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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 **D.C., INC., a Missouri corporation, doing business**  
20 **as WWW.DIRTCHEAPCIG.COM and DIRT**  
21 **CHEAP CIGARETTES; FRED W. TEUTENBERG,**  
22 **an individual, and DOES 1 through 15, inclusive,**

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR**  
**INJUNCTION, CIVIL**  
**PENALTIES, AND OTHER**  
**RELIEF** (Bus. & Prof. Code, §§  
17200, 17500 and 22963(b)4 and  
Rev. and Tax. Code, § 30101.7(d))

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

25 **INTRODUCTION**

26 Youth smoking is a serious pediatric health problem in California and the rest of the  
27 nation. More than 80% of regular smokers began smoking as children. Every day in the United  
28 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 site that  
8 minors under the age of 18 are prohibited from purchasing cigarettes and are subject to criminal  
9 penalties. However, defendants in fact facilitate and promote purchase of cigarettes by children  
10 because neither defendants' web site nor their delivery procedures require face-to-face delivery or  
11 otherwise adequate verification of age and identity of would-be purchasers. Defendants have sold  
12 cigarettes to children in California from their web site, and the People have so informed  
13 defendants on several occasions. Defendants have been similarly informed by other states on  
14 other occasions. Notwithstanding the fact that they have been so notified, defendants have not  
15 taken adequate precautions to ensure that children cannot purchase cigarettes and receive delivery  
16 from their web site. Specifically, defendants fail or refuse to put in place effective safeguards so  
17 as to prevent or seriously discourage further sales to minors. By refusing to do so and completing  
18 sales of cigarettes to minors, defendants are encouraging and allowing children to purchase  
19 cigarettes from their web site and thus undermining the state's efforts to reduce smoking by  
20 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 (BOE), the  
25 entity responsible for collecting those taxes. Defendants also induce consumers to purchase  
26 defendants' cigarettes by false and misleading statements concerning defendants' obligation to  
27 report to the BOE shipments of cigarettes and consumers' obligation to pay taxes on cigarettes  
28 purchased from defendants and shipped into California.

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

### 13 **PARTIES**

14 1. Bill Lockyer is the duly elected Attorney General of the State of California and is  
15 the chief law enforcement officer of the state (Cal. Const., art. 5, § 13.) He is authorized by  
16 Business and Professions Code sections 17204 and 17206 to bring actions, in his official capacity,  
17 to enforce the state’s statutes regulating unfair competition. He is also authorized by Revenue  
18 and Taxation Code section 30101.7, subdivision (e) to bring actions to facilitate the collection of  
19 all applicable state surtaxes and sales or use taxes on cigarettes sold to California residents over  
20 the Internet or by mail order. Additionally, he is authorized to assess civil penalties against any  
21 entity violating Business and Professions Code section 22963 which, among other things,  
22 prohibits both distribution of tobacco products directly or indirectly to persons under the age of  
23 18 through common carriers and delivery of tobacco products to an address other than the  
24 consumer’s verified billing address.

25 2. Defendants, D.C., INC., a Missouri corporation doing business as  
26 WWW.DIRTCHEAPCIG.COM, and DIRT CHEAP CIGARETTES (collectively referred to as  
27 “Dirt Cheap”), and FRED W. TEUTENBERG, an individual, are cigarette retailers that advertise  
28 and sell cigarettes over the Internet to California residents. Dirt Cheap receives Internet orders

1 from California residents and ships the orders by common carrier to California.

2 3. Dirt Cheap is, and during the relevant time period was, a Missouri corporation  
3 with its principal place of business located at 350 N. Valley Dell Drive, Fenton Missouri. Dirt  
4 Cheap also owns or controls a retail cigarette outlet known as “DirtCheapCig,” located in  
5 Paducah, Kentucky. Dirt Cheap sells cigarettes over the Internet by operating a web site at  
6 www.dirtcheapcig.com through which cigarettes are advertised and sold to California residents.

7 4. Defendant Fred Teutenberg, IV (“Teutenberg”) is and at all relevant times was,  
8 President and Director of D.C., Inc. In such capacity, and as an individual, Teutenberg controls,  
9 manages, supervises, and directs the operations and activities of D.C., Inc.

