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SACRAMENTO COURT
DEPT. #54

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SACRAMENTO

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12
13 **THE PEOPLE OF THE STATE OF**
CALIFORNIA, EX REL. EDMUND G.
14 **BROWN JR., ATTORNEY GENERAL OF**
15 **THE STATE OF CALIFORNIA,**

16 Plaintiff,

17 v.

18 **HEMI GROUP, LLC**

19 Defendant.

CASE NO. 34 2009 00057798

**CONSENT JUDGMENT AND
PERMANENT INJUNCTION**

20
21 This Consent Judgment and Permanent Injunction ("Consent Judgment") is issued and
22 entered based upon the Stipulation for Entry of Consent Judgment and Permanent Injunction
23 ("Stipulation") entered into by the parties to this action and the Court's approval of the same
24 based on its independent review of the Stipulation, and is made with reference to the following
25 findings of fact:

- 26 1. The People have filed a Complaint alleging that defendant The Hemi Group LTD.
27 Co, doing business under various names including Hemi Wholesale ("Hemi Group") is owned
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COPY

1 and/or controlled by Kai Gachupin ("Mr. Gachupin") who assisted in the sale of cigarettes and
2 other tobacco products by defendant Hemi Group.

3 2. The People allege that in the course of selling cigarettes and other tobacco products
4 via the Internet, defendant Hemi Group has engaged in unlawful business practices in violation of
5 Business & Professions Code section 17200, by:

6 (a) Failing to comply with the Jenkins Act (15 U.S.C. §§ 375-378);

7 (b) Failing to comply with Revenue & Taxation Code section 30101.7, which
8 prohibits non-face-to-face cigarette sales unless the seller complies with one of two
9 specified requirements relating to the payment of taxes on cigarette sales to California
10 customers; and

11 (c) Failing to comply with Business and Professions Code section 22963, which
12 prohibits non-face-to-face sales of tobacco products through any private or public delivery
13 service unless the seller complies with certain specified requirements including imposing a
14 two-carton minimum, providing information to the credit card acquiring company so that
15 the phrase "tobacco products" can be put on the purchaser's credit card receipt, and making
16 a telephone call to the purchaser after 5:00 p.m. confirming the sale prior to shipping the
17 products.

18 3. The People also allege in the Complaint that defendant Hemi Group separately
19 violated Revenue & Taxation Code section 30101.7.

20 4. The People also allege that defendant Hemi Group separately violated Business and
21 Professions Code section 22963(b)(2) and(3).

22 5. The Parties have entered into a Stipulation in order to settle this action, and have
23 requested that the Court approve the Stipulation. In light of the foregoing,

24 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

25 1. The court has subject matter jurisdiction of this action.

26 2. The Court accepts Mr. Gachupin's and Hemi Group's consent to the personal
27 jurisdiction of this court for the express and limited purposes of entering into the Stipulation and
28 being bound by the terms of the Consent Judgment as applicable to them.

1 3. Mr. Gachupin, being the owner of Hemi and in privity with it, is bound by the Consent
2 Judgment and Permanent Injunction (“Consent Judgment”) to the full extent he would have been
3 bound had he been named a defendant in the action. Mr. Gachupin cannot avoid any provision of
4 this agreement by acting in concert or participation with any other person or entity, by contract,
5 agreement, or other agreement, and regardless whether the entity is owned or controlled by Mr.
6 Gachupin.

7 4. Pursuant to Business and Professions Code section 17203, Hemi Group and
8 Gachupin’s directors, officers, successors and assigns, and any other business entity directly or
9 indirectly owned, operated, managed, controlled by, or otherwise affiliated with them (for
10 purposes of this Consent Judgment and the Stipulation of the parties, an entity is an “affiliate” of,
11 or an entity is “affiliated” with, another specified entity if it directly, or indirectly through one or
12 more intermediaries, controls, is controlled by or is under common control with the other
13 specified entity) are enjoined from engaging in unlawful business practices as follows:

