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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11 SACRAMENTO DIVISION

12
13 **STATE OF CALIFORNIA, ex rel. ROB**
14 **BONTA, in his official capacity as Attorney**
General of the State of California,

15 Plaintiff,

16 v.

17 **AZUMA CORPORATION; PHILLIP DEL ROSA,**
18 **in his personal capacity and official capacity**
as Chairman of the Alturas Indian
19 **Rancheria; DARREN ROSE, in his personal**
capacity and official capacity as Vice-
20 **chairman of the Alturas Indian Rancheria;**
21 **and WENDY DEL ROSA, in her official**
capacity as Secretary–Treasurer of the
22 **Alturas Indian Rancheria,**

23 Defendants.

COMPLAINT FOR DAMAGES, CIVIL
PENALTIES, AND DECLARATORY
AND INJUNCTIVE RELIEF

1 COMES NOW the Plaintiff, the State of California, by and through its Attorney General,
2 Rob Bonta, and for its claims against the Defendants, states and alleges as follows:

3 **JURISDICTION**

4 1. This is an action for declaratory relief against a tribal entity, declaratory and
5 injunctive relief under the *Ex parte Young* doctrine as against officers of a tribe and of a tribal
6 entity in their official capacities, and for civil damages and penalties as against such entity and
7 officers in their personal capacities arising from their years of knowing and intentional trafficking
8 of contraband cigarettes in the State of California. *See Okla. Tax Comm'n v. Citizen Band*
9 *Potawatomi Indian Tribe*, 498 U.S. 505, 514 (1991).

10 2. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C.
11 § 378(a); 18 U.S.C. § 2346(b); and 18 U.S.C. § 1964(c).

12 3. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C.
13 § 1331, as this case involves questions of federal law, including the Prevent All Cigarette
14 Trafficking Act of 2009 (“PACT Act”), 15 U.S.C. §§ 375–378; the Contraband Cigarette
15 Trafficking Act (“CCTA”), 18 U.S.C. §§ 2341–2346; and the Civil Racketeer Influenced and
16 Corrupt Organization Act (“Civil RICO”), 18 U.S.C. §§ 1961–1968.

17 4. This Court has supplemental jurisdiction over the related state law claims pursuant to
18 28 U.S.C. § 1367(a) because those claims form part of the same case or controversy, and share all
19 common operative facts and parties with the federal law claims. Resolving Plaintiff’s federal and
20 state claims in a single action serves the interests of judicial economy, convenience, consistency,
21 and fairness to the parties.

22 5. This Court has jurisdiction to grant the declaratory and injunctive relief requested in
23 this action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

24 6. Venue is proper in, and Defendants are subject to the personal jurisdiction of, this
25 Court because the majority of the events giving rise to this action occurred in this District.
26 28 U.S.C. § 1391(b).

27 **PARTIES**

28 7. Plaintiff is the State of California, by and through its Attorney General, Rob Bonta.

1 14. For sales made on Indian land, “the legal incidence of California’s cigarette tax falls
2 on non-Indian consumers of cigarettes purchased” on the reservation, and California “has the
3 right to require [the Tribe] to collect the tax on [the State’s] behalf.” *Cal. State Bd. of*
4 *Equalization v. Chemehuevi Indian Tribe*, 474 U.S. 9, 12 (1985) (per curiam).

5 15. To ensure the collection of tax on all cigarettes sold to non-exempt consumers and to
6 prevent fraudulent transactions to flout such taxes, California has established a comprehensive
7 statutory scheme of licensing and stamping. This scheme consists of the Cigarette and Tobacco
8 Products Licensing Act of 2003 (the “Licensing Act”), Cal. Bus. & Prof. Code §§ 22970–22991,
9 and the Cigarette and Tobacco Products Tax Law (the “Cigarette Tax Law”), Cal. Rev. & Tax.
10 Code §§ 30001–30483.

11 16. Like its tax laws, California’s licensing and stamping laws are properly applied to
12 tribes and tribal entities when they sell cigarettes to non-members or go beyond their own
13 borders. Off reservation, such entities are subject to California’s licensing and stamping laws as
14 those laws are “non-discriminatory state laws of general application.” *Big Sandy Rancheria*
15 *Enters. v. Bonta*, 1 F.4th 710, 729 (9th Cir. 2021), *cert. denied*, 143 S. Ct. 1110 (2022). And on
16 reservation, states may impose “minimal burden[s] designed to avoid the likelihood that in [their]
17 absence non-Indians purchasing from the tribal seller will avoid payment of a concededly lawful
18 tax.” *Moe v. Confederated Salish & Kootenai Tribes of the Flathead Reservation*, 425 U.S. 463,
19 483 (1976). The Ninth Circuit has expressly found California’s licensing and stamping laws to
20 constitute such “minimal burdens.” *See Big Sandy*, 1 F.4th at 731–32.

