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

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

16 Plaintiff,

17 v.

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

23 Defendants.

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

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

11 3. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C.
12 § 1331, as this case involves questions of federal law, including the Prevent All Cigarette
13 Trafficking Act of 2009 (“PACT Act”), Pub. L. 111-154, 124 Stat. 1087 (codified at 15 U.S.C.
14 §§ 375–378, 18 U.S.C. §§ 1716E, 2343); the Contraband Cigarette Trafficking Act (“CCTA”),
15 18 U.S.C. §§ 2341–2346; and the Civil Racketeer Influenced and Corrupt Organization Act
16 (“Civil RICO”), 18 U.S.C. §§ 1961–1968.

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

19 5. Venue is proper in, and Defendants are subject to the personal jurisdiction of, this
20 Court because the majority of the events giving rise to this action occurred in this District.
21 28 U.S.C. § 1391(b).

22 **PARTIES**

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

24 7. Defendant Darren Rose is a member, former chairperson, and current vice-
25 chairperson of the Alturas Indian Rancheria (the “Alturas Tribe”), a federally recognized Indian
26 tribe of Achumawi Indians located in Modoc County, California. *See* U.S. Bureau of Indian
27 Affairs, Indian Entities Recognized by and Eligible to Receive Services from the United States
28 Bureau of Indian Affairs, 89 Fed. Reg. 944, 944 (Jan. 8, 2024). He is also an officer, director,

1 and/or manager of several businesses that are wholly owned by the Alturas Tribe, including the
2 tribally chartered Azuma Corporation (“Azuma”), of which he is president/secretary. He is named
3 in this action in his official and personal capacities. The official capacities in which he is named
4 include his roles both in tribal government and in Alturas Tribe-owned businesses.

5 8. Defendant Phillip Del Rosa is a member and chairperson of the Alturas Tribe. He is
6 also an officer, director, and/or manager of several businesses that are wholly owned by the
7 Alturas Tribe, some of which retail and/or distribute cigarettes, including the Desert Rose Casino,
8 of whose Compliance Committee he is President. He is named in this action in his official and
9 personal capacities. As with Defendant Rose, the official capacities in which he is named include
10 his roles both in tribal government and in Alturas-owned businesses.

11 GENERAL ALLEGATIONS

12 I. CALIFORNIA CIGARETTE TAXES

13 9. Since 1959, California has imposed excise taxes on the distribution of cigarettes. The
14 rate has increased over time, and is currently \$2.87 per pack of 20 cigarettes. *See* Cal. Rev. &
15 Tax. Code §§ 30101, 30123(a), 30131.2(a), 30130.51(a). The tax attaches to the first taxable use,
16 sale, or consumption of cigarettes. *See id.* § 30008. Where the distributor of the cigarettes cannot
17 be taxed, the tax is “paid by the user or consumer,” *id.* § 30107, and it is collected by a distributor
18 “at the time of making the sale or accepting the order,” *id.* § 30108(a). The tax is generally
19 collected through the use of valued tax stamps, which are purchased by a licensed distributor and
20 affixed to the cigarette packages at or near the time of sale. *See id.* § 30163.

21 10. The California cigarette tax scheme recognizes that certain purchasers may not be
22 taxable at the time of sale and requires distributors to collect taxes only after they become due.
23 Cal. Rev. & Tax. Code § 30108(a) (providing “if the purchaser is not then obligated to pay the
24 tax,” the distributor must collect the tax “at the time the purchaser becomes so obligated”).

