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U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

★ DEC 14 2010 ★

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BROOKLYN OFFICE

THE CITY OF NEW YORK,

Plaintiff

CV 10 - 5783

Civil Action No. 10 cv ____

-against-

MOUNTAIN TOBACCO COMPANY, d/b/a KING
MOUNTAIN TOBACCO COMPANY INC., MOUNTAIN
TOBACCO DISTRIBUTING COMPANY INC.,
DELBERT WHEELER, Sr., and RICHARD "KIP"
RAMSEY,

COMPLAINT

WEXLER, J.

Defendants.

TOMLINSON, M.J.

----- X
Plaintiff the City of New York (the "City"), by its counsel Michael A. Cardozo,
Corporation Counsel of the City of New York, respectfully alleges, with knowledge of its own
actions and on information and belief as to the actions of others, as follows:

Nature of the Action

1. This is a civil action for injunctive relief, civil penalties, damages and attorney's fees under the Contraband Cigarette Trafficking Act, 18 U.S.C. § 2341 *et seq.*, (the "CCTA"), the Jenkins Act, 15 U.S.C. § 375 *et seq.*, as amended by the Prevent All Cigarette Trafficking Act of 2010 (the "PACT Act"), and the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*, ("RICO").

2. Defendants Mountain Tobacco Company, d/b/a King Mountain Tobacco Company Inc. ("King Mountain"), Mountain Tobacco Distributing Company Inc. ("Mountain Distributing"), Delbert Wheeler, Sr. ("Wheeler"), and Richard "Kip" Ramsey ("Ramsey") (when referred to collectively, the "King Mountain Defendants"), sell, transport, distribute, deliver and

ship cigarettes to purchasers in New York State, in complete disregard of federal, state and New York City laws regulating the sale, transport and taxation of cigarettes, including federal laws requiring, for all cigarettes that the King Mountain Defendants sell or deliver into New York City or State, that taxes be paid, that tax stamps be affixed, that deliveries be reported and that deliveries be labeled with specified information.

3. In selling, transporting, distributing, delivering and shipping into New York State cigarettes on which, *inter alia*, taxes have not been paid, tax stamps have not been affixed and reports to tax administrators have not been made, the King Mountain Defendants violate, *inter alia*, the CCTA, the PACT Act, and RICO, entitling the City to: i) an injunction against further sales or deliveries of cigarettes by the King Mountain Defendants into the State of New York, (ii) damages, including treble damages, (iii) civil penalties; and (iv) attorney's fees.

JURISDICTION AND VENUE

4. The Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 375 *et seq.*, 18 U.S.C. § 2341 *et seq.*, 18 U.S.C. § 1964, 28 U.S.C. § 1331, 28 U.S.C. § 1332 and 28 U.S.C. § 1367(a).

5. Venue is proper in this district under 18 U.S.C. § 1965(a) and (b) and 28 U.S.C. § 1391(b), because a substantial part of the events and omissions giving rise to the claims occurred in this district.

6. Personal jurisdiction is proper under 18 U.S.C. § 1965 and under N.Y. CPLR § 302, because each defendant, in person or through an agent, transacts or has transacted business within New York and in this district, or contracts or has contracted to supply goods or services within New York and in this district, or has committed a tortious act within New York and in this district. The King Mountain Defendants did and continue to do business within New

York and this district, made contracts to be performed in whole or in part in New York and this district, and/or performed tortious acts reasonably expected to have consequences in New York and in this district while deriving substantial revenue from interstate or international commerce.

PARTIES

7. The City is a municipal corporation organized under the laws of the State of New York.

8. Defendant King Mountain is a corporation formed under the laws of the Yakama Nation of Indians, with a registered office located at Box 669, White Swan, Washington, a principal place of business at 2000 Fort Simcoe Rd., White Swan, Washington, and a warehouse and distribution facility located at 2000 Signal Peak Road, White Swan, Washington, on the Yakama Indian Reservation.

9. Defendant Mountain Distributing is a corporation formed under the laws of the State of Washington, with a principal place of business located at 2000 Fort Simcoe Rd., White Swan, Washington.

10. Defendant Wheeler is a resident of the State of Washington, and the President, Chairman of the Board, and a part owner of King Mountain and the President and a part owner of Mountain Distributing.

