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PALA BAND OF MISSION INDIANS

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PALA BAND OF MISSION INDIANS,)
Plaintiff,)

vs.)

NICHOLAS MADUROS, in his official)
capacity as the Director of the)
California Department of Tax and Fee)
Administration; THE CALIFORNIA)
DEPARTMENT OF TAX AND FEE)
ADMINISTRATION,)

Defendants.)
_____)

Case No. 3:20-cv-01767-AJB-JLB

**SECOND AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

PRELIMINARY ALLEGATIONS

1. Plaintiff, PALA BAND OF MISSION INDIANS (hereinafter sometimes referred to as the "Plaintiff"), pursuant to the Court's order of December 11, 2020, hereby submits the following Second Amended Complaint.

2. Plaintiff seeks a declaratory judgment against the Defendants declaring invalid and unlawful any California statute, regulation, and/or order requiring the Plaintiff to report, charge, collect, and/or remit to Defendants any California state sales and use taxes on motor vehicle fuel and diesel fuel (hereinafter sometimes jointly

1 referred to as “motor vehicle fuel products”) that are distributed to, received by, and/or
2 sold by the Plaintiff on the Reservation.

3 2. The Plaintiff further seeks injunctive relief to restrain and enjoin the
4 Defendants from requiring the Plaintiff to report, charge, collect, and/or remit to
5 Defendants any California state sales and use taxes on motor vehicle fuel products that
6 are distributed to, received by, and/or sold by the Plaintiff on the Reservation.

7 **PARTY ALLEGATIONS**

8 3. Plaintiff, PALA BAND OF MISSION INDIANS, is a federally recognized
9 sovereign Indian tribe. The Plaintiff maintains its sovereign rights on land (hereinafter
10 sometimes referred to as the “Reservation”) held in trust by the United States for the
11 benefit of the Plaintiff.

12 4. Defendant, NICHOLAS MADUROS, is the Director of THE CALIFORNIA
13 DEPARTMENT OF TAX AND FEE ADMINISTRATION which is an
14 instrumentality/agency of the State of California (hereinafter sometimes referred to as
15 a “Defendant”). At all times herein mentioned, NICHOLAS MADUROS was acting in
16 his official capacity as the Director of THE CALIFORNIA DEPARTMENT OF TAX
17 AND FEE ADMINISTRATION.

18 5. Defendant, THE CALIFORNIA DEPARTMENT OF TAX AND FEE
19 ADMINISTRATION, is an instrumentality/agency of the State of California (hereinafter
20 sometimes referred to as a “Defendant” or the “CDTFA.”). The CDTFA was created
21 effective July 1, 2017 and has succeeded to all duties, powers and responsibilities of the
22 California State Board of Equalization with respect to the administration of the
23 California Sales and Use Tax Laws. For purposes of this lawsuit, actions taken or events
24 transpiring prior to July 1, 2017 by the California State Board of Equalization shall be
25 referred to as having been taken by the CDTFA.

26 6. Defendants carry out and enforce the provisions of *California Revenue &*
27 *Taxation Code §7301, et seq., California Revenue & Taxation Code §60001, et seq.,* as
28 well as other rules, orders, and regulations promulgated and enacted by the State of

1 California.

2 7. Defendants have construed the California statutes, regulations, and/or orders
3 to authorize the State of California to require the Plaintiff to report, charge, collect,
4 and/or remit to the Defendants California state sales and use taxes on all motor vehicle
5 fuel products distributed to, received by, and/or sold by the Plaintiff on the Reservation.

6 8. Defendants have enforced and intend to enforce those California state
7 statutes, regulations, and/or orders by requiring the Plaintiff to report, charge, collect,
8 and/or remit to Defendants California state sales and use taxes with respect to motor
9 vehicle fuel products that are delivered to, received by, and/or sold by the Plaintiff on the
10 Reservation.

