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F I L E D
 Clerk of the Superior Court
 MAY 28 2004
 By: J. JOHNSON, Deputy

CA 88 196 196

10 SUPERIOR COURT OF CALIFORNIA
 11 COUNTY OF SAN DIEGO

13 **THE PEOPLE OF THE STATE OF CALIFORNIA,**
 14 **ex rel. BILL LOCKYER, ATTORNEY**
 15 **GENERAL OF THE STATE OF**
 16 **CALIFORNIA,**
 Plaintiff,
 17
 v.
 18 **S4L DISTRIBUTING, Inc., a Virginia corporation,**
 19 **doing business as SMOKIN4LESS/A-1 DISCOUNT**
 20 **CIGARETTES, WWW.SMOKIN4LESS.COM and**
 21 **WWW.A1DISCOUNTCIGARETTES.COM;**
 22 **WILLIAM C. BAKER III, an individual, and**
 23 **DOES 1 through 15, inclusive,**
 Defendants.

Case No. GIC 808196

JUDGMENT BY COURT AFTER DEFAULT

23 THIS MATTER is before the Court on Plaintiff's Request for Entry of Default Judgment
 24 against defendants S4L DISTRIBUTING, INC., doing business as Smokin4less/A-1 Discount
 25 Cigarettes, www.smokin4less.com and www.A1discountcigarettes.com (hereafter "S4L"), and
 26 WILLIAM C. BAKER, III (hereafter "BAKER".) This Court has considered Plaintiff's
 27 Request for Entry of Default Judgment and accompanying declarations, papers and exhibits
 28 thereto, and the entire record in this matter and hereby finds as follows:

1 1. The Attorney General of the State of California brings this action on behalf of Plaintiff,
2 the People of the State of California ("People"), pursuant to Business and Professions Code
3 section 22963(b)(1), (3) and (4) and Revenue and Taxation Code section 30101.7(d) to enforce
4 compliance with specified requirements for sellers and distributors engaging in non-face-to-face
5 tobacco sales. The purpose of these requirements is to ensure, respectively, that tobacco products
6 will not be sold to children and all applicable state taxes will be paid.

7 2. The People also bring this action pursuant to Business and Professions Code section
8 17500 to enjoin defendants from engaging in false and misleading statements concerning their
9 obligations to comply with federal tax reporting laws and California consumers' obligation to
10 pay California taxes on cigarettes purchased from defendants' web sites.

11 3. Additionally, the People bring this action pursuant to Business and Professions Code
12 section 17200 for civil penalties and to enjoin defendants from engaging in unlawful, unfair and
13 fraudulent business practices in connection with the sale of cigarettes from their web sites to
14 California consumers.

15 4. Defendants S4L and BAKER are sellers of tobacco products, as defined by section
16 22963(e)(2), who sell those tobacco products directly to consumers in California through the
17 United States Postal Service and/or by other public or private postal or package delivery services
18 through orders placed over the Internet and, as such, are required to comply with Business and
19 Professions Code section 22963.

20 5. Defendants S4L and BAKER engage in non face-to-face sales of cigarettes to
21 California consumers, as defined in Revenue and Taxation Code section 30101.7(c).

22 6. At least thirty (30) days have passed since the date of service of the Summons and the
23 Complaint and defendants have failed to appear and defend in this Court.

24 7. Defendants were not at the time of service of the Summons and Complaint, nor are
25 they now, infants or minors, financially incapable, incapacitated or incompetent persons, nor in
26 the military service as defined by Article 1 of the "Soldiers' and Sailors' Civil Relief Act of
27 1940" as amended (50 U.S.C. Appen. Section 501 et seq.).

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1 8. Jurisdiction has been reviewed and is proper pursuant to California Code of Civil
2 Procedure section 410.10.

3 9. Venue has been reviewed and is proper pursuant to California Code of Civil Procedure
4 section 393.