11. Defendant Ramsey is a resident of the State of Washington, and the Vice-President and a part owner of King Mountain.

FACTS

12. With exceptions not relevant here, New York State and City require the pre-payment of cigarette excise taxes on cigarettes transported, shipped, sold and distributed in the State and City, and require that tax stamps be affixed to packages of cigarettes as evidence of

tax payments. Cigarettes on which taxes have not been paid are referred to herein as “unstamped” cigarettes.

13. New York State and City license entities known as “stamping agents” to affix tax stamps to cigarettes on which the stamping agents have pre-paid the tax. Stamping agents are the only entities lawfully permitted to affix State and City tax stamps to cigarettes and are the only entities that may lawfully import unstamped cigarettes into the City and State.

14. New York State and City also license and/or register wholesale and retail dealers in tobacco products and such licensed or registered entities are the only entities that may lawfully deal in tobacco products in the City and State.

15. At all times relevant to this complaint¹, none of the King Mountain Defendants has been licensed by or registered in any manner with New York State or New York City to deal in tobacco products or cigarettes or to apply State or City tax stamps or to pre-pay State or City cigarette taxes.

16. Jesse Watkins, Ernestine Watkins, Anitra Watkins and Jesse Watkins III (when referred to collectively, the “Watkins Sellers”) are New York residents who sell cigarettes through sole proprietorships, with places of business located on the Poospatuck Indian Reservation in Mastic, New York, including, but not limited to, smoke shops known as Monique’s Smoke Shop and Smoke Warehouse.

17. At all times relevant to this complaint, none of the Watkins Sellers or their sole proprietorships has been licensed by or registered in any manner with New York State or New York City to deal in tobacco products or cigarettes or to apply State or City tax stamps or to pre-pay State or City cigarette taxes.

¹ The phrase “At all times relevant to this complaint,” as used in this complaint, is intended to include times up through and including the present date.

18. Each of the Watkins Sellers, at all times relevant to this complaint, has sold unstamped cigarettes, in violation of the CCTA. The United States District Court for the Eastern District of New York has held that Jesse Watkins, Ernestine Watkins, Monique's Smoke Shop and Smoke Warehouse sell untaxed, unstamped cigarettes in violation of the CCTA.

19. In the United States District Court for the District of New Jersey, Jesse Watkins has pleaded guilty to conspiracy to traffic in contraband cigarettes in violation of 18 U.S.C. § 2341 *et seq.*

20. At all times relevant to this complaint since June 30, 2010 (the effective date of the PACT Act), the Watkins Sellers have been "consumers" within the meaning of the Jenkins Act, as amended by the PACT Act, 15 U.S.C. § 375(4) (referred to hereinafter as the "PACT Act"), because they are persons who purchased cigarettes and, because they are not licensed or registered in any manner by New York State to deal in tobacco products and have been found to have been selling cigarettes in violation of the CCTA, were not "lawfully-operating cigarette manufacturers, distributors, wholesalers or retailers."

21. At all times relevant to this complaint, King Mountain has manufactured King Mountain brand cigarettes and has sold, shipped and distributed bulk quantities of unstamped King Mountain brand cigarettes to New York "consumers," as that term is defined in the PACT Act, 15 U.S.C. § 375(4), including but not limited to the Watkins Sellers.

22. At all times relevant to this complaint, Mountain Distributing has transported and distributed bulk quantities of unstamped King Mountain brand cigarettes to New York "consumers," as that term is defined in the PACT Act, 15 U.S.C. § 375(4), including but not limited to the Watkins Sellers.

23. At all times relevant to this complaint, the King Mountain Defendants had both actual and constructive knowledge that the Watkins Sellers were not stamping agents licensed by New York State or City to affix tax stamps to cigarettes.

24. By wire transfer from the Watkins Sellers' "Smoke Warehouse" account at Suffolk County National Bank, Center Moriches, New York to King Mountain's account at Wheatland Bank, White Swan, Washington, the Watkins Sellers purchased unstamped King Mountain cigarettes from the King Mountain Defendants in the amounts and on or about the dates set forth in the table below:

| Date | Amount (\$) | Approx. # of Cartons |
|-------------------|--------------------|-----------------------------|
| November 11, 2009 | \$60,000 | 4,286 |
| November 19, 2009 | \$40,000 | 2,857 |
| November 24, 2009 | \$60,000 | 4,286 |
| December 4, 2009 | \$55,000 | 3,929 |
| December 8, 2009 | \$55,000 | 3,929 |
| December 23, 2009 | \$60,000 | 4,286 |
| December 31, 2009 | \$40,000 | 2,857 |
| January 6, 2010 | \$25,000 | 1,786 |
| February 9, 2010 | \$60,000 | 4,286 |

25. Shortly after the listed dates of purchases, the King Mountain Defendants shipped and distributed unstamped King Mountain cigarettes in approximately the amounts listed in paragraph 24 to the Watkins Sellers in Mastic, New York. In shipping and distributing the cigarettes from White Swan, Washington to Mastic, New York, the King Mountain Defendants transported the unstamped cigarettes through New York City.

