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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.

AZUMA CORPORATION; PHILLIP DEL ROSA, in his personal capacity and official capacity as Chairman of the Alturas Indian Rancheria; DAREN ROSE, in his personal 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,

Defendants.

2:23-cv-00743-KJM-DB

REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Date:	August 11, 2023
Time:	10:00 am
Courtroom:	3, 15th Floor
Judge:	Hon. Kimberly J. Mueller
Trial Date:	N/A
Action Filed:	April 19, 2023

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INTRODUCTION

Defendant Azuma Corporation ("Azuma") manufactures and distributes contraband cigarettes throughout California. Though not the only Native American or Native American-aligned manufacturer doing business in California, Azuma is the only one that introduces its off-directory cigarettes to California solely though unlicensed distributions. *See California Tobacco Directory*, CAL. DEP'T JUST., OFF. ATT'Y GEN., https://oag.ca.gov/tobacco/directory (last updated June 8, 2023) (listing, for example, cigarettes manufactured by Smokin Joes and Skookum Creek Tobacco Co.).[1] It is also the only one who, when repeatedly warned by both the California and U.S. Departments of Justice to cease their illegal operations, refused to either do so or come into compliance. It is the only one on the federal Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF")'s PACT Act non-compliant list, and (to our knowledge) the only one ATF has informed is violating the Contraband Cigarette Trafficking Act, and that its distributions could "form the basis for violations of the Federal wire fraud and money laundering statutes." Alexander Decl., Ex. B, at 1, ECF No. 13-3.

Over the past half-decade, ATF and the California Attorney General's Office ("OAG") have engaged with Azuma in various attempts to compel it to bring its distributions within the law. Azuma, however, has rebuffed those efforts, insisting that, unlike every other cigarette manufacturer—Native American aligned or not—the laws do not apply to it. After one last attempt to bring Azuma into compliance with the law, *see* Compl. ¶ 60, ECF No. 1; Rose Decl. ¶ 18, ECF No. 23-3, OAG brought this suit to enforce the compliance Azuma has repeatedly refused. And after ATF confirmed that Azuma is properly on the PACT Act non-compliance list and that its deliveries are prohibited under that Act, OAG moved to enjoin its unlawful distributions, putting a halt to Defendants' unlawful distributions during the pendency of this suit.

In their opposition, Defendants do not deny that Azuma is on the non-compliant list. Defendants do not deny that they deliver or cause to be delivered packages on behalf of Azuma, despite such listing. And Defendants do not deny that neither Azuma nor its customers comply

[1] *See* SMOKIN JOES, https://sjbrands.com/ (last visited July 25, 2023) ("The First Native American-Owned and Operated Tobacco Manufacturer"); SKOOKUM CREEK TOBACCO, https://skookumcreek.com/ (last visited July 25, 2023) ("[M]anufactured . . . on reservation").

with applicable state law. Defendants instead proffer long-since-rejected theories to claim the law does not apply to *them*. Defendants also claim that because Azuma has been operating unlawfully for years, they should be able to continue to distribute cigarettes unlawfully during the pendency of this suit. This Court should not allow those illegal distributions to continue, but should instead enjoin Defendants' deliveries.

ARGUMENT

Azuma operates unlawfully. Even under Defendants' reading of *Big Sandy Rancheria Enterprises v. Bonta*, 1 F.4th 710 (9th Cir. 2021), Azuma is "subject to non-discriminatory state laws of general application" including the licensing, reporting, and recordkeeping requirements it flouts. *See* Defs.' Opp'n Mot. Prelim. Inj. ("Opp'n") 16, ECF No. 23 (arguing that *Big Sandy*'s reasoning applies only to those "engaged in 'off-reservation conduct'"). *Compare id.* at 11 ("Azuma sells its cigarettes to retailers . . . wholly owned by other federally recognized Indian tribes . . . operating within Indian Country inside the State of California."), *with Big Sandy*, 1 F.4th at 718 ("[Plaintiff] resells . . . cigarettes . . . 'to . . . reservation-based retailers operating within their own . . . Indian Country within . . . the State of California.'"). The sole question here is whether Defendants should be enjoined from delivering cigarettes on Azuma's behalf.