21 **II. CALIFORNIA CIGARETTE REGULATIONS**

22 17. “It is the policy of the state that financial burdens imposed on the state by cigarette
23 smoking be borne by tobacco product manufacturers rather than by the state to the extent that
24 those manufacturers either determine to enter into a settlement with the state or are found
25 culpable by the courts.” Cal. Health & Safety Code § 104555(d). Thus, in addition to the
26 consumer-paid taxes collected on the distribution of cigarettes, the State also receives
27 compensation from cigarette manufacturers.

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1 18. As a result of the tobacco Master Settlement Agreement (“MSA”),¹ the State receives
2 annual payments from signatory manufacturers to that Agreement, called “Participating
3 Manufacturers,” in perpetuity. *See* MSA § IX(c).

4 19. Other cigarette manufacturers that have not signed the MSA, called “Non-
5 Participating Manufacturers,” do not make annual payments, but are required to escrow monies
6 against a potential future recovery by the State pursuant to the Escrow Statute. *See* Cal. Health &
7 Safety Code § 104557(a)(2).

8 20. The two charges—MSA payments by Participating Manufacturers and escrow fees by
9 Non-Participating Manufacturers—are not identical and are calculated differently, although they
10 are roughly equal on a per-cigarette basis. Participating Manufacturers’ MSA payments are
11 determined nationally based on federal excise collections, *see* MSA §§ II(z), IX(c), regardless of
12 whether state excise tax later applies. Non-Participating Manufacturers’ escrow fees, in contrast,
13 are assessed at the state level, and do not attach to cigarettes beyond the reach of state taxation,
14 including “cigarettes . . . sold by a Native American tribe to a member of that tribe on that tribe’s
15 land.” Cal. Health & Safety Code § 104556(j).

16 21. Because MSA payments and escrow fees are assessed against manufacturers and
17 collected months after the underlying distributions, there is no “pass on and collect” obligation for
18 MSA payments or escrow fees under State law. Manufacturers making the payments would
19 logically seek to recoup these amounts from their customers, but manufacturers evading their
20 payment obligations would not, allowing them to derive illicit cost advantages over their
21 compliant rivals.

22 22. The Directory Statute was enacted to close the door to such scofflaw manufacturers.
23 Under the Complementary Statute, manufacturers are required to provide various assurances to
24 the Attorney General’s office that they will meet their obligations under the Reserve Fund Statute.
25 *See* Cal. Rev. & Tax. Code § 30165.1(b). Manufacturers that provide such assurances are placed

26 ¹ The tobacco Master Settlement Agreement is a “landmark agreement” reached in 1998
27 between cigarette manufacturers and 52 states and territories *Lorillard Tobacco Co. v. Reilly*,
28 533 U.S. 525, 533 (2001). The text of the MSA can be found at <https://oag.ca.gov/sites/all/files/agweb/pdfs/tobacco/1msa.pdf>.

1 on the “Tobacco Directory” and their cigarettes may be sold to consumers in the State. *Id.*
2 § 30165.1(c). The Attorney General posts the Tobacco Directory on his official, public website.
3 *Id.*

4 23. A manufacturer’s failure to meet its obligations or provide adequate assurances that it
5 will do so renders its cigarettes contraband, unlawful for sale to consumers, and forfeitable to the
6 State. Cal. Rev. & Tax. Code § 30436(e).

7 **DEFENDANTS’ CONTRABAND CIGARETTE TRAFFICKING ENTERPRISE**

8 24. Defendants’ cigarette enterprise has one primary purpose: unlawfully selling
9 contraband cigarettes free of California taxes and other California tobacco regulations. To do so,
10 Defendants have abused their positions of power within the Alturas Tribe and Azuma. California
11 has exhausted the federal regulatory mechanisms Congress enacted specifically for states to
12 combat the kind of trafficking Defendants conduct, but Defendants’ enterprise continues to exist
13 and achieve its core purpose of evading State taxes and other cigarette laws, necessitating this
14 lawsuit.

