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19 UNITED STATES DISTRICT COURT
20 EASTERN DISTRICT OF WASHINGTON

21 KING MOUNTAIN TOBACCO
22 COMPANY, INC.; DELBERT
23 WHEELER, SR.; and THE
24 CONFEDERATED TRIBES AND
25 BANDS OF THE YAKAMA INDIAN
26 NATION,

Plaintiffs,

v.

ALCOHOL AND TOBACCO TAX AND
TRADE BUREAU; JOHN J.
MANFREDA, IN HIS OFFICIAL
CAPACITY AS ADMINISTRATOR OF
THE ALCOHOL AND TOBACCO TAX
AND TRADE BUREAU; UNITED
STATES DEPARTMENT OF THE
TREASURY; and TIMOTHY
GEITHNER, IN HIS OFFICIAL
CAPACITY AS THE SECRETARY OF
UNITED STATES DEPARTMENT OF
THE TREASURY,

No. CV-11-3038-RMP

COMPLAINT TO
ENFORCE
TREATY RIGHTS

Defendants.

I. INTRODUCTION

This suit seeks declaratory and injunctive relief enjoining the Defendants, agents of the United States acting outside the scope of their official capacity and authority and in violation of the law, from violating the guarantees and protections enjoyed by the Plaintiffs pursuant to the Yakama Treaty of 1855 between the Yakama Nation and the United States, as well as other federal and tribal laws.

As detailed herein, over 155 years ago the people of the Yakama Nation entered into an historic treaty with the United States. This treaty guaranteed the Yakama Nation and its people that: (i) a tract of land would be set aside and apart for the Yakamas for their exclusive use and benefit, and that the Yakamas would be allowed to take their goods to market free of any fees, tolls, or other impediments; (ii) that the United States would deal openly and honestly with the Yakamas and would protect them from “bad white men” who attempt to harm them; (iii) that if the United States did not honor its obligations under the treaty the Yakamas would have the ability to meet with the President so that he could ensure the United States’ compliance with its treaty obligations, and engage in dispute resolution of grievances; and (iv) that the United States would speak directly to the Chief of the Yakama Nation to arrive at a

1 resolution of disputes, particularly Treaty-based disputes and exemptions, involving
2 the Yakama Nation, its members, and member-owned entities.

3
4 As set forth in detail herein, several agencies and individuals in their official
5 capacities as agents of the United States have violated and continue to violate the
6 above-recited treaty obligations and guarantees by: (i) attempting to impose permitting
7 and other economic restrictions on Plaintiffs' ability to trade in tobacco products
8 cultivated and developed on Yakama Nation trust property all in violation of the treaty
9 and applicable federal statutory exemptions; and (ii) failing to acknowledge the
10 Plaintiffs' treaty guarantees to meet directly with the President and administration
11 decision-makers in meaningful government to government consultation regarding
12 Yakama Nation members and tribally licensed member-owned entities so that the
13 issues could be presented to address concerns and provide relief.

14
15 As a result of these significant and continued violations, the Plaintiffs have been
16 left with no means other than to turn to this Court to protect their federally-guaranteed
17 rights.

18 19 20 21 **II. PARTIES**

22
23 2.1 Plaintiff The Confederated Tribes and Bands of the Yakama Indian
24 Nation ("Yakama Nation") is an Indian tribe existing under the laws of the United
25 States. By virtue of its status as a sovereign nation with an independent government
26

1 and governing body, the Yakama Nation is a beneficiary of the rights and privileges
2 reserved to and created for the members of the Yakama Nation by the Treaty of 1855
3 between the Yakama Nation and the United States of America.
4

5 2.2 Plaintiff Delbert Wheeler, Sr., an individual, is a life-long enrolled
6 member of the Yakama Nation. His Yakama Nation enrollment number is 05777 and
7 a copy of his enrollment card is attached hereto as Attachment A.
8

9 2.3 Delbert Wheeler, Sr. is resident of White Swan, Washington, which is
10 located within the exterior boundaries of the sovereign lands governed by the
11 Confederated Tribes and Bands of the Yakama Nation and established by the Yakama
12 Nation's 1855 Treaty with the United States ("Yakama Nation Reservation").
13

14 2.4 King Mountain Tobacco, Inc. ("King Mountain") is a corporation
15 organized, existing, and operating under the laws of the Yakama Nation. The Yakama
16 Nation treaty rights are secured and guaranteed to and can be exercised by its
17 individual members and Yakama-owned and tribally licensed businesses.
18

19 2.5 King Mountain is owned and operated by Mr. Delbert Wheeler.
20

21 2.6 King Mountain is located and operates on 80 acres of Yakama Nation
22 trust property in White Swan, Washington, within the exterior boundaries of the
23 Yakama Nation Reservation.
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1 2.7 Defendant United States Department of the Treasury is an executive
2 department of the United States of America and its treasury.

3
4 2.8 Defendant Timothy Geithner is now, and was at all times material, the
5 Secretary of the United States Department of the Treasury.

6 2.9 Defendant Alcohol and Tobacco Tax and Trade Bureau (“TTB”) is a
7 bureau within the United States Department of the Treasury.

8
9 2.10 Defendant John J. Manfreda is now, and was at all times material, the
10 appointed Administrator of the TTB.

11
12 **III. JURISDICTION & VENUE**

13 3.1 This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331,
14 and notwithstanding 26 U.S.C. § 7421 and 28 U.S.C § 2201 for the reasons discussed
15 *infra* ¶¶ 5.1-10.

16
17 3.2 This Court has personal jurisdiction over Defendants as they are
18 purporting to implement and enforce the laws set forth herein against Plaintiffs within
19 this judicial district.

20
21 3.3 Venue is proper pursuant to 28 U.S.C. § 1391.

22 3.4 The federal District Courts have a virtually unflagging obligation to
23 exercise the jurisdiction given them. *Colo. River Water Conservation Dist. v. United*
24 *States*, 424 U.S. 800, 818-819 (1976).
25
26

1 3.5 In instances where threatened action by government is concerned, putting
2 a challenger to the choice between abandoning his rights or risking prosecution is a
3 dilemma that it was the very purpose of the Declaratory Judgment Act to ameliorate.
4
5 *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007).

