



## 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 the \_\_\_\_\_  
[Name of Tobacco Importer] [Name of Tribe]  
("the Tribe"), is a business arm of the Tribe, and/or is formed by the Tribe under the provisions of the  
Tribe's constitution or laws;

WHEREAS, \_\_\_\_\_ and/or  
[Name of Manufacturer]

\_\_\_\_\_ was formed for all business purposes allowed  
[Name of Importer]  
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 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;

WHEREAS, the State of California requires that all tobacco manufacturers on the State Tobacco  
Directory, to the full extent allowed by law, be subject to State regulations and enforcement of  
California law, including being susceptible to all remedies and enforcement measures permitted under  
California law,

WHEREAS, the State of California requires that all tobacco manufacturers on the State 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 104555-104557.1);

WHEREAS, the State of California requires that all tobacco manufacturers sell cigarettes and  
tobacco products only to a distributor, wholesaler, importer, retailer or other person holding a valid license  
from the California Board of Equalization,

WHEREAS, the State of California requires that the distributor either pay applicable state taxes  
and surcharges on sales of cigarettes and tobacco products in the State of California or collect them from  
the consumer,

WHEREAS, because of the location of \_\_\_\_\_ and the  
[Name of Manufacturer]  
business premises of \_\_\_\_\_ on the Tribe's Reservation or other  
[Name of Importer]  
Indian Country and because the manufacturer and/or the importer is owned by the Tribe, is a business  
arm of the tribe or is owned by members 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;



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WHEREAS, 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, agree to sell only to persons licensed by the California Board of Equalization.

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

\_\_\_\_\_  
[Name of Tribal Entity Authorized To Waive Tribal Sovereign Immunity]  
has on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, adopted this Resolution waiving the  
[Month]  
Tribe's 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]  
under the California's reserve fund statute (Health & Saf. Code, § 104555 *et seq.*), the California Tobacco Directory Law (Rev. & Tax Code, § 30165.1), the California Cigarette and Tobacco Products Licensing Act of 2003, (Bus. & Prof. Code, § 22970 *et seq.*), regulations implementing those laws and any other California law, rule, or regulation that pertains to the sale of cigarettes and tobacco products in the State of California. The Tribe recognizes and agrees that the foregoing regulatory laws (reserve fund statute, tobacco directory law, and 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 pure 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]  
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.

The Tribe agrees that \_\_\_\_\_ and  
[Name of Manufacturer]  
\_\_\_\_\_ shall sell only to California distributors, wholesalers,  
[Name of Importer]  
importers, and retailers that are licensed by the California Board of Equalization. The Tribe agrees that all its distributor(s) will collect and remit all taxes, surcharges, and escrow deposits imposed by California law, and all subsequent amendments thereto, on sales to persons who are not members of the Tribe in the same manner as required of all other such sales of cigarettes and tobacco products under California statutes and implementing regulations. The tribe attaches hereto a list of the names and addresses of all cigarette and tobacco product distributors the manufacturer or importer will use for distribution in the state of California.



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The Tribe agrees to enact and enforce such tribal laws as are necessary to implement the California tax, surcharge and escrow deposit laws that apply to sales to persons who are not members of the Tribe, including the right of the State to audit and to assess and collect the taxes, surcharges and escrow deposits due. The Tribe agrees that upon the request of the State, the Tribe,

\_\_\_\_\_, and \_\_\_\_\_  
[Name of Manufacturer] [Name of Importer]  
will assist the State of California in the assessment and collection of any California taxes, surcharges and escrow deposits due.

Finally, 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:

[Owner tribal members name]  
[Street Address or P.O. Box]  
[City and State, postal code]

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

\_\_\_\_\_  
Appropriate \_\_\_\_\_ Nation Officer

\_\_\_\_\_  
Appropriate \_\_\_\_\_ Nation Officer

\_\_\_\_\_  
Appropriate \_\_\_\_\_ Nation Officer

Attached to this Resolution is the 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(s) 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.