



## WAIVER OF TRIBAL SOVEREIGN IMMUNITY BY NATIVE AMERICAN TRIBE

RESOLUTION OF THE \_\_\_\_\_  
[Name of Tribe]

WHEREAS, \_\_\_\_\_ and/or  
[Name of Tobacco Manufacturer]  
\_\_\_\_\_ is owned by, chartered by, operated for the benefit of,  
[Name of Tobacco Importer, if any]  
and/or an "arm" of, the \_\_\_\_\_ ("the Tribe");  
[Name of Tribe]

WHEREAS, \_\_\_\_\_ and/or  
[Name of Manufacturer]  
\_\_\_\_\_ was formed for all business purposes allowed  
[Name of Importer, if any]  
under the laws of the Tribe, including the manufacture of cigarettes and tobacco products;

WHEREAS, the premises and manufacturing facility of the foregoing cigarette and/or tobacco manufacturer and the premises of cigarette and/or tobacco importer, if any, are located on the Tribe's Reservation or other Indian Country;

WHEREAS, \_\_\_\_\_ has applied to the State of  
[Name of Manufacturer]  
California to be placed on the State of California Directory of compliant tobacco manufacturers whose products may be legally sold in the State of California ("California Tobacco Directory");

WHEREAS, pursuant to California Business and Professions Code section 22979(a), every manufacturer and importer must obtain and maintain a license to engage in the sale of cigarettes, and as one condition for obtaining and maintaining such license, all manufacturers and importers shall waive any sovereign immunity defense that may apply to any enforcement action brought by the Attorney General or the Board of Equalization to enforce Division 8.6 of the Business and Professions Code, sections 104555 to 104557, inclusive, of the Health and Safety Code, Part 13 (commencing with section 30001) of Division 2 of the Revenue and Taxation Code, and regulations adopted pursuant to these laws;

WHEREAS, the State of California requires that all tobacco manufacturers on the California Tobacco Directory either sign the Master Settlement Agreement and make payments pursuant to that agreement or make escrow deposits as required by the California reserve fund statute (Health & Safety Code, sections 104555-104557);

WHEREAS, because of the location of \_\_\_\_\_ and/or the  
[Name of Manufacturer]  
business premises of \_\_\_\_\_ on the Tribe's Reservation or other  
[Name of Importer, if any]  
Indian Country and because the manufacturer and/or the importer is owned by, chartered by, operated for the benefit of, or an "arm" of the Tribe, the manufacturer and/or the importer may be shielded by tribal sovereign immunity or treaty rights from full enforcement and remedies available against tobacco manufacturers; and

WHEREAS, because the protection afforded by tribal sovereign immunity and treaty rights includes immunity from suit, liability, judgment and collection, including enforcement of judgments on tribal land by way of attachment of property or otherwise, the State of California requires that the manufacturer and/or the importer and their owner(s) waive tribal sovereign immunity and treaty rights.



# WAIVER OF TRIBAL SOVEREIGN IMMUNITY BY NATIVE AMERICAN TRIBE

THEREFORE, the \_\_\_\_\_ Indian Nation, through  
[Name of Tribe]

\_\_\_\_\_  
[Name of Tribal Entity or Official Authorized To Waive Tribal Sovereign Immunity]  
has on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, adopted this Resolution waiving the  
[Month]  
Tribe's sovereign immunity and treaty rights as follows:

The \_\_\_\_\_ hereby waives its sovereign immunity and  
[Name of Tribe]  
treaty rights against suit, liability, judgment and collection with respect to the obligations and duties of  
\_\_\_\_\_  
[Name of Tobacco Manufacturer] and/or \_\_\_\_\_  
[Name of Tobacco Importer, if any]

under the reserve fund statute (Health & Saf. Code, § 104555 *et seq.*); the Cigarette and Tobacco Products Tax Law (Rev. & Tax. Code, Div. 2, Part 13, § 30001 *et seq.*), including the tobacco directory law (Rev. & Tax. Code, § 30165.1); the California Cigarette and Tobacco Products Licensing Act of 2003, (Bus. & Prof. Code, § 22970 *et seq.*); and regulations implementing those laws . The Tribe recognizes and agrees that the foregoing regulatory laws (reserve fund statute, the Cigarette and Tobacco Products Tax Law, tobacco directory law, and the Cigarette and Tobacco Products Licensing Act of 2003), which require (1) the creation of a reserve fund in escrow, (2) qualifying for listing on a directory of compliant tobacco companies, and (3) state licensing, apply equally to everyone, including the Tribe, and are regulations which impose their restrictions for a public purpose unrelated to revenue generation. In so waiving its immunity, the Tribe recognizes and agrees that any suits or administrative actions brought against

\_\_\_\_\_  
[Name of Manufacturer] and/or \_\_\_\_\_  
[Name of Importer, if any]

and their owner(s) relating to the duties and obligations referenced above may be brought in the California Superior Court, and that all such actions and proceedings shall be governed by California's substantive and procedural law.

Finally, for the actions described in this waiver, the Tribe agrees to the jurisdiction of the California Superior Court over the Tribe, waives personal service of process, and agrees that service of process by certified or registered mail, return receipt requested, to the following address shall constitute adequate service:

[Tribal manufacturer/importer name] \_\_\_\_\_  
[Street Address or P.O. Box] \_\_\_\_\_  
[City and State, postal code] \_\_\_\_\_

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
[Month]



## WAIVER OF TRIBAL SOVEREIGN IMMUNITY BY NATIVE AMERICAN TRIBE

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[Signature(s) of Tribal Official(s) authorized to  
adopt this Resolution]

[Printed Name(s)]

Attached to this Resolution is a letter from legal counsel for the Tribe to the California Attorney General evidencing legal counsel's written legal opinion to the State of California that the Tribal entity(ies) or officer(s) adopting this Resolution and waiving the Tribe's sovereign immunity and treaty rights is/are authorized under Tribal law to do so and have the ability to bind the Tribe, and that all procedures required by Tribal and Federal law (including, if applicable, the Foreign Sovereign Immunities Act of 1976 (28 U.S.C. section 1605(a)(1)), were followed and that the actions in waiving sovereign immunity and treaty rights are binding and enforceable under Tribal, Federal and California State law.