

1 BILL LOCKYER
Attorney General of the State of California
2 THOMAS GREENE
Chief Assistant Attorney General
3 DENNIS ECKHART
Senior Assistant Attorney General
4 WILLIAM F. SOOHOO (SBN 80694)
Deputy Attorney General
5 1300 I Street
P.O. Box 944255
6 Sacramento, CA 94244-2550
Telephone: (916) 323-3795
7 Fax: (916) 323-0813

8 Attorneys for Plaintiff

9

10

SUPERIOR COURT OF CALIFORNIA

11

COUNTY OF SACRAMENTO

12

13

**PEOPLE OF THE STATE OF CALIFORNIA, ex
rel. BILL LOCKYER, Attorney General of the State
of California,**

14

15

Plaintiff,

16

v.

17

**W100 IMPORTACAO E EXPORTACAO LTDA., a
foreign corporation, and DOES 1 through 100,
inclusive,**

18

19

Defendants.

20

21

22

23

24

25

26

27

28

FILED
ENDORSED

05 OCT 25 PM 3:48

LEGAL PROCESS #1

CASE NO. 02AS07514

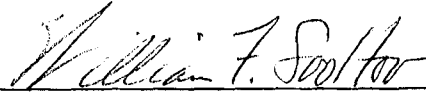
**NOTICE OF ENTRY OF
JUDGMENT**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PLEASE TAKE NOTICE that on October 14, 2005, the Sacramento Superior Court per Judge Loren E. McMaster issued a Judgment in the above-captioned action. A true copy of the Judgment is attached hereto as Exhibit A and incorporated by reference herein.

Dated: October 25, 2005

Respectfully submitted,
BILL LOCKYER
Attorney General of the State of California
THOMAS GREENE
Chief Assistant Attorney General
DENNIS ECKHART
Senior Assistant Attorney General


WILLIAM F. SOOHOO
Deputy Attorney General
Attorneys for Plaintiff

1 BILL LOCKYER
Attorney General of the State of California
2 THOMAS GREENE
Chief Assistant Attorney General
3 DENNIS ECKHART
Senior Assistant Attorney General
4 WILLIAM F. SOOHOO (SBN 80694)
CORINNE L. MURPHY (SBN 72050)
5 PETER M. WILLIAMS (SBN 180533)
Deputy Attorneys General
6 1300 I Street
P.O. Box 944255
7 Sacramento, CA 94244-2550
Telephone: (916) 323-3853
8 Facsimile: (916) 323-0813
Attorneys for Plaintiff

10:00
10:00
10:00

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SACRAMENTO

12 **PEOPLE OF THE STATE OF CALIFORNIA, ex**
13 **rel. BILL LOCKYER, Attorney General of the**
14 **State of California,**
15
16 v.
17 **W100 IMPORTACAO E EXPORTACAO LTDA.,**
18 **a foreign corporation, and DOES 1 through 100,**
19 **inclusive,**
20
21 Defendants.

No. 05AS00763

**[PROPOSED] JUDGMENT BY
COURT AFTER DEFAULT**

21 THIS MATTER is before the Court on *Plaintiff's Request for Entry of Default*
22 *Judgment* against Defendant **W100 IMPORTACAO E EXPORTACAO LTDA.** (hereafter,
23 "**W100**"). This Court has considered *Plaintiff's Request for Entry of Default Judgment* and
24 accompanying declarations, papers and exhibits thereto, and the entire record in this matter and
25 hereby finds as follows:

26 1. The Attorney General of the State of California brings this action on behalf of
27 Plaintiff, the People of the State of California, pursuant to California Health and Safety Code
28 section 104557(c), to enforce the reserve fund requirements of California Health and Safety Code

1 sections 104555-104557.

2 2. The Defendant, **W100**, manufactures cigarettes intended for sale in the United
3 States and thus falls within the statutory definition of a "tobacco product manufacturer" as
4 defined in California Health and Safety Code section 104556(i). **W100** has sold and continues to
5 sell cigarettes (as defined in section 104556(d)) directly or indirectly, to consumers in California
6 and, accordingly, has transacted and is transacting business within the State of California.

7 3. At least thirty (30) days have passed since the date of service of the Summons and
8 Verified Complaint on **W100** and **W100** has failed to appear and defend in this court.

9 4. **W100** was not at the time of service of the Summons and Verified Complaint, nor
10 is now, an infant or minor, a financially incapable, incapacitated or incompetent person, nor in
11 the military service as defined by Article 1 of the "Soldiers' and Sailors' Civil Relief Act of
12 1940" as amended (50 U.S.C. Appen. § 501 et seq.).

13 5. Jurisdiction has been reviewed and is proper over **W100** pursuant to California
14 Code of Civil Procedure, section 410.10.

15 6. Venue has been reviewed and is proper pursuant to California Code of Civil
16 Procedure, section 393.

17 7. **W100** has failed and continues to fail and/or otherwise comply with the reserve
18 fund requirements of California Health and Safety Code, sections 104555-104557 and
19 implementing regulations (Title 11, Calif. Code of Reg., §§ 999.10a through 999.14).