26. By checks written from the Watkins Sellers' "Smoke Warehouse" account at Bank of America payable to King Mountain, the Watkins Sellers purchased unstamped King Mountain cigarettes from the King Mountain Defendants in the amounts and on or about the dates set forth in the table below:

| Date | Amount (\$) | Approx. # of Cartons |
|----------------|--------------------|-----------------------------|
| March 24, 2010 | \$32,760 | 2,340 |
| June 9, 2010 | \$25,000 | 1,786 |
| July 1, 2010 | \$150,000 | 10,714 |
| July 7, 2010 | \$150,000 | 10,714 |
| July 16, 2010 | \$150,000 | 10,714 |
| July 23, 2010 | \$100,000 | 7,143 |

27. Shortly after each of the dates listed in paragraph 26, the King Mountain Defendants shipped and distributed unstamped King Mountain cigarettes in approximately the amounts listed in the above table to the Watkins Sellers in Mastic, New York. In shipping and distributing the unstamped cigarettes from White Swan, Washington to Mastic, New York, the King Mountain Defendants transported the cigarettes through New York City.

Allegations Related to the Contraband Cigarette Trafficking Act

28. New York State and the City each impose an excise tax on cigarettes possessed for sale or use in the City or State. *See* N.Y. Tax L. §§ 471, 471-a; N.Y.C. Admin. Code § 11-1302.

29. New York State and the City each require a tax stamp to be affixed to cigarette packages to evidence payment of the taxes imposed pursuant to the Tax Law and Administrative Code. N.Y. Tax L. §§ 471, 473; N.Y.C. Admin. Code § 11-1304.

30. New York City imposes a tax on the “use” of any cigarettes within the City, defined as the exercise of any right or power, actual or constructive, over cigarettes, including their transport in the City, subject to certain exceptions not applicable here. N.Y.C. Admin. Code §§ 11-1301, 11-1302.

31. Within twenty-four hours after liability for the tax on the use of cigarettes accrues, each person liable for the tax shall file with the commissioner of finance a return, together with a remittance of the tax shown to be due thereon. N.Y.C. Admin. Code § 11-1302.

32. None of the unstamped cigarettes shipped, transported, sold, and distributed by the King Mountain Defendants to the Watkins Sellers pursuant to the orders of November 2009 through July 2010 listed in paragraphs 24 and 26 *supra*, had New York City or State tax stamps affixed, nor were the New York City taxes that were owed on such cigarettes remitted to the commissioner of finance.

33. The cigarettes shipped, transported, sold, and distributed by the King Mountain Defendants to the Watkins Sellers are contraband within the meaning of the CCTA: i) there is a State and a City cigarette tax applicable to such cigarettes; ii) New York State and City require a stamp to be placed on packages of cigarettes to evidence payment of cigarette taxes; and (iii) the cigarettes were found within the State and the City without tax stamps.

34. On or about August 31, 2010, the New York City Office of the Corporation Counsel informed the King Mountain Defendants that the sales and shipments of cigarettes to the Watkins Sellers violated the CCTA.

35. As of the date of the filing of this complaint, the King Mountain Defendants had refused to terminate such sales and shipments.

36. The sale, transport, shipment and distribution of contraband cigarettes by the King Mountain Defendants to the Watkins Sellers and/or other unlawfully operating cigarette resellers will continue unless enjoined.

Allegations Related to the PACT Act

37. Pursuant to the PACT Act (effective June 30, 2010), a “delivery sale” is any sale of cigarettes to a consumer in which the seller is not in the physical presence of the consumer when the order is made, or the seller is not in the physical presence of the consumer when the consumer obtains possession of the cigarettes, or the cigarettes are delivered to the consumer by any method of remote delivery. *See* 15 U.S.C. § 375(5).

