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By A. O'DONNELL
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO
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13 **PEOPLE OF THE STATE OF**
CALIFORNIA ex rel. Kamala D. Harris,
14 **Attorney General,**
15 Plaintiff,
16 v.
17 **NATIVE WHOLESALE SUPPLY**
COMPANY, a corporation, and DOES 1
18 **through 20,**
19 Defendant.
20

Case No. 34-2008-00014593 CU-CL-GDS
~~PROPOSED~~ **ORDER GRANTING**
PEOPLE'S MOTION FOR SUMMARY
JUDGMENT OR, ALTERNATIVELY,
FOR SUMMARY ADJUDICATION AND
REQUEST FOR CIVIL PENALTIES AND
INJUNCTION
Dept: 53
Judge: Hon. David I. Brown
Trial Date: Feb. 21, 2017
Action Filed: June 30, 2008

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Plaintiff, the People of the State of California’s motion for motion for summary judgment, or in the alternative, summary adjudication, is ruled upon as follows.

In this action, the People allege numerous causes of action against Native Wholesale Supply Company (“NWS”) based on its conduct in importing illegal cigarettes from Canada and selling them in California. The People assert causes of action for violation of the Directory Statute (Rev. & Tax. Code, § 30165.1), the Fire Safety Act (Health & Safety Code, § 14955 et seq.), and violations of Bus. & Prof. Code, § 17200.

The parties’ requests for judicial notice are granted.

The People’s separate statement includes the following. The Attorney General’s Tobacco Directory as specified in Health & Safety Code § 30165.1(c) went live on June 29, 2004. Neither Grand River Enterprises nor Seneca, Opal and/or Couture brands (GRE-Cigarettes) have ever been listed on the Tobacco Directory. Big Sandy’s land is “within the exterior limits of the State of California [including] all territory within these limits owned by or ceded to the United States of America.” Each year from 2004 to 2012 NWS sold GRE-Cigarettes to Big Sandy Rancheria. Between at least June 30, 2004 and May 25, 2012, NWS sold to Big Sandy and shipped to California GRE-Cigarettes. NWS paid carriers to transport GRE-Cigarettes to California. NWS admits that each year from 2004 to 2012 it arranged for GRE-Cigarettes to be shipped or transported to California at Big Sandy’s direction.

NWS admits that funds paid by NWS were used for promotion of GRE-Cigarettes at tobacco retailers in Indian country in California who were customers of Big Sandy. NWS used funds for promotion of GRE-Cigarettes at tobacco retailers in Indian country in California, which promotions were accessible to persons in California who do not reside in Indian Country if those persons entered Indian Country. At least 15 NWS employees promoted GRE-Cigarettes in California. NWS’s promotional activities in California included product and merchandise give-aways, personal appearances by NWS personnel at retail locations where promotional-priced products or samples would be provided as well as customer loyalty items. NWS was served with

1 the instant complaint on July 9, 2008. After that time, NWS continued to sell and ship GRE-
2 Cigarettes to Big Sandy for another 4 years until at least May 25, 2012.

3 GRE is a Canadian corporation located in Oshweken, Ontario, Canada. NWS imported
4 GRE-made cigarettes from Canada. The Big Sandy Rancheria Band of Mono Indians is an Indian
5 tribe that had approximately 434 members in 2005.

6 NWS admits that no GRE-Cigarette has been certified by the manufacturer to the State Fire
7 Marshal as meeting the fire safety requirements of the California Cigarette Fire Safety and
8 Firefighter Protection Act, specifically Health & Safety Code section 14951 et seq., at any time
9 from 2004 to 2012. The State Fire Marshal's Office has no record of any certification submitted
10 to or approved at any time prior to February 2014 for any brand or style of GRE-Cigarettes.
11 NWS sold no GRE-Cigarettes to anyone in California after May 25, 2012.