10 5. The true names and capacities of the defendants sued herein under the fictitious  
11 names of Does One through Fifteen, inclusive, are unknown to plaintiff who therefore sues  
12 defendants by such fictitious names. Plaintiff will amend its complaint to show the true names of  
13 such defendants when the same have been ascertained. Plaintiff is informed and believes and upon  
14 such information and belief alleges, that each of the defendants designated herein as a DOE is  
15 legally responsible in some manner for the events and happenings alleged in this complaint.

16 **JURISDICTION AND VENUE**

17 6. The violations of law alleged in this Complaint occurred in San Diego County and  
18 in other counties in California or occurred outside of California but were intended by defendants  
19 to influence prospective purchasers in California. Defendants purposefully and voluntarily  
20 directed their activities toward California consumers and purposefully availed themselves of the  
21 privilege of conducting business in California by both soliciting and transacting business in  
22 California. Defendants have intentionally targeted California and have sold cigarettes to  
23 consumers in San Diego and in other counties in the State of California.

24 **FACTUAL ALLEGATIONS**

25 **Sales of cigarettes to minors**

26 7. Pursuant to Penal Code section 308(a), every person, firm or corporation which  
27 knowingly or under circumstances in which it has knowledge, or should have grounds for

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1 knowledge, sells cigarettes to persons under the age of 18 years is subject either to a  
2 misdemeanor criminal action or to a civil action punishable by a fine.

3           8. Defendants have knowledge or grounds for knowledge that it is selling cigarettes  
4 to children from its web sites. Defendants were notified in writing by Plaintiff's attorney that  
5 since on or before March 2001 Dirt Cheap has sold cigarettes from its web site to children in  
6 California on numerous occasions. Dirt Cheap does not have adequate procedures and safeguards  
7 in place to ensure that minors cannot receive cigarettes purchased from its web site.

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

15           10. The People sent another letter to defendants on January 23, 2003, informing them  
16 that the California Attorney General had documented sales of cigarettes to minors from  
17 defendants' web site on three occasions beginning in March 2001, that the Attorney General of  
18 Michigan had documented a sale to a minor on May 30, 2000, and that the New York City  
19 Department of Consumer Affairs had cited Dirt Cheap for deceptive trade practices for selling  
20 cigarettes to a minor without verifying age. (A copy of this letter is attached as Exhibit "B" and  
21 incorporated herein by reference.) The People also requested that defendants enter into a  
22 settlement agreement ("agreement) between defendants and a significant number of states. A  
23 copy of the proposed agreement setting forth procedures to ensure that children could not  
24 purchase cigarettes from their web sites was included in the January 2003 letter. The People also  
25 informed defendants of their obligation to comply with the Jenkins Act in this letter. Although  
26 defendants received this letter, defendants did not respond in any way.

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## Internet Cigarette Sales-Excise Tax Evasion

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2           11. Pursuant to Revenue and Taxation Code section 30101.7(d), if an out-of-state  
3 retailer does not collect and remit the tax to the state, the consumer purchasing the cigarettes is  
4 ultimately liable for the excise tax. Because Dirt Cheap does not collect and remit any of the  
5 applicable California taxes, California consumers who purchase cigarettes from Dirt Cheap are  
6 responsible for paying these taxes directly to the state.

7           12. Pursuant to the Jenkins Act, 15 U.S.C. section 375 et seq. (“Jenkins Act”),  
8 vendors who sell and ship cigarettes in interstate commerce other than to a licensed distributor  
9 must register with the tobacco tax administrator of each state shipped to and, on a monthly basis,  
10 report (1) the name and address of the persons to whom cigarette shipments were made, (2) the  
11 brands of cigarettes shipped, and (3) the quantities of cigarettes shipped. Reports must be filed no  
12 later than the 10<sup>th</sup> day of each calendar month, reporting each and every cigarette shipment made  
13 to the state during the previous calendar month. The seller’s registration must list the seller’s  
14 name, trade name, and the address of all business locations.

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

21           14. The BOE sent a Jenkins Act letter to Dirt Cheap on at least several occasions  
22 requesting that the company report all its shipments of cigarettes to California consumers as  
23 required by the Jenkins Act. It sent letters to the company’s Fenton, Missouri address on May 23,  
24 2000, and to the company’s Paducah, Kentucky address on June 21, 2002. (Copies of these  
25 letters are attached, as Exhibits “C” and “D”, and incorporated herein by reference.)