6 **IV. FACTS GIVING RISE TO THE PRESENT CONTROVERSY**

7 **A. Background Regarding the Historic Treaty of 1855 Between the Yakama** 8 **Nation and the United States.**

9 4.1 The Ninth Circuit has held that the Treaty of 1855 between the Yakama
10 Nation and the United States (Treaty of 1855) is to be interpreted within “the
11 historical context and the parties’ intent at the time the Treaty was signed.” *Cree v.*
12 *Flores*, 157 F.3d 762, 769 (9th Cir 1998). The terms are interpreted as the *Indians*
13 would have understood them at the time. *Id.* Attached hereto as Attachment B are
14 true and correct copies of the Treaty of 1855, the treaty council minutes, and copies of
15 letter written by U.S. agents regarding the treaty negotiations (“Treaty and Minutes”).
16
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18

19 4.2 One June 9, 1855, the people of the Yakama Nation entered into the
20 Treaty with the federal government of the United States. The Treaty itself and the
21 negotiations between the Yakamas and the United States leading up to the ratification
22 thereof are all supremely important in appreciating how the Yakama people
23 understood what they were entering into with the United States. *See Cree*, 157 F.3d at
24 769 (citing *Tulee v. Washington*, 315 U.S. 681, 684-85 (1942)) (noting that treaties are
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26

1 interpreted in accord with meaning they were understood to have by tribal
2 representatives at the Council).

3
4 4.3 For two weeks leading up the signing of the Treaty, representatives from
5 the United States and representatives from the Yakama Nation (and other tribes) met
6 in Walla Walla to discuss a proposed treaty. At the time, the State of Washington did
7 not yet exist and the Washington Territory had just been established less than 2 years
8 prior.

9
10 4.4 The main representatives from the United States were General Isaac
11 Stevens, the Washington Territorial Governor and Superintendent of Indian Affairs
12 for that territory and General Joel Palmer, Superintendent of Indian Affairs of the
13 Oregon Territory. Both men were directed to enter into treaties with Pacific
14 Northwest tribes as expeditiously as possible, so that the United States could continue
15 its rapid expansion to the Western seaboard. Securing a treaty with the Yakamas was
16 particularly critical to the United States, as it was necessary to open up (present day)
17 South-Central Washington for further development by white settlers.

18
19 4.5 Three Yakama chiefs were present and represented their people in the
20 treaty negotiations: Chief Kamiakin, the principal chief of the Yakama people, his
21 brother Chief Skloom, and their half-brother Chief Owhi. All three chiefs expressed
22 significant reluctance about entering into an agreement of any kind with the United
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24
25
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1 States.

2 4.6 The United States' negotiators did not speak the Yakamas' native
3 language and the Yakamas did not speak English. Thus, the entirety of the
4 negotiations took place through translation, a process that was laborious and made
5 particularly difficult given that there were numerous instances where representations
6 made by the United States did not have an adequate translation or recognized concept
7 in the Yakamas' language
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9
10 4.7 During the negotiations, agents of the United States kept "minutes" of the
11 representations that were made during the treaty council, the conduct of the United
12 States negotiators, and the reactions of the Yakama Nation representatives. The
13 minutes are one of the only complete transcripts still in existence from any treaty
14 council between the United States and Native American tribes.
15

16
17 4.8 The Yakamas' way of life (like many Native American tribes) was
18 steeped in oral tradition and the concept of memorializing statements or occurrences
19 in a "writing" was simply a foreign concept to the Yakama people. For this reason,
20 the Yakamas have always understood that the "treaty" between them and the United
21 States was embodied in the representations made to the Yakamas during the treaty
22 council. In fact, on the day the Yakamas signed the Treaty General Stevens told the
23 Yakamas that "[t]hese papers [the treaty document] *engage us to exactly what we have*
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1 *promised to do.*” Treaty and Minutes (Att. B) at 99 (emphasis added).

2 4.9 Even then, though, the treaty council minutes kept by the United States
3 need to be understood in historical context: the minutes do not fully and accurately
4 explain how the *Yakamas* understood what was being promised to them; rather, the
5 minutes reflect what the *United States’ agents* understood was being conveyed to the
6
7 Yakamas.
8

9 ***B. Numerous Promises and Representations Were Made To The Yakamas***
10 ***During the Treaty Council and In the Treaty Itself—All of Which Were***
11 ***Understood By The Yakamas As Binding on the United States.***

12 4.10 The United States made numerous promises and representations to the
13 Yakamas in the two weeks that culminated in the signing of the Treaty on June 9,
14 1855. The breach of these promises by the United States are inflicting irreparable
15 harm on the Plaintiffs and are what now leads them to file the present suit.
16

17 *The Yakamas Were Promised They Would Be Given the Exclusive Use and*
18 *Benefit of Their Lands Without Any Intrusions by the United States or Its*
19 *Agents.*

20 4.11 The Yakamas were promised that if they agreed to give the United States
21 millions of acres of their land and move onto a much smaller tract of land, this
22 “reserved land”
23

24 shall be set apart and, so far as necessary, surveyed and
25 marked out, for the exclusive use and benefit of said
26 confederated tribes and bands of Indians, as an Indian

1 reservation, nor shall any white man, excepting those in the
2 employment of the Indian Department, be permitted to
3 reside upon the said reservation without permission of the
4 tribe and the superintendent and agent.

5 Treaty of 1855, Article II.

6 4.12 The Yakamas were also ensured they had:

7 The exclusive right of taking fish in all the streams, where
8 running through or bordering said reservation, is further
9 secured to said confederated tribes and bands of Indians, as
10 also the right of taking fish at all usual and accustomed
11 places, in common with citizens of the Territory, and of
12 erecting temporary buildings for curing them; together with
13 the privilege of hunting, gathering roots and berries, and
14 pasturing their horses and cattle upon open and unclaimed
15 land.

16 Treaty of 1855, Article III.

17 These representations to the Yakamas were extremely important and significant
18 to the Yakamas agreeing to the Treaty.

19 4.13 The Yakamas were well-known as inveterate traders, farmers, and
20 fishermen and engaged in these practices without their tribal leadership imposing any
21 fees or otherwise requiring any sort of special permission in the form of a license or
22 permit. In fact, Chief Kamiakin was well-known for farming and raising cattle. It is
23 inconceivable that he would have ever agreed to the Treaty unless he understood that
24 “exclusive use and benefit” truly meant that the Yakamas would be allowed to
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1 develop and cultivate their “reserved” lands without any interference from the United
2 States, or anyone else for that matter.

3
4 4.14 Further, the Yakama lands are an integral and necessary part of the
5 Yakamas’ existence and land has always had an exceedingly spiritual and religious
6 meaning to the Yakamas.