11 9. In furtherance of Defendants' imposition and enforcement of said California
12 state tax laws on the Plaintiff, the Defendants have undertaken collection activities
13 against the Plaintiff including demands for immediate payment along with threats of
14 property seizure, notices of lien, pre-intercept collection, collection fees, and late
15 penalties.

16 10. The Defendants' requirement for Plaintiff to report, charge, collect, and/or
17 remit California state sales and use taxes to the Defendants places the legal incidence of
18 those California state taxes on the Plaintiff and unlawfully infringes on the Plaintiff's
19 self-government and tribal sovereignty by virtue of the Defendants' regulation of
20 Plaintiff's conduct on the Reservation.

21 **JURISDICTION AND VENUE ALLEGATIONS**

22 11. The District Court has original jurisdiction over this action pursuant to 28
23 *U.S.C. §1331* and 28 *U.S.C. §1362*.

24 12. The District Court is authorized to issue temporary, preliminary, and
25 permanent injunctive relief pursuant *Federal Rules of Civil Procedure, Rule 65*, and may
26 declare the parties' rights and grant such other and further relief as may be necessary to
27 protect and/or secure those rights pursuant to 28 *U.S.C. §2201* and 28 *U.S.C. §2202*.

28 13. Pursuant to *Ex parte Young* (1908) 209 U.S. 123, the District Court is

1 authorized to exercise jurisdiction to enjoin the violations of federal law as alleged
2 herein.

3 14. Venue is proper in this district pursuant to 28 U.S.C. §1391 (b). The
4 Defendants are present in this district; a substantial part of the events or omissions giving
5 rise to the claim occurred in this district; and/or a substantial part of the property that is
6 the subject of this action is situated in this district.

7 **FACTUAL ALLEGATIONS**

8 15. The Plaintiff owns a retail gasoline station located at the Pala Mini Mart,
9 11154 Highway 76, Pala, California 92059. The gasoline station is on Reservation land
10 held in trust by the United States for the benefit of the Plaintiff.

11 16. The Plaintiff, as a federally recognized sovereign government, has the
12 power, pursuant to Section 2F of the Plaintiff's Constitution, to levy taxes, including
13 sales tax and other taxes as the General Council deems necessary. The Plaintiff's sale
14 of motor vehicle fuel products generates critical revenue for essential services for the
15 Plaintiff on the Reservation.

16 17. Since 2005, the CDTFA has required the Plaintiff to report, charge, collect,
17 and/or remit to the Defendants any California state sales and use taxes from the sale of
18 motor vehicle fuel products delivered to, received by, and/or sold by the Plaintiff on the
19 Reservation.

20 18. The continued unlawful requirement that Plaintiff report, charge, collect,
21 and/or remit said California sales and use taxes to the Defendants will cause the Plaintiff
22 material and irreparable harm.

23 19. Neither NICHOLAS MADUROS nor the CDTFA will suffer any material
24 damage by the issuance of a preliminary injunction.

25 20. The issuance of an injunction in favor of the Plaintiff and against the
26 Defendants is in the public interest given the Plaintiff's likelihood of success on the
27 merits; the serious legal issues presented; and the likelihood of irreparable harm to the
28 Plaintiff.

COUNT ONE

DECLARATORY AND INJUNCTIVE RELIEF BASED ON
EXPRESS AND IMPLIED FEDERAL PREEMPTION

21. The Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1 through 20 herein and by this reference incorporates same as though they were fully set forth hereat.

22. The Federal Indian Trader statutes (25 U.S.C. § 261 through 25 U.S.C. § 264), enacted by Congress pursuant to the Indian Commerce Clause (*United States Constitution, Article I § 8, clause 3*) and by virtue of the Federal Supremacy Clause (*United States Constitution, Article VI, clause 2*), expressly preempt any California statutes, regulations, and/or orders from serving as the basis for any requirement that the Plaintiff report, charge, collect, and/or remit to Defendants any California state sales and use taxes with respect to motor vehicle fuel products that are delivered to, received by, and/or sold by the Plaintiff on the Reservation.