I. PLAINTIFF WILL PREVAIL ON ITS PACT ACT CLAIMS

Azuma is listed on the PACT Act non-compliant list. Accordingly, subject to three affirmative defenses, it is unlawful for anyone to "knowingly complete, cause to be completed, or complete its portion of a delivery of any package for" Azuma. 15 U.S.C. § 376a(e)(2)(A). Defendants fail to establish any of those affirmative defenses apply to its deliveries, and the Court should enjoin them under the PACT Act.

A. The "lawfully operating" exception to the PACT Act's prohibitions does not apply

While there are several laws Azuma's customers must comply with in order to be "lawfully engaged" in cigarette retailing, *compare* Opp'n 18–25 (positing several theories for why those laws should not apply to Azuma's on-reservation retailer customers), *with People ex rel. Becerra v. Rose*, 16 Cal. App. 5th 317, 321 (2017) (enjoining Defendant Rose from selling tax-free, off-

directory cigarettes); *People ex rel. Becerra v. Huber*, 32 Cal. App. 5th 524, 549–50 (2019) (enjoining tribally-owned retailer from selling untaxed, off-directory cigarettes to nonmembers of the tribe); *People ex rel. Brown v. Black Hawk Tobacco, Inc.* 197 Cal. App. 4th 1561, 1570–71 (2011) (same),[2] this motion focuses only on licensing, which unquestionably applies to Azuma's customers, *see* Mem. P. & A. Supp. Pl.'s Mot. Prelim. Inj. ("Mot.") 9–11, ECF No. 13-1.

Almost fifty years ago, the Supreme Court held that States may impose on retailers located in Indian country "minimal burden[s] designed to avoid the likelihood that in [their] absence non-Indians purchasing from the tribal seller will avoid payment of a concededly lawful tax." *Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 483 (1976). Subsequent Supreme Court cases established these "minimal burdens" include comprehensive licensing and recordkeeping requirements. *See Dep't of Taxation & Fin. v. Milhelm Attea & Bros.*, 512 U.S. 61, 67, 78 (1994) (approving requirement that "[w]holesalers who wish to sell tax-free cigarettes to Indian tribes or reservation retailers . . . ensure that the buyer . . . holds a valid state tax exemption certificate"); *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134, 159 (1980) (approving requirement that on-reservation smokeshops "keep detailed records"); *accord Moe*, 425 U.S. at 480–81 (striking down a license fee—but not the license requirement itself—as a preempted tax). Moreover, the Supreme Court has found California's cigarette tax to be validly imposed, *Cal. State Bd. of Equalization v. Chemehuevi Indian Tribe*, 474 U.S. 9, 12 (1985) (per curiam), and the Ninth Circuit has found "California's licensing, recordkeeping, and reporting requirements" to be permissible "minimal burdens," *Big Sandy*, 1 F.4th at 731.

Defendants claim the State must determine that any particular entity owes a tax before these "minimal burdens" can be imposed. Opp'n 15; *see also id.* at 25 ("[T]he State has failed to prove that any of the Tribal Retailers' . . . sales are taxable . . . ."). The law is otherwise. Instead, such "minimal burdens," including California's licensing regime, "may be imposed on Indian

[2] As an initial matter, Defendants misapprehend the statement that "[t]he PACT Act . . . federalizes state cigarette laws." Mot. 2. Plaintiff's motion is not premised on any assertion that the PACT Act expands state authority, *cf.* Opp'n 13, but rather that it makes a violation of state cigarette laws also a violation of federal law, thus providing a forum and remedy in this Court, *see* Mot. 2.

businesses that . . . purport to engage only in tax-exempt transactions." *Big Sandy*, 1 F.4th at 731 (citing *Colville*, 447 U.S. at 159–60; *Milhelm*, 512 U.S. at 76). As the Ninth Circuit explained, the core of California's regulatory regime are its licensing, recordkeeping, and reporting provisions. *See id.* at 731–32. By "impos[ing] licensing obligations on manufacturers, importers, wholesalers, distributors, and retailers," *id.* at 715, the State can "see if someone owes the tax, and then, if they do, to collect it," *id.* at 732.

