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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUL 27 2012

C. PULSIFER

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF RIVERSIDE
12 DESERT DIVISION, INDIO BRANCH

14 **THE PEOPLE OF THE STATE OF**
15 **CALIFORNIA, ex rel. Edmund G. Brown**
16 **Jr., Attorney General of the State of**
California,

17 Plaintiff,

18 v.

19 **BLACK HAWK TOBACCO, INC., dba**
20 **Black Hawk Tobacco Shop and**
21 **Blackhawktobacco.com, FREDERICK**
22 **ALLEN McALLISTER, dba Black Hawk**
Tobacco Shop, and DOES 1 through 20,
inclusive,

23 Defendants.

Case No. INC 087307

~~PROPOSED~~ **ORDER GRANTING**
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

Date: June 19, 2012
Time: 8:30 a.m.
Dept: 2F
Judge: Hon. John G. Evans
Trial Date: October 15, 2012
Action Filed: June 10, 2009

25 Plaintiff's motion was duly set and noticed for hearing on June 19, 2012. Defendants did
26 not oppose the motion. The Court issued a tentative ruling on June 18, 2012, to grant the motion
27 and directed plaintiff's counsel to give notice of the ruling and to prepare a formal order.
28 Defendants did not request oral argument. The Court now grants plaintiff's motion in full.

1 The Court has considered all the arguments and evidence presented in support of the motion
2 and has determined that there are no triable issues of material fact, that plaintiff is entitled to
3 summary judgment on all five causes of action set forth in the complaint, that civil penalties
4 should be assessed against defendants and that defendants should be permanently enjoined.

5 Therefore, the Court now ORDERS, ADJUDGES AND DECREES:

6 1. Defendants violated the tobacco directory law (Rev. & Tax. Code, § 30165.1),
7 specifically Revenue and Taxation Code section 30165.1, subdivision (e)(2), by selling, offering,
8 and possessing for sale in this State cigarettes whose brand family and manufacturer were not
9 listed on the California Tobacco Directory

10 2. Defendants violated the tobacco directory law, specifically Revenue and Taxation
11 Code section 30165.1, subdivision (e)(3)(A), by selling or distributing cigarettes that defendants
12 knew or should have known were intended to be distributed in violation of paragraph (e)(2) of
13 section 30165.1.

14 3. Defendants violated the tobacco directory law, specifically Revenue and Taxation
15 Code section 30165.1, subdivision (e)(3)(B), by acquiring, holding, owning, possessing,
16 transporting, importing or causing to be imported cigarettes that defendants knew or should have
17 known were intended to be distributed in violation of paragraph (e)(2) of section 30161.1.

18 4. Defendants violated the Cigarette Fire-Safety and Firefighter Protection Act, Health
19 and Safety Code sections 14950-14960 ("fire-safe cigarette law"), specifically subdivision (a)(4)
20 of section 14951, by knowingly selling, offering, and/or possessing for sale cigarettes for which
21 no written certification had been filed by the manufacturer with the State Fire Marshal.

22 5. Defendants violated former section 30101.7, subdivision (d)(2), of the Revenue and
23 Taxation Code by selling cigarettes by mail order, the Internet and/or the telephone but failing
24 either to ensure that all applicable California taxes had been paid or to place on the outside of the
25 shipping containers the required notice about the purchasers' tax liability.

26 6. Defendants violated section 22963, subdivision (b)(3), of the Business and
27 Professions Code by selling or distributing tobacco products directly to consumers in California
28

1 through the U.S. Postal Service without making a telephone call after 5 p.m. to the purchasers,
2 confirming the order prior to shipping the order.

3 7. Defendants violated the Unfair Competition Law (Bus. & Prof. Code, § 17200 et
4 seq.) by engaging in unlawful business practices, to wit, violating the tobacco directory law, the
5 fire-safe cigarette law, and the two remote sales laws (former section 30101.7, subd. (d)(2) of the
6 Rev. & Tax. Code and section 22963, subd. (b)(3) of the Bus. & Prof. Code), as set forth in the
7 findings above, and also by knowingly shipping, transporting, receiving, possessing, selling,
8 distributing and/or purchasing contraband cigarettes, as defined in the Contraband Cigarette
9 Trafficking Act (18 U.S.C. §§ 2341-2344), in violation of that Act, specifically 18 U.S.C. § 2342,
10 subdivision (a).