7
8 4.15 The Yakamas believe that everything comes directly from the earth itself.
9 When the Yakamas were told that, in exchange for their ceding of millions of acres to
10 the United States, that they would have a certain portion of their own land for their
11 “exclusive use and benefit” they understood that the United States was promising to
12 them the unrestricted and unfettered right to have this land be their new home, free of
13 any unwanted incursions of any kind from anyone, with the concomitant right to
14 exclude all others from it, including agents of the United States.

15
16
17 4.16 The historical record shows that “exclusive use and benefit” language
18 was understood by the Yakamas as signifying the firm commitment and agreement
19 from the United States to allow the Yakamas to use their land for developing farms
20 and crops for the purposes of engaging in their historic practices of trade both on and
21 off the “reserved land” without any interferences or hindrance by the United States,
22 including the imposition of a fee, permit, license, or other permission of any kind.
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1 *The Yakamas Were Promised That the United States Would Deal With Them*
2 *Honestly, Justly, and Zealously and Would Protect Their Right To Their Lands*
3 *and to Engage in Their Historic Practices of Travel and Trade.*

4 4.17 The agents promised the Yakamas that the relationship established
5 between them was based on honesty and transparency. For example, the Yakamas
6 were told such things as: (i) “We come here to promote peace and happiness among
7 you”; (ii) that our “great chief [the President] has a good heart. I know that my brother
8 Gov. Stevens has a good heart, that they both desire to do and act for your good”; (iii)
9 that the U.S. negotiators “took a solemn oath to be your friends”; and (iv) “We want
10 kindness on the one side and kindness on the other: we want no injuries to resent.”
11 Treaty and Minutes (Att. B) at 15-17.

12
13
14 4.18 The U.S. negotiators also promised to protect the Yakamas from “bad
15 white men” who enter the lands held exclusively by the Yakamas do such things as
16 “rob you of your property.” *Id.* at 35-36. General Palmer specifically mentioned that
17 “these men you cannot tell always who they are, but all such men need watching; you
18 will now be able to judge who are your friends: such men, or myself and my brother
19 who have come here to act for your good.” *Id.* at 36.

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21
22 4.19 All of these representations were understood by the Yakamas as more
23 than mere platitudes, puffery or aspirational statements. These representations, and
24 others like them, were understood by the Yakamas as providing the entire foundation
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1 for the treaty.

2 4.20 The Yakamas understood that the United States was affirmatively
3 pledging that it would protect the Yakamas and would not engage in any sort of
4 artifice or stratagem of any kind when dealing with the Yakamas then or in the future.
5

6 4.21 The Yakamas also understood these representations to mean that the
7 United States would protect the Yakamas from any individual or individuals that
8 would attempt to intrude on the Yakamas solitude or otherwise attempt to disrupt the
9 Yakamas from enjoying the exclusive use and benefits of their land as well as their
10 historic right to engage in extensive travel and trade.
11
12

13 *The Yakamas and the United States Agreed on a Definite and Specific*
14 *Procedure for Resolving Disputes Between the Two Nations.*

15 4.22 The United States agents made very specific representations to the
16 Yakamas as to how the parties would handle any disputes that arose between the two
17 nations after the ratification of the Treaty. Governor Stevens explicitly promised:
18

19
20 I have spoken of an agent, I will speak more. If we agree
21 at the council we have many things to do for you; the
22 agent will live with you and see that it is done; if you
23 think we have not done our part go to the agent and tell
24 him so, and he will see that we do it. *If we think you have*
not done your part the agent will go the [sic] the chiefs
and say so frankly and arrange it with them; he will be
your elder brother. and he will see that you are not
wronged, and that the bargain is carried out.

25 Treaty and Minutes (Att. B) at. 29 (emphasis supplied).
26

1 4.23 The Yakamas understood this to mean is that if the United States
2 believed that the Yakamas were engaging in conduct that was improper, the first step
3 was for the designated agent to go directly to the chiefs, explain the nature of the
4 problem, and attempt to arrive at a solution.
5

6 4.24 Such an “in person” resolution with the Chiefs is a practice deeply rooted
7 in the Yakama culture. In the Yakama culture, the Chiefs were the ones that
8 maintained authority and control over the members of the tribe. The Chiefs resolved
9 disputes and exacted punishments or decisions accordingly. This was not
10 accomplished through the process of written communications or correspondence.
11 Thus, the Yakamas understood this process of “going to the chiefs” as being the
12 exclusive “dispute resolution process” that would be invoked by the United States if
13 any dispute arose between the United States and the Yakama Nation and its members.
14
15

16 4.25 Similarly, and consistent with the notion that the United States had to
17 deal directly with the Chiefs if a dispute arose, the Yakamas were guaranteed the right
18 to deal directly with the “Great Chief” of the United States if the Yakamas believed
19 the United States was not doing its part. Specifically, General Palmer told the
20 Yakamas:
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22

23 “Do you want school teachers to teach your children how to
24 read and write?” It is not good that these men can write
25 down what is said here and understand what it is? It would
26

1 make my heart glad if you could all do so. It would make
2 my brother's heart glad if you could all do so. Would it not
3 be good if wanted to talk with my brother, or if you wanted
4 to talk with our Great Chief? If you knew how to write and
5 wanted to talk you could send it to him on paper and he
6 would know your heart.

7 4.26 The Yakamas understood these representations to mean that if the
8 Yakamas believed that the United States had failed to live up to its obligations, the
9 Yakamas would be allowed to deal directly with the President through an in-person
10 meeting in order to seek a just and expeditious resolution of any dispute. At the time,
11 this concept of writing letters in order to communicate was a completely foreign
12 concept to the Yakamas. From the Yakamas' perspective, in order for any
13 communication to occur (especially the kind where the communicator is expressing
14 what was in his heart) the communication had to take place face-to-face through
15 conversation. Based on these representations, the Yakamas understood that if they
16 learned how to speak English and they had a grievance with the Treaty not being
17 carried out, the President had obligated himself to deal directly with the aggrieved
18 Yakama and to act promptly to deal with any such grievance.

19 *The Yakamas Attempts to Utilize the Definite and Specific Procedure for*
20 *Resolving Disputes Between The Two Nations Were Rejected.*

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25 4.27 Pursuant to Treaty of 1855's promise that the Yakama Members could
26

1 deal directly with the President of the United States to resolve breaches of the Treaty,
2 Yakama Members sought a meeting with the President on or about Fall 2010.

3
4 4.28 Although permitted to meet with some staff members, the Yakama
5 Members never met with or had the opportunity to present their grievance to the
6 President.

