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8 Attorneys for Plaintiffs the People of the State of
9 California

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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 GENERAL**
OF THE STATE OF CALIFORNIA,

16 Plaintiff,

17 v.

18 **eSMOKES, INC., a Florida Corporation, doing**
19 **business as WWW.ESMOKES.COM and**
20 **WWW.CIGARETTESBYMAIL.COM, GARY E.**
KIRSCHNER, an individual, and DOES 1 through
21 **15, inclusive,**

22 Defendants.

GIC 808195 (Consolidated with
Case Nos. GIC 808196, GIC
808197, GIC 808198, and GIC
811625)

**STIPULATED FINAL
JUDGMENT AND
PERMANENT INJUNCTION
(People v. eCommerce Today,
Ltd.)**

Judge: Hon. Wayne L. Peterson
Dept.: 75

23 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

- 24 1. The court has jurisdiction of the parties and the subject matter.
- 25 2. The defaults entered in this matter against Paul D. Hayes and ECommerce Today,
26 Ltd. are hereby vacated.
- 27 3. This case is severed from consolidated cases GIC 808195, GIC 808197 and
28 GIC 808198 so that judgment may be entered in this matter.

1 4. Pursuant to Business and Professions Code sections 17203 and 17535,
2 defendant E-Commerce Today, Ltd., doing business as www.discountcigarettes.net and
3 www.ecommerce-today.com and defendant Paul D. Hayes and their officers, directors, partners,
4 agents, employees, representatives, assignees, successors in interest and all persons, corporations
5 and other entities who are acting in concert or participation with defendants, with actual or
6 constructive notice of this Final Judgment (“defendants”) are hereby permanently enjoined and
7 restrained from directly or indirectly shipping cigarettes into the state of California.

8 5. Pursuant to Business and Professions Code sections 17203 and 17535, defendants
9 shall do the following:

10 a) Within five (5) days of their execution of the Stipulation for Entry of Final
11 Judgment and Permanent Injunction (“Stipulation”), defendants shall permanently cease and
12 desist from shipping cigarettes into the state of California;

13 b) Within five (5) days of their execution of the Stipulation, defendants shall
14 place a statement, clearly and conspicuously, on each and every web site that defendants own or
15 operate and/or through which Defendants sell or offer to sell cigarettes, that the owner or
16 operator does not ship cigarettes into the state of California;

17 c) Within five (5) days of their execution of the Stipulation, defendants shall
18 program the software for www.discountcigarettes.net and www.ecommerce-today.com, and any
19 other web sites defendants own or operate presently or in the future and/or through which
20 defendants sell or offer to sell cigarettes to California consumers so that the entry by a
21 prospective purchaser of a delivery address within the state of California will cause the order to
22 be rejected by the order-processing software. If a potential customer tries to make an order for
23 which the shipping address is located in the state of California, the web site will immediately
24 notify the consumer that the web site does not ship to California and the order will not be
25 processed.

26 d) In addition to the above, defendants agree to take other reasonable steps to
27 assure that shipments of cigarettes or other tobacco products are not shipped to an address in the
28 state of California;

1 e) Within five (5) days of their execution of the Stipulation, defendants shall
2 adopt written policies and procedures that ensure that their web sites do not ship cigarettes into
3 the state of California and shall provide a copy of the policies and procedures to each employee
4 with any responsibility in the sale or shipment of cigarettes into the state of California;

5 f) Within thirty (30) days of the date of the stipulation, defendants shall provide
6 to Laura Kaplan, attorney for the People, a copy of the written policies and procedures described
7 in the preceding subparagraph;

8 6. Defendants E-Commerce Today, Ltd. and Paul D. Hayes shall forthwith jointly
9 and severally pay the People civil penalties in the sum of four thousand dollars (\$ 4,000)
10 pursuant to Business and Professions Code section 17536 and Revenue and Taxation Code
11 section 30101.7(e). Payment shall be made in four (4) equal installments of one thousand dollars
12 (\$1,000) each pursuant to the following schedule: The first installment is due no later than ten
13 (10) days after the signing of the Stipulation, the second installment is due thirty (30) days after
14 the first, the third installment is due thirty (30) days after the second and the fourth installment is
15 due thirty (30) days after the third. The penalty shall be paid by check and made out to "The
16 California Department of Justice." The check shall be mailed to: Office of the Attorney
17 General, Attention: Nancy Wagner, Tobacco Litigation and Enforcement Section, 1300 I Street,
18 P.O. Box 944255, Sacramento, CA 94244-2550.

19 7. Defendants E-Commerce Today, Ltd. and Paul D. Hayes shall also forthwith
20 jointly and severally pay the People the cost of investigation of this case, the cost of service of
21 process, and the cost of monitoring future violations in the sum of eight thousand dollars
22 (\$8,000). Payment shall be made in four (4) equal installments of two thousand dollars (\$2,000)
23 each pursuant to the following schedule: The first installment is due no later than ten (10) days
24 after the signing of the Stipulation, the second installment is due thirty (30) days after the first,
25 the third installment is due thirty (30) days after the second and the fourth is due thirty (30) days
26 after the third. The check for costs shall be made out to "The California Department of Justice."
27 The check shall be mailed to: Office of the Attorney General, Attention: Nancy Wagner,

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1 Tobacco Litigation and Enforcement Section, 1300 I Street, P.O. Box 944255, Sacramento, CA
2 94244-2550.

3 8. In the event of a violation of this Final Judgment, defendants shall pay as a
4 penalty to the People five thousand dollars (\$5,000) for each violation. For purposes of this Final
5 Judgment, a violation of the Final Judgment shall occur if an order for cigarettes or other tobacco
6 products submitted to a business from which defendants derive, directly or indirectly, any income
7 through the sale of cigarettes or other tobacco products over the Internet, results in the delivery of
8 cigarettes or other tobacco products to an address within the state of California. The fact of such
9 delivery shall constitute conclusive proof of a violation of this Final Judgment. Each delivery
10 shall constitute a separate violation.

