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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

**STATE OF CALIFORNIA, ex rel. ROB  
BONTA,**

Plaintiff,

**v.**

**PHILIP DEL ROSA, et al.,**

Defendants.

2:23-cv-00743-KJM-SCR

**DEFENDANTS' OPPOSITION TO  
CALIFORNIA'S NOTICE OF  
VIOLATION (DKT. 164)**

Judge: Hon. Kimberly J. Mueller  
Action filed: April 19, 2023  
Trial date: N/A

Defendants Philip Del Rosa and Darren Rose file this brief pursuant to this Court's Order, ECF 167, and in opposition to the Notice of Violation ("NOV"), ECF 164, filed by Plaintiff State of California ex rel. Rob Bonta ("Plaintiff" or "State"). The NOV alleges Rose violated the preliminary injunction filed September 8, 2023, Dkt. 43 ("Preliminary Injunction"), by selling 35 cases of cigarettes to AIR Fuels and Desert Rose Casino, *see* Declaration of Peter F. Nascenzi in Support of Plaintiff's Notice of Violation, dated Aug. 28, 2025 ("Nascenzi Decl."), ¶ 8, both of which are, like Azuma Corporation, wholly owned and operated by the Alturas Indian Rancheria. The NOV does not explain how face-to-face transactions occurring on the Alturas Indian Rancheria by and between Alturas-owned enterprises (sometimes referred to as the "**Intratribal Transactions**") are prohibited under the Preliminary Injunction (or even, for that matter, regulated

by the PACT Act at all), and instead alleges merely that “Azuma has distributed . . . cigarettes in violation of the preliminary injunction during th[e] month [of July 2025],” Nascenzi Decl. ¶¶ 7-8. The State is clearly seeking to extend the Preliminary Injunction to bar all business activities by Azuma, even sales on its own reservation to its sister enterprises, including a casino operated under procedures prescribed by the Secretary of the Interior and pursuant to the Indian Gaming Regulatory Act, 25 USC § 2701 et seq. The State’s effort must fail, and the NOV should be denied.

### BACKGROUND

The facts and procedural history of this litigation are set forth more fully in Defendants’ Memorandum of Law in Support of Motion to Clarify Preliminary Injunction, which is filed concurrently herewith. That background is incorporated here by reference. This brief sets forth only those facts and background immediately relevant to the instant motion.

The Preliminary Injunction provides:

Defendant Darren Rose, in his official capacity as vice-chairman of the Alturas Indian Rancheria and as president/secretary of Azuma Corporation, and his employees and agents are hereby enjoined from completing or causing to be completed any delivery, or any portion of a delivery, of packages containing cigarettes on behalf of Azuma Corporation to anyone in California in violation of section 376a(e)(2)(A) of the PACT Act.

Prelim. Inj. at 24.<sup>1</sup>

On August 11, 2025, Rose produced to the State records of Azuma’s business activities pursuant to a previous sanctions order. The portions of those records upon which the NOV relies (the “Records”) are attached as Exhibit A to the Nascenzi Declaration. In short, the Records show sales by Azuma to Desert Rose Casino and AIR Fuels. Both Desert Rose Casino and AIR Fuels are wholly owned by the Tribe, Declaration of Alyssa Rose (Aug. 29, 2025), filed concurrently herewith (“Alyssa Decl.”), at ¶ 4, as is Azuma, Order, Jan. 24, 2024, ECF 58, at 5. Furthermore, none of the records indicates any of the transactions was remote (i.e., non face-to-face) in nature. To the contrary, in each of the transactions, an employee of either Desert Rose Casino or AIR Fuels

<sup>1</sup> The Ninth Circuit upheld the Preliminary Injunction. *California v. Azuma Corp.*, No. 23-16200, 2024 WL 4131831 (9th Cir. Sept. 10, 2024).

1 visited Azuma's facility on the Alturas Indian Rancheria, placed its cigarette order in person, and  
2 acquired possession of the cigarettes while at Azuma's facility. Alyssa Rose Decl. ¶ 5-8.