7
8 4.29 Even the meetings the Yakama Members were granted were insufficient.
9 These meetings were perfunctory meet and greets with no opportunity for the Yakama
10 Members to discuss the specific breaches of the Treaty of 1855, issues presenting the
11 Yakama Nation Members, nor receive a substantive plan or guidance on process to
12 pursue resolution of the breaches. While the meetings were a first step with certain
13 staff members who were sought out based on their positions of familiarity with Native
14 American issues, there was never a protocol that was suggested nor acted upon by the
15 staff members to address the breaches of the Treaty.
16
17

18 4.30 Specifically, Yakama Members and employees of King Mountain met
19 with Christopher Chaney, the Deputy Director of the Department of Justice Office of
20 Tribal Justice; with officials at the Department of the Interior Bureau of Indian Affairs
21 (BIA) including Michael Black, the BIA Director; Michael Smith, the BIA Deputy
22 Director; and another BIA agent, Larry Echohawk, the highest official at the BIA and
23 an Assistant Secretary of the Interior; Kimberly Teehee, the Senior Policy Advisor to
24
25
26

1 the President on Native American Affairs and Jodi Gillette, the Director of the Office
2 of Intergovernmental Affairs

3
4 4.31 While sympathetic, none of these officials were able to fulfill the express
5 promise of the Treaty of 1855, namely that the Yakamas would be able to deal directly
6 with the President to resolve treaty breaches. The officials neither provided Plaintiffs
7 and the other Yakama Members with a means of utilizing their Treaty remedies, nor
8 did they take effective measures to prevent the Defendant executive agencies and
9 administrators from enforcing laws in a manner that abrogate Plaintiffs' Treaty rights.
10

11
12 4.32 Plaintiffs relied upon the Treaty provisions of executive intervention and
13 attempted to avail themselves of this remedy at several points in 2010. In sum,
14 although officials were informed of the U.S. Government's breaches of the Treaty of
15 1855, these officials were unwilling or unable to protect Plaintiffs' Treaty rights. The
16 Yakama Members were never granted a face-to-face meeting with President Obama as
17 provided by the Treaty of 1855 nor a dispute resolution process leading up to a
18 meeting for *resolution* that was guaranteed by Plaintiffs' Treaty. A resolution for
19 grievances was guaranteed, and not just limited to meetings.
20
21

22
23 *The United States Government recognizes its overarching duty to Set up Face-*
24 *to-Face Communication Procedures with the Indian Tribes.*

25 4.33 During both the Clinton and Obama Administrations, mechanisms have
26

1 been established to respond to Indian rights issues, particularly Tribal consultation in
2 measures that affect tribal governance and sovereignty. Nevertheless, when Plaintiffs
3 attempted to utilize these mechanisms to enforce their own treaty rights, the agencies
4 did not attempt to provide relief or an opportunity for a face-to-face meeting in
5 conformity with their Treaty rights. Furthermore, actions taken against Plaintiffs'
6 property were taken without informing the Yakama Nation Tribal government and
7 without deference to a Yakama Council determination that the Treaty of 1855 did not
8 permit King Mountain products to be taxed. (See *Confederated Tribes and Bands of*
9 *the Yakama Nation v. Eric Holder, Jr., United States Department of Justice, Robert S.*
10 *Mueller III, Director of the Federal Bureau of Investigation, United States of*
11 *America, John Doe FBI Agents 1-100, United States District Court Eastern District of*
12 *Washington, CV-11-3028-RMP)*

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17 4.34 Specifically, as far back as 1994, President Clinton issued a
18 "Memorandum on Government-to-Government Relations with Native American
19 Tribal Governments." A copy of the Memorandum ("1994 Memorandum") is
20 attached hereto as Attachment C. The 1994 Memorandum required all executive
21 departments and agencies to "consult, to the greatest extent practicable and to the
22 extent permitted by law, with Tribal governments prior to taking actions that affect
23 federally-recognized Tribal governments. All such consultations are to be open and
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1 candid so that all interested parties may evaluate for themselves the potential impact
2 of relevant proposals.” President Clinton clarified that Native American Tribal
3 governments are to be treated as fellow sovereigns to the United States.
4

5 4.35 The 1994 Memorandum required all executive departments and agencies
6 to “take appropriate steps to remove any procedural impediments to working directly
7 and effectively with Tribal governments on activities that affect trust property and/or
8 governmental rights of the Tribes.”
9

10 4.36 In 1995, a federal statute created the Office of Tribal Justice within the
11 Department of Justice. At the time, the Office was formed to respond to tribal
12 concerns, and existed only under the discretion of the Attorney General.
13

14 4.37 On November 6, 2000, President Clinton issued Executive Order 13175,
15 entitled “Consultation and Coordination with Indian Tribal Governments.” This
16 Executive Order was promulgated to “establish regular and meaningful consultation
17 and collaboration with tribal officials in the development of Federal policies that have
18 tribal implications” A copy of the Executive Order (“EO 13175”) is attached
19 hereto as Attachment D.
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21

22 4.38 EO 13175 requires that agencies and departments, “shall respect Indian
23 tribal self-government and sovereignty, honor tribal treaty and other rights, and strive
24 to meet the responsibilities that arise from the unique legal relationship between the
25
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1 Federal Government and Indian tribal governments.” § 3(a).

2 4.39 Section 5 of the Order is entitled “Consultation.” The section was
3 included for the purpose of ensuring “meaningful and timely input by tribal officials
4 in the development of regulatory policies that have tribal implications.” § 5(a). The
5 Section requires that Indian governments be consulted when a regulation has tribal
6 implications and imposes substantial direct compliance costs on Indian tribal
7 governments. Read together, the two Clinton documents indicate the federal
8 government’s purported goals of treating a sovereign Tribal government as its peer
9 and engaging in meaningful consultation when taking actions that affect the Tribal
10 government.
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14 4.40 The Obama Administration also has purported to advance similar goals
15 with regard to consultation with Tribal peoples and governments. On November 5,
16 2009, President Obama issued a memorandum to the heads of executive departments
17 and agencies requiring each leader to submit a detailed plan on its implementation of
18 EO 13175. A copy of this Memorandum (“2009 Memorandum”) is attached hereto as
19 Attachment E.
20
21