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

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

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

17 **II. CALIFORNIA CIGARETTE REGULATIONS**

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

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

27 ¹ The tobacco Master Settlement Agreement is a “landmark agreement” reached in 1998
28 between cigarette manufacturers and 52 states and territories. *Lorillard Tobacco Co. v. Reilly*,

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

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

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

19 19. The Directory Statute, also known as the Complementary Statute, was enacted to
20 close the door to such scofflaw manufacturers. Under the Directory Statute, manufacturers are
21 required to provide various assurances to the Attorney General’s Office that they will meet their
22 obligations under the Reserve Fund Statute. *See* Cal. Rev. & Tax. Code § 30165.1(b).
23 Manufacturers that provide such assurances are placed on the “Tobacco Directory” and their
24 cigarettes may be sold to consumers in the State. *Id.* § 30165.1(c). The Attorney General posts the
25 Tobacco Directory on his official, public website. *Id.*

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27 _____
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 20. A manufacturer's failure to meet its obligations or provide adequate assurances that it
2 will do so renders its cigarettes contraband, unlawful for sale to consumers, and forfeitable to the
3 State. Cal. Rev. & Tax. Code § 30436(e).

4 **DEFENDANTS' CONTRABAND CIGARETTE TRAFFICKING ENTERPRISE**

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

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

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

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

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

27 25. In 2009, Rose turned to retail sales of contraband cigarettes. Sourcing cigarettes from
28 unlicensed manufacturers located outside of California, Rose set up two tobacco shops on his

1 allotments: Burning Arrow I, located at 900 Running Bear Road, Yreka, California; and Burning
2 Arrow II, located on Baker Ridge Road, near 10838 Rainbow Lake Road, Ono, California. These
3 were located on the Benter Allotment and Henry Wallace Allotment, respectively.

4 26. Rose’s cigarette sales from those two smoke shops violated the California cigarette
5 regulations identified in ¶¶ 9–20, *supra*. The two shops were unlicensed; sourced cigarettes from
6 unlicensed manufacturers and distributors; sold off-directory cigarettes; and failed to collect and
7 remit any excise tax to the state.

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

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

15 29. Rose nevertheless continued his unlawful cigarette sales.

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

24 **II. ROSE AND DEL ROSA USE AZUMA TO CREATE A VERTICALLY INTEGRATED**
25 **CONTRABAND CIGARETTE ENTERPRISE THAT DISTRIBUTES CONTRABAND**
26 **CIGARETTES THROUGHOUT CALIFORNIA**

27 31. In the wake of the suit against his retail tobacco shops, Rose attempted a new
28 unlawful business: a marijuana grow facility. Prior to establishing the facility, the United States
Attorney’s Office for the Eastern District of California informed Rose and the Alturas Tribe that

1 their plans would violate federal law. Rose and the Alturas Tribe nevertheless went ahead with
2 them. But on July 8, 2015, officers from the Bureau of Indian Affairs, the Drug Enforcement
3 Administration, and other agencies executed a search warrant on the facility, seizing 12,000
4 illegal marijuana plants.

5 32. After the failure of his marijuana operation, Rose once more turned to cigarettes, this
6 time expanding beyond retail to importing, manufacturing, and distributing, becoming the
7 primary source for contraband cigarettes in response to OAG’s efforts to remove such cigarettes
8 from the California market.

9 **A. SMC “Exits” the California Cigarette Market**

10 33. Non-party Seneca Manufacturing Company (“SMC”) is a tribally chartered, privately
11 owned corporation. SMC manufactures cigarettes under a federal manufacturer’s permit issued by
12 U.S. Tobacco Tax and Trade Bureau (“TTB”) and distributes cigarettes from its manufacturing
13 facility in Cattaraugus County, New York. It manufactures cigarettes under the brands Heron and
14 Sands.

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

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

22 36. To resolve the issue of contraband SMC cigarettes entering California, SMC provided
23 by letter dated October 10, 2014, written confirmation that “Seneca Manufacturing Company is
24 not shipping cigarettes into California and does not plan to ship cigarettes into California in the
25 future.” A true and correct copy of this letter is attached as exhibit F. SMC also later agreed in
26 writing by letter dated June 17, 2016, that “[i]f Seneca Manufacturing Company or any successor

27 ² As explained in ¶ 53, the PACT Act requires those shipping cigarettes in interstate
28 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 in interest ever becomes aware that anyone is selling Seneca Manufacturing Company cigarettes
2 or roll-your-own tobacco anywhere within California’s exterior boundaries or within Indian
3 Country in California,” it would “[p]rovide written notice to the . . . Office of the Attorney
4 General.” A true and correct copy of this letter is attached as exhibit G.