12 NWS never filed with the Board of Equalization the statement required by 15 U.S.C. §
13 376(a) or any monthly report as specified in 15 U.S.C. § 376(b) with respect to any sale and/or
14 shipment of GRE-Cigarettes to anyone in California. Big Sandy is not a licensed cigarette
15 distributor in California. After the cigarettes NWS purchased were passed through Customs, they
16 were stored at one of three federally regulated facilities in New York and Nevada. Cigarettes
17 were shipped to customers from the storage facilities. The GRE-Cigarettes that NWS sold to Big
18 Sandy were shipped to persons in California from outside California. NWS's headquarters is on
19 the Seneca reservation in New York.

20 **I. FIRST CAUSE OF ACTION (VIOLATION OF THE DIRECTORY STATUTE-REV. & TAX.
21 CODE § 30165.1(E)(2), (E)(3).)**

22 The People's motion for summary adjudication on the first cause of action is granted. Rev.
23 & Tax. Code § 30165.1, commonly referred to as the Directory Statute, requires, among other
24 things, that every cigarette manufacturer whose cigarettes are sold in California to annually
25 deliver to the Attorney General a document certifying that the manufacturer is in full compliance
26 with various provisions of the Directory Statute and other state laws. Subdivision (e)(2) provides
27 that no person shall sell, ship, or otherwise distribute cigarettes or tobacco products that are not
28 listed in the AG's directory. (Rev. & Tax. Code, § 30165.1(e)(2).) Subdivision (e)(3) prohibits

1 persons from selling, distributing, acquiring, holding, owning, possessing, importing,
2 transporting, or causing to be imported, cigarettes that the person knows or should know are
3 intended to be distributed in violation of subdivision (e)(2). (*Id.*, subd. (e)(3).) The People's
4 evidence set forth above shows that the GRE-Cigarettes have never been listed on the Tobacco
5 Directory. (People's Separate Statement of Undisputed Material Facts ("UF") 2.) NWS sold
6 these cigarettes to Big Sandy in California. NWS shipped many of the cigarettes to other entities
7 in California at Big Sandy's direction and engaged in promotional activities directed at a
8 California market beyond Big Sandy. (UF 4-7, 8-12, 15.) In addition, as described by the Court
9 of Appeal in this very case, "[i]n 2007 alone, NWS shipped and sold approximately 80 million
10 cigarettes (1.4 million standard cigarette packs) to Big Sandy. Again, it bears noting Big Sandy
11 has just 431 members; in other words, even if nearly every member of Big Sandy smoked *two*
12 packs every day that would still total only about 280,000 packs a year. It equally is clear that
13 these cigarettes, in turn, are sold to the general public in California." (*People v. Native Wholesale*
14 *Supply Co.* (2011) 196 Cal.App.4th 357, 363-364 [emphasis in original].)

15 The People's evidence is sufficient to demonstrate that NWS sold in and shipped or
16 otherwise distributed into California cigarettes that were not listed on the Attorney General's
17 directory in violation of subdivision (e)(2). The evidence also shows that NWS knew or should
18 have known that Big Sandy intended to redistribute the cigarettes in violation of subdivision
19 (e)(2), which constitutes a violation of subdivision (e)(3). The People met their burden to shift to
20 NWS the burden on demonstrating the existence of a triable issue of material fact. It failed to do
21 so.

22 In this regard, in its opposition, NWS does not specifically address the individual causes of
23 action, but argues that its defenses preclude summary adjudication/judgment. First, it argues that
24 the People's claims are pre-empted under *White Mtn. Apache Tribe v. Bracker* (1980) 448 U.S.
25 136. The Court rejected this argument in connection with its ruling on NWS's motion for
26 summary judgment, also decided today, which ruling is incorporated herein.

27 NWS next argues that this Court has no personal jurisdiction over it. However, this
28 contention has been extensively litigated in this matter and both this Court and the Third District

1 Court of Appeal have found that personal jurisdiction exists. (*People v. Native Wholesale Supply*
2 *Co.* (2011) 196 Cal.App.4th 357.)