14 (a) Hemi Group and Gachupin shall permanently cease and desist from shipping
15 tobacco products sold in non-face-to-face transactions to consumers, unlicensed distributors,
16 wholesalers, and tribal entities located in the State of California and will exercise best
17 efforts to ensure there is no inadvertent shipment. Neither Hemi Group nor Mr. Gachupin
18 shall resume sales and delivery of cigarettes or other tobacco products into California unless
19 and until they or their directors, officers, successors and assigns, and any other business
20 entity directly or indirectly owned, operated, managed, controlled by, or otherwise affiliated
21 with Mr. Gachupin or Hemi Group receives written consent from the California Attorney
22 General’s Office or an order or judgment entered by a court of competent jurisdiction in
23 California, permitting them to resume such sales and shipment of cigarettes or other
24 tobacco products in the State of California. In the event that Gachupin and Hemi Group’s,
25 directors, officers, successors and assigns, and any other business entity directly or
26 indirectly owned, operated, managed, controlled by, or otherwise affiliated with Gachupin
27 or Hemi Group receives written consent from the California Attorney General’s Office or a
28 court order or judgment permitting the sale and shipment of cigarettes and/or other tobacco

1 products into the State of California, they shall comply with all provisions of California and
2 federal law, including but not limited to:

- 3 i. The Jenkins Act (15 U.S.C. §§ 375-378);
- 4 ii. California Revenue and Taxation Code section 30101.7;
- 5 iii. California Business and Professions Code section 22963; and
- 6 iv. California Business and Professions Code section 17200.

7 (b) Within five (5) days following the date defendant receives a court endorsed
8 copy of this Consent Judgment, Hemi Group and Mr. Gachupin shall place a statement,
9 clearly and conspicuously, on each and every web site that enjoined parties own or operate
10 in which they have sold or offered to sell cigarettes and/or other tobacco products in non-
11 face-to-face transactions to California consumers, distributors, wholesalers and tribal
12 entities (hereafter "customers"), so that the system will reject any attempted order where the
13 shipping address is located in the State of California.

14 (c) Within five (5) days following the date defendant receives a court endorsed
15 copy of this Consent Judgment, Hemi Group and Mr. Gachupin shall configure each and
16 every web site that enjoined parties own or operate in which they have sold or offered to sell
17 cigarettes and/or other tobacco products in non-face-to-face transactions to California
18 consumers, unlicensed distributors, wholesalers or tribal entities, so that the system will
19 reject any attempted orders where the shipping address entered by the customer is located
20 within the State of California. If a potential customer tries to place an order for which the
21 shipping address is located in the State of California, the web site will (1) reject the order as
22 indicated above, and (2) immediately notify the customer that they do not ship to California
23 and the order will not be processed.

24 (d) In addition to the above, should Hemi Group or Mr. Gachupin resume cigarette
25 sales pursuant to subparagraph 4(a) above, upon the request of the Attorney General, Hemi
26 Group and Mr. Gachupin will in good faith take other additional steps to prevent their non-
27 face-to-face sales of cigarettes and other tobacco products to persons located in California
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1 and assure that they do not ship cigarettes or other tobacco products to an address in the
2 State of California;

3 (e) Within five (5) days following the date defendant receives a court endorsed
4 copy of this Consent Judgment, Mr. Gachupin shall provide a copy of the Stipulation For
5 Entry of Consent Judgment and Permanent Injunction and this Consent Judgment to the
6 following: (1) any business to which plaintiff requests a copy be sent; (2) all successors or
7 assigns of any business conducted by the Hemi Group or Mr. Gachupin since January 2,
8 2005, that sold any products to customers from California; and (3) all businesses and
9 individuals with which the Hemi Group or Mr. Gachupin had any agreement specifically
10 regarding cigarettes or other tobacco products purchased by California consumers,
11 distributors, wholesalers or tribal entities.

12 (f) If Hemi Group or Gachupin resumes sales pursuant to paragraph 4(a), they
13 shall, no less than thirty (30) days before resuming such sales, provide plaintiff's attorney of
14 record a copy of the written policies and procedures which they have adopted to ensure
15 compliance with all California laws, including those referred to in paragraph 4(a) and shall
16 provide a copy of the policies and procedures to each employee with any responsibility in
17 the sale or shipment of cigarettes or other tobacco products into the State of California,

18 5. Within five business days following the date defendant receives a court endorsed
19 copy of this Consent Judgment, Mr. Gachupin shall produce to plaintiff electronically the name
20 and address of persons to whom shipments were made, the brand and the quantity of the product
21 sold for each and every shipment of cigarettes or tobacco products that Hemi Group or Kai
22 Gachupin has sold or delivered for shipment to all consumers, as well as all unlicensed
23 distributors, wholesalers and tribal entities, in California since January 1, 2005.