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

6 37. With SMC ceasing its California sales, Defendants devised their own scheme to bring
7 off-directory cigarettes into California and manufacture their own. Expanding beyond Rose’s
8 previous retailing of contraband cigarettes, Defendants used Azuma and other tribal businesses to
9 establish a vertically integrated contraband cigarette operation, importing, manufacturing,
10 distributing, and retailing contraband cigarettes throughout California.

11 38. Defendants Rose and Del Rosa obtained a federal TTB tobacco manufacturer’s
12 permit for Azuma, license number TP CA-15012.

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

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

23 41. The Heron and Sands brands are not listed on the California Cigarette Directory, as
24 neither Azuma nor SMC have made the necessary assurances that it will meet its escrow
25 obligations. Heron and Sands cigarettes are accordingly contraband. *See* Cal. Rev. & Tax. Code
26 § 30436(b), (e).

27 42. SMC also manufactured Azuma-owned brands on behalf of Azuma. Azuma owns the
28 Tracker and Tucson cigarette brand trademarks. The Tracker and Tucson brands are not listed on

1 the California Cigarette Directory, as neither Azuma nor SMC have made the necessary
2 assurances that it will meet its escrow obligations. *See* Cal. Rev. & Tax. Code § 30436(b), (e).

3 43. SMC no longer manufactures cigarettes on behalf of Azuma after a final shipment in
4 December 2022. That final shipment contained about 10 million SMC-branded cigarettes, alone
5 sufficient to meet Azuma's reported distribution volume for several months.

6 44. Azuma currently manufactures cigarettes under its owned brands, Tracker and
7 Tucson.

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

9 45. Filling the gap in the supply of contraband cigarettes in California, Defendants have
10 also unlawfully converted Azuma into a distributor of contraband cigarettes throughout
11 California. Moreover, Defendants established at least three retail smokeshops of their own. Thus,
12 Defendants have created a vertically integrated contraband cigarette operation, encompassing
13 manufacturing, distribution, and retail.

14 46. Azuma supplies contraband cigarettes directly to other retail smokeshops outside of
15 Alturas Indian country. Azuma has also supplied contraband cigarettes to such smokeshops
16 indirectly through unlicensed distributors operating within the State.

17 47. Moreover, the previously shuttered smokeshop on the Benter Allotment near Yreka
18 that Defendant Rose was and is enjoined from operating has been reopened under the name AIR
19 Fuels Station ("AIR Fuels - Yreka"). That smokeshop now sells contraband cigarettes Azuma
20 either manufactured or imported into California.

21 48. Defendants' retail cigarette operations also expanded to include sales at the Alturas
22 Tribe-owned Desert Rose Casino and at a second gas station named AIR Fuels Station ("AIR
23 Fuels - Alturas"), both of which are located on the Alturas Tribe's land. Each of these
24 smokeshops also sell contraband cigarettes Azuma either manufactured or imported into
25 California.

26 49. Though Azuma has access to ten-wheel trucks, it acquired a single-rear-axle box
27 truck to conduct its distribution business. Aware that California regularly inspects larger trucks at

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1 agricultural stations and truck scales, Defendants opted to have Azuma use a simple box truck to
2 avoid such inspections.

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

6 51. Defendant Rose acts as one of Azuma’s box truck delivery drivers, personally
7 distributing Azuma cigarettes to AIR – Yreka and other retailers throughout the State.

8 52. Azuma, under Defendants’ direction, also uses personal cars to transport smaller
9 numbers of cases to retail smokeshops, also to avoid inspection or detection.