3 NWS next argues that enactment and enforcement of the Directory Statute violates the
4 Equal Protection Clause of the 14th Amendment and the corresponding protections under the
5 California Constitution. NWS argues that where the state legislation singles out Indian tribes for
6 particular or special treatment, the legislation is unlawful unless it passes strict scrutiny.
7 However, the subject Directory Statute does *not* single out Indian tribes and is equally applicable
8 to *all citizens of California*. Indeed, “[a]bsent express federal law to the contrary, Indians going
9 beyond reservation boundaries have generally been held subject to non-discriminatory state law
10 otherwise applicable to all citizens of the State.” (*Mescalero Apache Tribe v. Jones* (1973) 411
11 U.S. 145, 148-149.) The case law cited by NWS involves legislation that was not equally
12 applicable to all citizens. Again, the Directory Statute is equally applicable to *all citizens*. (*KG*
13 *Urban Enters., LLC v. Patrick* (2012) 693 F.3d 1, 19 [statutes containing differentiation based on
14 tribal preference].) NWS argues that the Court must examine the Legislature’s intent in enacting
15 the Directory Act and that it is currently pursuing discovery on this subject. But the cases cited
16 by NWS for the proposition that the Legislature’s intent is relevant deal again with statutes that
17 contain a classification based on a protected class. (*United States v. Windsor* (2013) 133 S. Ct.
18 2675, 2693-2694; *United States Dep’t of Agriculture v. Moreno* (1973) 413 U.S. 528, 534-537.)
19 Here, NWS alleges that the subject laws impermissibly discriminate against Indian tribes, tribal
20 members, tribal cigarette manufacturers and entities that sell or desire to sell Native-made
21 cigarettes to tribal members or tribes or both. However, NWS does not allege it is a tribe, tribal
22 member or native cigarette manufacturer. An equal protection claim can only be raised by “a
23 member of the class of persons discriminated against.” (*Rubio v. Superior Court* (1979) 24
24 Cal.3d 93, 103.) Further, individuals who sell cigarettes to tribes are not a suspect class. Where a
25 law “neither burdens a fundamental right nor targets a suspect class, we will uphold the
26 legislative classification so long as it bears a rational relation to some legitimate end.” (*Romer v.*
27 *Evans* (1996) 517 U.S. 620, 631.) Under a rational basis review, a statute alleged to discriminate
28 “must be upheld against an equal protection challenge if there is any reasonably conceivable state

1 of facts that could provide a rational basis for the classification.” (*F.C.C. v. Beach*
2 *Communications, Inc.* (1993) 508 U.S. 307, 313.) “[I]t is entirely irrelevant for constitutional
3 purposes whether the conceived reason for the challenged [statute] actually motivated the
4 legislature.... In other words, a legislative choice is not subject to courtroom fact-finding and may
5 be based on rational speculation unsupported by evidence or empirical data.” (*Id.*, at p. 315.) A
6 statute “comes [before the Court] bearing a strong presumption of validity,... and those attacking
7 its rationality have the burden to negate every conceivable basis which might support it.” (*Id.*, at
8 pp. 314-315.) The Court of Appeal has already held that the subject statutes promote public
9 health which is certainly a rational basis. (*Black Hawk, supra*, 197 Cal.App.4th at p. 1561.)
10 There is no basis for an equal protection defense and the argument that the Legislature’s intent in
11 enacting the Directory Statute creates a triable issue of fact on NWS’s equal protection
12 affirmative defense is rejected.

13 NWS argues that it was under no obligation to comply with the Directory Statute until 2013
14 when the Legislature amended the “Escrow Statute” to revise the definition of “units sold” to
15 specifically include tribal sales by specifying that “units sold” equaled the number of cigarettes
16 sold to consumers in California regardless of whether or not the state excise tax was collected on
17 the sale. NWS then attempts to cite to the legislative history behind the Escrow Statute. The
18 Court rejects this argument which is confusing at best. Indeed, the language of the Directory
19 Statute is clear and unambiguous and provides that “[n]o person shall [sell, ship, etc.] cigarettes
20 of a tobacco product manufacturer or brand family not included in the [Attorney General’s
21 Directory].” (Rev. & Tax. Code § 30165.1, subd. (e)(2), (3).) The Court would only look to
22 legislative intent to construe a statute “only when the statutory language is susceptible of more
23 than one reasonable interpretation.” (*People v. Salazar-Merino* (2001) 89 Cal.App.4th 590, 596
24 [italics in original].) The Directory Statute contains no carve out for certain kinds of persons,
25 manufacturers, etc. and there is no argument made that the Act is ambiguous or unclear and thus
26 resort to legislative history regarding the Escrow Statute, a different statute, is not permissible.
27 The Court rejects the argument that NWS was not subject to the Directory Statute between 2004
28 and 2012.