15 **I. DEFENDANT DARREN ROSE ESTABLISHES UNLAWFUL TOBACCO SHOPS**

16 25. Defendant Darren Rose, having no previous connection to the fewer-than-ten-member
17 Alturas Tribe, was adopted into the Tribe in 2003. Rose had earlier obtained interests in two
18 Indian allotments—the Benter Allotment and Henry Wallace Allotment—and was introduced to
19 the Alturas Tribe by in order to leverage the Alturas Tribe’s sovereignty to exploit that interest.
20 Though on Indian country as defined under federal law, each of these allotments is more than 150
21 miles from the Alturas Indian Rancheria, and the Alturas Tribe holds no jurisdiction or other
22 ownership interest in either allotment.

23 26. Rose’s schemes to exploit the Alturas Tribe’s sovereignty and his interests in the
24 allotments have been illegal and based on avoiding lawful taxes and regulations.

25 27. Rose first attempted to build and develop a second casino for the Tribe on one of his
26 allotments. But because the allotment was the land of the Karuk Tribe, the Alturas Tribe had no
27 authority to open a casino on it. Accordingly, the Bureau of Indian Affairs refused to approve the
28 new casino.

1 28. In 2009, Rose turned to retail sales of contraband cigarettes. Sourcing cigarettes from
2 unlicensed manufacturers located outside of California, Rose set up two tobacco shops on his
3 allotments: Burning Arrow I, located at 900 Running Bear Road, Yreka, California; and Burning
4 Arrow II, located on Baker Ridge Road, near 10838 Rainbow Lake Road, Ono, California. These
5 were located on the Benter Allotment and Henry Wallace Allotment, respectively.

6 29. Rose’s cigarette sales from those two smoke shops violated the California cigarette
7 regulations identified in ¶¶ 12–23, *supra*. The two shops were unlicensed; sourced cigarettes from
8 unlicensed manufacturers and distributors; sold off-directory cigarettes; and failed to collect and
9 remit any excise tax to the state.

10 30. In February 2009, May 2010, and November 2011, the Bureau of Indian Affairs sent
11 cease and desist letters to Rose, demanding he stop selling tax-free cigarettes and informing him
12 that he had a legal duty to collect and remit California excise taxes for his sales. True and correct
13 copies of these letters are attached as exhibits A, B, and C.

14 31. In December 2012, the California Attorney General’s Office (“OAG”) sent a cease
15 and desist letter to Rose, notifying him that his cigarette sales were unlawful. A true and correct
16 copy of this letter is attached as exhibit D.

17 32. Rose nevertheless continued his unlawful cigarette sales.

18 33. In February 2013, OAG filed suit against Rose, alleging each of the sales violated
19 California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200–17210. The court found
20 that Rose committed at least 51,000 violations of the Unfair Competition Law for unlawfully
21 selling over 51,000 cartons of cigarettes, imposed \$765,000 in civil penalties, and permanently
22 enjoined Rose from selling cigarettes except to members of the Alturas Tribe on the Alturas
23 Tribe’s land. *See ex. E, Statement of Decision 14–16, People ex rel. Becerra v. Rose, Case*
24 *No. 176689 (Shasta Cnty. Super. Ct. Aug. 28, 2015); People ex rel. Becerra v. Rose, 16 Cal. App.*
25 *5th 317, 323–24, 332 (2017) (affirming trial court judgment).*

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1 **II. ROSE AND PHILLIP DEL ROSA USE AZUMA TO CREATE A VERTICALLY**
2 **INTEGRATED CONTRABAND CIGARETTE ENTERPRISE THAT DISTRIBUTES OF**
3 **CONTRABAND CIGARETTES THROUGHOUT CALIFORNIA**

4 34. In the wake of the suit against his retail tobacco shops, Rose attempted a new
5 unlawful business: a marijuana grow facility. Prior to establishing the facility, the United States
6 Attorney's Office for the Eastern District of California informed Rose and the Alturas Tribe that
7 their plans would violate federal law. Rose and the Alturas Tribe nevertheless went ahead with
8 them. But on July 8, 2015, officers from the Bureau of Indian Affairs, the Drug Enforcement
9 Administration, and other agencies executed a search warrant on the facility, seizing 12,000
10 illegal marijuana plants.

11 35. After the failure of his marijuana operation, Rose once more turned to cigarettes, this
12 time expanding beyond retail to importing, manufacturing, and distributing, becoming the
13 primary source for contraband cigarettes in response to OAG's efforts to remove such cigarettes
14 from the California market.

15 **A. SMC "Exits" the California Cigarette Market**

16 36. Non-party Seneca Manufacturing Company ("SMC") is a tribally chartered, privately
17 owned corporation. SMC manufactures cigarettes under a federal manufacturer's permit issued by
18 TTB and distributes cigarettes from its manufacturing facility in Cattaraugus County, New York.
19 It manufactures cigarettes under the brands Heron and Sands.