22 4.41 The 2009 Memorandum stated, “[h]istory has shown that failure to
23 include the voices of tribal officials in formulating policy affecting their communities
24 has all too often led to undesirable and, at time, devastating and tragic results. By
25
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1 contrast, meaningful dialogue between Federal officials and tribal officials has greatly
2 improved Federal policy toward Indian tribes. *Consultation is a key ingredient of a*
3 *sound and productive Federal-tribal relationship*” (Emphasis added).
4

5 4.42 The Obama Administration has put in place the structure through which
6 Tribal governments can interact with the United States government, on a government-
7 to-government basis. The Office of Tribal Justice is now a permanent Office within
8 the Department of Justice pursuant to the Tribal Law and Order Act of 2010, Pub. L.
9 No. 111-211, § 214 (July 29, 2010).
10

11 4.43 The Justice Department itself, pursuant to the 2009 Memorandum,
12 expanded the Office of Tribal Justice. This expansion was intended to “ensure[] a
13 central source of communication and coordination between the Department and tribal
14 nations.”
15

16 4.44 Today, the Office of Tribal Justice purports to “[p]rovide a single point
17 of contact within the Department for meeting the broad and complex federal
18 responsibilities owed to federally recognized Indian tribes.” The Office of Tribal
19 Justice’s mandate also includes “[m]aintain[ing] liaison with federally recognized
20 tribes, and work[ing] with the appropriate federal, state, and local officials,
21 professional associations, and public interest groups,” as well as “coordinat[ing],
22 together with the Office of Legislative Affairs, the Department [of Justice’s]
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1 legislative efforts relating to Indian country.” See About the Office: Office of Tribal
2 Justice, a copy of which is attached hereto as Attachment F.

3
4 4.45 The international community recognizes many human rights for
5 indigenous peoples that are implicated in the Defendants’ attempts to deprive
6 Plaintiffs of the rights guaranteed by the Treaty—their rights, benefits, guarantees, and
7 livelihood under threats of penalties, sanctions, loss of liberty, and statutory threats of
8 imprisonment for alleged debts owed.

9
10 **C. Tobacco is Historically and Culturally Significant to the Yakama Nation.**

11 4.46 Tobacco has been an integral part of Yakama life for centuries.

12
13 4.47 Tobacco is “sacred” to the Yakama People and a vitally important part of
14 Yakama Tribal religious exercise.

15
16 4.48 The Yakama People regard tobacco as a gift from the spirits and believe
17 its use to confer many benefits on human beings.

18
19 4.49 The Yakamas believe smoke from tobacco grown on Yakama lands
20 travels to the heavens and takes a part of the Yakama spirit along the way during this
21 journey.

22
23 4.50 Tobacco is an essential element of traditional healing and worship
24 ceremonies.

25 4.51 In addition to its spiritual and healing properties, virtually every
26

1 ceremony or social interaction involves the use of tobacco.

2 4.52 Tobacco is often used as a gift between friends and other wishing to
3 honor one another.

4 4.53 Ceremonial tobacco use was traditionally incorporated into negotiations,
5 declarations of war, and peace ratifications.
6

7 4.54 At the Council of Walla Walla, where the Treaty of 1855 was negotiated,
8 Chief Kamiakin and Peo-peo-mox-mox, Head Chief of the Walla Wallas, were
9 offered tobacco by Isaac Stevens when they first arrived at his tent, but they refused it,
10 indicating they were cautious of signaling complicity with what was planned,
11

12 4.55 The Yakama People historically grew tobacco and “Kinnikinnick,” also
13 referred to as “tobacco,” directly on their lands, harvested the tobacco, and traded it
14 with other tribes as well as non-Native Americans, such as early explorers that would
15 pass through the lands occupied by the Yakamas.
16

17 4.56 The term “Kinnikinnick” is used at times to refer to tobacco, a smoked
18 material added to tobacco, and the “mixture” of tobacco and other smoking materials.
19 For purposes of this Complaint, Kinnikinnick and tobacco are used interchangeably.
20

21 4.57 The Yakama’s tradition of trading tobacco with both Native Americans
22 and non-Native Americans has existed for several hundred years.
23

24 4.58 One of the many aspects of the Yakama way of life, that they understood
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26

1 would be protected and preserved under the Treaty of 1855, was the Yakamas’
2 extensive involvement with travel and the trade of Yakama-produced goods, including
3 tobacco.
4

5 4.59 For centuries, Yakamas have incorporated tobacco grown and cultivated
6 by the Yakamas themselves as well as tobacco obtained from other tribes through
7 trade and exchange.
8

9 4.60 Historical accounts illustrate that the Yakamas traditionally used tobacco
10 as a form of currency which they traded for fish, horses, and other goods.
11

12 4.61 To this day, tobacco remains an important part of Yakama life serving
13 both cultural and economic purposes.
14

15 4.62 The Yakama’s reverence for tobacco and its ceremonial use continue
16 today and religious ceremonies, social gatherings, and other important social and
17 political events taking place on the Yakama Nation include the smoking of tobacco,
18 particularly tobacco grown on Yakama lands.
19

20 **D. King Mountain Products Incorporate Traditional Ceremonial and Production**
21 **Methods and are Manufactured and Produced on the Yakama Nation**
22 **Reservation.**

23 4.63 In 2006, Delbert Wheeler, Sr. purchased 80 acres of trust property
24 (hereinafter “King Mountain Trust Property”) from the Yakama Nation Land
25 Enterprise, the agency charged with overseeing the maintenance of real property held
26

1 in trust for the benefit of the Yakama Nation and its members.

2 4.64 The King Mountain Trust Property is located in White Swan,
3 Washington within the exterior boundaries of the Yakama Nation Reservation and is
4 zoned for “farming and agricultural uses.”
5

6 4.65 Mr. Wheeler subsequently transferred the King Mountain Trust Property
7 to King Mountain so that it could commence farming and agricultural operations as
8 well as manufacturing operations.
9

10 4.66 King Mountain subsequently invested millions of dollars to improve and
11 develop the King Mountain Trust Property and has harnessed the natural resources of
12 the trust land to develop a tobacco growing and production operation.
13

14 4.67 King Mountain manufactures two varieties of tobacco products on the
15 King Mountain Trust Property: cigarettes and “roll your own” tobacco, referred to
16 collectively herein as “King Mountain Products.”
17

18 4.68 King Mountain Products are produced using well water and energy
19 resources from the Yakama Nation’s energy company
20

21 4.69 King Mountain employs enrolled Yakama members in the manufacturing
22 of tobacco products and the growing of tobacco.
23

24 4.70 Traditional ceremonial and agricultural processes are incorporated into
25 the production of every King Mountain Product.
26

1 4.71 Tobacco has grown naturally on the Yakama Nation Reservation for
2 centuries.