23. The *Hayden-Cartwright Act* (4 USCS § 104 - § 109), requires the Congress to provide “unmistakably clear” authorization to abrogate any of the Plaintiff’s tax immunities.

24. Pursuant to *California Revenue & Taxation Code §7360, et seq.*, the Defendants require the Plaintiff to report, charge, collect, and/or remit to Defendants any California state sales and use taxes with respect to motor vehicle fuel that is delivered to, received by, and/or sold by the Plaintiff on the Reservation.

25. Pursuant to *California Revenue & Taxation Code §60050, et seq.*, the Defendants require the Plaintiff to report, charge, collect, and/or remit to Defendants any California state sales and use taxes on diesel fuel that is delivered to, received by, and/or sold by the Plaintiff on the Reservation.

26. The requirements imposed by Defendants upon Plaintiff to report, charge, collect, and/or remit to the Defendants said California state sales and use taxes have neither been enacted by nor approved by the Congress and are invalid on their face as

1 applied to the Plaintiff.

2 27. The imposition by the Defendants of the requirement for Plaintiff to report,
3 charge, collect, and/or remit to the Defendants said California state sales and use taxes
4 is preempted by the above-cited federal laws. There is no express Congressional consent
5 containing an “unmistakably clear” authorization for the abrogation of any of the
6 Plaintiff’s tax immunities pursuant to these statutes.

7 28. Based on the absence of the required Congressional consent containing an
8 “unmistakably clear” authorization for the abrogation of any of the Plaintiff’s tax
9 immunities pursuant to these statutes, the Plaintiff is exempt and immune from any
10 requirement for the Plaintiff to report, charge, collect, and/or remit to Defendants said
11 California state sales and use taxes based on the sale of motor vehicle fuel products
12 distributed to, received by, and/or sold by the Plaintiff on the Reservation.

13 29. Pursuant to 28 U.S.C. §2201 - 28 U.S.C. §2202, the Plaintiff is entitled to
14 a declaration of rights stating that the Defendants’ requirements for the Plaintiff to
15 report, charge, collect, and/or remit to Defendants said California state sales and use
16 taxes, based on the sale of motor vehicle fuel products distributed to, received by, and/or
17 sold by the Plaintiff on the Reservation, is unlawful.

18 30. The Plaintiff is also entitled to a temporary, preliminary, and permanent
19 injunction enjoining the Defendants from requiring the Plaintiff to report, charge, collect,
20 and/or remit to Defendants said California state sales and use taxes, based on the sale of
21 motor vehicle fuel products distributed to, received by, and/or sold by the Plaintiff on the
22 Reservation.

23 **PRAYER**

24 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

25 **ON COUNT ONE:**

26 1. For a declaratory judgment against the Defendants declaring invalid and
27 unlawful any California requirement for the Plaintiff to report, charge, collect, and/or
28 remit to Defendants any California sales and use taxes based on motor vehicle fuel

1 products that are distributed to, received by, and/or sold by the Plaintiff on the
2 Reservation;

3 2. For a temporary, preliminary, and permanent injunction enjoining the
4 Defendants from enforcing any requirement for the Plaintiff to report, charge, collect,
5 and/or remit to the Defendants any California sales and use taxes based on motor vehicle
6 fuel products distributed to, received by, and/or sold by the Plaintiff on the Reservation;

7 3. For an award of all costs of suit incurred herein by the Plaintiff; and

8 4. For such other and further relief as the Court deems just and proper.

9 DATED: December 23, 2020

10 MILLAR LAW,
11 OGDEN & MOTLEY,

12 By: s/ Dale E. Motley
13 DALE E. MOTLEY,
14 Attorneys for Plaintiff,
15 PALA BAND OF MISSION INDIANS
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