24 6. Plaintiff waives all claims that plaintiff could have brought against Hemi Group, Mr.
25 Gachupin, their directors, officers, successors and assigns, and any other business entity directly
26 or indirectly owned, operated, managed, controlled by, or otherwise affiliated with Hemi Group
27 or Mr. Gachupin in this matter. Plaintiff reserves, and this Consent Judgment is without prejudice
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1 to, all rights of the State of California against the Hemi Group and Mr. Gachupin with respect to
2 all other matters, including but not limited to the following:

3 a) civil or criminal liability for conduct not referred to or described in the
4 complaint and/or in paragraphs 2, 3 and 4 on page 2 above and/or paragraphs 1, 2 and 3 of
5 the Stipulation; and

6 b) the defendant's failure to satisfy the requirements of this Consent Judgment.

7 7. This Consent Judgment is binding upon Gachupin and Hemi Group, their directors,
8 officers, successors and assigns, and any other business entity directly or indirectly owned,
9 operated, managed, controlled by, or otherwise affiliated with Gachupin or Hemi Group and upon
10 plaintiff.

11 8. For purposes of this Consent Judgment and the Stipulation of the parties, "tobacco
12 products" shall not include cigars (defined as tobacco wrapped in tobacco leaf or
13 leaves). However, Defendant shall not engage in the sale of any cigar in violation of California
14 Business and Professions code section 22963, or any other present or future California law
15 prohibiting or regulating the sale of cigars. Additionally, defendant shall notify Plaintiff in
16 writing in advance of beginning to operate any business involving the sale of cigars to customers
17 in California. If found by a court of competent jurisdiction to have violated California Business
18 and Professions code section 22963, that shall be a violation of this Stipulation and the Consent
19 Judgment and shall entitle Plaintiff to all of the remedies available to it under this Stipulation and
20 the Consent Judgment.

21 9. In the event of his violation of this Consent Judgment, Kai Gachupin shall pay as a
22 penalty to the People five thousand dollars (\$5000) for each violation. For purposes of this
23 Consent Judgment, a violation of the Consent Judgment shall occur if an order for cigarettes
24 and/or other tobacco products submitted to a business that Hemi Group or Gachupin owns,
25 controls, manages or operates, in which they sell or offer to sell cigarettes and/or other tobacco
26 products in non face-to-face transactions, results in the delivery of cigarettes or other tobacco
27 products to an address within the State of California. The fact of such delivery, upon proof that it
28 was from a business that Hemi group or Mr. Gachupin owns, controls, manages or operates, in

1 which they sell or offer to sell cigarettes or other tobacco products in non face-to-face
2 transactions, shall constitute presumption of a violation of this Consent Judgment. Each delivery
3 shall constitute a separate violation.

4 10. The Court accepts that this Consent Judgment is a compromise of disputed claims and
5 acknowledges that by entry into the Consent Judgment and Permanent Injunction no enjoined
6 party admits any liability, obligation or wrongdoing of any kind.

7 11. The Court retains jurisdiction for the purpose of enabling any party to this Consent
8 Judgment to apply to the Court at any time for such further orders and directions as may be
9 necessary and appropriate for the construction or carrying out of this Consent Judgment, for the
10 modification or termination of any of its injunctive provisions, for the enforcement of any of its
11 provisions, or for punishment of any violations of its provisions.

12 12. Jurisdiction and venue for any action or proceeding to enforce the provisions of this
13 Consent Judgment shall be in the Sacramento Superior Court. Service may be accomplished on
14 the Hemi Group by certified mail addressed to Randolph Barnhouse, Luebben Johnson &
15 Barnhouse LLC, 7424 4th Street NW, Los Ranchos de Albuquerque, New Mexico 87107, or after
16 written notice has been given to the plaintiff, any other person designated by Hemi Group to
17 accept service on its behalf. Service may be accomplished on the State of California by certified
18 mail to Laura Kaplan, Deputy Attorney General, Tobacco Litigation and Enforcement Section,
19 PO Box 944255, Sacramento, CA 94244-2550, or after written notice has been given to Randolph
20 Barnhouse, any other person designated by the State of California to accept service on its behalf.

21
22 IT IS SO ORDERED, ADJUDGED AND DECREED.

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24 Date: SEP 23 2009

SHELLEYANNE W.L. CHANG

Judge of the Sacramento Superior Court