3
4 4.72 Consistent with the Yakama's reverence for its tribal land and tobacco
5 specifically, King Mountain incorporates tobacco grown on Yakama Nation
6 Reservation land ("trust-grown tobacco") into every single King Mountain Product.
7
8 This is accomplished through the process of hand threshing the tobacco plants,
9 performing spiritual and religious exercises over the trust-grown tobacco, and
10 blending the "trust-grown tobacco" into the King Mountain Products.

11
12 4.73 Trust-land grown tobacco is blended with non-trust-grown tobacco to
13 preserve the sacred character of the King Mountain tobacco products.

14
15 4.74 The incorporation of non-trust-grown tobacco does not diminish the
16 sacred character of the King Mountain Tobacco products as tobacco obtained through
17 trade has been used by the Yakamas for centuries.

18
19 4.75 Every King Mountain Product is only complete upon incorporation of
20 trust-grown tobacco and carries with it the significance of being a product that truly
21 comes from trust property owned and operated by an enrolled member of the Yakama
22 Nation.

23
24 4.76 The King Mountain Trust Property is situated in an arid climate and has
25 been cultivated for commercial tobacco growing operations. King Mountain can
26

1 manufacture product from tobacco grown solely on Yakama Nation reservation land.

2 4.77 Since business operations commenced, the King Mountain Trust Property
3 (and other trust property owned by Mr. Wheeler) has been used to grow and cure
4 tobacco.
5

6 4.78 Since 2006, King Mountain has worked to blend state of the art farming
7 techniques with traditional growing methods with the goal of producing all of its
8 tobacco products with tobacco grown on the King Mountain Trust Property.
9

10 4.79 The tobacco is grown using trust property resources such as soil, well
11 water, and energy resources from the Yakama Nation's energy company.
12

13 4.80 The tobacco is grown with special attention being provided to the
14 individual plants by manual labor and the plants themselves are actually harvested by
15 hand.
16

17 4.81 The process of growing tobacco on trust land and ultimately using it as a
18 commercial product is wholly consistent with the traditions and commercial
19 exchanges involving tobacco on Yakama tribal lands for centuries.
20

21 4.82 The tobacco curing process is also carried out by hand in that the
22 individual plants are hung in the curing houses and the dried tobacco is hand-threshed
23 by King Mountain employees and enrolled members.
24

25 4.83 The King Mountain Products are products of Yakama Nation lands,
26

1 natural resources, the Yakama People, and the Yakama way of life. As such, the King
2 Mountain Products are inextricably intertwined with the Yakama Nation realty such
3 that all commercial exchanges of these products must be and are governed by the
4 laws, traditions, and customs of the Yakama Nation, not the laws of the states or
5 federal government.
6

7
8 4.84 The Yakamas, like several Native American cultures, believe that their
9 bodies are a mere extension of their tribal lands and they were created directly from
10 their lands.
11

12 4.85 The King Mountain Products packaging reflects this essential connection
13 to the Yakama Nation Land. Every package prominently displays a scenic picture of
14 “Pahto” or “King of the Mountain” the Yakamas’ name for Mt. Adams.
15

16 4.86 The Yakamas draw their strength and support from Pahto and it is a
17 geographic location of great significance to the Yakamas.
18

19 **E. Defendants TTB and the Department of the Treasury, Through Defendants**
20 **Manfreda and Geithner, Imposed TTB Taxes and Regulations on Plaintiffs.**

21 4.87 The United States Treasury Department has historically worked with the
22 alcohol and tobacco industries in the United States. Currently, that work is carried out
23 by the Alcohol and Tobacco Tax Trade Bureau (“TTB”) – which was created in
24 January 2003 under reorganization called for by the Homeland Security Act of 2002.
25

26 4.88 The TTB’s “mission” is “to collect alcohol, tobacco, firearms, and

1 ammunition excise taxes that are rightfully due; to protect the consumer of alcohol
2 beverages through compliance programs that are based upon education and
3 enforcement of the industry to ensure an effectively regulated marketplace; and to
4 assist industry members to understand and comply with Federal tax, product, and
5 marketing requirements associated with the commodities we regulate.”
6
7

8 4.89 King Mountain is assessed with taxes by the TTB and the Department of
9 the Treasury.

10 4.90 The TTB is constrained by the powers it has been delegated through the
11 Internal Revenue Code and the Federal Alcohol Administration Act. The TTB cannot
12 regulate and/or adjudicate outside its authority.
13

14 4.91 The changes sought in this Complaint are in regards to the way in which
15 Defendants assess King Mountain with taxes and the way in which Defendants
16 impose regulations on King Mountain. The changes sought by King Mountain
17 constitute a system-wide change as to how Defendants regulate Plaintiffs’ conduct,
18 and assesses taxes upon, a Yakama Nation tobacco manufacturer.
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21 **V. SUBJECT MATTER JURISDICTION**

22 5.1 Subject matter jurisdiction is permitted by the judicial exceptions to the
23 Anti-Injunction Act, 26 U.S.C. § 7421, and the Declaratory Judgment Act, 28 U.S.C.
24 § 2201, pursuant to *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7-8
25
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1 (1962) and *South Carolina v. Regan*, 465 U.S. 367 (1984).

2 5.2 The Supreme Court has held that the Declaratory Judgment Act's ability
3 to provide declaratory relief for tax cases is "no broader" than the Anti-Injunction
4 Act's exception. The Ninth Circuit has not expressly stated whether the Declaratory
5 Judgment Act is narrower, see *Hansen v. Dep't of Treasury*, 528 F.3d 597, 602 n.7
6 (9th Cir. 2007), and other courts have held that the provisions are "coterminous."
7
8 *Debt Buyers Ass'n v. Snow*, 481 F. Supp. 2d 1, 8 (D.D.C. 2006) (citing *Nat'l*
9 *Taxpayers' Union v. United States*, 68 F.3d 1428, 1435 (D.C. Cir. 1995)).

10 **The Williams Packing Exception** (*Enochs v. Williams Packing & Navigation Co.*,
11 370 U.S. 1 (1962))

12 Plaintiffs qualify for the judicial exception set forth in *Williams Packing*, 370
13 U.S. at 7-8, based on a showing of equity jurisdiction and success on the merits as it
14 pertains to their unique legal standing.