1 NWS offers no other argument in support of its opposition. In addition, while NWS
2 purports to dispute a number of the facts set forth in the People's separate statement, none of the
3 facts are truly disputed and/or to the extent there is any dispute, it is not material. For example,
4 NWS attempts to dispute almost all of the People's material facts with evidence that it sold
5 cigarettes to Big Sandy, a federally recognized tribe, on sovereign land, in transactions that were
6 FOB New York with title and risk of loss transferring to Big Sandy before the products entered
7 into California. NWS does not specifically discuss this point in its opposition, but essentially it is
8 attempting to argue the same point that it did in its own motion, that is, that the claims at issue are
9 pre-empted. As already made clear, they are not. In any event, the Court has sustained the
10 People's objections to the evidence on this point, a single sentence in a declaration from NWS'
11 "manager," Erlind Hill. Mr. Hill's declaration was made "to the best of [his knowledge and
12 belief." (Hill Decl. 1:27-28.) Such a declaration is insufficient to establish the personal
13 knowledge required by section 437c. (*Ahrens v. Superior Court* (1988) 197 Cal.App.3d 1134,
14 1151, fn. 13.) Nor does Mr. Hill indicate that he is an officer, director, or specify what he
15 manages on NWS's behalf to indicate how he would have personal knowledge about the nature of
16 the transactions. In any event, as the Court noted in the ruling on NWS's motion, it appears that
17 NWS is trying to argue that sales between tribes are pre-empted. As noted, they are not. Case
18 law has consistently held "inter-tribal" trade is not exempt from state regulation. (See, e.g.,
19 *Muscogee (Creek) Nation v. Henry* (E.D. Okla. 2010) 867 F.Supp.2d 1197, 1206-1211.)

20 As a result, NWS has failed to raise a triable issue of material fact with respect to the First
21 Cause of Action and the motion for summary adjudication is granted.

22 **II. SECOND CAUSE OF ACTION (FIRE SAFETY ACT --VIOLATION OF HEALTH & SAFETY**
23 **CODE § 14950 ET SEQ.)**

24 The People's motion for summary adjudication is granted. The Fire Safety Act provides
25 that "[a] person shall not sell, offer, or possess for sale in this state cigarettes not in compliance
26 with the following requirements: ... (4) A written certification is filed by the manufacturer with
27 the State Fire Marshal in accordance with Section 14953." (Health & Saf. Code, § 14951, subd.
28 (a)(4).) The People's evidence shows that NWS sold cigarettes to Big Sandy for which no

1 certification had been filed between July 9, 2008, when it was served with the complaint in this
2 action, and May 25, 2012, when it claimed to have stopped selling the cigarettes. (UF 13, 23.) At
3 no time prior to February 2014 were any GRE-Cigarettes certified as being in compliance with
4 Health & Safety Code section 14951, subdivision (a)(4). (UF 3, 4, 20, 21, 22.) The evidence is
5 sufficient to shift to NWS the burden of demonstrating the existence of a triable issue of material
6 fact.

7 As discussed above, NWS did not present separate arguments to the separate causes of
8 action and instead presented the arguments as to all causes of action, which have been extensively
9 discussed and rejected above. The Court would note that NWS' responsive separate statement
10 attempts to rely upon its seventh affirmative defense in its answer, that it relied in good faith on
11 the manufacturer's certification and markings that the GRE-Cigarettes complied with the
12 requirements of the Fire Safety Act. Health and Safety Code section 14955, subdivision (g)
13 provides a defense to penalties based on such good faith reliance. However, the People only seek
14 penalties based on NWS's violations from July 9, 2008, the date NWS received service of the
15 complaint in this action. At that point, NWS was on notice that the cigarettes at issue were
16 alleged to have violated the Act. NWS presents no evidence to demonstrate that it continued to
17 rely in good faith on any certification from any manufacturer.

18 As a result, NWS has failed to raise a triable issue of material fact with respect to the
19 Second Cause of Action and the motion for summary adjudication is granted.