3 On August 28, 2025, the State filed the NOV. ECF 164. The NOV asserts Azuma's sales  
4 to Desert Rose Casino and AIR Fuels violate the Preliminary Injunction. NOV at 2-3; *see also*  
5 Nascenzi Decl. ¶¶ 6-7. It provides no analysis of how it believes the transactions between the three  
6 Alturas-owned entities come within the scope of the Preliminary Injunction. Instead, the NOV  
7 addresses this major point indirectly, merely incorporating the State's conclusory footnote from its  
8 earlier Opposition to Defendants' Motion for Reconsideration / Clarification, ECF 150. NOV fn.  
9 1. As demonstrated below, the Intratribal Transactions do not involve any delivery component and  
10 are on-reservation transactions involving only Indians which, as this Court has already stated, "are  
11 not subject to State regulation," Order (May 27, 2025), ECF 131, at 9:1-3.

## 12 ARGUMENT

### 13 I. The Intratribal Transactions are Face-to-Face transactions that do not 14 involve delivery and therefore do not violate the Preliminary Injunction.

15 Defendants provide analysis in their Motion to Clarify, filed concurrently herewith,  
16 demonstrating why the Intratribal Transactions are face-to-face, non-remote transactions that  
17 involve no delivery and are thus beyond the scope of the Preliminary Injunction (and the PACT  
18 Act's so-called Prohibited Delivery Provision (§ 376a(e)(2)(A)) upon which the Preliminary  
19 Injunction is based). Mot. to Clarify at 6-11. In the balance of this Section I, Defendants repeat  
20 those arguments verbatim, or nearly verbatim, due to their pertinence to the NOV.

21 The Preliminary Injunction, like the Prohibited Delivery Provision on which it is based,  
22 prohibits deliveries (and certain conduct constituting facilitation of such deliveries). Therefore, it  
23 does not enjoin face-to-face cigarette transactions, such as the Intratribal Transactions, which occur  
24 at Azuma's facility on the Alturas Indian Rancheria between Azuma as seller and Desert Rose  
25 Casino and AIR Fuels as buyers, in which the order is placed in-person and not remotely via voice  
26 transmission, telephone, internet, or mail, and the cigarettes are collected in-person and not  
27  
28

1 delivered to the buyer by common carrier, private delivery service, or other method of remote  
2 delivery. *See* 15 U.S.C. § 376(5) (defining “delivery sale”).

3 The Preliminary Injunction was based upon California having shown that “both Azuma and  
4 Mr. Rose *deliver* cigarettes to ‘consumers.’” Prelim. Inj. Order at 18 (emphasis added). As the  
5 Court observed, the “prohibited activity” under § 376a(e)(2)(E) is “knowingly completing, causing  
6 to be completed, or completing [the prohibited persons’] respective portions of a delivery of  
7 cigarettes for any person on the noncompliant list.” *Id.* at 17; see also *id.* at 19 (finding California  
8 has shown likelihood of success on claim of violation of § 376a(e)(2)(A)). Accordingly, delivery  
9 conduct was the conduct the Preliminary Injunction prohibited. *Id.* at 24 (enjoining Rose “from  
10 completing or causing to be completed any delivery, or any portion of a delivery, of packages  
11 containing cigarettes on behalf of Azuma Corporation to anyone in California in violation of section  
12 376a(e)(2)(A) of the PACT Act”). Subsequent orders have maintained the focus on deliveries. *See*  
13 Order, Feb. 28, 2024, ECF No. 71, at 5 (finding “Azuma has continued to deliver cigarettes on its  
14 own behalf”).