5 **THEREFORE**, by the clerk having entered the default of **S4L** and **BAKER**, as requested
6 by Plaintiff, **JUDGMENT** is accordingly entered in favor of the Plaintiff and against **S4L** and
7 **BAKER** with respect to all claims, as follows:

8 A. Injunctive Relief

9 Pursuant to Business and Professions Code sections 17203 and 17535, defendants **S4L**
10 and **BAKER**, and **S4L** directors, officers, agents, employees, representatives, successors and
11 assignees, ~~and all persons who are acting in concert or in participation with any of them who~~
12 ~~have actual or constructive knowledge of this judgment~~ ^{see RELS} (hereinafter referred to collectively as
13 "defendants") are hereby permanently enjoined and restrained and otherwise prohibited from
14 directly or indirectly doing any of the following acts or practices in connection with non-face-to-
15 face sales made to California consumers from defendants' web sites:

- 16 1. Selling, giving or in any way furnishing tobacco products to anyone in California
- 17 under the age of 18 years of age in violation of Penal Code section 308 (a).
- 18 2. Representing or implying that defendants are not required to comply with the
- 19 reporting requirements of 15 U.S.C. 375 et seq. (Jenkins Act);
- 20 3. Representing or implying that California consumers are not required to pay
- 21 California taxes on cigarettes purchased from defendants and shipped into California;
- 22 4. Representing or implying that California consumers may be required to report
- 23 their cigarette purchases from defendants to the BOE.
- 24 5. Advertising defendants' cigarettes at a stated price but failing to inform California
- 25 consumers that this stated price does not include California taxes;
- 26 6. Failing to disclose in connection with each advertisement and/or promotion of a
- 27 tobacco product at any Internet website, in any catalogue, by telephone, by fax, by e-mail, or by
- 28 any other means of communication prominently both on the website page that is immediately

1 visible when the website is accessed, and immediately adjacent to any portion of the website
2 devoted to placing orders: (1) that it is illegal to sell cigarettes or other tobacco product(s) to
3 persons under 18 years of age, (2) that the sale of tobacco product(s) to a person under 18 years
4 of age may give rise to criminal penalties, (3) that federal law requires out-of-state sellers of
5 cigarettes to provide information including the names of purchasers to California taxing
6 authorities, (4) that the purchaser must be at least 18 years of age or older to purchase tobacco
7 products from S4L and that purchasers may be required to provide a copy of a valid government-
8 issued picture ID and a statement affirming the purchaser is at least 18 years of age or older, and
9 (5) that tobacco products will not be delivered without an adult signature and the person
10 accepting delivery will be required to provide a valid government-issued picture ID showing that
11 person is at least 18 years old.

12 7. Failing to verify that the purchaser is 18 years of age or older by attempting to
13 match the name, address and date of birth provided by the customer to information contained in
14 records in a database of individuals whose age has been verified to be 18 years or older by
15 reference to an appropriate database of government records, as specified by Business and
16 Profession Code section 22963(b)(1)(A); or if defendants are unable to verify that the purchaser
17 is 18 years of age or older, defendant shall require the customer to submit an age-verification kit
18 as required by Business and Professions Code section 22963(b)(1)(B), consisting of an attestation
19 signed by the customer that he or she is 18 years of age or older and a photocopy of a valid
20 government-issued photo ID, showing the person to be not less than 18 years of age,
21 accompanied by a signed statement in writing certifying that (a) the photocopy of the ID correctly
22 identifies the person and correctly states the person's address and date of birth, (b) the person
23 understands that placing another person's signature on the statement may be illegal as forgery,
24 and (c) the person understands that tobacco sales to minors are illegal.

25 8. Failing to verify that the address on the check or credit card offered for payment
26 by the purchaser matches the billing address listed in the billing database, as required by
27 Business and Professions Code section 22963(b)(1)(A).

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1 9. Failing to verify that the address on the check or credit card provided by the
2 consumer matches the address listed on the government identification, as required by Business
3 and Professions Code section 22963(b)(1)(B)(1).

4 10. Failing to make a telephone call after 5 p.m. to the purchaser confirming the order
5 prior to shipping the tobacco products, as required by Business and Professions Code section
6 22963(b)(1)(B)(3).

7 11. Failing to deliver the tobacco product to the customer's verified billing address on
8 the check or credit card used for payment.