20 8. **W100** has engaged in and continues to engage in acts of unfair competition as
21 defined in California Business & Professions Code, section 17200, in that defendant has failed to
22 establish the required reserve fund and failed to certify compliance to the Attorney General, in
23 violation of California Health and Safety Code sections 104555, 104556, and 104557 and
24 implementing regulations.

25 9. Notwithstanding notice, **W100** has failed to certify to the Attorney General that a
26 Qualified Escrow Fund (as defined in California Health and Safety Code section 104556(f)) has
27 been established and also failed to make the deposit for its 2003 sales in California as required
28 under California Health and Safety Code section 104557. Accordingly, **W100's** actions

1 constitute one or more "knowing" violations.

2 10. **W100** has committed one or more knowing violations of California Health and
3 Safety Code section 104557 and is therefore subject to the maximum sanctions and penalties
4 provided for under the reserve fund requirements of California Health and Safety Code section
5 104557.

6 **THEREFORE**, default having been entered by the clerk against **W100**, as requested by
7 Plaintiff, **JUDGMENT** is accordingly entered in favor of the Plaintiff and against **W100** with
8 respect to all claims, **AS FOLLOWS**:

9 A. **W100** shall, within fifteen (15) days of this Order, establish a Qualified
10 Escrow Fund and place into said fund the following amount as adjusted for inflation per
11 California Health and Safety Code section 104557(a)(2):

12 **Sales during the year 2003:**

13 **(5,539,400 units x \$0.0167539) plus 16.3627565% for inflation for a total of**
14 **\$107,990.60**

15 B. **W100** shall, within fifteen (15) days of this Order, provide Plaintiff with a
16 list of the names of all cigarette brands manufactured by **W100**, as well as unit sales information
17 and supporting documentation for sales in California in 2003.

18 C. **W100** shall, within fifteen (15) days of this Order, pay civil penalties in
19 the amount of 300% of the escrow amounts improperly withheld, for a total of **\$323,971.80** for
20 knowingly violating California Health and Safety Code section 104557(a)(2), (c), by failing to
21 certify to the Attorney General for the State of California that it is in compliance with
22 California's reserve fund statute and for knowingly failing to establish a qualified escrow fund
23 as defined under California Health and Safety Code section 104556(f) and knowingly failing to
24 deposit sufficient escrow funds into a qualified escrow fund as required under California Health
25 & Safety Code section 104557.

26 D. Pursuant to California Business and Professions Code section 17203,
27 **W100** is hereby enjoined and otherwise prohibited from selling *any* cigarettes in California,
28 either directly or through a distributor, retailer or other intermediary, *including but not limited to*,

1 the following brand: "*San Marino*." The injunction shall commence from the date of this Order
2 and continue until **W100** establishes a qualified escrow fund, deposits **\$107,990.60**
3 into said escrow fund and provides to the Attorney General the compliance certification required
4 by sections 104555-104557 and implementing regulations.

5 After the sales ban elapses, **W100** shall make quarterly deposits into a qualified
6 escrow account fund for five (5) years after **W100** is permitted to resume selling cigarettes in
7 California, directly or through a distributor, retailer or similar intermediary.

8 E. Pursuant to Business and Professions Code section 17206, **W100** shall,
9 within fifteen (15) days from the date of this Order, pay a penalty of **\$5,000** pursuant to Business
10 and Professions Code section 17200.

11 F. **W100** shall, within fifteen (15) days from the date of this Order, shall
12 appoint an agent for service of process in California for any action to enforce any resulting
13 injunction(s) and/or judgment in the within action.

14 G. The Court shall retain jurisdiction in this matter.

15 H. **W100** shall within fifteen (15) days of this Order, pay all Plaintiff's
16 reasonable costs, including but not limited to filing fees in the amount of **\$241.50** pursuant to
17 Government Code section 6103.5 and subject to modification and/or further relief as this Court
18 deems just and proper.

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

20 1) Name/Address of Judgment Creditors:
21 State of California
22 c/o Department of Justice—Office of the Attorney General
23 1300 I. Street
24 P.O. Box 944255
25 Sacramento, CA 94244-2550

26 2) Name/Address/Phone-Judgment Creditor's Attorney:
27 William F. Soo Hoo, Deputy Attorney General
28 Department of Justice—Office of the Attorney General
1300 I. Street
P.O. Box 944255
Sacramento, CA 94244-2550
(916) 323-3795

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3) Name/Address-Judgment Debtor:

W100
Av 9 de Julio 3229 cj 1006 Bela Vista,
San Paulo, Brazil CEP 01407-000
1600 NW 93rd Avenue
Miami, FL 33172

4) Principal Amount of Judgment for Escrow: \$ 107,990.60

5) Principal Amount of Judgment for Penalties:

Health & Safety Code section 104557 \$ 323,971.80

Bus. & Prof. Code section 17200 \$ 5,000.00

Total Penalties \$ 328,971.80

6) Costs: \$ 241.50

Grand Total \$ 437,203.90

7) Post-judgment simple interest at the rate of ten percent (10%) per annum

on the total judgment which consists of items 4 thru 6 from the date of judgment is entered until fully paid. Interest is compounded annually.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2005

LOREN E. McMASTER

Judge of the Superior Court