15 In the May 27, 2025, Order, ECF No. 131, the Court emphasized that the PACT Act  
16 “prohibits individuals from ‘causing’ a delivery to be completed or completing a ‘portion of a  
17 delivery’ for Azuma.” *Id.* at 7. The Court explained that this prohibition encompasses not just “the  
18 physical transport of cigarettes for Azuma, but also those actions required to precipitate, plan and  
19 execute a delivery.” *Id.* The transportation of Azuma cigarettes by a third person to buyers off-  
20 reservation constituted a delivery, and Rose effectively “continue[d] deliveries in violation of the  
21 Act by engaging third-party deliverers.” *Id.* The Court also explained that the Preliminary  
22 Injunction “‘does not prohibit anyone from lawfully engaging in the cigarette business in  
23 compliance with applicable federal law.’” Order (April 23, 2024) at 2. Rose and Azuma may sell  
24 cigarettes, but they must do so in compliance with the PACT Act and this court’s orders.” *Id.* at  
25 10.

26 These orders establish that, while the Preliminary Injunction prohibits more than deliveries  
27 themselves, the existence of a delivery sale is an essential element for conduct to come within the  
28 reach of the Preliminary Injunction. Therefore, a face-to-face sale, involving an order placed by

1 the buyer in the physical presence of the seller, and the seller's receipt of the cigarettes in the  
2 physical presence of the buyer, without any delivery, is outside the Preliminary Injunction's scope.

3 California has urged a broad interpretation of the Preliminary Injunction as barring all of  
4 Azuma's cigarette sales. *See* Notice of Violation, ECF No. 164; *see also* Tr. of Proceedings, July  
5 7, 2025, at 8:6-15 (State arguing that for Rose to purge himself of contempt, Azuma must "cease  
6 making sales" and "stop selling cigarettes"); *see also* Mem. P's & A's In Supp. of Prop. Rev. Pros.  
7 Sanctions Order, ECF 163-1, at 3:11-13 (asserting that the State "moved for a preliminary  
8 injunction to halt Azuma's . . . sales[.]"). The State's reasoning appears to be that customers  
9 purchasing cigarettes at Azuma's facilities are "delivering the[] [cigarettes] themselves," Pl.'s Opp.  
10 to Defs.' Mtn. for Reconsideration, ECF No. 150, at 4 n.2. California's suggestion seems to be that  
11 every sale necessarily involves delivery. The PACT Act, however, distinguishes between face-to-  
12 face sales and delivery sales. The PACT Act expressly limits delivery sales and does not extend to  
13 circumstances wherein the order for a sale is not made remotely and the cigarettes are not delivered  
14 to the buyer. 15 U.S.C. § 376(5). Contrary to California's interpretation, which collapses this  
15 distinction, only delivery sales are covered by the Preliminary Injunction, while face-to-face sales  
16 are not.

17 Although the PACT Act's Prohibited Delivery Provision does not define what it means by  
18 "delivery," or what it means to "cause [a delivery] to be completed, or complete [a] portion of a  
19 delivery," 15 U.S.C. § 376a(e)(2)(A), the Act does define the term "delivery sale." A "delivery  
20 sale" is a type of "sale of cigarettes or smokeless tobacco to a consumer," meeting either of the  
21 following criteria:

22 (A) the consumer submits the order for the sale by means of a telephone or other  
23 method of voice transmission, the mails, or the Internet or other online service, or  
24 the seller is otherwise not in the physical presence of the buyer when the request  
for purchase or order is made; or

25 (B) the cigarettes or smokeless tobacco are delivered to the buyer by common  
26 carrier, private delivery service, or other method of remote delivery, or the seller is  
27 not in the physical presence of the buyer when the buyer obtains possession of the  
cigarettes or smokeless tobacco.  
28

1 15 U.S.C. § 375(5). Thus, a “delivery sale” only occurs where the buyer *orders* cigarettes outside  
2 the physical presence of the seller, or *obtains possession* of cigarettes outside the physical presence  
3 of the seller, or the cigarettes are delivered to the buyer by a method of remote delivery such as  
4 common carrier or private delivery service. The sale of cigarettes not involving either remote  
5 ordering or remote transfer of possession is still a sale, but not a “delivery sale.” *See Gordon v.*  
6 *Holder*, 721 F.3d 638, 642 (D.C. Cir. 2013) (explaining that a “delivery sale is any sale in which  
7 either the purchase or the delivery does not occur face-to-face”). The current Azuma sales are not  
8 delivery sales.

