudulent Acts or Practices).

The purpose of this letter is to advise you of these violations and of the civil and criminal penalties to which you are subject for violating the above-mentioned laws. Additionally, unless you immediately comply with all California laws in connection with the sale of your tobacco products or cease doing business in this state, you will be subject to additional civil penalties. The penalties for violating these statutes include:

Business and Professions Code section 22963 and Revenue and Taxation Code section 30101.7: Civil penalties for violations of these statutes range from \$1,000 to \$10,000 per violation, depending on the number of violations.

Revenue and Taxation Code section 30165.1(e)(3): A violation of this statute constitutes a misdemeanor.

Health and Safety Code section 14951: A retailer who knowingly sells non-fire-safe cigarettes is subject to a civil penalty of \$500 for each sale of cigarettes not exceeding 50 packages. The penalty is increased to \$1,000 for sales in excess of 50 packages.

Business and Professions Code section 17200: Civil penalties for violations of Business and Professions Code section 17200 are up to \$2500 per violation, over and above any penalties imposed by any of the above-mentioned statutes. A violator is also subject to an injunction and restitution for these violations.

Please promptly reply to this letter and indicate what steps you have taken to ensure that you are in compliance with all California laws or, alternatively, that you have stopped doing

Scott Maybee
February 7, 2008
Page 3

business in California. If we do not receive a reply by March 15, 2008, we may take legal action to ensure compliance with our laws.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Kaplan". The signature is fluid and cursive, written in a professional style.

LAURA KAPLAN
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

cc: Lynn Bartolo, Chief, Excise Taxes Division, California BOE
Gilbert Haas, Chief, Investigations Division, California BOE