

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:  
7 Fax: (916) --

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

Defendant.

20

21

22

23

24

25

26

27

28

FILED  
2005 MAR 04 11 03 AM  
LEGAL DEPARTMENT

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 March 28, 2006, 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: April 3, 2006

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

EXHIBIT A

FILED  
ENDORSED

2006 MAR 28 AM 11:35

SACRAMENTO COURTS  
DEPT. #53 #54

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. SOO HOO (SBN 80694)  
Deputy Attorney General  
5 1300 I Street  
P.O. Box 944255  
6 Sacramento, CA 94244-2550  
Telephone:  
7 Facsimile:  
Attorneys for Plaintiff

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SACRAMENTO

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

14 Plaintiff,

15 v.

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

19 Defendants.

CASE NO. 05AS04247

[PROPOSED] JUDGMENT BY  
COURT AFTER DEFAULT

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

25 1. The Attorney General of the State of California brings this action on behalf of  
26 Plaintiff, the People of the State of California, pursuant to California Health and Safety Code  
27 section 104557(c), to enforce the reserve fund requirements of California Health and Safety Code  
28 sections 104555-104557.

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

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

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

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

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

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

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

24           9.       Notwithstanding notice, **W100** has failed to certify to the Attorney General that a  
25 Qualified Escrow Fund (as defined in California Health and Safety Code section 104556(f)) has  
26 been established and has failed to make the deposits for its 2004 sales in California as required  
27 under California Health and Safety Code section 104557. Accordingly, **W100's** actions  
28 constitute one or more "knowing" violations.

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

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

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

11                   **Sales during the year 2004:**  
12                   **(5,269,000 units x \$0.0167539) plus 20.151102% for inflation for a total of**  
13                   **\$106,064.97**

14           B.       **W100** shall, within fifteen (15) days of this Order, provide Plaintiff with a  
15 list of the names of all cigarette brands manufactured by **W100**, as well as unit sales information  
16 and supporting documentation for sales in California in 2004.

17           C.       **W100** shall, within fifteen (15) days of this Order, pay civil penalties in  
18 the amount of 300% of the escrow amounts improperly withheld, for a total of **\$318,194.91** for  
19 knowingly violating California Health and Safety Code section 104557(a)(2), (c), by failing to  
20 certify to the Attorney General for the State of California that it is in compliance with  
21 California's reserve fund statute and for knowingly failing to establish a qualified escrow fund  
22 as defined under California Health and Safety Code section 104556(f) and knowingly failing to  
23 deposit sufficient escrow funds into a qualified escrow fund as required under California Health  
& Safety Code section 104557.

24           D.       Pursuant to California Business and Professions Code section 17203,  
25 **W100** are hereby enjoined and otherwise prohibited from selling *any* cigarettes in California,  
26 either directly or through a distributor, retailer or other intermediary, *including but not limited to*,  
27 the following brand: "San Marino." The injunction shall commence from the date of this Order  
28 and continue until **W100** establishes a qualified escrow fund, deposit **\$106,064.97** into said

1 escrow fund and provides to the Attorney General the compliance certification required by  
2 sections 104555-104557 and implementing regulations.

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

6 E. Pursuant to Health and Safety Code section 104557(c)(3), **W100** is hereby  
7 enjoined and otherwise prohibited from selling *any* cigarettes in California, either directly or  
8 through a distributor, retailer or other intermediary, *including but not limited to*, the following  
9 brand: "San Marino." The injunction shall commence from the date of this Order and continue  
10 for two years as authorized by section 104557(c)(3).

11 F. After the sales bans imposed by this judgment elapses, **W100** shall make  
12 quarterly deposits into a qualified escrow account fund for five (5) years after **W100** is permitted  
13 to resume selling cigarettes in California, directly or through a distributor, retailer or similar  
14 intermediary.

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

18 H. **W100** shall, within fifteen (15) days from the date of this Order, shall  
19 appoint an agent for service of process in California pursuant to Revenue and Taxation Code  
20 section 30165.1(f)(1), for any action to enforce any resulting injunction(s) and/or judgment in the  
21 within action.

22 I. Defendant shall not resume sales in California until a serial number  
23 marking system is approved in writing by the Attorney General and the Board of Equalization.  
24 As a condition of resuming sales of cigarettes or tobacco products in California, defendant shall  
25 place on each pack of cigarettes or tobacco products sold in California a unique serial number, in  
26 standardized form, which identifies the tobacco product's manufacturer and the location and date  
27 of manufacture. Pursuant to Revenue and Taxation Code section 30165.1(g)(4), the marking  
28 system must provide sufficient information enable the Attorney General and the Board of

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

Sacramento, CA 94244-2550  
(916) 323-3795

3) Name/Address-Judgment Debtor:

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

4) Principal Amount of Judgment for Escrow: \$ 106,064.97

5) Principal Amount of Judgment for Penalties:

Health & Safety Code section 104557 \$ 318,194.91

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

Total Penalties \$ 429,259.88

6) Costs: \$ 241.50

Grand Total \$ 429,501.38

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.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: MAR 28 2006, 2006

LOREN E. McMASTER

\_\_\_\_\_  
Judge of the Superior Court