10
11 **D. Azuma Continues Distributing Contraband Cigarettes Despite Listing on
the PACT Act Non-Compliant List**

12 53. To help states combat contraband cigarette trafficking, Congress passed the Prevent
13 All Cigarette Trafficking Act of 2009 (“PACT Act”), Pub. L. 111-154, 124 Stat. 1087 (codified at
14 15 U.S.C. §§ 375–378, 18 U.S.C. §§ 1716E, 2343). The PACT Act requires those shipping
15 cigarettes in interstate commerce or through Indian country to file reports of such shipments with
16 the “tobacco tax administrator of the State into which such shipment is made.” 15 U.S.C.
17 § 376(a)(2). It also federalizes “all State, local, tribal, and other laws applicable to the sales of
18 cigarettes” for all delivery sales of cigarettes, treating delivery sales into a state “as if the delivery
19 sales occurred entirely within the . . . State.” *Id.* § 376a(a).

20 54. Azuma has claimed non-existent exemptions to the PACT Act—both to its reporting
21 requirements and to the state law as federalized by the Act. *See* ¶ 40; *Big Sandy Rancheria*
22 *Enters. v. Bonta*, 1 F.4th 710, 729 (9th Cir. 2021) (“We . . . treat[] tribe-to-tribe sales made
23 outside the tribal enterprise’s reservation as ‘off reservation’ activity subject to non-
24 discriminatory state laws of general application.”). Azuma has accordingly failed to file all the
25 reports required by the Act for its cigarette shipments, *see* 15 U.S.C. § 376(a), and has not
26 complied with the state laws incorporated by the Act, *see id.* § 376a(a).

27 55. As a result of Azuma’s non-compliance with the PACT Act, OAG nominated Azuma
28 to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) for the so-called

1 PACT Act non-compliant list on December 18, 2018. *See* 15 U.S.C. § 376a(e)(1). Outside of
2 limited statutory exceptions, the PACT Act prohibits anyone from knowingly distributing
3 cigarettes on behalf on those listed. *See id.* § 376a(e)(2). ATF placed Azuma on the list on April
4 10, 2019. A true and correct copy of ATF’s listing notice to Azuma dated February 28, 2019, is
5 attached as exhibit I.

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

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

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

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1 59. In a letter to ATF dated April 10, 2023, Azuma reiterated its previously rejected
2 arguments. In that letter, Azuma admitted that its tribal customers held no licenses and sold to
3 non-members of their respective tribes without collecting or remitting California excise tax or
4 otherwise complying with the state laws identified above. A true and correct copy of this letter is
5 attached as exhibit L.

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

10 61. In a letter dated April 10, 2023, Azuma requested ATF remove it from the non-
11 compliant list. On May 23, 2023, ATF rejected Azuma's request and again determined that it was
12 correctly placed on the PACT Act non-compliant list. A true and correct copy of this letter is
13 attached as exhibit O.

14 62. ATF determined that "Azuma continues to violate the Contraband Cigarette
15 Trafficking Act (CCTA) and PACT Act by illegally shipping unstamped, untaxed cigarettes that
16 are not permitted by the California directory to unlicensed entities which cannot lawfully possess
17 untaxed, unstamped cigarettes." Ex. O, at 1. "Moreover," ATF continued, "Azuma has continued
18 to violate the CCTA and PACT Act for years after ATF instructed Azuma that its operations were
19 in violation of said statutes and placement on the Non-Compliant list." *Id.* at 10.

20 63. Despite OAG's warning letter and ATF's determination that Azuma's operations
21 have violated the CCTA and PACT Act for years, Azuma continues its unlawful activities to the
22 present.

23 **III. DEFENDANTS ROSE AND DEL ROSA CONTROL THE ALTURAS TRIBE AND AZUMA**
24 **AND THUS THE ENTERPRISE'S CONTRABAND CIGARETTE TRAFFICKING**

25 64. Rose's foray into contraband cigarettes originally was roiled by a leadership dispute
26 within the Tribe, with Rose and Del Rosa on opposite sides. *See Alturas Indian Reservation*,
27 54 I.B.I.A. 1, 1-2 (Aug. 5, 2011). Subsequent leadership disputes have placed Rose and Del Rosa
28 on the same side when Del Rosa became a supporter of and active participant in Azuma's

1 contraband cigarette trafficking activities. *See Alturas Indian Reservation*, 64 I.B.I.A. 236, 238
2 (Jun. 30, 2017) (“The Tribe has been embroiled in membership and leadership disputes for many
3 years, although the make-up of the factions has changed.”).