20 37. Neither the Heron nor Sands brands are listed on the California Cigarette Directory,
21 making them contraband in the State of California. *See* Cal. Rev. & Tax. Code § 30436(b), (e).

22 38. In 2014, OAG obtained invoices indicating distributions of SMC-brand cigarettes in
23 California without corroborating reports mandated by the PACT Act.² In response to inquiries
24 from OAG, SMC represented that SMC did not itself send any SMC cigarettes to California, but
25 instead that a tribal distributor picked up cigarettes at the SMC factory dock and that the
26 subsequent California distributions were made by that tribal distributor.

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28 ² As explained in ¶ 53, the PACT Act requires those shipping cigarettes in interstate
commerce or through Indian country to file reports of such shipments with the "tobacco tax
administrator of the State into which such shipment is made." 15 U.S.C. § 376(a)(2).

1 39. To resolve the issue of contraband SMC cigarettes entering California, SMC provided
2 by letter dated October 10, 2014, written confirmation that “Seneca Manufacturing Company is
3 not shipping cigarettes into California and does not plan to ship cigarettes into California in the
4 future.” A true and correct copy of this letter is attached as exhibit F. SMC also later agreed in
5 writing by letter dated June 17, 2016, that “[i]f Seneca Manufacturing Company or any successor
6 in interest ever becomes aware that anyone is selling Seneca Manufacturing Company cigarettes
7 or roll-your-own tobacco anywhere within California’s exterior boundaries or within Indian
8 Country in California,” it would “[p]rovide written notice to the . . . Office of the Attorney
9 General.” A true and correct copy of this letter is attached as exhibit G.

10 **B. Azuma Back-fills SMC’s “Exit” from California**

11 40. With SMC ceasing its California sales, Defendants devised their own scheme to bring
12 off-directory cigarettes into California and manufacture their own. Expanding beyond Rose’s
13 previous retailing of contraband cigarettes, Defendants used Azuma to establish a vertically
14 integrated contraband cigarette operation, importing, manufacturing, distributing, and retailing
15 contraband cigarettes throughout California.

16 41. Defendants Rose and Phillip Del Rosa obtained a federal TTB tobacco
17 manufacturer’s permit for Azuma, license number TP CA-15012.

18 42. After OAG received information regarding brands registered to SMC being
19 distributed by Azuma in California in 2018, Azuma represented that it entered into an April 2018
20 agreement with SMC under which SMC manufactured cigarettes under the Sands and Heron
21 brands in New York, affixing Azuma’s TTB license number in order to claim such cigarettes as
22 “manufactured” by Azuma, and transferring such cigarettes “in bond” to Azuma’s facilities in
23 California.

24 43. Azuma claimed in a letter dated September 14, 2018, that a definitions section of the
25 Code of Federal Regulations and a definitions section of the U.S. Code rendered such cigarettes
26 “not subject to state regulation and taxes.” A true and correct copy of this letter is attached as
27 exhibit H.

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1 44. The Heron and Sands brands are not listed on the California Cigarette Directory, as
2 neither Azuma nor SMC have made the necessary assurances that it will meet its escrow
3 obligations. Heron and Sands cigarettes are accordingly contraband. *See* Cal. Rev. & Tax. Code
4 § 30436(b), (e).

5 45. SMC also manufactured Azuma-owned brands on behalf of Azuma. Azuma owns the
6 Tracker and Tucson cigarette brand trademarks. The Tracker and Tucson brands are not listed on
7 the California Cigarette Directory, as neither Azuma nor SMC have made the necessary
8 assurances that it will meet its escrow obligations. *See* Cal. Rev. & Tax. Code § 30436(b), (e).

9 46. SMC no longer manufactures cigarettes on behalf of Azuma after a final shipment in
10 December 2022. That final shipment contained about 10 million SMC-branded cigarettes, alone
11 sufficient to meet Azuma's current reported distribution volume for about six months.

12 47. Azuma currently manufactures cigarettes under its owned brands, Tracker and
13 Tucson.

14 **C. Azuma Takes on Distribution and Reopens Rose's Retail Business**

15 48. Filing the gap in the supply of contraband cigarettes in California, Defendants have
16 also unlawfully converted Azuma into a distributor of contraband cigarettes throughout
17 California. Moreover, the previously shuttered smokeshop on the Benter Allotment that
18 Defendant Rose was enjoined from operating has been reopened, selling contraband cigarettes
19 Azuma imported into California. Thus, Defendants have created a vertically integrated
20 contraband cigarette operation, encompassing manufacturing, distribution, and retail.