9 The larger structure of the PACT Act supports the conclusion that the PACT Act is limited  
10 to sales involving remote deliveries or remote deliveries. The Prohibited Delivery Provision is  
11 closely connected to the kind of remote deliveries which are a necessary element of the delivery  
12 sales the Act regulates. The Prohibited Delivery Provision is part of § 376a, entitled “Delivery  
13 sales.” Following several subdivisions establishing obligations for delivery sellers and delivery  
14 sales, and directing the creation of a list of delivery sellers not in compliance with these obligations,  
15 the Prohibited Delivery Provision, as stated above, bars certain people from knowingly completing,  
16 causing to be completed, or completing their portions of a delivery of any package for a person  
17 named on the noncompliant list. 15 U.S.C. § 376a(e)(2)(E). The prohibition is subject to three  
18 exceptions, each of which hinges on the nature of the delivery in question. *Id.* § 376a(e)(2)(E)(i)-  
19 (iii).

20 The PACT Act’s Findings and Purpose sections confirm the Act’s overriding purpose is to  
21 regulate remote delivery sales, particularly internet cigarette sales to juveniles. Congress enacted  
22 the PACT Act, which added the “delivery sale” provisions to existing law, based on findings that  
23 emphasized why legislation focusing on these remote sales was desirable. The “Findings” section  
24 of the PACT Act states in part that “the sale of illegal cigarettes and smokeless tobacco over the  
25 Internet, and through mail, fax, or phone orders, makes its cheaper and easier for children to obtain  
26 tobacco products,” that “the majority of Internet and other remote sales of cigarettes and smokeless  
27 tobacco are being made without adequate precautions to protect against sales to children, without  
28 the payment of applicable taxes, and without complying with the nominal registration and reporting

requirements in existing Federal law,” that “the number of Internet vendors in the United States and in foreign countries that sell cigarettes and smokeless tobacco to buyers in the United States increased from only about 40 in 2000 to more than 500 in 2005,” and that “the intrastate sale of illegal cigarettes and smokeless tobacco over the Internet has a substantial effect on interstate commerce.” PACT Act, Pub. L. No. 111-154, § 1(b)(4), (5), (9) & (10), 15 U.S.C. § 375 Note. *See also id.* at Sec. 8 (recognizing “unique harms . . . associated with online cigarette sales”). The express purpose of the Act is primarily to “require Internet and other remote sellers of cigarettes and smokeless tobacco to comply with the same laws that apply to law-abiding tobacco retailers.” *Id.* § 1(c)(1).<sup>2</sup>

Accordingly, the PACT Act delivery sales provisions are limited in scope. They only apply when either the orders are made remotely by means of telephone, voice transmissions or the mails, Internet, or other online service or outside the physical presence of the seller, or when the cigarettes are delivered to the buyer via common carrier, private delivery service, or other form of remote delivery. The Prohibited Delivery Provision applies to transactions that involve a “remote delivery” of the kind described in the “Delivery sales” definition, § 375(5)(B). By the same token, the Prohibited Delivery Provision does not apply to transactions in which there is no “remote delivery” involved and the seller is “in the physical presence of the buyer when the buyer obtains possession of the cigarettes,” *Id.*<sup>3</sup> Therefore, Azuma would not violate the Prohibited Delivery Provision by engaging in a face-to-face transaction, in which the buyer places in the order in the physical presence of Azuma and thereafter obtains possession of the cigarettes while at Azuma’s facility.

<sup>2</sup> Given these express purposes of the PACT Act, it strains credulity to believe the heart of the PACT Act was intended even to apply to transactions like those at issue here, where entities owned and operated by the same Indian tribe are engaged in face-to-face transactions on their own reservation. This is particularly so in light of Section 5 of the PACT Act, which reaffirms federal limitations on interference with sales of cigarettes “by or to Indian tribes, tribal members, tribal enterprises, or in Indian country,” Pub. L. 111-154 (March 31, 2010), Sec. 5, sub. (a)(3), the core of which are on-reservation transactions involving only Indians of the same tribe.

