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

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

Plaintiff,

v.

**PHILLIP DEL ROSA, in his personal
capacity and official capacity as Chairman
of the Alturas Indian Rancheria; and
DAREN ROSE, in his personal capacity and
official capacities as Vice-chairman of the
Alturas Indian Rancheria and
President/Secretary of Azuma Corporation,**

Defendants.

2:23-cv-00743-KJM-SCR

**PLAINTIFF'S REPLY IN SUPPORT OF
NOTICE OF VIOLATION AND
OPPOSITION TO DEFENDANTS'
MOTION TO CLARIFY**

Date: October 17, 2025
Time: 1:30 pm
Courtroom: 3, 15th Floor
Judge: Hon. Kimberly J. Mueller
Trial Date: N/A
Action Filed: April 19, 2023

INTRODUCTION

The Court issued its Preliminary Injunction a full two years ago. Order, ECF No. 43. At no point in those two years has Defendant Darren Rose, the subject of that order, complied with the injunction. Instead, Rose has continually sought “to avoid compliance with this court’s orders,” Order (“Second Contempt Order”) 8, ECF No. 131, and to “escape the consequences,” Order (“First Contempt Order”) 5, ECF No. 71, of his contemptuous actions. Opposing the State’s Notice of Violation and moving to carve out certain contemptuous activities from the Preliminary Injunction under the guise of “clarification,” Rose once again seeks to avoid compliance with this court’s orders. To do so, Defendants disregard the plain text of the Court’s Preliminary Injunction and of the Prevent All Cigarette Trafficking Act of 2009 (“PACT Act”) undergirding that order. Rose also once again seeks to escape the consequences of his contempt by claiming this Court is powerless to impose civil monetary sanctions for that contempt. Wrong on both counts, Defendants’ Motion to Clarify should be denied, Rose should be held in contempt for a third time, and the Court should impose sanctions for such contempt.¹

I. THE PRELIMINARY INJUNCTION ADDRESSES “DELIVERIES,” NOT “DELIVERY SALES”

Placement on the PACT Act’s so-called “non-compliant list” imposes a sweeping prohibition. It prohibits delivery sellers and those in receipt of the list from “knowingly complet[ing], caus[ing] to be completed, or complet[ing] [their] portion of a delivery of any package for” the listed person. 15 U.S.C. § 376a(e)(2)(A). The Court’s Preliminary Injunction mirrors this language, prohibiting Rose “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.” Prelim. Inj. 24. Applying to the “delivery of any package” and providing three limited exceptions, the PACT Act places an affirmative burden on deliverers

¹ Defendants’ Motion to Clarify contains nearly identical arguments as its Opposition to the State’s Notice of Violation. *See* Opp’n Not. Violation 3, ECF No. 169 (“In the balance of this Section I, Defendants repeat those arguments verbatim, or nearly verbatim . . .”). Accordingly, the State files this single document acting as both its opposition to Defendants’ motion and reply in support of the State’s Notice of Violation. *See* Min. Order ECF No. 171 (granting Plaintiff 14 days and 10 pages for a reply in support of its Notice of Violation).

1 to ensure that any packages delivered on behalf of the listed entity either (1) do not contain
 2 cigarettes, *see* 15 U.S.C. § 376a(e)(2)(A)(i), (iii); or (2) are made only to those “lawfully
 3 engaged” in the cigarette business, *id.* § 376a(e)(2)(A)(ii). Thus, for listed entities it does not
 4 matter how any particular package is ordered or how delivery occurs: the PACT Act prohibits any
 5 involvement in the delivery of cigarettes from the listed entity unless the recipient complies with
 6 relevant cigarette laws. *See, e.g.*, Second Contempt Order 7 (“The PACT Act plainly prohibits
 7 individuals from ‘causing’ a delivery to be completed or completing a ‘portion of a delivery’ for
 8 Azuma, therefore extending to more than just the physical transport of cigarettes for Azuma, but
 9 also those actions required to precipitate, plan and execute a delivery.”). None of Azuma’s
 10 customers comply with relevant cigarette laws, *see* Prelim. Inj. 18–19, and so all of Azuma’s
 11 sales to those customers violate the injunction.