11 8. Between January 2, 2008, and February 28, 2010, defendants violated the tobacco
12 directory law 86,439 times by selling cigarettes that were not listed on the State Tobacco
13 Directory at their Sunrise Way and Amado Road stores.

14 9. Between June 10, 2005, and May 3, 2010, defendants violated the tobacco directory
15 law 26,947 times by selling cigarettes that were not listed on the State Tobacco Directory by mail
16 order.

17 10. Between January 1, 2006, and February 18, 2010, defendants violated the tobacco
18 directory law 419 times by purchasing cigarettes that were not listed on the State Tobacco
19 Directory.

20 11. Between January 2, 2008, and February 28, 2010, defendants violated the fire-safe
21 cigarette law 86,526 times, in their Sunrise Way and Amado Road stores, by selling cigarettes
22 that had not been certified to the State Fire Marshall in accordance with the fire-safe cigarette
23 law.

24 12. Between January 1, 2007, and May 3, 2010, defendants violated the fire-safe cigarette
25 law 23,823 times, in their mail order business, by selling to California residents cigarettes that
26 had not been certified to the State Fire Marshall in accordance with the fire-safe cigarette law.
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1 13. Between June 10, 2009, and May 3, 2010, defendants violated the remote sales laws
2 26,947 times by selling cigarettes by mail order but failing to comply with all the legally
3 prescribed requirements for making such sales.

4 14. Between May 24, 2007, and February 18, 2010, defendants violated the Unfair
5 Competition Law 452 times, by purchasing more than 10,000 cigarettes in packs that did not bear
6 a California cigarette excise stamp, which conduct violated the federal Contraband Cigarette
7 Trafficking Act.

8 15. Between January 1 and March 6, 2006, defendants violated the Unfair Competition
9 Law three times, by purchasing more than 60,000 cigarettes in packs that did not bear a California
10 cigarette excise stamp, which conduct violated the federal Contraband Cigarette Trafficking Act.

11 16. At no time relevant to this action was either defendant Black Hawk Tobacco, Inc. or
12 Frederick Allen McAllister licensed by the State of California as a cigarette distributor,
13 authorized to purchase or possess unstamped cigarettes in the State of California.

14 17. Defendant McAllister was licensed by the State of California to sell cigarettes at three
15 locations in Palm Springs and at one location in Cathedral City.

16 18. Defendants' illegal conduct was willful and persistent and continued unabated even
17 after they received a letter from plaintiff's attorneys, asking defendants to cease and desist from
18 their illegal conduct, and after this action was filed.

19 19. On the first cause of action, defendants are assessed a \$15 penalty, pursuant to the
20 section 17206 of the Business and Professions Code, for each of the 86,439 times they sold off-
21 directory cigarettes in their stores and for each of the 26,947 times they sold off-directory
22 cigarettes by mail order; plus a \$500 penalty for each of the 419 times defendants purchased off-
23 directory cigarettes, for a total penalty of \$1,910,290.

24 20. On the second cause of action, defendants are assessed a \$10 penalty, pursuant to the
25 Cigarette Fire-Safety and Firefighter Protection Act, for each of the 86,526 times they sold non-
26 fire-safe-certified cigarettes in their stores and for each of the 23,823 times they sold non-fire-
27 safe-certified cigarettes by mail order to California residents, for a total penalty of \$1,103,490.

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1 21. On the third and the fourth causes of action, defendants are assessed a penalty of \$10,
2 pursuant to section 17206 of the Business and Professions Code, for each of the 26,947 times
3 defendants mailed cigarettes to California residents and failed to comply with Revenue and
4 Taxation Code section 30101.7, subdivision (d)(2), and Business and Professions Code section
5 22963, subdivision (b)(3), for a total penalty of \$269,470.

6 22. On the fifth cause of action, defendants are assessed a \$500 penalty, pursuant to
7 section 17206 of the Business and Professions Code, for each of the 455 times defendants
8 violated the Contraband Cigarette Trafficking Act, for a total of \$227,500.

9 23. Defendants should be permanently enjoined, pursuant to section 17203 of the
10 Business and Professions Code, from violating the State's tobacco directory, fire-safe cigarette,
11 and remote sales laws, and the federal Contraband Cigarette Trafficking Act.

12 IT IS SO ORDERED.

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14 Dated: 7/27/12

Judge John G. Evans

Judge of the Superior Court

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