<sup>3</sup> In Defendants’ view, the Prohibited Delivery Provision of the PACT Act and the Preliminary Injunction do not prohibit remote *orders* (§ 375(5)(A)), but only prohibit remote *deliveries* (§ 375(5)(B)). Nevertheless, as noted, Desert Rose Casino and AIR Fuels place their orders in the physical presence of Azuma.



1 To be as clear as possible, this scenario is not the one the Court discussed in the May 23,  
2 2025, Order, where a third-party service was hired by multiple buyers for the purpose of picking  
3 up and transporting cigarettes on each buyer's behalf. *See* ECF No. 131 at 7. Here, Desert Rose  
4 Casino and AIR Fuels place orders for, and take possession of, the cigarettes at Azuma's location  
5 through bona fide employees of Desert Rose Casino and AIR Fuels.

6 It would stretch the meaning of the Prohibited Delivery Prohibition to conclude that a  
7 "delivery" occurs (and, therefore, that Rose and Azuma "cause" a delivery to be completed, or  
8 that they complete their "portion of a delivery") under these circumstances. No "delivery" within  
9 the meaning of the Prohibited Delivery Provision or the Preliminary Injunction occurs where the  
10 buyer itself orders the cigarettes and obtains possession at Azuma's facility. The buyer's  
11 subsequent conduct – *i.e.*, bringing the cigarettes back to the buyer's retail store – is not a  
12 delivery, because in the PACT Act's contemplation, the "delivery" factors that distinguish a  
13 "delivery sale" from any other sale are tied to the moments the buyer places its order and obtains  
14 possession, and whether the buyer and seller are in one another's "physical presence" at those  
15 moments, or if the cigarettes are "delivered to the buyer by common carrier, private delivery  
16 service, or other method of remote delivery." 15 U.S.C. § 375(5)(B). When the Desert Rose  
17 Casino or AIR Fuels, through an employee, picks up cigarettes from Azuma and carries them to  
18 the casino or fuel station, there is no "delivery" to the Desert Rose Casino or AIR Fuels because  
19 they obtained and retained possession at and from the time of pickup.

20 In sum, "delivery" is central to the Preliminary Injunction, as demonstrated by the  
21 Preliminary Injunction Order, the subsequent enforcement orders, and the Prohibited Delivery  
22 Provision of the PACT Act on which it is based. The meaning of the term "delivery" under the  
23 Prohibited Delivery Provision, and thus under the Preliminary Injunction, is best understood by  
24 reference to the "remote delivery" portion of the PACT Act's "delivery sales" definition. So  
25 understood, Azuma's face-to-face sales to the Desert Rose Casino and AIR Fuels, in which the  
26 buyers order, purchase and obtain possession of the cigarettes in person at the Azuma facility, do  
27 not involve delivery or delivery sales as defined under the PACT Act. Since there is no delivery  
28



1 sale, the PACT Act and the Preliminary Injunction do not prohibit these transactions. Necessarily,  
2 then, these transactions do not violate the Preliminary Injunction.

3 **II. Even if Rose had violated the Preliminary Injunction, the State's Request for**  
4 **Sanctions under the State's Proposed Revised Sanctions Order, rather than the**  
5 **existing Sanctions Order, must be denied.**

6 In the NOV, the State asks the Court to not impose sanctions under the current sanctions  
7 order in effect, ECF 95 (the "Sanctions Order"), but instead asks the Court "to impose the sanctions  
8 requested in the concurrently filed Proposed Revised Prospective Sanctions Order," *see* [Proposed]  
9 Rev. Sanctions Order, ECF 163 (the "Proposed Order"). NOV at 3. As shown below, such  
10 sanctions would be criminal in nature, rather than civil coercive. Because the State has failed to  
11 make the showings required for the imposition of criminal sanctions, the State's request for  
12 sanctions must be denied.