20 **III. FOURTH CAUSE OF ACTION (VIOLATION OF BUS. & PROF. CODE § 17200 ET SEQ.)**

21 The People's motion for summary adjudication is granted. Unfair competition includes
22 "any unlawful ... business act or practice...." (Bus. & Prof. Code, § 17200.) "By defining unfair
23 competition [in this manner], the UCL permits violations of other laws to be treated as unfair
24 competition that is independently [from the underlying offense] actionable." (*Kasky v. Nike, Inc.*
25 (2002) 27 Cal.4th 939, 949.) The People's evidence, as set forth above, demonstrates that NWS
26 violated the Directory and Fire Safety Acts. In addition, 15 USC § 376 requires any person who
27 sells cigarettes in interstate commerce, whereby such cigarettes are shipped into a state that taxes
28 their sale or use, to file monthly reports with the state tax administrator, providing specific

1 information about each shipment. The evidence shows that NWS, headquartered in New York,
2 sold and shipped cigarettes from outside California to Big Sandy in California, which is not a
3 licensed distributor in California, thus engaging in interstate commerce. (UF 3, 4, 6, 7, 26-28.)
4 NWS failed to file monthly reports with the state tax administrator. (UF 25.) The evidence is
5 sufficient to shift to NWS the burden of demonstrating the existence of a triable issue of material
6 fact.

7 As discussed above, NWS did not present separate arguments to the separate causes of
8 action and instead presented the arguments as to all causes of action were extensively discussed
9 and rejected above. As a result, NWS has failed to raise a triable issue of material fact with
10 respect to the Fourth Cause of Action and the motion for summary adjudication is granted.

11 In sum, the People's motion for summary adjudication is granted as to the first, second, and
12 fourth causes of action which are the only remaining causes of action asserted against NWS.
13 Accordingly, the People's motion for summary judgment is granted.

14 **IV. PENALTIES AND INJUNCTION**

15 The People seek penalties under both the UCL and the Fire Safety Act. The People seek a
16 total of \$4,292,500 in civil penalties (\$2,002,250 for UCL violations and \$2,290,000 for Fire
17 Safety Act violations). The People seek an order that they are entitled to these penalties.

18 At the outset, the civil penalties and injunctive relief are *remedies* and not part of any cause
19 of action. As a result, to the extent there are factual disputes as to these issues, the Court can still
20 grant summary judgment (as it did above) and could simply hold an evidentiary hearing to resolve
21 factual issues related to remedies. (*People v. Superior Court* (2015) 234 Cal.App.4th 1360, 1372-
22 1377.) As will be discussed below, there are no such disputed facts.

23 The UCL authorizes civil penalties of up to \$2,500 for each violation. (Bus. & Prof. Code,
24 § 17206, subd. (a).) Once a violation is found, the duty to impose a penalty for each violation is
25 mandatory. (*People v. First Federal Credit Corp.* (2002) 104 Cal.App.4th 721, 728.) "In
26 assessing the amount of the civil penalty [under the UCL], the court shall consider any one or
27 more of the relevant circumstances presented by any of the parties, including, but not limited to,
28 the following: the nature and seriousness of the misconduct, the number of violations, the

1 persistence of the misconduct, the length of time over which the misconduct occurred, the
2 willfulness of the defendant's misconduct, the length of time over which the misconduct
3 occurred, the willfulness of the defendant's conduct, and the defendant's assets, liabilities, and net
4 worth." (Bus. & Prof. Code, § 17206, subd. (b).) The Court may also consider the revenues
5 received by the defendant from the unlawful conduct. (*People v. Morse* (1993) 21 Cal.App.4th
6 259, 272.) "[P]enalties provided by [the UCL] are cumulative to each other and to the remedies
7 or penalties available under all other laws of this state." (Bus. & Prof. Code, § 17205.)