Defendants claim *Big Sandy* is "based on the premise that the entity was engaged in 'off-reservation conduct.'" Opp'n 16. This misreads the case. As the Ninth Circuit explained, *Big Sandy* was based on decades of Supreme Court precedent applying the "minimal burdens" standard of *Moe*, which was *first* applied to on-reservation retailers, *then* to off-reservation distributors. *See* 1 F.4th at 731–32 ("[C]igarette wholesalers . . . are generally less burdened than Indian retailers whom the state may require to do the same under *Colville* . . . ." (emphasis removed)); *Colville*, 447 U.S. at 159 (approving state requirement that tribal retailers "record and retain for state inspection the names of all Indian purchasers, their tribal affiliations, the Indian reservations within which sales are made, and the dollar amount and dates of sales"). The Ninth Circuit's conclusions were also based on decades of precedent in which "tax enforcement schemes with even more demanding requirements than those of California have been repeatedly upheld by the Supreme Court as imposing only a 'minimal burden.'" *Id.* at 731 (cleaned up). While certain tribal retailers might avoid certain aspects of a state regime,[3] it is clear that the core of California's regime—ensuring all cigarettes are distributed through licensed entities who must keep records and make reports of their cigarette transactions, *see Big Sandy*, 1 F.4th at 732—is properly applied to Indians in Indian country, and thus to Azuma and its customers.

B. The instant motion does not affect any third party's rights

Defendants also argue this motion should fail because Azuma's current customers—those to whom Defendants continue to deliver cigarettes despite being barred from "complet[ing],

[3] For example, in *Moe*, the plaintiff tribal entities successfully challenged the imposition of a fee in order to receive a vendor license as an impermissible direct tax. 425 U.S. at 480–81. On the other hand, the Eighth Circuit rejected a challenge to state authority to revoke a license for failure to remit properly imposed state taxes in *Flandreau Santee Sioux Tribe v. Noem*, 938 F.3d 928, 939 (8th Cir. 2019).

caus[ing] to be completed, or complet[ing] its portion of a delivery of any package" on Azuma's behalf, 15 U.S.C. § 376a(e)(2)(A)—are not parties to this case. This misunderstands the motion and the underlying Act. Azuma is the entity listed on the PACT Act non-compliant list. This motion seeks to compel only Defendants' compliance with the Act's delivery prohibitions and does not depend on the adjudication of any third party's rights. And, notably, none of Azuma's customers have claimed an interest in the litigation. *See United States v. Bowen*, 172 F.3d 682, 689 (9th Cir. 1999) (requiring as a threshold mater "that the absent party *claim* a legally protected interest"). Azuma's customers are accordingly not necessary parties under Rule 19(a)(1). *Contra* Opp'n 26–27. Defendants' contrary reading of § 376a(2)(A) would make all customers of an illegal sales operation necessary and indispensable parties under Rule 19. They are not.

This motion seeks to enjoin only Defendants. Azuma is on the non-complaint list and Plaintiff is empowered to seek an injunction against those who make deliveries on its behalf—i.e., Defendants. *See* 15 U.S.C. § 378(c)(1)(A). The relief Plaintiff seeks would not prevent Azuma's customers from selling cigarettes or purchasing cigarettes from other entities. *Contra* Opp'n 27. It would not compel them to do anything. This motion seeks to determine only Defendants' rights.

Defendants also get the burdens wrong. To prevail on its PACT Act claim, Plaintiff does not need to establish that Azuma's customers are "unlawfully operating." *Contra* Opp'n 12. Rather, in order to defeat Plaintiff's PACT Act claim, *Defendants* would need to establish that the "lawfully operating" exception applies to each their deliveries.[4] Section 376a(e)(2)(A) lists three exceptions to its prohibition on deliveries, each of which is an affirmative defense: (i) the delivering person "knows or believes in good faith that the item does not include cigarettes;" (ii) the deliveries are to a "lawfully operating" cigarette business; or (iii) the package is over 100 pounds and the delivering person "does not know or have reasonable cause to believe" it contains cigarettes. Just as a plaintiff need not establish what a deliverer "knows or believes in good faith," or what a deliverer "does not know or have reasonable cause to believe," a plaintiff need not