13 The Sanctions Order expressly provides the sanctions for "[a]ny future noncompliance with  
14 the preliminary injunction," which are as follows:

15 \$10,000 for the first day of noncompliance, \$12,000 for the second day of  
16 noncompliance, \$14,000 for the third day of noncompliance, \$16,000 for the  
17 fourth day of noncompliance, and \$16,000 for the fifth day of noncompliance.  
Noncompliance beyond the sixth day may result in a custodial sanction.

18 Sanctions Order at 5-6, ¶ 5. The Court recently interpreted and applied the Sanctions Order in an  
19 order disposing of the State's prior notice of violation. *See* Order, ECF 162. In that Order, the  
20 Court found, and the parties had so agreed, that the Sanctions Order "signaled cumulative sanctions  
21 for up to five days of violations," *id.* at 5:15-18, and thus ordered Rose "to pay sanctions provided  
22 by [the Sanctions Order], adding the sanctions amount for each day up to five days," which was in  
23 the total amount of \$68,000, *id.* at 5:25-27. In regard to custodial sanctions, the court reserved the  
24 possibility "for further clarification as appropriate if the record is supplemented to support the  
25 issuance of a clarifying order putting Mr. Rose on notice and spelling out ways to purge any  
26 contempt." *Id.* at 5-6.

27 The Sanctions Order, not the Proposed Order, controls the imposition of sanctions for the  
28 Intratribal Sales during July 2025 that are the basis for the NOV. This is true by the terms of the

Sanctions Order. As noted above, it provides that it, and the sanctions schedule therein, applies to “[a]ny future noncompliance with the preliminary injunction[.]” Sanctions Order at 5. The Court, in its recent Order of August 15, 2025, ECF 162, reiterated the prospective nature of the Sanctions Order and its application until superseded by a subsequent order for prospective sanctions. *See* Order, ECF 162, at 6-7. More specifically, the Court noted that since the Sanctions Order “did not coerce defendants into compliance, California may seek a revised prospective sanctions order from the court[.]” Order, ECF 162, at 6:8-11 (emphasis added). The Court ordered California to file “any proposed revised prospective sanctions order” within 30 days, and the Court outlined standards for any such proposed prospective sanctions order. *Id.* at 6. The Court also afforded Defendants 14 days to object to any such proposed order. *Id.* at 162 (“Defendants may file any objections to a proposed order within fourteen days thereafter, at which point the matter will be submitted.”).<sup>4</sup> The State filed its Proposed Order within that 30-day window, and the Defendants are currently within their 14-day period to prepare and file any objections thereto, after which time the issue of the Proposed Order will be deemed submitted for resolution by the Court. Clearly, the Court’s multiple orders provide that sanctions orders are prospective in nature, and the State’s request that the Proposed Order, which was submitted in late August 2025, apply to Azuma’s alleged activities from the month prior would be contrary to those orders.

In addition, it would be contrary to law to apply the sanctions under the Proposed Order, rather than the Sanctions Order, to prior alleged violations by Rose. As this Court has held, “[w]here the court imposes coercive contempt fines, the requirement of an ‘opportunity to purge,’ i.e., ‘reduce or avoid the fine through compliance’ is what distinguishes civil from criminal contempt; civil contempt fines are fundamentally conditional in nature.” Order (Aug. 15, 2025), ECF 162, at 4 (quoting *International Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 829 (1994), which itself was citing *Penfield Co. of Cal. v. SEC*, 330 U.S. 585, 590 (1947), *Hicks v. Feiock*, 485 U.S. 624, 632-33 (1988), and *United States v. Ayres*, 166 F.3d 991, 997 (9th

<sup>4</sup> Defendants’ 14-day window to object to the Proposed Order extends through September 11, 2025, based on the State having filed its Proposed Order on August 28, 2025. Defendants intend to prepare and file such objections at the earliest possible time, but in no event later than September 11th.