38. At all times relevant to this complaint since the effective date of the PACT Act, the Watkins Sellers have been “consumers” within the meaning of the PACT Act because they are persons who purchased cigarettes and, because they are not licensed or registered in any manner by New York State to deal in tobacco products and have been found to have been selling cigarettes in violation of the CCTA, were not “lawfully-operating cigarette manufacturers, distributors, wholesalers or retailers.” *See* 15 U.S.C. § 375(4).

39. When the King Mountain Defendants sell cigarettes to the Watkins Sellers, the sales are “delivery sales” within in the meaning of the PACT Act because the Watkins Sellers are consumers who order cigarettes from the King Mountain Defendants when not in the physical presence of the King Mountain Defendants. The sales are also “delivery sales” because the cigarettes are delivered to the Watkins Sellers by remote delivery. Any post-June 30, 2010 sales of cigarettes by the King Mountain Defendants to the Watkins Sellers were “delivery sales” within the meaning of the PACT Act.

40. A “delivery seller” is a person who makes a delivery sale. *Id.* The King Mountain Defendants are delivery sellers for purposes of their sales to the Watkins Sellers.

41. Under the PACT Act, any person that sells, transfers, or ships for profit cigarettes in interstate commerce into New York State in a delivery sale must first file with the New York State Department of Taxation and Finance (“NY DTF”) specified information identifying the seller and must also file, not later than the 10th day of each calendar month, a memorandum containing specified information concerning each and every shipment of cigarettes made during the previous calendar month into New York State. Such persons must also file copies of the memorandum concerning any and all cigarette shipments into New York State with the New York City Department of Finance and the Corporation Counsel of the City of New York. *See* 15 U.S.C. § 376.

42. Under the PACT Act, any delivery seller making a delivery sale into New York City and/or State must (i) comply with all laws governing the sale of cigarettes in New York City and/or State; (ii) assure that the weight of cigarettes sold, delivered, or caused to be delivered in a single sale or delivery not exceed ten pounds; and (iii) comply with certain labeling requirements on the cigarette packaging. 15 U.S.C. § 376a. In particular, a delivery seller must make certain that all applicable cigarette taxes have been paid to New York City and/or State and that the required tax stamps have been affixed before the delivery sale is made. *Id.*

43. The King Mountain Defendants (i) did not report to New York City or State the delivery sales made to the Watkins Sellers in a memorandum describing the particulars of the sales; (ii) did not make certain that State taxes had been paid prior to delivery of the cigarettes; (iii) sold the cigarettes without New York State tax stamps affixed to them; (iv) did

not comply with all laws generally applicable to sales of cigarettes within New York State; (v) sold and caused to be delivered more than ten pounds of cigarettes in a single sale or delivery; and (vi) did not comply with the labeling requirements of the PACT Act, all in violation of that Act.

44. On July 30, 2010, in an action to which neither the City nor the King Mountain Defendants are parties, a federal district court in the Western District of New York issued a preliminary injunction enjoining the federal government from enforcing certain provisions of the PACT Act – specifically, 15 U.S.C. § 376a(a)(3) and (4) and 15 U.S.C. § 376a(d). *See Red Earth v. United States*, 10-cv-530A, 2010 U.S. Dist. LEXIS 77719 (W.D.N.Y. July 30, 2010).

45. On or about August 31, 2010, the New York City Office of the Corporation Counsel informed the King Mountain Defendants that the sales and shipments of cigarettes to the Watkins Sellers violated the PACT Act.

46. As of the date of the filing of this complaint, the King Mountain Defendants had refused to terminate such sales and shipments.

47. Sales and shipments of cigarettes by the King Mountain Defendants in violation of the PACT Act, will continue unless enjoined.

Allegations Related to the RICO Act

The Enterprise

48. At all times relevant to this complaint, King Mountain and Mountain Distributing have been an “enterprise” within the meaning of 18 U.S.C. § 1961(4) (the “King Mountain Enterprise”). The King Mountain Enterprise, which operated in the Eastern District of New York and elsewhere, was engaged in, and its activities affected, interstate and foreign

commerce. The King Mountain Enterprise constituted an ongoing organization whose members and associates functioned as a continuing unit for the common purpose of achieving the objectives of the Enterprise.

49. At all times relevant to this complaint, Wheeler and Ramsey have been associates of the King Mountain Enterprise.

The Purposes, Methods and Means of the Enterprise

50. The principal purpose of the King Mountain Enterprise is to generate money for the defendants Wheeler and Ramsey and their associates. This purpose has been implemented by Wheeler and Ramsey and associates of the Enterprise through various legal and illegal activities, including the sale, transport, distribution, and shipment of contraband cigarettes.