26           15. On July 14, 2000, Dirt Cheap sent a letter to the BOE, through its attorney,  
27 claiming that it was not required to comply with the Jenkins Act for the following reasons: all of  
28 Dirt Cheap’s cigarette sales are booked in Missouri, the company pays Missouri cigarette taxes,

1 and since Dirt Cheap has only “mere incidental” contacts with states other than Missouri, it is not  
2 required to pay cigarette taxes in other states. The BOE responded in a letter dated October 25,  
3 2000, stating “The Jenkins Act requires a report whenever cigarettes are shipped into a state  
4 which taxes the sale or use of cigarettes. California is clearly such a state.” (A copy of this letter  
5 is attached as Exhibit “E” and incorporated herein by reference.) Defendant did not respond to  
6 this letter.

7 16. Dirt Cheap clearly has extensive contacts with California. It purposefully targets  
8 California by directing its activities to California consumers. Dirt Cheap solicits business from  
9 California consumers and transacts business in California both by delivering its cigarettes to  
10 California residents and by advertising in local periodicals in the state. (A copy of one such  
11 advertisement placed in a local California newspaper, dated April 24, 2000, is attached as Exhibit  
12 “F” and incorporated herein by reference.)

13 17. Dirt Cheap has failed or refused to file any reports with the BOE, at any time, of  
14 shipments of cigarettes to California consumers, as required by section 376 of the Jenkins Act.

### 15 **Deceptive Advertising**

16 18. To induce consumers to purchase cigarettes from its web sites, defendants have  
17 not and do not presently inform prospective California purchasers of their obligation to pay  
18 California taxes on the cigarettes they purchase from Dirt Cheap. Those taxes amount to \$0.87  
19 per package of twenty cigarettes or \$8.70 per carton. Kentucky imposes one of the lowest excise  
20 taxes in the country – \$0.03 per pack or \$0.30 per carton. A California resident may purchase  
21 from Dirt Cheap located in Kentucky and pay a price that represents an apparent savings of \$8.40  
22 per carton.

23 19. Further, through statements on its web site, Dirt Cheap misrepresents and has  
24 misrepresented the obligation of potential purchasers in California to pay California taxes on  
25 cigarettes purchased through defendants’ web site. For example, Dirt Cheap states on its web  
26 site:

27 “By entering this website for any purpose, you agree that all actions which  
28 take place over this website, and all www.dircheapcig.com, Inc.’s actions in  
delivering through common carriers the tobacco products you purchase, are

1 governed exclusively under the laws of the State of Kentucky, with the sale  
2 having been made at Paducah, Kentucky”

3 20. Defendants’ representation concerning the obligation of California consumer to  
4 pay California taxes are false and misleading for the following reasons:

5 (a) Defendants’ implication that all tobacco product sales from their web site are  
6 governed by Kentucky law is erroneous and misleading because by law, consumers are obligated  
7 to pay taxes on cigarettes purchased from defendants over the Internet and shipped into  
8 California;

9 (b) Pursuant to Revenue and Taxation Code sections 30008, 30009 and 30109,  
10 California taxes are imposed and collected on the first distribution of untaxed cigarettes in the  
11 state. This means that since Smokin4Less does not pay taxes on cigarettes purchased from its  
12 web sites and shipped to consumers in California, the California consumers must pay all taxes  
13 owed on the cigarettes;

14 (c) Defendants advertise their cigarettes at a stated price but fail to inform  
15 California consumers that the stated price doesn’t include taxes

16 **Failure to Notify California Purchasers of Tax Obligations**

17 21. Effective January 1, 2003, California Revenue and Taxation Code section 30101.7(d)  
18 requires that a person may engage in non-face-to-face sales of cigarettes to California consumers  
19 provided that either of the following conditions is met:

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

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

25 “IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A  
26 SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU  
27 RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL  
28 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.”



1           22. Since January 1, 2003, Dirt Cheap has violated Revenue and Taxation Code  
2 section 30101.7(d) by failing to pay applicable California taxes on sales of cigarettes shipped to  
3 California residents in the state or to inform California consumers of their obligation to pay all  
4 applicable unpaid taxes on the cigarettes.