8 Here, the evidence shows that NWS funneled more than one billion contraband cigarettes
9 into California over an eight year period and more than 2/3 of the sales in California took place
10 after NWS had been served with the complaint in this action. (Edson Decl. Exhs. 6 and 13.)
11 Further, even after May 25, 2012, when it claims to have stopped selling the cigarettes, NWS
12 spent millions of dollars promoting the GRE-cigarette sales in California, including paying \$3
13 million towards a customer appreciation gala in Las Vegas to which it invited over 500 people,
14 including the chairperson of Big Sandy and persons affiliated with stores that sell/distribute GRE-
15 cigarettes in California. (*Id.*, Exh. 17, pp. 366-367, 371-372, 374-376; Exh. 18, pp. 381-382,
16 386, 386-405; Exh. 19, pp. 409-411, 413-414.) According to NWS, these were "people we need
17 to be buying our product or [people] we desire to become customers." (*Id.*, Exh. 20, p. 421:14-
18 15.) In addition, when the Attorney General found that NWS had been storing cigarettes in Las
19 Vegas at the foreign trade zone ("FTZ") and requested that the cigarettes stop being released for
20 shipment into California, NWS began concealing from the FTZ the destinations in California to
21 which the cigarettes would be shipped upon release. (*Id.*, Exh. 14, pp. 257-261, 274-280; Exh. 4,
22 pp. 31-33.) Finally, although NWS was in bankruptcy, it has recently emerged and has admitted
23 that its bankruptcy plan is feasible such that it has the "ability to ... stay current with its
24 obligations and to make the proposed payments to all Allowed Claimants [including California]
25 over time." (*Id.*, Exh. 21, pp. 425-426.) "Debtor will have sufficient cash flow and capital
26 resources to pay its liabilities as they become due [including Plan provisions for payment of any
27 California judgment] and to satisfy its capital needs for the conduct of its business." (*Id.*, Exh.
28 22, p. 430, ¶ I.)

1 In short, the Court finds that NWS's unlawful conduct, committed on a large scale over a
2 substantial period of time, and even after it was served with notice of the complaint in this action,
3 and its attempts to continue to promote the unlawful conduct even after claiming to have stopped
4 the sales, together with its financial condition, justify the maximum penalty per violation. This is
5 especially true given that NWS reaped over \$67 million in sales from the unlawful conduct.
6 (Edson Decl. Exh. 6.) The proposed penalty here is but a small fraction of that amount.
7 Moreover, the People have requested a penalty based on invoiced transactions between NWS and
8 Big Sandy, as opposed to the number of cigarettes sold, despite the fact that other courts have
9 upheld penalties against NWS based on the number of cigarettes sold for essentially the same
10 conduct. (*State v. Native Wholesale Supply* (Okla. 2014) 338 P.3d 613, 624.) The People's
11 evidence demonstrates 476 violations based on violations of the Directory Statute (476 invoiced
12 transactions of shipping GRE-cigarettes into California that were on the AG's directory), 229
13 violations predicated on the Fire Safety Act (229 invoiced transactions of cigarettes that were not
14 properly certified as fire safe), and 96 violations predicated on violations of 15 U.S.C. § 376
15 (failures to report to the Board of Equalization) for a total of 801 violations of the UCL. At
16 \$2,500 per violation, the People are entitled to penalties in the amount of \$2,002,500 under the
17 UCL.

18 In addition, the People are separately entitled to penalties under the Fire Safety Act which
19 provides that "any manufacturer or any other person or entity that knowingly sells or offers to sell
20 cigarettes other than through retail sale in violation of this part is subject to a civil penalty not to
21 exceed \$10,000 per sale." (Health & Safety Code, § 14955, subd. (a).) NWS has admitted that
22 the sales were not retail sales. (Edson Decl. Exh. 1, p. 2.) NWS committed at least 229 invoiced
23 transactions since July 9, 2008 when it was served with the complaint and thus knew that the
24 GRE-Cigarettes had not been certified as fire-safe. The Fire Safety Act does not set forth the
25 factors to consider in assessing the amount of the penalty, but the same factors discussed above
26 support a maximum penalty for each violation. As a result at \$10,000 per violation, the People
27 are entitled to penalties in the amount of \$2,290,000 under the Fire Safety Act.
28

1 In opposition, NWS argues that there is a triable issue of fact as to how many cigarettes
2 were sold to “non-Indians” after they were sold to Big Sandy. However, the penalty sought here
3 is based on a per-transaction basis, not the number of cigarettes sold. This distinguishes the
4 matter from the nonbinding trial court decision referred to by NWS in its opposition. (Mackey
5 Decl. Exh. B.) There the penalty was sought based on the number of cigarettes sold. By contrast
6 here, the penalty is sought based on the number of transactions to Big Sandy and there is no
7 dispute that NWS sold all cigarettes to Big Sandy. NWS in essence attempts to repeat its failed
8 arguments that under a pre-emption analysis, it cannot be liable for sales made to Indian
9 customers. That argument has been rejected.