51. The associates of the King Mountain Enterprise sought, among other things, to enrich Wheeler and Ramsey and other associates of the Enterprise through the trafficking of untaxed contraband cigarettes in interstate commerce.

52. Wheeler and Ramsey and other associates of the King Mountain Enterprise participated in the conduct of the affairs of the Enterprise by the following means and methods: selling, shipping, transporting and distributing cigarettes into New York State which did not bear New York State or New York City tax stamps.

53. At all times relevant to this complaint, the affairs of the King Mountain Enterprise have been conducted through a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(1)(B), consisting principally of multiple and continuing instances of contraband cigarette trafficking in violation of 18 U.S.C. § 2341 *et seq.*

Role of the Defendants

54. At all times relevant to this complaint, Wheeler and Ramsey participated in the leadership, management and operation of the King Mountain Enterprise by, among other things:

- a. Controlling the operations of the King Mountain Enterprise;
- b. Controlling the disposition of profits from the operation of the King Mountain Enterprise;
- c. Employing other individuals to assist the King Mountain Enterprises in their operations and activities; and
- d. Participating in the transaction of cigarette sales with the Watkins Sellers.

Defendants' Racketeering Activity

55. At all times relevant to this complaint, Wheeler and Ramsey conducted the management and operation of the affairs of the King Mountain Enterprise directly or indirectly through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5) and 1962(c), in violation of 18 U.S.C. § 1962(c), namely, by committing multiple and continuing acts of contraband cigarette trafficking in violation of 18 U.S.C. § 2341 *et seq.*

56. At all times relevant to this complaint, Wheeler and Ramsey intentionally furthered the acts of the King Mountain Enterprise by shipping, distributing, selling or transporting unstamped cigarettes into New York State.

57. At all times relevant to this complaint, Wheeler and Ramsey conspired with the Watkins Sellers to violate the provisions of 18 U.S.C. § 1962(c), in violation of 18 U.S.C. § 1962(d), by agreeing to further an endeavor of the King Mountain Enterprise that, when completed, amounted to contraband cigarette trafficking, in violation of the CCTA, 18 U.S.C. §§ 2341 *et seq.*

58. At all times relevant to this complaint, Wheeler and Ramsey agreed to a plan with the Watkins Sellers whereby Wheeler and Ramsey would ship, distribute, sell or transport unstamped cigarettes to the Watkins Sellers. Wheeler and Ramsey further agreed to a plan with the Watkins Sellers whereby those cigarettes would be shipped, distributed, sold, delivered or transported in New York City and State by the Watkins Sellers. Wheeler and Ramsey recognized that an essential element of this plan consists of multiple violations of 18 U.S.C. § 2341 *et seq.* Wheeler and Ramsey agreed that certain conspirators, including but not limited to Wheeler and Ramsey themselves and the Watkins Sellers, would commit CCTA violations while associates of the King Mountain Enterprise, including Wheeler and Ramsey, would engage in conduct intended to support and facilitate the violations.

59. In or about and between at least November 2009 and July 2010, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, Wheeler and Ramsey, together with others, being persons employed by and associated with the King Mountain Enterprise, an Enterprise that engaged in, and the activities of which affected, interstate and foreign commerce, knowingly and intentionally conspired to violate 18 U.S.C. § 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the Enterprise through a pattern of racketeering activity, as defined in 18 U.S.C. § 1961(1), (5).

60. The pattern of racketeering activity through which Wheeler and Ramsey, together with others, agreed to conduct the affairs of the King Mountain Enterprise consisted of the acts set forth in paragraph 61. Wheeler and Ramsey agreed that a conspirator would commit at least two of these acts of racketeering in the conduct of the affairs of the King Mountain Enterprise.