[4] This motion seeks to enjoin Defendants from making deliveries "of packages containing cigarettes on behalf of Azuma Corporation to anyone in California." Proposed Order 2, ECF No. 13-2. Defendants have identified no deliveries made within California that are to "lawfully operating" entities, and as explained in the motion itself, anyone who purchases from Azuma is not "lawfully operating" due to Azuma being unlicensed. *See* Mot. 10.

establish the recipient is not "lawfully engaged" in the cigarette business. *See United States v. Carey*, 929 F.3d 1092, 1100–01 (9th Cir. 2019) ("Where . . . the 'statutory prohibition is broad and an exception is narrow, it is more probable that the exception is an affirmative defense.'" (quoting *United States v. Gravenmeir*, 121 F.3d 526, 528 (9th Cir. 1994))). It is Defendants who would need to meet the burden that any of § 376a(e)(2)(A)'s exceptions apply to them.

Defendants have not and cannot meet that burden. As explained above, California can impose "minimal burdens" on tribal retailers, regardless of whether any of those retailers' sales are ultimately taxable, and arguments premised to the contrary need not be credited. *Cf. Shermoen v. United States*, 982 F.2d 1312, 1318 (9th Cir. 1992) (rejecting that a court should "find a party necessary based on patently frivolous claims"). Defendants' failure to establish they are entitled to an affirmative defense has no impact—practical or otherwise—on any legally protectable interest of their customers and they are not necessary under Rule 19(a)(1).

Notably, in addition to contesting the PACT Act enforcement action in this litigation, Azuma is also challenging its placement on the PACT Act non-compliant list in a separate suit against ATF. Opp'n 12 n.3.[5] Azuma has not made its customers parties to that litigation, but argues the same issue—whether the deliveries made to its current customers are subject to the PACT Act's "lawfully operating" exception—compels their presence here. *See* Compl. ¶ 122, *Azuma Corp. v. Garland*, No. 1:23-cv-01761 (D.D.C. Jun. 16, 2023), ECF No. 1. In other words, Azuma contends it can do in that suit exactly what it claims cannot be done in this Court. Azuma cannot have it both ways. *See Int'l Union of Operating Eng'rs v. County of Plumas*, 559 F.3d 1041, 1043 (9th Cir. 2009) ("[A] party should not be allowed to gain an advantage by litigation on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory.").

Finally, Defendants claim Azuma's customers are necessary parties because this motion is "an action to set aside a lease or a contract," and thus directly implicates their rights. Opp'n 28 (quoting *Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1325 (9th Cir. 1975)). This motion seeks no such relief. As explained above, it seeks relief only against Defendants, compelling them to cease

[5] Despite the numerous meet-and-confer efforts surrounding the instant motion and Defendants' responsive pleading, Defendants' opposition is the first time they have alerted Plaintiff of Azuma's suit against ATF or even that it was contemplating such a suit.

making unlawful deliveries, and "is not 'an action to set aside . . . a contract,' an 'attack on the terms of a negotiated agreement,' or 'litigation seeking to decimate [a] contract.'" *Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 881 (9th Cir. 2004) (alterations in original) (citations omitted). Like in *Disabled Rights*, Plaintiff here "does not allege that [any] . . . agreement is illegal." *Id.* at 882. More importantly, despite declarations from Azuma's President/Secretary, Rose Decl. ¶ 4, ECF No. 23-3, and Marketing Manager and Compliance Officer, Ferris Decl. ¶ 5, ECF No. 23-4, Defendants provide no evidence of any contracts this motion will allegedly "set aside."

C. Azuma's customers are not indispensable parties

Even assuming, *arguendo*, Azuma's customers are necessary under Rule 19(a)(1), they are not indispensable under Rule 19(b). As explained above, a determination of whether Defendants have met their burden under § 376a(e)(2)(A)(ii) would result in no prejudice to any third parties. *See* Fed. R. Civ. P. 19(b)(1). Any potential prejudice could be eliminated by making any order clear that it contains no determination of any third-party rights, but merely of whether Defendants have met the burden of their affirmative defense. *See* Fed. R. Civ. P. 19(b)(2). Additionally, any prejudice can be "minimized" even further if, as here, "the absent party is adequately represented in the suit." *Salt River Project Agric. Improvement & Power Dist. v. Lee*, 672 F.3d 1176, 1180 (9th Cir. 2012). Given the overlapping interests of Defendants and Azuma's customers, there is no indication that those interests will be unrepresented here. Finally, a finding that Azuma's customers are indispensable parties could deprive the State of any venue to litigate the instant claim, *see* Fed. R. Civ. P. 19(b)(4), severely undermining the purposes of that Act, *compare* 15 U.S.C. § 375(10), as amended by the PACT Act of 2009, Pub. L. 111-154, 124 Stat. 1087 (including commerce to, from, and through Indian country as "interstate commerce" requiring PACT Act reports), *with* 15 U.S.C. § 376 (1952) (requiring reports only for commerce "in interstate commerce").