10 In sum, the Court finds that there are no disputed factual issues on the issue of remedies,
11 which would require a separate evidentiary hearing and the People are therefore entitled to
12 penalties in the amount of \$4,292,500. In addition, the People are entitled to injunctive relief.
13 The People seek injunctive relief in connection with their cause of action under the UCL which
14 expressly allows for injunctive relief even in situations where a person “has engaged” in the
15 challenged practice. (Bus. & Prof. Code § 17203.) This section was expanded to “encompass
16 past activity....” (*Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 570.)
17 The remedial power under the UCL “necessarily includes authority to make orders to prevent
18 such activities from occurring in the future.” (*Hewlett v. Squaw Valley Ski Corp.* (1997) 54
19 Cal.App.4th 499, 540 [citations omitted].) Injunctive relief is also available under the Fire
20 Safety Act. (Health & Safety Code, § 14955, subd. (f).) “Injunctive relief will be denied [only] if
21 ... there is no reasonable probability that the past acts complained of will recur.” (*Colgan v.*
22 *Leatherman Tool Group, Inc.* (2006) 135 Cal.App.4th 663, 702 [citations omitted].) “The Court
23 has the power to refuse to enjoin future conduct where it is satisfied that there is no reasonable
24 possibility past unlawful acts will be repeated.” (*People v. National Association of Realtors*
25 (1981) 120 Cal.App.3d 459, 476.) The People seek injunctive relief enjoining NWS from selling
26 cigarettes that are not listed on the Attorney General’s Directory or not certified in compliance
27 with the Fire Safety Act to anyone in California, or to anyone anywhere when NWS knows or
28

1 should know that those cigarettes will be resold in or into California, and if NWS makes any such
2 sales, to file all documents required by 15 U.S.C. § 376.

3 While NWS claims to have stopped selling contraband cigarettes in California in May
4 2012, as already discussed, it did not cease selling the cigarettes even after the instant complaint
5 was filed and even after it claims to have stopped, it engaged in conduct in 2014 promoting sales
6 of the cigarettes in California when it spent \$3 million on a customer appreciation event.

7 NWS's arguments that it is bankrupt and that it does not intend to resume sales were fully
8 addressed in the Court's ruling denying NWS's motion for summary judgment and need not be
9 addressed again. In short, the People's evidence shows the injunctive relief is proper as there is a
10 probability that NWS will resume sales unless otherwise enjoined.

11 As a result, the People's motion for summary judgment is GRANTED in full. The People
12 are entitled to \$4,292,500 and permanent injunctive relief as requested.

13 The People's evidentiary objections are sustained. In any event, even if the objections were
14 overruled, the result would not change.

15 IT IS SO ORDERED.

16 DATED: DEC 28 2016



David I. Brown
JUDGE OF THE SUPERIOR COURT

DAVID I. BROWN

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DECLARATION OF SERVICE BY E-MAIL and OVERNIGHT COURIER

Case Name: **People v. Native Wholesale Supply Company, et al.**
No.: **2:08-CV-01827-LKK-KJM**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for overnight mail with **Golden State Overnight**. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business.

On December 16, 2016, I served the attached:

[PROPOSED] ORDER GRANTING PEOPLE'S MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, FOR SUMMARY ADJUDICATION AND REQUEST FOR CIVIL PENALTIES AND INJUNCTION

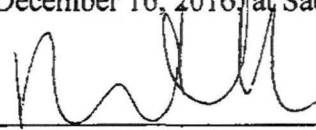
by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 16, 2016, at Sacramento, California.

Natalie Clark
Declarant



Signature