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

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

13 67. Defendants Rose and Del Rosa, holding two of the three seats on the Business
14 Committee, control the Business Committee and have authority to govern all aspects of the
15 Alturas Tribe and its subdivisions and arms.

16 68. The third member of the Business Committee, Wendy Del Rosa, is in an active
17 dispute over the Alturas Tribe’s leadership, has asked the Department of the Interior “to recognize
18 a 2013 decision by the Tribe’s governing body removing Phillip Del Rosa . . . from holding
19 voting and leadership positions in the Tribe,” and has taken the position that Darren Rose is “not
20 a valid member of the Tribe.” *Alturas Indian Rancheria v. Bernhardt*, No. 19-16885, 2023 WL
21 385176, at *2 (9th Cir. Jan. 25, 2023) (memorandum opinion).

22 69. Amid the Alturas Tribe’s leadership dispute, Defendants Rose and Del Rosa have
23 used their two votes to control the Alturas Tribe’s tobacco business operations. For example,
24 Azuma’s Amended Articles of Incorporation dated December 19, 2017, were signed by only the
25 Alturas Tribe’s Chairman and Vice-Chairman, i.e., Defendants Del Rosa and Rose. Those
26 Amended Articles of Incorporation also specifically lowered the number of required directors
27 from three to two, allowing Rose and Del Rosa to remove Wendy Del Rosa as a director.

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1 70. Pursuant to the Alturas Tribe’s Tobacco Ordinance, the Business Committee has
2 direct and sole authority to establish tobacco outlets on the Alturas Tribe’s land and otherwise to
3 regulate tobacco sales on the Alturas Tribe’s land.

4 71. Azuma possesses a federal manufacturer’s permit issued by the TTB and distributes
5 cigarettes from its facility in Modoc County, California.

6 72. Azuma directly employs ten people in its manufacturing operations, of which four are
7 enrolled members of the Alturas Tribe.

8 73. Defendant Rose holds the title of Azuma’s president/secretary and exercises control
9 over Azuma’s operations. OAG has obtained copies of invoices of cigarette shipments both to and
10 from Azuma, and—in line with his position as president/secretary and control over the
11 corporation—Rose is invariably listed as the contact for Azuma. *See, e.g.,* ex. N, Bill of Lading
12 from Azuma Corp. to Big Sandy Rancheria (Sept. 10, 2018).

13 74. Not only exercising control over Azuma’s operations, Defendant Rose also acts as
14 delivery driver for Azuma, personally delivering cigarettes to Azuma’s customers.

15 75. Defendants Rose and Del Rosa are both directors on Azuma’s governing board.

16 76. Defendant Rose also exercises control over AIR Fuels - Yreka. After the California
17 Superior Court enjoined him operating the smokeshop near Yreka, Rose has been observed at
18 AIR Fuels - Yreka. Rose has also acted both as delivery driver to and receiver of shipments on
19 behalf of AIR Fuels - Yreka.

20 77. Though a member of the Alturas Tribe, Defendant Rose does not live on the Alturas
21 Tribe’s land. Rather, his last known primary residence is located in Redding California, over 100
22 miles away in Shasta County.

23 78. Defendant Rose works alternatively from a home office in Redding, California and
24 from an office rented by the Alturas Tribe in Redding, California. Neither location is located on
25 the Alturas Indian Rancheria.

26 79. Like Defendant Rose, although he is a member of the Alturas Tribe, Defendant Del
27 Rosa does not live on the Alturas Tribe’s land. Del Rosa’s last known primary residence is
28 located over 150 miles away in Medford, Oregon.

1 80. Defendant Del Rosa works from his home in Medford, Oregon, and indeed the
2 mailing address for the Alturas Tribe is reported on the Bureau of Indian Affairs’s website to be
3 Del Rosa’s home address in Medford, Oregon. That location is not located on the Alturas Indian
4 Rancheria.