1 Cir. 1999) (“Civil contempt sanctions . . . are only appropriate where the contemnor is able to purge  
 2 the contempt by his own affirmative act . . .”). Here, during the month of July 2025, Rose could  
 3 only have had notice of the sanctions schedule under the Sanctions Order, which was entered  
 4 months prior. By the same token, Rose had no notice of the proposed sanctions schedule under the  
 5 Proposed Order, which was filed in August 2025—approximately one month after the conduct in  
 6 question. In other words, Rose only had the opportunity to avoid (i.e., purge) the sanctions under  
 7 the Sanctions Order, and he had no similar opportunity to avoid sanctions provided under the  
 8 Proposed Order. Accordingly, by seeking sanctions under the Proposed Order, the State is seeking  
 9 a criminal sanction rather than civil coercive. *See Coleman v. Newsom*, 131 F.4th 948, 962-63 (9th  
 10 Cir. 2025). The State, however, has not provided the due process or other showings necessary to  
 11 support a criminal sanction. The State characterizes its Proposed Order as prospective, coercive  
 12 sanctions, ECF 163-1 at 2, but if imposed under these circumstances, they would be retrospective,  
 13 punishing conduct that occurred before the sanctions became an order of the Court (indeed, before  
 14 they were even proposed), and they would not be coercive, as a sanctions framework established  
 15 in September is not capable of coercing Rose to alter his conduct in July. Therefore, the State’s  
 16 request for sanctions under the NOV should be denied on this basis alone.

17 **III. Even under the Sanctions Order, the State has exhausted the available**  
 18 **monetary sanctions.**

19 In the NOV, the State specifically requests that the Court “impose the sanctions requested  
 20 in the concurrently filed Proposed [Order].” NOV at 3:1-3. As discussed above, those sanctions  
 21 cannot be lawfully imposed upon Rose under the current circumstances because they would amount  
 22 to criminal sanctions, rather than civil coercive sanctions.

23 Even if the State had requested the Court impose sanctions provided under the Sanctions  
 24 Order, the State has not shown those sanctions would be appropriate, either. This is because the  
 25 State has exhausted all the monetary sanctions available under the Sanctions Order. As previously  
 26 discussed, the Court has previously held that the monetary sanctions under the Sanctions Order are  
 27 “cumulative sanctions for up to five days of violations.” Order, ECF 162, at 5:15-18. Under that  
 28 interpretation, the Court imposed sanctions in the amount of \$68,000, which was the maximum

1 monetary sanctions available under the Sanctions Order for five or more days of violations. As a  
2 result, the State has exhausted the monetary sanctions available for Rose's alleged violations of the  
3 preliminary injunction because those violations would be in addition to the five days of violations  
4 for which Rose was already sanctioned. Thus, the State has available under the Sanctions Order  
5 only the custodial sanctions. And while the State could still seek such sanctions, it has not done  
6 so, and more importantly, has not made the showing necessary to do so, *see* Order, ECF 162, at  
7 5:19-24.

### 8 CONCLUSION

9 Defendants respectfully request that the Court find that the State, through the NOV, has  
10 failed to show that Rose violated the Preliminary Injunction. Furthermore, even assuming the State  
11 had shown a violation, the State is not entitled to the sanctions it requests under the Proposed  
12 Revised Sanctions Order, because such sanctions would amount to criminal sanctions, rather than  
13 civil coercive sanctions. Finally, even if the State had requested sanctions under the operative  
14 Sanctions Order, the State has already exhausted the monetary sanctions available thereunder and  
15 has not made the showing required for custodial sanctions. For these reasons, Defendants ask the  
16 Court to find that the NOV fails to show that Rose has violated the preliminary injunction, and even  
17 if that were otherwise, that sanctions are not warranted.

18  
19 Dated: September 4, 2025

Respectfully submitted,

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21 *s/ John M. Peebles*

22 John M. Peebles

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