12 Seeking to avoid the clear language of the PACT Act and the even clearer language of the
 13 Court’s Preliminary Injunction applying the PACT Act specifically to Rose and to Azuma,
 14 Defendants claim that “delivery” does not mean “delivery,” but instead means “delivery sale,” a
 15 term defined by the PACT Act. *See* Opp’n Not. Violation 5. However, neither the Preliminary
 16 Injunction nor the delivery prohibition it mirrors use that term. Accordingly, basic principles of
 17 statutory interpretation say that “delivery” cannot mean “delivery sale.” *See S.E.C. v. McCarthy*,
 18 322 F.3d 650, 656 (9th Cir. 2003) (“It is a well-established canon of statutory interpretation that
 19 the use of different words or terms within a statute demonstrates that Congress intended to convey
 20 a different meaning for those words.”).

21 Instead, as “delivery” is itself undefined in the PACT Act, it takes on its “ordinary
 22 meaning.” *Hamilton v. Lanning*, 560 U.S. 505, 513 (2010). “In determining the ‘plain meaning’
 23 of a word,” courts “consult dictionary definitions, which . . . capture the contemporary
 24 understandings of the word.” *United States v. Flores*, 729 F.3d 910, 914 (9th Cir. 2013).
 25 Mirroring the delivery prohibition’s broad application to “any package,” Black’s Law Dictionary
 26 broadly defines “delivery”: “The formal act of voluntarily transferring something; esp., the act of
 27 bringing goods, letters, etc. to a particular person or place.” *Delivery*, Black’s Law Dictionary
 28 (12th ed. 2024). The Merriam–Webster Dictionary defines “delivery” as “the act . . . of delivering

1 something,” and then similarly broadly defines “deliver” as “to take and hand over to or leave for
 2 another,” to “convey,” and to “hand over, surrender.” *Delivery*, Merriam-Webster Dictionary,
 3 <https://www.merriam-webster.com/dictionary/delivery> (last updated Sept. 9, 2025); *Deliver*,
 4 Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/delivering> (last
 5 updated Sep. 9, 2025).² Transferring cigarettes to “consumers” as defined under the PACT Act,
 6 15 U.S.C. § 375(4)—whether they are located on the Alturas Indian Rancheria or elsewhere in
 7 California³—Rose is once more violating the Preliminary Injunction.

8 Moreover, the plain language of the delivery prohibition demonstrates that it does not
 9 import the defined term “delivery sale.” Rather than narrowly defined, the prohibition applies to
 10 “delivery of any package.” 15 U.S.C. § 376a(e)(2)(A). Indeed, importing “delivery sale” into the
 11 PACT Act’s delivery prohibition would render that provision nonsensical. Rather than
 12 encompassing “any package,” a “delivery sale,” is limited to a “sale of cigarettes or smokeless
 13 tobacco.” *Id.* § 375(5). And if “delivery” meant “delivery sale,” the prohibition’s exceptions for
 14 when the deliverer knows or has reason to believe the package does not contain cigarettes, *see id.*
 15 § 376a(e)(2)(A)(i), (iii), would be rendered superfluous.⁴

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17 ² The Merriam–Webster Dictionary also includes a legal definition on the same page: “to
 18 transfer possession of (property) to another” or “put into the possession or exclusive control of
 another.”

19 ³ The Court found that Azuma’s customers were “consumers” under the PACT Act
 20 because they “do not have licenses and do not remit applicable taxes to California.” Prelim. Inj.
 21 19. Defendants make no claim that Desert Rose Casino, AIR Fuels, or Cedarville Rancheria
 22 Rabbit Traxx have licenses or remit taxes, and indeed they do not. *Cf.* Mem. Law Supp. Mot.
 Clarify 4 n.2, ECF No. 170-1 (disclaiming any need of “showing the Desert Rose Casino and AIR
 Fuels are ‘lawfully operating’ for purposes of the PACT Act”).