5 81. Azuma receives its mail at and conducts business through a post office box. That post
6 office box is not located on the Alturas Indian Rancheria.

7
8 **FIRST CLAIM FOR RELIEF**
9 **Violations of 15 U.S.C. §§ 376–376a – PACT Act**
10 **Against Defendants in their official and personal capacities**

11 82. The State of California realleges all paragraphs set forth above and incorporates them
12 by reference.

13 83. Azuma is a “delivery seller” as defined under the PACT Act. *See* 15 U.S.C. § 375(6).

14 84. Each and every unlicensed customer of Azuma located outside of the Alturas
15 Rancheria is a “consumer” as defined under the PACT Act. *See* 15 U.S.C. § 375(4).

16 85. The shipments of Azuma’s cigarettes to customers outside of the Alturas Rancheria
17 are “delivery sales” as defined under the PACT Act. *See* 15 U.S.C. § 375(5). They also are made
18 in “interstate commerce” as defined under the PACT Act. *See id.* § 375(10).

19 86. Since at least 2018 and continuing to the present, Azuma has not filed all the reports
20 required by the PACT Act for their cigarette shipments made in interstate commerce. *See*
21 15 U.S.C. § 376(a).

22 87. The delivery sales made by Azuma since at least 2018 and continuing to the present
23 do not comply with the shipping requirements, recordkeeping requirements, or tax collection
24 requirements of the PACT Act. *See* 15 U.S.C. § 376a(b), (c), (d).

25 88. The delivery sales made by Azuma under Defendants’ direction since at least 2018
26 and continuing to the present do not comply with the state laws applicable to such sales as
27 incorporated into federal and required by the PACT Act. *See* 15 U.S.C. § 376a(a)(3). Namely:

- 28 a. Azuma does not pay or collect and remit California excise taxes or otherwise
comply with California tobacco tax law for their off-reservation sales and

1 sales to nonmembers of the Alturas Tribe, *see* Cigarette and Tobacco
2 Products Tax Law, Cal. Rev. & Tax. Code §§ 30001–30483;

3 b. Azuma is 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. Azuma sells, offers, possesses for sale in California, ships, and/or or
7 otherwise distributes 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. Azuma sells, distributes, acquires, holds, owns, possesses, transports,
11 imports, and/or causes to be imported cigarettes not found on the California
12 cigarette 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 89. The Attorney General of California is empowered to enforce the PACT Act. *See*
16 15 U.S.C. § 378(c).

17 90. Azuma and Defendants both deliver cigarettes to consumers and have received the
18 non-compliant list, subjecting them to the PACT Act’s delivery prohibitions for those listed on
19 the non-compliant list. *See* 15 U.S.C. § 376a(e)(2)(A).

20 91. Azuma and Defendants have knowingly completed, caused to be completed, or
21 completed their portion of deliveries of cigarettes for Azuma, who is named on the non-compliant
22 list, in violation of the PACT Act. *See* 15 U.S.C. § 376a(e)(2)(A).

23 92. As a direct result of these violations of the PACT Act, the State of California has
24 suffered and will continue to suffer damages.

25 93. Unless enjoined, Azuma will continue to make delivery sales and cigarette shipments
26 under Defendants’ direction without complying with the PACT Act.

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1 101. Azuma and its customers constitute an “enterprise” as defined in 18 U.S.C. § 1961(4)
2 and as used in 18 U.S.C. § 1962(c) and who engages in and whose activities affect interstate
3 commerce.

4 102. Since at least 2018 and continuing to the present, Defendants have conducted and
5 participated in the enterprise through a pattern of racketeering activity. *See* 18 U.S.C. § 1962(c).
6 Specifically, Defendants engaged in multiple and repeated acts of cigarette trafficking in violation
7 of the CCTA, 18 U.S.C. §§ 2341–2346, through the enterprise. *See* 18 U.S.C. § 1961(1). The acts
8 of trafficking made through the enterprise are both related and continuous, using the enterprise to
9 accomplish the uniform purpose of profiting from the repeated and ongoing sale of contraband
10 cigarettes in California.