D. The PACT Act does not foreclose *Ex parte Young* enforcement actions

As explained in Plaintiff's motion, sovereign immunity is no bar to the requested relief. Mot. 11–12. Defendants' claims to the contrary misconstrue the *Ex parte Young* doctrine as an

"exception to immunity." Opp'n 30. Rather, when acting contrary to federal law, officials are "stripped of [their] official or representative character and [are] subjected in [their] person to the consequences of [their] individual conduct." *Ex parte Young*, 209 U.S. 123, 160 (1908); *see also Agua Caliente Band of Cahuilla Indians v. Hardin*, 223 F.3d 1041, 1045 (9th Cir. 2000) ("The *Young* doctrine is premised on the fiction that such a suit is not an action against a 'State' and is therefore not subject to the sovereign immunity bar.").

Defendants do not deny that Plaintiff "has alleged an ongoing violation of federal law and seeks prospective relief." Opp'n 31 (quoting *Burlington N. & Santa Fe Ry. Co. v. Vaughn*, 509 F.3d 1085, 1092 (9th Cir. 2007)). Instead, they claim that because the PACT Act "does not 'abrogate or constitute a waiver of any sovereign immunity,'" it forecloses *Ex parte Young* actions to enjoin PACT Act violations against tribal officials. Opp'n 32 (quoting 15 U.S.C. § 378(c)(1)(B)). But as explained above, *Ex parte Young* is not an abrogation of sovereign immunity. By acting contrary to federal law—here, contrary to the PACT Act—Defendants are "stripped of [their] official or representative character" and enjoy no immunity in the first instance. *Ex parte Young*, 209 U.S. at 160.

Defendants also claim the PACT Act's "remedial scheme is sufficiently comprehensive" to render *Ex parte Young* inapplicable. Opp'n 31. The cases Defendants cite, however, lend no such support. The PACT Act's supposed "remedial scheme" bear no resemblance to the "intricate procedures" of the Indian Gaming Regulatory Act ("IGRA") addressed in *Seminole Tribe v. Florida*, 517 U.S. 44 (1996). *Cf.* 25 U.S.C. § 2710(d)(7) (IGRA remedial scheme). Defendants rely extensively on *Rosie D. ex rel. John D. v. Swift*, 310 F.3d 230 (1st Cir. 2002), but that case explains exactly why *Seminole Tribe* does not apply here: The analysis turns on the "statutory detail and intricacy" of the law in question, *Swift*, 310 F.3d at 236. The PACT Act's single sentence giving the State the option to rely on federal enforcement, 15 U.S.C. § 378(c)(2), "does not approach the standard of comprehensiveness required under *Seminole Tribe*." *Swift*, 310 F.3d at 236 (rejecting claim that Medicaid Act's "fair hearing" provision created an exception to *Ex parte Young*). Finally, the PACT Act itself makes clear that when it precludes *Ex parte Young* suits, it specifically exempts governments from the "persons" amenable to suit. *Compare*

15 U.S.C. § 378(d) (permitting private actions against "any person other than a State, local, or tribal government), *with id.* § 378(c)(1)(A) (permitting state actions against "any person").

II. WHEN ENFORCING A FEDERAL STATUTE, IRREPARABLE INJURY IS PRESUMED

Because the PACT Act expressly authorizes States to obtain injunctive relief in federal court to restrain violations, 15 U.S.C. § 378(c)(1)(A), there is no need to show irreparable injury. As explained in the motion, harm to the public interest is presumed, *see* Mot. 12 (citing *United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 175–76 (9th Cir. 1987)). Defendants' only response is a single district court case from 1991. *See* Opp'n 35 (citing *United States v. Nutri-Cology, Inc.*, No. C-91-1332-DLJ, 1991 WL 1092506, at *2 (N.D. Cal. July 19, 1991)). Regardless of that court's view, the Ninth Circuit has subsequently made clear that "where the applicable statute authorizes injunctive relief, the traditional irreparable injury showing is not required." *Fed. Trade Comm'n v. Consumer Def., LLC*, 926 F.3d 1208, 1214 (9th Cir. 2019).

