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COURTS

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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SACRAMENTO

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12 **PEOPLE OF THE STATE OF CALIFORNIA, ex**
rel. BILL LOCKYER, Attorney General of the State
13 **of California,**
14
Plaintiff,
15
v.
16 **TABACALERA BOQUERON S.A., a foreign**
corporation, and DOES 1 through 10, inclusive,
17
Defendants.
18

03AS04704

~~PROPOSED~~ JUDGMENT BY
COURT AFTER ENTRY OF
DEFAULT

19 THIS MATTER is before the Court on *Plaintiff's Request for Entry of Default*
20 *Judgment* against defendant TABACALERA BOQUERON S.A. ("TABACALERA
21 BOQUERON.") This Court has considered *Plaintiff's Request for Entry of Default Judgment*
22 and accompanying declarations, papers and exhibits thereto, and the entire record in this matter
23 and hereby finds as follows:

24 1. The Attorney General of the State of California brings this action on behalf of
25 plaintiff, the People of the State of California, pursuant to California Health and Safety Code
26 section 104557(c), to enforce the reserve fund requirements of California Health and Safety Code
27 sections 104555-104557 and California Business and Professions Code section 17200 et seq.

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

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

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

15 5. Jurisdiction has been reviewed and is proper over TABACALERA BOQUERON
16 pursuant to California Code of Civil Procedure section 410.10.

17 6. Venue has been reviewed and is proper pursuant to California Code of Civil
18 Procedure section 393.

19 7. TABACALERA BOQUERON has failed and continues to fail and/or otherwise
20 comply with the reserve fund requirements of California Health and Safety Code, sections
21 104555-104557 and implementing regulations (Calif. Code of Reg., tit. 11, §§ 999.10a through
22 999.14).

23 8. TABACALERA BOQUERON has engaged in and continues to engage in acts of
24 unfair competition as defined in California Business & Professions Code section 17200, in that
25 the defendant has failed to establish the required reserve fund and failed to certify compliance to
26 the Attorney General, in violation of California Health and Safety Code sections 104555,
27 104556, and 104557 and implementing regulations.

28 9. Notwithstanding notice, TABACALERA BOQUERON has failed to certify to

1 the Attorney General that a qualified escrow fund (as defined in California Health and Safety
2 Code section 104556(f)) has been established and also failed to make the deposit for its 2002
3 sales in California as required under California Health and Safety Code section 104557.
4 Accordingly, TABACALERA BOQUERON'S actions constitute one or more "knowing"
5 violations.

6 10. TABACALERA BOQUERON has committed one or more knowing violations
7 of California Health and Safety Code section 104557 and is therefore subject to the maximum
8 sanctions and penalties provided for under the reserve fund requirements of California Health
9 and Safety Code section 104557.

10 **THEREFORE**, default having been entered by the clerk against TABACALERA
11 BOQUERON, as requested by plaintiff, **JUDGMENT** is accordingly entered in favor of the
12 plaintiff and against TABACALERA BOQUERON with respect to all claims, **AS FOLLOWS**:

13 A. TABACALERA BOQUERON shall, within fifteen (15) days of this Order, establish a
14 qualified escrow fund and place into said fund the following amount as adjusted for inflation per
15 California Health and Safety Code section 104557(a)(2):

16 **Sales during the year 2002:**

17 **(4,178,800 units x \$0.0136125%) plus 12.97355% for inflation for a total of**
18 **\$64,264.**

19 B. The defendant shall, within fifteen (15) days of this Order, provide plaintiff with a list
20 of the names of all cigarette brands manufactured by TABACALERA BOQUERON, as well as
21 unit sales information and supporting documentation for its sales in California in 2002.

22 C. TABACALERA BOQUERON shall, within fifteen (15) days of this Order, pay civil
23 penalties in the amount of 300% of the escrow amounts improperly withheld, for a total of
24 **\$192,792** for knowingly violating California Health and Safety Code section 104557(a)(2), (c),
25 by failing to certify compliance with California's reserve fund statute to the Attorney General and
26 knowingly failing to establish a qualified escrow fund as defined under California Health and
27 Safety Code section 104556(f) and knowingly failing to deposit sufficient funds into a qualified
28 escrow fund as required under California Health & Safety Code section 104557.

1 D. Pursuant to California Business and Professions Code section 17203,
2 TABACALERA BOQUERON is hereby enjoined and otherwise prohibited from selling *any*
3 cigarettes in California, either directly or through a distributor, retailer or other intermediary,
4 *including but not limited to* "Carlyle" brand. The injunction shall commence from the date of
5 this Order and continue until TABACALERA BOQUERON establishes a qualified escrow fund,
6 deposits \$64,264 into said escrow fund and provides to the Attorney General the compliance
7 certification required by sections 104555 - 104557 and implementing regulations.

8 After the sales ban elapses, TABACALERA BOQUERON shall make quarterly deposits
9 into a qualified escrow fund for five (5) years after TABACALRA BOQUERON is permitted to
10 resume selling cigarettes in California, directly or through a distributor, retailer or similar
11 intermediary.

12 E. Pursuant to Business and Professions Code section 17206, TABACALERA
13 BOQUERON shall, within fifteen (15) days from the date of this Order, pay a penalty of **\$10,000**
14 pursuant to Business and Professions Code section 17200.

15 F. TABACALERA BOQUERON shall, within fifteen (15) days from the date of this
16 Order, appoint an agent for service of process in California for any action to enforce any
17 resulting injunction(s) and/or judgment in the within action.

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

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

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

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

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