11 103. As a direct and proximate result of the foregoing racketeering activity and violations
12 of 18 U.S.C. § 1962(c), California has suffered damages in the amount of \$2.87 for each pack of
13 20 cigarettes unlawfully trafficked, which constitutes an injury to its business or property within
14 the meaning of 18 U.S.C. § 1964(c).

15
16 **FOURTH CLAIM FOR RELIEF**
17 **Violations of 18 U.S.C. § 1962(d) – Civil RICO Conspiracy**
18 **Against Defendants in their personal capacities**

19 104. The State of California realleges all paragraphs set forth above and incorporates them
20 by reference.

21 105. As set forth above, since at least 2018 and continuing to the present, Defendants have
22 agreed and conspired to violate 18 U.S.C. § 1962(c). Specifically, Defendants have intentionally
23 conspired and agreed to conduct and participate in the conduct of the affairs of the enterprise
24 identified above through a pattern of racketeering activity. Defendants knew that their predicate
25 acts were part of a pattern of racketeering activity and agreed to the commission of those acts to
26 further the scheme described above. That conduct constitutes a conspiracy to violate 18 U.S.C.
27 § 1962(c) in violation of 18 U.S.C. § 1962(d).

28 106. As a direct and proximate result of the foregoing racketeering activity and violations
of 18 U.S.C. § 1962(d), California has suffered damages in the amount of \$2.87 for each pack of

1 20 cigarettes unlawfully trafficked, which constitutes an injury to its business or property within
2 the meaning of 18 U.S.C. § 1964(c).

3
4 **PRAYER FOR RELIEF**

5 The State of California prays for:

6 1. Preliminary and permanent injunctive relief, enjoining Defendants Darren Rose and
7 Phillip Del Rosa in their official capacities, their successors, employees, agents, representative,
8 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 2. A declaration that Defendants Darren Rose and Phillip Del Rosa in their official
27 capacities:

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- 1 a. Must file the reports described in the PACT Act for their sales made off the
- 2 Alturas Rancheria, *see* 15 U.S.C. § 376(a);
- 3 b. Must comply with the shipping requirements, recordkeeping requirements,
- 4 or tax collection requirements of the PACT Act for their delivery sales made
- 5 off the Alturas Rancheria, *see* 15 U.S.C. § 376a(b), (c), (d);
- 6 c. Must comply with the state laws applicable to delivery sales both as a matter
- 7 of state law and as incorporated into federal law by the PACT Act for their
- 8 sales made off the land of the Alturas Tribe and/or to nonmembers, *see*
- 9 15 U.S.C. § 376a(a)(3), namely, the Cigarette and Tobacco Products Tax
- 10 Law, Cal. Rev. & Tax. Code §§ 30001–30483, the Tobacco Products
- 11 Licensing Act of 2003, Cal. Bus. & Prof. Code §§ 22970–22991, and the
- 12 Directory Statute, Cal. Rev. & Tax. Code § 30165.1;

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

15 4. Civil penalties against Defendants Darren Rose and Phillip Del Rosa in their personal
16 capacities:

- 17 a. Pursuant to 15 U.S.C. § 377(b)(1), in the amount of the greater of (a) \$5,000
- 18 for the first violation and \$10,000 for each subsequent violation of the PACT
- 19 Act as alleged in the complaint or (b) two percent of the gross sales of
- 20 Defendants’ cigarettes sales during the one-year period ending on the date of
- 21 each violation of the PACT Act as alleged in the complaint, in a total
- 22 amount to be determined by proof; and
- 23 b. Pursuant to 18 U.S.C. § 2344, in an amount to be determined by proof;

24 5. Money damages against Defendants Darren Rose and Phillip Del Rosa in their
25 personal capacities:

- 26 a. In an amount equal to the State of California’s actual damages caused by
- 27 Defendants’ violations of the PACT Act, in an amount to be determined by
- 28 proof, *see* 15 U.S.C. § 378(c)(1)(A); and