15 5.3 This Court has interpreted the Treaty of 1855 to forbid regulatory
16 schemes that infringe on Yakama Members' right to travel for commercial purposes.
17 See *Yakama Indian Nation v. Flores*, 955 F. Supp. 1129 (E.D. Wash. 1997), *aff'd sub*
18 *nom. Cree v. Flores*, 157 F.3d 762 (9th Cir. 1998); see also *Hansen*, 528 F.3d at 602
19 (evaluating existing case law to determine whether success on the merits is certain).
20 Because the United States' taxation scheme is directly foreclosed by existing case law,
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1 it cannot succeed on the merits.

2 5.4 Plaintiff Wheeler is a life-long enrolled member of the Confederated
3 Tribes and Bands of the Yakama Nation with clearly established rights under the
4 Yakama Treaty. The Plaintiffs, as Yakama Members and the Tribe itself, are
5 beneficiaries of the right to travel. *United States v. Smiskin*, 487 F.3d 1260, 1265 (9th
6 Cir. 2007). The right to travel includes the right to unfettered access to the highways
7 for commerce and trade. *Id.* Critically, this includes the right to take goods to the
8 market without restriction. *See id.* at 1266.

9 5.5 This Court has previously held that the Treaty of 1855 prohibits the
10 United States from interfering with the Yakama Members' right to travel on public
11 highways and, thus, engage in interstate trade. *Yakama Indian Nation*, 955 F. Supp. at
12 1260.

13 5.6 In *Smiskin*, 487 F.3d 1260 at 1265, the Ninth Circuit held that the Treaty
14 of 1855 forbids regulations affecting the Yakama Members' right to engage in
15 commerce. The Ninth Circuit interpreted the Treaty of 1855 to provide Yakama
16 Members, as individuals, with an "unambiguous[] . . . right to travel the public
17 highways *without restriction* for the purposes of hauling goods to the market." 487
18 F.3d at 1266. *Smiskin* held that, whether a fee or regulation was imposed on
19 commercial behavior by a Yakama Member, "[a]pplying either type of requirement to
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1 the Yakamas imposes a condition of travel that violates their treaty right to *transport*
2 *goods to market* without restriction.” *Id.* (emphasis added).
3

4 5.7 *Smiskin* refused to draw a distinction between the Yakama’s right to
5 travel and right to trade, finding that the right to travel overlaps with the right to trade
6 and, if not given this effect, the right to travel portion of the Treaty would be
7 meaningless. The rights restrict government interference with trade “whether the
8 goods at issue are timber or tobacco products,” because “the right to travel overlaps
9 with the right to trade under the Yakama Treaty” *Id.* at 1266-67. Thus, in
10 *Smiskin*, the court held that the State could not sanction Yakama members “for not
11 providing notice to the State before transporting tobacco for trade or sale.” *Id.* at
12 1266.
13
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15
16 5.8 The tobacco regulatory system that Plaintiffs are subject to is materially
17 indistinguishable from that disapproved by the *Smiskin* court, and is plainly
18 inconsistent with this Court’s interpretation of the “travel” provision of the Treaty of
19 1855. Plaintiffs remain subject to severe regulatory requirements, including federal
20 collection of excise taxes and extensive federal regulations that restricts their manner
21 of engaging in commerce. Specifically, manufacturers of products such as cigarettes
22 are required to operate a bonded warehouse, with the condition on the bond express
23 limitations on the manufacturer’s right to remove the cigarettes from the warehouse
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1 and place them in transportation for commerce. Those limitations include an excise
2 tax that is imposed upon *removal* of the tobacco products from the bonded warehouse.
3
4 26 U.S.C. § 5703(b) (establishing tax to be paid based on time of removal); 26 U.S.C.
5 § 5702(j) (defining removal as removing the tobacco products from bond, that is, from
6 the warehouse).

7
8 5.9 The regulatory restrictions on Plaintiffs’ business also require King
9 Mountain to “prepay” these excise taxes. Such manufacturers are not allowed to
10 move tobacco products from the warehouse without filing a prepayment return and
11 prepaying the tax—that is, paying the tax in advance. 27 C.F.R. § 40.166 (provision
12 for prepayment); 27 C.F.R. § 40.167 (requirement of a prepayment return).

13
14 5.10 These regulations are directly related to the use of public roads, and
15 implicate the right to trade that is provided by the Treaty of 1855’s broad “right to
16 travel” provision. Plaintiffs are subject to this regulatory system in direct
17 contravention of the Treaty of 1855. Therefore, Plaintiffs have shown that there are
18 “no circumstances” under which the government can prevail.

19
20
21 5.11 Mr. Wheeler and King Mountain will suffer irreparable harm from the
22 abridgment of their right to take goods to the marketplace pursuant to the Treaty of
23 1855 and irreversible damage to their business interests. The Yakama Tribe will
24 suffer irreparable injury by the interference with Tribal self-government, the loss of
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1 rights established by the Treaty of 1855, and the overruling of a Tribal Council decree
2 that King Mountain is not subject to taxation. *See, e.g., Kiowa Indian Tribe of*
3 *Oklahoma v. Hoover*, 150 F.3d 1163, 1171 (10th Cir. 1998) (finding irreparable injury
4 based in part on the seizure of assets necessary to run the tribal government and the
5 “concomitant prohibition against full enforcement of tribal laws”); *Seneca-Cayuga*
6 *Tribe v. Oklahoma*, 874 F.2d 709, 716 (10th Cir. 1989) (finding irreparable injury
7 when threatened loss of revenues and jobs created “prospect of significant interference
8 with [tribal] self-government”).
9

10
11
12 **The South Carolina v. Regan Exception** (*South Carolina v. Regan*, 465 U.S. 367
13 (1984)).