9 12. Failing to comply with either of the following conditions, as required by Revenue
10 & Taxation Code section 30101.7(d):

- 11 a. paying all applicable California taxes on the cigarettes, or
12 b. including on the outside of the shipping container for any cigarettes shipped
13 to a resident in California from any source in the United States an externally visible and easily
14 legible notice located on the same side of the shipping container as the address to which the
15 package is delivered stating as follows:

16 "IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER
17 LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS
18 REPORTED PURSUANT TO FEDERAL LAW THE SALE OF THESE CIGARETTES
19 TO YOUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND
20 ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID
21 STATE TAXES ON THESE CIGARETTES."

22 13. Delivering tobacco products to a customer without verifying that the person is at
23 least 18 years old by a face-to-face (in person) check of a valid form of photo-ID reasonably
24 establishing that the ID is valid, genuine and unaltered, that the person submitting the ID is the
25 person pictured and described on the ID and that the ID shows the person to be not less than 18
26 years of age.

27 14. Failing to provide the California Board of Equalization with a monthly report
28 showing the identity of each recipient in the State to whom defendants shipped tobacco
product(s) during the applicable month, and the brand and quantities of tobacco product(s)
shipped, as required by 15 U.S.C. 375 et seq. (the Jenkins Act).

1 B. Civil Penalties

2 1. Pursuant to Business and Professions Code section 17536, defendants S4L and
3 BAKER, jointly and severally, shall pay plaintiff a penalty of \$500 for each violation of
4 Business and Professions Code section 17500 alleged in the First Cause of Action, for a total
5 assessed penalty of \$225,500.

6 2. Pursuant to Business and Professions Code section 22963(f), defendants S4L and
7 BAKER, jointly and severally, shall pay plaintiff a penalty of \$1,000 for the first violation,
8 \$2,500 for the second violation, \$4,000 for the third violation, \$5,500 for the fourth violation and
9 \$10,000 for each violation thereafter for 8 violations of Business and Professions Code section
10 22963(b)(1), (3) and (4), for a total assessed penalty of \$53,000.

11 3. Pursuant to Revenue and Taxation Code section 30101.7(e), defendants S4L and
12 BAKER, jointly and severally, shall pay plaintiff a penalty of \$1,000 for the first violation,
13 \$2,500 for the second violation, \$4,000 for the third violation, \$ 5,500 for the fourth violation
14 and \$10,000 for each violation thereafter of Revenue and Taxation Code section 30101.7(d), for
15 a total assessed penalty of \$3,093,000.

16 4. Pursuant to Business and Professions Code section 17206, defendants S4L and
17 BAKER, jointly and severally, shall pay plaintiff a penalty of \$1000 for each violation of Penal
18 Code section 308(a) for a total of \$12,000 and shall pay a penalty of \$100 per violation, for the
19 remaining violations totalling of \$988,700, a total assessed penalty of \$1, 000,700.

20 C. The Court shall retain jurisdiction of this matter.

21 D. Defendants shall pay all plaintiff's reasonable costs, including but not limited to filing
22 fees in the amount of \$241.50 pursuant to Government Code section 6103.5, and costs of service
23 of process on BAKER in the amount of \$44.75 and S4L in the amount of \$ 165.75 for a total
24 sum of \$210.50 and subject to modification and/or further relief as this court deems just and
25 proper.

26 E. The defendants shall pay attorneys' fees to plaintiff in the amount of \$9,150.

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F. The Court further orders, as just and appropriate, the following:

1. Name/Address of Judgment Creditors:
State of California
c/o Department of Justice-Office of the Attorney General
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550

2. Name/Address/Phone-Judgment Creditor's Attorney:
Deputy Attorney General, Laura Kaplan
Department of Justice-Office of the Attorney General
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
(916) 323-3822

3. Name/Address-Judgment Debtors:
William C. Baker, III and S4L Distributing, Inc.
P.O. Box 457
Big Stone Gap, VA 24219

4. Principal Amount of Judgment for penalties: **\$4,372,200**

5. Costs: **\$452**

6. Post-judgment simple interest at the rate of ten percent (10%) per annum on the total judgment which consists of items 4 and 5 from the date of entry of judgment until fully paid. Interest is compounded annually.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: MAY 28 2004, 

RICHARD E. L. STRAUSS

Judge of the Superior Court