21 49. Azuma supplies contraband cigarettes directly to retail smokeshops on Indian land.
22 Azuma has also supplied contraband cigarettes to such smokeshops indirectly through unlicensed
23 distributors operating within the State.

24 50. Though Azuma has access to ten-wheel trucks, Defendants acquired a single rear axle
25 box truck to conduct its distribution business. Aware that California regularly inspects larger
26 trucks at agricultural stations and truck scales, Defendants opted to use a simple box truck to
27 avoid such inspections.

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1 51. Defendants’ box truck also operates without a federal Department of Transportation
2 (“DOT”) number. On at least one occasion, California Highway Patrol has pulled over the truck
3 and advised the driver to obtain a DOT number.

4 52. Defendants also use personal cars to transport smaller numbers of cases to retail
5 smokeshops, also to avoid inspection or detection.

6
7 **D. Azuma Continues Distributing Contraband Cigarettes Despite Listing on
the PACT Act Non-Compliant List**

8 53. To help states combat contraband cigarette trafficking, Congress passed the Prevent
9 All Cigarette Trafficking Act of 2009 (“PACT Act”), 15 U.S.C. §§ 375–378, 18 U.S.C.
10 §§ 1716E, 2343. The PACT Act requires those shipping cigarettes in interstate commerce or
11 through Indian country to file reports of such shipments with the “tobacco tax administrator of the
12 State into which such shipment is made.” 15 U.S.C. § 376(a)(2). It also federalizes “all State,
13 local, tribal, and other laws applicable to the sales of cigarettes” for all delivery sales of
14 cigarettes, treating delivery sales into a state “as if the delivery sales occurred entirely within
15 the . . . State.” *Id.* § 376(a).

16 54. Azuma has claimed non-existent exemptions the PACT Act—both to its reporting
17 requirements and to the state law as federalized by the Act. *See* ¶ 43; *Big Sandy Rancheria*
18 *Enters. v. Bonta*, 1 F.4th 710, 729 (9th Cir. 2021) (“We . . . treat[] tribe-to-tribe sales made
19 outside the tribal enterprise’s reservation as ‘off reservation’ activity subject to non-
20 discriminatory state laws of general application.”). Azuma has accordingly failed to file all the
21 reports required by the Act for its cigarette shipments, *see* 15 U.S.C. § 376(a), and has not
22 complied with the state laws incorporated by the Act, *see id.* § 376(a).

23 55. As a result of Azuma’s non-compliance with the PACT Act, OAG nominated Azuma
24 to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) for the so-called
25 PACT Act non-compliant list on December 18, 2018. *See* 15 U.S.C. § 376a(e)(1). Outside of
26 limited statutory exceptions, the PACT Act prohibits anyone from knowingly distributing
27 cigarettes on behalf on those listed. *See id.* § 376a(e)(2). ATF placed Azuma on the list on April

28 ///

1 10, 2019. A true and correct copy of ATF's listing notice to Azuma dated February 28, 2019, is
2 attached as exhibit I.

3 56. On September 30, 2019, Azuma claimed that it did not receive any notice from ATF
4 of its nomination for the list, despite Federal Express confirming delivery to Azuma's physical
5 address, complete with signature of a tribal employee. Though the PACT Act only requires that
6 ATF "make a reasonable attempt to send notice to the [nominated] seller by letter, electronic
7 mail, or other means," 15 U.S.C. § 376a(e)(1)(E)(ii); *see also id.* § 376a(e)(8), ATF nonetheless
8 removed Azuma from the non-compliant list due to the purported defect on October 11, 2019.
9 ATF provided Azuma with opportunity to respond to the nomination by November 1, 2019.
10 Azuma filed an objection on that date, making legal arguments against its listing. ATF rejected
11 those arguments and placed Azuma on the list once again effective December 1, 2019. A true and
12 correct copy of ATF's listing notice to Azuma dated November 12, 2019, is attached as exhibit J.

13 57. Through counsel, Azuma provided another response to ATF by letter dated February
14 7, 2020. A true and correct copy of this letter is attached as exhibit H. Rather than substantively
15 comply with state law as incorporated into federal law by the PACT Act, Azuma proposed a
16 scheme to insert an intermediary into its distributions in an attempt to excuse itself from PACT
17 Act requirements. *See ex. K*, Letter from Ben Fenner, Attorney for Azuma Corp. to Joel J.
18 Roessner, Chief Counsel, ATF (Feb. 7, 202) 2. The scheme would have merely substituted one
19 subdivision of one of Azuma's in-state customers for another. *See id.* (proposing transferring
20 cigarettes to Big Sandy Rancheria Importing, IRA, who would then transfer them to Big Sandy
21 Rancheria Distributing, IRA, instead of transferring them directly to Big Sandy Rancheria
22 Distributing, IRA).