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

12           **Failure to Deliver Tobacco Products to Purchasers' Verified Billing Address**

13           24. Effective January 1, 2003, Business and Professions Code section 22963(b)(4)  
14 requires that any person distributing tobacco products directly to a consumer in the state through any  
15 public or private postal service or package delivery service, including orders placed through the  
16 Internet, must, among other things, deliver the tobacco product to the purchaser's verified billing  
17 address on the check or credit card used for payment. Since January 1, 2003, Dirt Cheap has violated  
18 that provision and has been representing to consumers on its web site that it may deliver tobacco  
19 products to California purchasers at addresses other than their verified billing addresses, after the  
20 initial purchase.

21           **FIRST CAUSE OF ACTION**

22           **Business and Professions Code 17500**  
23           **False or Misleading Advertising**

24           25. The People reallege and incorporate herein by reference, paragraphs 1 through 24,  
25 inclusive, as though fully set forth herein.

26           26. Within the past three (3) years from the date of the filing of this Complaint,  
27 defendants and their agents and representatives, have made or caused to be made, untrue or  
28 misleading statements to members of the public, including to potential customers purchasing

1 cigarettes from defendants' web sites, in violation of section 17500 of the Business and  
2 Professions Code, in order to induce them to purchase cigarettes from defendants. Said untrue or  
3 misleading statements include, but are not limited to the following:

4 (a) Representing or implying that California consumers are not required to pay  
5 taxes in California on cigarettes purchased from Dirt Cheap over the Internet; and

6 (b) Advertising Dirt Cheap's cigarettes at a stated price but failing to inform  
7 California consumers that this stated price does not include California taxes.

8 27. Defendants knew, or by the exercise of reasonable care should have known, that  
9 the statements set forth in paragraph 26 were untrue or misleading at the time such statements  
10 were made.

11 **SECOND CAUSE OF ACTION**

12 **Business and Professions Code section 22963(b)(4)**  
13 **Delivery of Tobacco Products to Unverified Billing Address**

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

16 29. Since January 1, 2003, Dirt Cheap has delivered and continues to deliver tobacco  
17 products to persons in California at an address other than the purchasers' verified billing address  
18 on the check or credit card used for payment, in violation of Business and Professions Code  
19 section 22963(b)(4).

20 **THIRD CAUSE OF ACTION**

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

23 30. The People reallege and incorporate by reference, paragraphs 1 through 29,  
24 inclusive, as though fully set forth herein.

25 31. Since January 1, 2003, Dirt Cheap has engaged and continues to engage in non-  
26 face-to-face sales of cigarettes to California consumers without satisfying either of the following  
27 conditions required by Revenue and Taxation Code section 30101.7: (1) paying all applicable  
28 California taxes or (2) including on the outside of the shipping container for any cigarettes

1 shipped to a resident in California from any source in the United States an externally visible and  
2 easily legible notice located on the same side of the shipped container as the address to which the  
3 package is delivered.

4 **FOURTH CAUSE OF ACTION**

5 **Business and Professions Code Section 17200**  
6 **Unfair or Unlawful Business Acts or Practices**

7 32. The People reallege and incorporate by reference paragraphs 1 through 31,  
8 inclusive, as though fully set forth herein.

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

13 (a) Making untrue or misleading statements as referenced in paragraphs 26 of this  
14 Complaint, in violation of Business and Professions Code section 17500;

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

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

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

22 (e) Delivering tobacco products to an address other than the purchaser's verified  
23 billing address on the check or credit card used for payment, in violation of Business and  
24 Professions Code section 22963(b); and

25 (f) Failing either to pay the California taxes owed on cigarettes purchased by  
26 California consumers over the Internet from defendants or to clearly notify consumers that  
27 defendants have reported the sale of cigarettes to the BOE and that the purchaser is responsible  
28 for the unpaid taxes, in violation of Revenue and Taxation Code section 30101.7(d).

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

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

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

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

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

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

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

25           7. That defendants be required to pay to the People civil penalties pursuant to the  
26 schedule set forth in Business and Professions Code section 29963(f), in an amount to be  
27 determined by proof.

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