14 5.12 This Court has subject matter jurisdiction for the additional reason that
15 no alternative avenue exists for Plaintiffs to vindicate their claim. *South Carolina v.*
16 *Regan*, 465 U.S. 367 (1984). In *Regan*, the Supreme Court held that the purpose of
17 the Anti-Injunction Act was to encourage the efficient collection of federal taxes, and
18 to force taxpayers to use the refund proceeding rather than the federal courts to litigate
19 tax claims. *See* 465 U.S. at 378-80. Consequently, the Court held that the Anti-
20 Injunction Act did not apply when Congress had created no adequate remedy to
21 litigate the claims. *Id.* at 378.
22
23

24 5.13 If Plaintiffs’ rights to be free from the regulatory scheme at issue arise
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1 from the Treaty of 1855, the Anti-Injunction Act is inapplicable. There is no
2 alternative remedy available that would permit the Plaintiffs to obtain the necessary
3 relief with regard to the Yakama Members' treaty rights.
4

5 5.14 Specifically, Plaintiffs Wheeler and King Mountain cannot be afforded
6 adequate relief under the refund proceeding. These Plaintiffs seek not only to
7 challenge a tax action, but an entire regulatory scheme violative of their rights under
8 the Treaty of 1855. A limited tax proceeding can only afford relief that is wholly
9 incomplete for Plaintiffs Wheeler and King Mountain—it could not include, for
10 example, a declaration that the federal *regulatory* scheme at issue violates the Treaty
11 of 1855. This result would be inconsistent with the Anti-Injunction Act and the
12 Treaty of 1855. Thus, the *South Carolina* exception to the Anti-Injunction Act
13 permits Wheeler and King Mountain's suit.
14
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17 5.15 Plaintiff Yakama Tribe has no adequate remedy to enjoin the taxation of
18 its members in violation of the Treaty of 1855, because it is not itself subject to the
19 tax. While the Yakama Tribe is injured by its members being taxed and the associated
20 threat to tribal self-government and economic well being, these harms cannot be
21 remedied in a refund proceeding because the Yakama Tribe is not subject to the tax.
22 Thus, Congress has provided no adequate alternative remedy to an injunction or
23 declaratory relief and the *South Carolina* exception to the Anti-Injunction Act permits
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1 the Yakama Tribe's suit. *See, e.g., South Carolina*, 465 U.S. at 379-80 (South
2 Carolina could sue Treasury Secretary for injunctive relief because the state was not
3 itself subject to tax liability and could not pursue claim by refund proceeding); *In re*
4 *Leckie Smokeless Coal Co.*, 99 F.3d 573, 584 (4th Cir. 1996) (applying South
5 Carolina exception to debtors in bankruptcy who required declaratory judgment about
6 tax liability of a third party, not themselves); *Virginia ex rel. Cuccinelli v. Sebelius*,
7 702 F. Supp. 2d 598, 610 (E.D. Va. 2010) (applying *South Carolina* exception to the
8 Commonwealth of Virginia's challenge to the Patient Protection and Affordable Care
9 Act).

10
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12
13 5.16 For these reasons, the Court has subject matter jurisdiction and may
14 proceed to the merits of the Complaint.

15 VI. CAUSES OF ACTION

16 COUNT I

17 (Declaratory Relief Pursuant to 28 U.S.C. § 2201—Violation of the Treaty of 1855)

18
19
20 6.1 Plaintiffs hereby repeat each and every allegation contained in paragraphs
21 1 through 5.16 of this Complaint as if set forth herein fully at length.

22
23 6.2 Pursuant to the Treaty of 1855, King Mountain is not subject to payment
24 of any monies to Defendants and the programs and/or corporations they administer on
25 behalf of the Federal Government.
26

1 6.14 Enforcement of the TTB regulations against Plaintiffs unduly encroaches
2 upon the supremacy of treaty rights affecting commerce of the Yakama Nation, and
3 federal power over interstate and foreign commerce and commerce with Indians set
4 forth in the United States Constitution, Article I, Section 8, Clause 3, and Article VI,
5 cl. 2.
6

7
8 6.15 Defendant's interpretation, application, and enforcement of the TTB
9 regulations against King Mountain based on the sale and distribution of its King
10 Mountain Products violates the sovereign and commerce rights of the Yakama Nation.
11

12 6.16 Plaintiffs hereby seek a declaratory judgment that Defendants'
13 interpretation, application, and enforcement of the TTB regulations against King
14 Mountain based on the sale and distribution of its King Mountain Products violates
15 the sovereign and commerce rights of the Yakama Nation.
16

17 **COUNT IV**

18 **(Declaratory Relief Pursuant to 28 U.S.C. § 2201—Failure of Executive to Remedy**
19 **Treaty Violations)**

20 6.17 Plaintiffs repeat each and every allegation contained in paragraphs 1
21 through 6.16 of this Complaint as if set forth herein fully at length.
22

23 6.18 The Treaty of 1855 provides that disputes over the protection of the
24 Treaty are to be resolved between the Great Chief, namely the President of the United
25
26

1 States, and the leaders of the Yakama Nation.

2 6.19 The Treaty provides an absolute duty on the Executive to remedy
3 violations of the Treaty by others, including agents of the United States.
4

5 6.20 The President and other members of the Executive Branch were either
6 unwilling, or unable, to remedy the Treaty rights violations suffered by Plaintiff, itself
7 in violation of the Treaty.
8

9 6.21 The President and other members of the Executive Branch failed to give
10 Plaintiffs an audience with the President to address their Treaty violations, itself in
11 violation of the Treaty, and to consider the issues in a government to government
12 consultation and/or in a manner that is consistent with the Treaty and which does not
13 mandate litigation and investigations between the parties.
14

15 6.22 The President and other members of the Executive Branch have failed to
16 follow the Executive Orders and Policy regarding meaningful consultation between
17 the Plaintiffs and the administration to deal with the grievances and serious issues
18 facing members of the Yakama Nation, including in a timely manner that is consistent
19 with the Treaty and which does not mandate litigation and investigations between the
20 parties.
21

22 6.23 Plaintiffs hereby seek a declaratory judgment that Plaintiffs are entitled
23 through the Treaty of 1855, and in accord with the Executive Orders and policies
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1 previously set forth, for meaningful consultation and resolution without threats of
2 litigation, prosecution, or proceedings.

3
4 **V. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs' prays for the following relief:

6 1. That this Court declare King Mountain is not subject to payment of any
7 monies to the TTB or this agency's federal programs;

8 2. That imposing the requirements of the TTB regulations on King
9 Mountain would violate the Treaty of 1855, federal law, and tribal law;

10 3. That Defendants are prohibited under federal law from imposing the
11 requirements of the TTB regulations on King Mountain;

12 4. That King Mountain is entitled to a refund and/or abatement of all
13 monies that have been paid to date under the TTB regulations;

14 5. That Defendants and all others acting on their behalf or in concert with
15 them be enjoined from prohibiting King Mountain from selling its products;

16 6. Plaintiffs hereby seek a declaratory judgment that Plaintiffs are entitled
17 through the Treaty of 1855, and in accord with the Executive Orders and policies
18 previously set forth, for meaningful consultation and resolution without threats of
19 litigation, prosecution, or proceedings.

20 7. For any further relief that this court deems honorable and just.
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DATED this 5th day of April, 2011.

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