23 58. ATF rejected the arguments Azuma made in its letter of February 7, 2020, and the
24 company remains on the non-compliant list.

25 59. In a letter to ATF dated April 10, 2023, Azuma reiterated its previously rejected
26 arguments. In that letter, Azuma admitted that its tribal customers held no licenses and sold to
27 non-members of their respective tribes without collecting or remitting California excise tax or

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1 otherwise complying with the state laws identified above. A true and correct copy of this letter is
2 attached as exhibit L.

3 60. OAG sent a warning letter to Azuma, care of Phillip Del Rosa and Darren Rose, dated
4 October 26, 2022. That letter alerted Azuma of its violations of law and demanded that it cease its
5 unlawful cigarette distributions and sales. A true and correct copy of this letter is attached as
6 exhibit M.

7 61. Despite the warning letter, Azuma continues its unlawful activities.

8 **III. DEFENDANTS ROSE AND PHILLIP DEL ROSA CONTROL THE ALTURAS TRIBE AND**
9 **AZUMA AND THUS THE ENTERPRISE’S CONTRABAND CIGARETTE TRAFFICKING**

10 62. Rose’s foray into contraband cigarettes originally was roiled by a leadership dispute
11 within the Tribe, with Rose and Defendant Phillip Del Rosa on opposite sides. *See Alturas Indian*
12 *Reservation*, 54 I.B.I.A. 1, 1–2 (Aug. 5, 2011). Subsequent leadership disputes have placed Rose
13 and Phillip Del Rosa on the same side when Phillip Del Rosa became a supporter of and active
14 participant in Azuma’s contraband cigarette trafficking activities. *See Alturas Indian Reservation*,
15 64 I.B.I.A. 236, 238 (Jun. 30, 2017) (“The Tribe has been embroiled in membership and
16 leadership disputes for many years, although the make-up of the factions has changed.”).

17 63. The Alturas Tribe has both a General Council and a Business Committee. The
18 General Council “effectively consists of all voting members of the Tribe.” *Alturas Indian*
19 *Reservation*, 54 I.B.I.A. at 4. The Business Committee “consists of the Tribe’s three elected
20 officials (a Chairman, Vice-Chairman, and Secretary–Treasurer).” *Id.*

21 64. Under the Tribe’s constitution, the Business Committee has “the authority to
22 promulgate ‘all ordinances, resolutions, or other enactments of the [Tribe],’ and to represent the
23 Tribe ‘in all negotiations between the [T]ribe and local, state, and federal governments, and other
24 tribes.’” *Alturas Indian Reservation*, 54 I.B.I.A. at 4. It also has “the authority ‘[t]o administer all
25 lands and assets and manage all economic affairs and enterprises of the [Tribe].’” *Id.*

26 65. Defendants Rose and Phillip Del Rosa, holding two of the three seats on the Business
27 Committee, control the Business Committee and have authority to govern all aspects of the
28 Alturas Tribe and its subdivisions and arms.

- 1 sales and sales to nonmembers of the Alturas Tribe, *see* Cigarette and
2 Tobacco Products Tax Law, Cal. Rev. & Tax. Code §§ 30001–30483;
- 3 b. Defendants are not properly licensed by the State of California for their off-
4 reservation sales, *see* Tobacco Products Licensing Act of 2003, Cal. Bus. &
5 Prof. Code §§ 22970–22991;
- 6 c. Defendants sell, offer, possess for sale in California, ship, and/or or
7 otherwise distribute into or within California cigarettes not found on the
8 California cigarette directory, *see* Cal. Rev. & Tax. Code § 30165.1(e)(2);
9 and
- 10 d. Defendants sell, distribute, acquire, hold, own possess, transport, import,
11 and/or cause to be imported cigarettes not found on the California cigarette
12 directory that Defendants know or should know are intended to be
13 distributed into or within California, *see* Cal. Rev. & Tax. Code
14 § 30165.1(e)(3).

15 74. The Attorney General of California is empowered to enforce the PACT Act. *See*
16 15 U.S.C. § 378(c).

17 75. Defendants have knowingly completed, caused to be completed, or completed their
18 portion of deliveries of cigarettes from Azuma, who is named on the non-compliant list, in
19 violation of the PACT Act. *See* 15 U.S.C. § 376a(e)(2).

20 76. As a direct result of Defendants’ violations of the PACT Act, the State of California
21 has suffered and will continue to suffer damages.