Racketeering Acts

61. On or about the dates set forth in this paragraph, within the Eastern District of New York, the King Mountain Enterprise, knowingly and intentionally sold, transported, distributed and/or shipped to the Watkins Sellers contraband cigarettes, to wit: the approximate quantity of cigarettes set forth below, lacking valid New York State or New York City tax stamps, in violation of Title 18, United States Code, Section 2342(a):

| Date | Amount (\$) | Approx. # of Cartons |
|-------------------|--------------------|-----------------------------|
| November 11, 2009 | \$60,000 | 4,286 |
| November 19, 2009 | \$40,000 | 2,857 |
| November 24, 2009 | \$60,000 | 4,286 |
| December 4, 2009 | \$55,000 | 3,929 |
| December 8, 2009 | \$55,000 | 3,929 |
| December 23, 2009 | \$60,000 | 4,286 |
| December 31, 2009 | \$40,000 | 2,857 |
| January 6, 2010 | \$25,000 | 1,786 |
| February 9, 2010 | \$60,000 | 4,286 |
| March 24, 2010 | \$32,760 | 2,340 |
| June 9, 2010 | \$25,000 | 1,786 |
| July 1, 2010 | \$150,000 | 10,714 |
| July 7, 2010 | \$150,000 | 10,714 |
| July 16, 2010 | \$150,000 | 10,714 |
| July 23, 2010 | \$100,000 | 7,143 |

62. At all times relevant to this complaint, the King Mountain Defendants had both actual and constructive knowledge that the Watkins Sellers sold cigarettes in violation of the CCTA.

63. On or about the dates set forth in paragraph 61, and in the amounts there stated, Wheeler and Ramsey conspired with the Watkins Sellers to sell, transport, distribute and/or ship contraband cigarettes within the meaning of the CCTA.

FIRST CLAIM FOR RELIEF

Violation of the Contraband Cigarette Trafficking Act (King Mountain and Mountain Distributing)

64. The City repeats and realleges paragraphs 1-63 above as if fully set forth herein.

65. Pursuant to the CCTA, "it is unlawful for any person knowingly to ship, transport, receive, possess, sell, distribute or purchase 'contraband cigarettes.'" 18 U.S.C. § 2342. "Contraband cigarettes" are 50 or more cartons of cigarettes (10,000 or more cigarettes) that bear no evidence of the payment of applicable State or local cigarette taxes in the State or locality where such cigarettes are found, if the State or local government requires a stamp to be placed on packages of cigarettes to evidence payment of cigarette taxes. 18 U.S.C. § 2341(2).

66. The cigarettes that King Mountain and Mountain Distributing knowingly shipped, sold, transported, and distributed to the Watkins Sellers did not bear New York State and New York City cigarette tax stamps, nor were taxes otherwise paid on them once due, and are contraband cigarettes within the meaning of 18 U.S.C. § 2341(2).

67. King Mountain's and Mountain Distributing's actions are unlawful within the meaning of the CCTA.

68. Unless enjoined, King Mountain and Mountain Distributing will continue to ship, sell, transport and distribute contraband cigarettes to the Watkins Sellers and to other unlicensed and unregistered cigarette sellers on the Poospatuck Indian Reservation and throughout New York State.

69. As a direct result of King Mountain's and Mountain Distributing's sale, transport, distribution, and shipment of unstamped cigarettes to the Watkins Sellers, the City has suffered injury in that cigarette taxes to which the City is entitled have not been paid.

70. Pursuant to the CCTA, 18 U.S.C. §2346, the City, as a local government, is empowered to bring an action in federal district court to restrain violations of the CCTA and to obtain any other appropriate forms of relief from such violations, including civil penalties and damages.

SECOND CLAIM FOR RELIEF

**Violation of the Jenkins/PACT Act
(King Mountain Defendants)**

71. The City repeats and realleges paragraphs 1-63 above as if fully set forth herein.

72. The King Mountain Defendants are each "delivery sellers" within the meaning of the PACT Act.

73. The Watkins Sellers are each "consumers" within the meaning of the PACT Act.

74. As to the delivery sales of cigarettes to the Watkins Sellers, the King Mountain Defendants (i) did not report the sales to New York City or State in a memorandum describing the particulars of the sales; (ii) did not assure prior to the sales that State cigarette taxes had been paid; (iii) did not assure prior to the sales that State tax stamps were affixed to the

cigarettes; (iv) did not comply with all laws generally applicable to sales of cigarettes within New York State; (v) sold and caused to be delivered more than ten pounds of cigarettes in a single sale or delivery; and (vi) did not comply with the cigarette labeling requirements of the PACT Act.

75. The King Mountain Defendants' post-June 30, 2010, delivery sales were unlawful within the meaning of the PACT Act.

76. Unless enjoined, the King Mountain Defendants will continue to make delivery sales to the Watkins Sellers, and to other consumers in New York State, without complying with the amended Jenkins Act.

77. As a direct result of the King Mountain Defendants' delivery sales to the Watkins Sellers, the City has suffered injury in that cigarette taxes to which the City is entitled have not been paid.