23 ⁴ Defendants also erroneously claim “California’s Complaint sets apart on-reservation
 24 tribal member transactions as outside the scope of the conduct alleged to violate the PACT Act.”
 25 Mem. Law Supp. Mot. Clarify 4 n.2. While the First Amended Complaint (“FAC”) sets apart on-
 26 reservation tribal member transactions for certain alleged violations, it does not make such
 27 distinction for violations of the PACT Act’s delivery prohibition. *See* FAC ¶ 90, ECF No. 68
 28 (citing 15 U.S.C. § 376a(e)(2)(A)); *id.* Prayer for Relief ¶ 1(d). That is because each claimed
 violation in the FAC is applied only to its relevant statutory provision in the PACT Act.
 Moreover, Defendants’ Notice of Errata, which corrects the record to include sales to the
 Cedarville Rancheria, *see* Defs.’ Not. Errata 1, ECF No. 177, directly undermines that footnote,
 premised as it is on Azuma making only transactions “solely involving Alturas-owned entities.”
 Mem. Law Supp. Mot. Clarify 4 n.2

Nor does the PACT Act elsewhere use “delivery” to refer to “delivery sales,” but instead specifies when and how its different provisions apply to different activities, including whether they apply only to “delivery sales.” For example, § 376a(b)(4) addresses the kinds of remote deliveries Defendants claim the delivery prohibition is limited to. But rather than refer broadly to “deliveries” in the way the delivery prohibition does, that provision refers specifically to when a delivery seller “mails or ships tobacco products.” *id.* § 376a(b)(4), and thus excludes transactions considered “delivery sales” under the remote order provision, *see id.* § 375(5)(A). And § 376a(d)—entitled “Delivery”—makes clear that it addresses not any delivery, but only deliveries made “pursuant to a delivery sale.” This language stands in stark contrast to § 376a(e)(2)(A)’s broad “delivery of any package” language in furtherance of its broad prophylactic purpose against those already found to be noncompliant with the PACT Act.

Defendants preferred reading of the PACT Act, too, collapses on itself. After arguing that “delivery” means “delivery sale,” Defendants backtrack and cut out half of the definition of “delivery sale” by claiming that “the Prohibited Delivery Provision of the PACT Act and the Preliminary Injunction do not prohibit remote orders.” Opp’n Not. Violation 7 n.3 (emphasis removed) (citing 18 U.S.C. § 375(5)(A)). Defendants provide no support for this contention, however, and it finds no support in the text. Indeed, as explained above, Congress knew how to limit provisions to remote deliveries and did so in § 376a(b)(4).

While Defendants’ motion was originally premised on “transactions with other Alturas Indian tribal businesses,” Mem. Law Supp. Mot. Clarify 2, Defendants’ Notice of Errata and the accompanying revised Declaration of Alyssa Rose, ECF No. 177-1, include sales to a store located on the Cedarville Rancheria and make clear Defendants are searching for another nonexistent loophole.⁵ Defendants argue that having their customers’ “bona fide employees” come to collect and deliver Azuma’s cigarettes themselves rather than “a third-party service”

⁵ Plaintiff here notes that Alyssa Rose executed her original declaration in support of Defendants’ Motion to Clarify on August 29, 2025, well after the newly revealed sale to the Cedarville Rancheria on August 7, 2025, making her original declaration disingenuous at best. Defendants also previously argued that cigarettes picked up by the Cedarville Rancheria “are not deliveries,” Tr. Sanction Hr’g 10:20–23, ECF No. 149, making the failure to include such transactions in Defendants’ Motion to Clarify all the more galling.

would avoid the delivery prohibition and the Preliminary Injunction. Mem. Law Supp. Mot. Clarify 10; *see also* Not. Errata 2 (“Cedarville, through its employee, placed its order in person at the Azuma facility and collected the cigarettes in person at the Azuma facility.”). Of course, there is nothing in the PACT Act that even hints at a distinction between “third-party services” or “bona fide employees” making deliveries, and there is no practical distinction between the two—Defendants’ customers are legal entities who can act only through natural-person agents, whether hired directly as employees, indirectly as contractors, or through another legal entity. In each case, cigarettes are delivered from Azuma’s manufacturing facility to the customer retailer.

Moreover, contriving any such distinction between these methods of delivery would mirror the “gaping enforcement gap” of exempting cigarettes delivered by Azuma itself that Defendants already proposed and this Court already rejected. First Contempt Order 6. Just like “[l]eaving non-compliant entities free to deliver cigarettes on their own behalf would contravene the purposes of the PACT Act,” *id.*, so, too, would leaving unlawfully operating cigarette retailers free to send employees to collect deliveries from their non-compliant cigarette suppliers, *see* PACT Act, Pub. L. No. 111-154, § 1(c), 124 Stat. 1087, 1087–88 (2010) (“It is the purpose of this Act . . . to . . . create strong disincentives to illegal smuggling of tobacco products; . . . make it more difficult for cigarette . . . traffickers to engage in and profit from their illegal activities; [and] . . . increase collections of . . . State, and local excise taxes on cigarettes . . .”).