22 77. Unless enjoined, Defendants will continue to make delivery sales and cigarette
23 shipments without complying with the PACT Act.

24

25 **SECOND CLAIM FOR RELIEF**
26 **Violations of 18 U.S.C. § 2342 – CCTA**
27 **Against all Defendants**

28 78. The State of California realleges all paragraphs set forth above and incorporates them
by reference.

1 87. As a direct and proximate result of the foregoing racketeering activity and violations
2 of 18 U.S.C. § 1962(c), California has suffered damages in the amount of \$2.87 for each pack of
3 20 cigarettes unlawfully trafficked, which constitutes an injury to its business or property within
4 the meaning of 18 U.S.C. § 1964(c).

5
6 **FOURTH CLAIM FOR RELIEF**
7 **Violations of Cal. Rev. & Tax. Code § 30165.1 – Directory Statute**
8 **Against all Defendants**

9 88. The State of California realleges all paragraphs set forth above and incorporates them
10 by reference.

11 89. Since at least 2018 and continuing to the present, Defendants have sold, offered,
12 possessed for sale in California, shipped and/or otherwise distributed into or within California
13 cigarettes not listed on the California tobacco directory in violation of California Revenue and
14 Taxation Code section 30165.1(e)(2).

15 90. Since at least 2018 and continuing to the present, Defendants have sold, distributed,
16 acquired, held, possessed, transported, imported, and/or caused to be imported cigarettes not
17 listed on the California tobacco directory that Defendants knew or should have known were
18 intended to be distributed in California in violation of California Revenue and Taxation Code
19 section 30165.1(e)(3).

20 **FIFTH CLAIM FOR RELIEF**
21 **Violations of Cal. Health & Safety Code § 104557 – Escrow Statute**
22 **Against all Defendants**

23 91. The State of California realleges all paragraphs set forth above and incorporates them
24 by reference.

25 92. Defendant Azuma is a tobacco product manufacturer as defined in California Health
26 and Safety Code section 104556(i).

27 93. Since at least 2018 and continuing to the present, Defendants have failed to comply
28 with the Escrow Statute. Namely, Defendant Azuma has not become a participating manufacturer
and generally performed the attendant financial obligations under the Master Settlement

1 Agreement, nor placed sufficient funds into escrow pursuant to California Health and Safety
2 Code section 104557(a).

3
4 **PRAYER FOR RELIEF**

5 The State of California prays for:

- 6 1. Preliminary and permanent injunctive relief, enjoining Defendants Azuma
7 Corporation and Darren Rose, Phillip Del Rosa, and Wendy Del Rosa in their official capacities,
8 their successors, employees, agents, representative, and other persons acting in concert with them:
- 9 a. To file the reports required by the PACT Act for their cigarette shipments
10 made in interstate commerce, *see* 15 U.S.C. § 376(a);
 - 11 b. To comply with the shipping requirements, recordkeeping requirements, or
12 tax collection requirements of the PACT Act for their delivery sales, *see*
13 15 U.S.C. § 376a(b), (c), (d);
 - 14 c. To comply with the state laws applicable to delivery sales as incorporated
15 into federal law by the PACT Act, *see* 15 U.S.C. § 376a(a)(3), namely, the
16 Cigarette and Tobacco Products Tax Law, Cal. Rev. & Tax. Code §§ 30001–
17 30483, the Tobacco Products Licensing Act of 2003, Cal. Bus. & Prof. Code
18 §§ 22970–22991, and the Directory Statute, Cal. Rev. & Tax. Code
19 § 30165.1;
 - 20 d. From knowingly completing, causing to be completed, or completing their
21 portion of deliveries of cigarettes from Azuma, who is named on the non-
22 compliant list, in violation of the PACT Act, *see* 15 U.S.C. § 376a(e)(2);
 - 23 e. From selling, purchasing, shipping, transporting, receiving, possessing, and
24 distributing contraband cigarettes in violation of the CCTA, *see* 18 U.S.C.
25 § 2342(a);
 - 26 f. From selling, offering, possessing for sale in California, shipping and
27 otherwise distributing into or within California cigarettes not listed on the

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1 California tobacco directory in violation of the Directory Statute, *see* Cal.
2 Rev. & Tax. Code § 30165.1(e)(2);

3 g. From selling, distributing, acquiring, holding, possessing, transporting,
4 importing, and causing to be imported cigarettes not listed on the California
5 tobacco directory that Defendants know or should know are intended to be
6 distributed in California in violation of the Directory Statute, *see* Cal. Rev.
7 & Tax. Code § 30165.1(e)(3); and