Plaintiff has also made the traditional irreparable injury showing. *See* Mot. 13–14 Defendants' evasion of taxes and fees cannot be satisfied by mere "monetary damages" as they claim, Opp'n 35, as those taxes and fees increase the per-pack costs at retail, reducing smoking rates and ensuring that monetary relief is available for any health-related claims, *see* Mot. 14. The taxes and fees do not just "fund 'public health goals.'" Opp'n 35. They directly implement the public health goals. *See* Mot. 14. Finally, Defendants' argument that if the State permits a certain harmful product, there can be no irreparable injury from avoiding State regulations that seek to mitigate that product's harm misapprehends state regulation entirely.

III. THE PUBLIC INTEREST AND BALANCE OF EQUITIES FAVORS THE STATE

The balance of equities analysis favors the State as well. Congress passed the PACT Act to, among other things, "make it more difficult for cigarette . . . traffickers to engage in and profit from their illegal activities; . . . increase collections of Federal, State, and local excise taxes on cigarettes . . . ; and . . . prevent and reduce youth access to inexpensive cigarettes . . . through illegal . . . contraband sales." Prevent All Cigarette Trafficking Act of 2009, Pub. L. 111-154, § 1(c)(4)–(6), 124 Stat. 1087, 1087 (codified at 15 U.S.C. § 375 note). An injunction here directly furthers those goals. Defendants place on the other side of the scale the private business interest

of Azuma and its customers. *See* Opp'n 37–38. Those interests cannot outweigh the public interests furthered by an injunction because "[w]hen a district court balances the hardships of the public interest against a private interest, the public interest should receive greater weight." *Fed. Trade Comm'n v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989). Absent injunctive relief, there is no doubt Defendants will continue to distribute contraband cigarettes.[6]

At bottom, Defendants' reliance on the revenues from and the investment in their cigarette business, *see* Opp'n at 35–36, amounts to nothing more than an argument that investing money in an unlawful enterprise inoculates it from injunctive relief. *Cf. Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 867 (9th Cir. 2017) ("[H]arm caused by illegal conduct does not merit significant equitable protection."). This argument rings especially hollow given the numerous warnings Azuma has received that its business is unlawful.

Defendant Rose, in particular, is experienced in the tobacco business and aware of the legal requirements for selling cigarettes in California. Indeed, this is not his first dispute with the State. *See* Compl. ¶¶ 25–33. Despite hundreds of thousands of dollars in civil penalties and an injunction prohibiting his sales of untaxed, off-directory cigarettes, *see Rose*, 16 Cal. App. 5th at 321; Compl., ex. E, ECF No. 1-5, he has used Azuma to expand his unlawful activities into manufacturing and distributing, *see* Compl. ¶ 48. Furthermore, as described above, the State has attempted for several years to bring Defendants' unlawful business into compliance with applicable law before resorting to this Court for relief. *See* Compl. ¶¶ 55–61. Despite its nomination and placement on ATF's PACT Act non-compliant list and several warnings from the State, Defendants elected instead to continue pursuing their tobacco business, investing in it, and ultimately, running the serious risk it could come crashing down. Therefore, Defendants' predicament is a risk they freely chose to take, and one of their own making.

CONCLUSION

The Court should grant Plaintiff's Motion for Preliminary Injunction, ECF No. 13.

[6] Defendants misread Plaintiff's motion as resting on a determination that "Azuma's cigarettes are 'contraband cigarettes' under the [Contraband Cigarette Trafficking Act]." Opp'n 37. Reserving the issue of whether Azuma's cigarettes are contraband under that act, this motion is premised on their status as contraband under state law. *See* Mot. 14 (citing Cal. Rev. & Tax. Code § 30436(e)); *Big Sandy*, 1 F.4th at 717.

Dated: July 27, 2023

Respectfully submitted,

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