11 9. Jurisdiction is retained for the purpose of enabling any party to this Final
12 Judgment to apply to the Court at any time for such further orders and directions as may be
13 necessary and appropriate for the construction or carrying out of this Final Judgment, for the
14 modification or termination of any of its injunctive provisions, for the enforcement of any of its
15 provisions, or for punishment of any violations of its provisions.

16 Dated:

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JUDGE OF THE SUPERIOR COURT

1 BILL LOCKYER
Attorney General of the State of California
2 TOM GREENE
Chief Assistant Attorney General
3 DENNIS ECKHART
Senior Assistant Attorney General
4 LAURA KAPLAN (SBN 64264)
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11 SUPERIOR COURT OF CALIFORNIA
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KIRSCHNER, an individual, and DOES 1 through
15, inclusive.,

21 Defendants.

GIC 808195 (Consolidated with
Case Nos. GIC 808197, GIC
808198, and GIC 811625)

22
23 **STIPULATION FOR ENTRY**
OF FINAL JUDGMENT AND
PERMANENT INJUNCTION

Judge: Hon. Richard E.L. Strauss
Dept.: 75

24 Plaintiff the People of the State of California, having filed the Complaint herein, and
25 Plaintiff appearing through its attorney Bill Lockyer, Attorney General, through Deputy
26 Attorneys General Laura Kaplan and Michelle Fogliani; and Defendants Cyco.net, Inc., a New
27 Mexico corporation and Richard Urrea, Chief Executive Officer and President, Daniel Urrea,
28 Chief Financial Officer, and Francisco Urrea, Jr., Director of Cyco.net Inc., residents of New
Mexico, doing business as or having done business as www.cycocigs.com and

1 www.aabakisnokes.com represented by their attorney of record Charles V. Berwanger, of
2 Gordon and Rees, LLP, ("Defendants"), Plaintiff and Defendants hereby stipulate and agree that:

3 1. On April 1, 2003, the People filed a Complaint alleging that, in the course of
4 selling cigarettes over the Internet, Defendants has engaged in unlawful business practices in
5 violation of Business and Professions Code section 17200 by:

6 a) selling cigarettes to children;

7 b) failing to implement adequate safeguards to ensure that minors cannot receive
8 cigarettes purchased from their web site;

9 c) failing to comply with the Jenkins Act, 15 U.S.C. 375 et seq. ("Jenkins Act")
10 requiring reporting the shipment of cigarettes into California by out-of-state sellers;

11 d) failing to comply with a California statute, effective January 1, 2003, and
12 prohibiting non-face-to-face cigarette sales unless the seller complies with one of two specified
13 requirements concerning the payment of taxes on cigarette sales to California customers (Rev. &
14 Tax Code § 30101.7); and

15 e) engaging in false and misleading advertising for the purpose of inducing
16 California consumers to purchase defendants cigarettes (Bus. & Prof. Code, § 17500).

17 2. The People also allege that Defendants separately violated Business and
18 Professions Code 17500 and Revenue and Taxation Code section 30101.7, respectively, by
19 making certain false and misleading advertising on their web sites, for the purpose of inducing
20 California consumers to purchase defendants' cigarettes and by failing to either pay all applicable
21 taxes on cigarettes shipped to California customers or advise those customers of their obligation
22 to pay those taxes to the California Board of Equalization.

23 3. Defendants contend that they no longer own or operate any web site that ships
24 tobacco products to California.

25 4. In settlement of the People's Complaint, Defendants Cyco.net, Inc., Richard
26 Urrea, Daniel Urrea, and Francisco Urrea, Jr., their officers, directors, partners, agents,
27 employees, representatives, assignees, successors in interest and the People stipulate to entry of
28 this Final Judgment and permanent Injunction without the taking of proof and without this

1 Judgment constituting evidence of an admission by any party regarding any issue of law or fact
2 alleged in the Complaint, all parties having waived the right to appeal, attempt to set aside or
3 vacate, or otherwise to attack, directly or collaterally the Stipulated Final Judgment between
4 Plaintiff and Defendant or any provision contained therein.

5 5. The court may sever this matter from consolidated cases GIC 808195, 811625 and
6 808198 so that judgment may be entered in this matter.

7 6. The proposed Stipulated Final Judgment and Permanent Injunction, a copy of
8 which is attached hereto as Exhibit 1 and incorporated by this reference, may be signed by any
9 judge or commissioner of the Superior Court of the State of California, County of San Diego and
10 entered by the clerk without notice, provided that this Stipulated Judgment has been executed by
11 counsel listed below:

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1 DATED: April 28, 2004

BILL LOCKYER
Attorney General of the State of California

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3 By: Laura Kaplan
4 LAURA KAPLAN
Deputy Attorney General

5 Attorneys for Plaintiffs the People of the State
6 of California

7 DATED: April 21, 2004

CHARLES V. BERWANGER
GORDON S. REES, LLP

8
9 By: Charles V Berwanger
10 CHARLES BERWANGER

11 Attorneys for Defendants Cyco.net, Inc.

12
13 DATED: 4-19-04

Richard Urrea
PRESIDENT
Cyco.net, Inc.

14
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16 DATED: 4-19-04

Richard Urrea
RICHARD URREA, Individual

17
18
19 DATED: 4/19/04

Daniel Urrea
DANIEL URREA, Individual

20
21
22 DATED: 4/19/04

Francisco Urrea, Jr.
FRANCISCO URREA, JR., Individual