8 h. To place funds into escrow for each unit sold by Defendant Azuma in
9 California in accordance with the Escrow Statute, *see* Cal. Health & Safety
10 Code § 104557(c);

11 2. A declaration that Defendants Azuma Corporation and Darren Rose, Phillip Del
12 Rosa, and Wendy Del Rosa in their official capacities:

13 a. Must file the reports described in the PACT Act for their sales made off the
14 Alturas Rancheria, *see* 15 U.S.C. § 376(a);

15 b. Must comply with the shipping requirements, recordkeeping requirements,
16 or tax collection requirements of the PACT Act for their delivery sales made
17 off the Alturas Rancheria, *see* 15 U.S.C. § 376a(b), (c), (d);

18 c. Must comply with the state laws applicable to delivery sales both as a matter
19 of state law and as incorporated into federal law by the PACT Act for their
20 sales made off the land of the Alturas Tribe and/or to nonmembers, *see*
21 15 U.S.C. § 376a(a)(3), namely, the Cigarette and Tobacco Products Tax
22 Law, Cal. Rev. & Tax. Code §§ 30001–30483, the Tobacco Products
23 Licensing Act of 2003, Cal. Bus. & Prof. Code §§ 22970–22991, and the
24 Directory Statute, Cal. Rev. & Tax. Code § 30165.1;

25 3. Such other and further equitable relief as required to remedy past unlawful acts and
26 prevent future violations of law as allowable by law;

27 4. Civil penalties against Defendants Azuma Corporation and Darren Rose and Phillip
28 Del Rosa in their personal capacities:

- 1 a. Pursuant to 15 U.S.C. § 377(b)(1), in the amount of the greater of (a) \$5,000
- 2 for the first violation and \$10,000 for each subsequent violation of the PACT
- 3 Act as alleged in the complaint or (b) two percent of the gross sales of
- 4 Defendants' cigarettes sales during the one-year period ending on the date of
- 5 each violation of the PACT Act as alleged in the complaint, in a total
- 6 amount to be determined by proof;
- 7 b. Pursuant to 18 U.S.C. § 2344, in an amount to be determined by proof;
- 8 c. Pursuant to California Revenue and Taxation Code section 30165.1(i)(3), in
- 9 the amount of five times the retail value of the cigarettes distributed that
- 10 were not included on the California Tobacco Directory; and
- 11 d. Pursuant to California Health and Safety Code section 104557(c), in the
- 12 amount of five percent of the amount improperly withheld from escrow per
- 13 day of each violation of the Escrow Statute to a maximum of 100 percent of
- 14 the amount improperly withheld, and in the amount of fifteen percent of the
- 15 amount improperly withheld from escrow per day of each knowing violation
- 16 of the Escrow Statute to a maximum of 300 percent of the amount
- 17 improperly withheld, in a total amount to be determined by proof;

18 5. Money damages against Defendants Azuma Corporation and Darren Rose and Phillip
19 Del Rosa in their personal capacities:

- 20 a. In an amount equal to the State of California's actual damages caused by
- 21 Defendants' violations of the PACT Act, in an amount to be determined by
- 22 proof, *see* 15 U.S.C. § 378(c)(1)(A); and
- 23 b. In an amount equal to the State of California's actual damages caused by
- 24 Defendants' violations of the Contraband Cigarette Trafficking Act, in an
- 25 amount to be determined by proof, *see* 18 U.S.C. § 2346(b)(2);

26 6. Money damages against Defendants Darren Rose and Phillip Del Rosa in their
27 personal capacities in an amount equal to three times the State of California's actual damages

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1 caused by Defendants' violation of the RICO Act, 18 U.S.C. § 1962(c), in an amount to be
2 determined by proof, *see* 18 U.S.C. § 1964(c);

3 7. Costs of investigation, expert witness fees, costs of the action, and reasonable
4 attorneys' fees in amounts to be determined by proof, pursuant to California Revenue and
5 Taxation Code section 30165.1(p); and 18 U.S.C. § 1964(c) from Defendants Azuma Corporation
6 and Darren Rose and Phillip Del Rosa in their personal capacities;

7 8. That the court retain jurisdiction of this action;

8 9. That the court order Defendants to disclose any and all information needed to enforce
9 a judgment and/or injunction; and

10 10. Such other and further relief as the Court deems appropriate and just.

11
12 Dated: April 19, 2023

Respectfully submitted,

13 ROB BONTA
14 Attorney General of California
15 JAMES V. HART
16 Supervising Deputy Attorney General
17 DAVID C. GOODWIN
18 Deputy Attorney General

19 */s/ Peter F. Nascenzi*

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