78. Pursuant to the Jenkins Act, 15 U.S.C. § 378, the City, as a local government, is empowered to bring an action in federal district court to prevent and restrain violations of the Jenkins Act and to obtain any other appropriate forms of relief from such violations, including civil penalties and damages.

THIRD CLAIM FOR RELIEF

**Violation of 18 U.S.C. § 1962(d)
(Wheeler and Ramsey)**

79. The City realleges paragraphs 1-63 above as if fully set forth herein.

80. New York City is a "person" as defined in 18 U.S.C. §§ 1961(3).

81. Wheeler and Ramsey are "persons" as defined in 18 U.S.C. § 1961(3) and as used in 18 U.S.C. § 1962(c), (d).

82. King Mountain and Mountain Distributing constitute an “enterprise” as defined in 18 U.S.C. § 1961(4) and as used in 18 U.S.C. § 1962(c) and King Mountain and Mountain Distributing each engaged in activities affecting interstate commerce at all times relevant to the complaint.

83. Wheeler and Ramsey are each associated with the King Mountain Enterprise and agreed with the Watkins Sellers that Wheeler and Ramsey would conduct or participate in the management and operation of the affairs of the Enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1)(B) and 1961(5) and 1962(c), to wit, multiple and repeated acts of contraband cigarette trafficking, in violation of 18 U.S.C. §§ 2341 *et seq.*

84. Wheeler and Ramsey conspired with the Watkins Sellers within the meaning of 18 U.S.C. § 1962(d) to violate 18 U.S.C. § 1962(c) in that Wheeler and Ramsey each intended and agreed with the Watkins Sellers to conduct the affairs of the Enterprise by furthering or facilitating endeavors of the Enterprise that, when completed, would satisfy all of the elements of a criminal offense, to wit, contraband cigarette trafficking in violation of the CCTA, 18 U.S.C. §§ 2341 *et seq.*

85. With knowledge that the Watkins Sellers engaged in multiple and repeated acts of contraband cigarette trafficking in violation of the CCTA, 18 U.S.C. §§ 2341, *et seq.*, Wheeler and Ramsey agreed with the Watkins Sellers to conduct the affairs of the King Mountain Enterprise in a manner that would facilitate the acts of the Watkins Sellers and would lead to the success of the scheme to traffic contraband cigarettes into New York City and State.

86. The scheme to traffic contraband cigarettes into New York City and State constitutes a pattern of unlawful activity within the meaning of 18 U.S.C. § 1961 (1) (B). The

predicate acts are both related and continuous. The acts are connected to one another as part of a scheme to accomplish a uniform purpose, which is the making of a profit from the sale of untaxed cigarettes. The repeated nature of the conduct during the period of the scheme and the threat of similar conduct occurring in the future makes the acts continuous.

87. New York City has suffered injury to its business or property within the meaning of 18 U.S.C. § 1964(c) by reason of defendants' violation of 18 U.S.C. § 1962(d) because taxes were owed on each carton of cigarettes transported through New York City to the Watkins Sellers.

WHEREFORE, New York City respectfully prays that the Court grant judgment against defendants as follows:

- a. On the First Claim For Relief, enjoining King Mountain and Mountain Distributing from violating the CCTA, 18 U.S.C. §§ 2341 *et seq.*, by selling and/or delivering unstamped cigarettes to anyone in New York State other than a licensed stamping agent;
- b. On the First Claim For Relief, requiring King Mountain and Mountain Distributing to pay the City money damages and a suitable civil penalty, as provided for in the CCTA, and the attorney's fees and costs incurred in bringing this action;
- c. On the Second Claim For Relief, enjoining the King Mountain Defendants from violating the Jenkins Act, 15 U.S.C. §§ 375 *et seq.*, as amended by the PACT Act, by making delivery sales into New York State without complying with the requirements of the PACT Act;

- d. On the Second Claim For Relief, requiring the King Mountain Defendants to pay the City money damages and a suitable civil penalty, as provided for in the PACT Act, and the attorney's fees and costs incurred in bringing this action;
- e. On the Third Claim For Relief, as provided for in 18 U.S.C. § 1964, requiring Wheeler and Ramsey to pay the City treble damages and the attorney's fees and costs incurred in bringing this action.
- f. Awarding such other and further relief as the Court may deem appropriate.

Dated: New York, New York
December 14, 2010

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