II. THE COURT’S ORDERS DO NOT LEAVE ROSE FREE TO VIOLATE THE INJUNCTION WITHOUT CONSEQUENCE

Imposing \$68,000 in civil fines due to Rose’s prior noncompliance, the Court recognized that its “prior prospective sanctions order did not coerce defendants into compliance.” Second Sanctions Order 6. Accordingly, the Court invited the State to “seek a revised prospective sanctions order from the court, if it believes such an order is warranted.” *Id.* After a several-day delay due to Defendants’ representations that discussion of such revised sanctions order could be fruitful, the State promptly filed a proposed revised sanctions order to finally bring Rose into compliance with the injunction. *See* Proposed Order, ECF No. 163. All the while, Rose continued

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1 violating the injunction, despite being put on notice that the Court could issue sanctions beyond
2 those in the prior order.

3 Rose now claims that imposing sanctions under the revised order “would be criminal in
4 nature, rather than civil coercive.”⁶ Opp’n Not. Violation 9. However, as Defendants recognize,
5 “the requirement of an ‘opportunity to purge,’ i.e., ‘reduce or avoid the fine through compliance’
6 is what distinguishes civil from criminal contempt.” *Id.* at 10 (quoting Second Sanctions Order 4).
7 Rose has all the while had the opportunity to avoid the requested sanctions and purge his
8 contempt simply by complying with the injunction. *See N.L.R.B. v. Ironworkers Local 433*,
9 169 F.3d 1217, 1221 (9th Cir. 1999) (“[T]he imposition of non-compliance fines following a
10 failure to purge is a coercive, civil remedy.”).

11 Even assuming the Court elects not to apply Plaintiff’s proposed sanctions order, Rose
12 argues he is also free of consequences under the Court’s prior order, claiming that “the State has
13 exhausted all the monetary sanctions available under the [First] Sanctions Order.” Opp’n Not.
14 Violation 11. But Rose has newly violated the Court’s injunction. Thus, if the Court applies the
15 First Sanction Order to Rose’s July 2025 violations, he will have once again incurred that order’s
16 “cumulative sanctions for up to five days of violations” totaling \$68,000. Second Contempt
17 Order 5.

18 After the Court’s conclusion that “the lack of clarity” in the First Sanctions Order “weighs
19 significantly against imposing” custodial sanctions, Second Sanctions Order 5, Rose essentially
20 claims that the Court gave him up to forty-five days to violate the injunction without
21 consequence. And by both delaying the State’s filing of its proposed revised sanctions order and
22 taking the full fourteen days to respond to that filing, Rose not only claims “the keys of his
23 prison,” *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828 (1994), but also
24 authority to determine the duration of his claimed hall pass. Doing so is but another step in his
25 long line of attacks on that injunction, and Rose’s claim of no-consequences should be rejected.

26 ⁶ As the State has pointed out several times previously, this Court has authority to refer
27 Rose to the U.S. Attorney’s Office for criminal prosecution of his contempt. *See* Mem. P. & A. Supp. Proposed Revised Sanctions Order 7 n.4, ECF No. 163-1; Pl.’s Mem. P. & A. Supp. Mot.
28 Order Show Cause 7 n.4, ECF No. 50-1 (providing authority). But that is not the sanction
requested in Plaintiff’s pending Notice of Violation.

1 *See, e.g.*, Order 4, ECF No. 175 (denying Defendants’ motion and describing “Defendants’
2 labeling of the motion as one for reconsideration of the contempt order [a]s disingenuous, given
3 their true focus is the applicability and enforceability of the injunction order.”).

4 **CONCLUSION**

5 For the reasons provided, Plaintiff the State of California respectfully requests the Court
6 hold Defendant Darren Rose in contempt for a third time, impose sanctions for such contempt,
7 and deny Defendants’ Motion to Clarify, ECF No. 170.

8 Dated: September 11, 2025

Respectfully submitted,

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