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Distributors, Inc., Premium Imports, Inc. d/b/a
La Flor Dominicana, My Father Cigars, Inc.,
Cigar Rights of America, and Premium Cigar
Association

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Rocky Patel Premium Cigars, Inc., Oliva
Cigar Co., Piloto Cigars, Inc. d/b/a
Padrón Cigars, Inc., A. Fuente & Co.,
LLC, Ashton Distributors, Inc.,
Premium Imports, Inc. d/b/a La Flor
Dominicana, My Father Cigars, Inc.,
Cigar Rights of America, and Premium
Cigar Association,

Plaintiffs,

v.

Robert Andres Bonta, in his official
capacity as Attorney General of the State
of California,

Defendant.

Case No. 8:25-cv-2244

**COMPLAINT FOR INJUNCTIVE
AND EQUITABLE RELIEF**

**ACTION SEEKING STATEWIDE
OR NATIONWIDE RELIEF**

1. Violation of the First Amendment of the United States Constitution
2. Violation of the California Administrative Procedure Act, Cal. Gov's Code §§ 13400, *et seq.*
3. Violation of Article I, Sections 8, 10 of the United States Constitution
4. Violation of Article VI, Clause 2 of the United States Constitution
5. Violation of the Fourteenth Amendment of the United States Constitution

Plaintiffs, ROCKY PATEL PREMIUM CIGARS, INC., OLIVA CIGAR CO.,
PILOTO CIGARS, INC. D/B/A PADRÓN CIGARS, INC., A. FUENTE & CO.,

1 ASHTON DISTRIBUTORS, INC., PREMIUM IMPORTS, INC. D/B/A LA FLOR
2 DOMINICANA, MY FATHER CIGARS, INC., CIGAR RIGHTS OF AMERICA,
3 and the PREMIUM CIGAR ASSOCIATION (collectively, “Plaintiffs”) bring this
4 Complaint against the above-named ROBERT BONTA, ATTORNEY GENERAL
5 OF CALIFORNIA (“Defendant”), and in support thereof state the following:

6 **INTRODUCTION**

7 1. Plaintiffs bring this action against Defendant to challenge the
8 enforcement and implementation of Cal. Health & Safety Code § 104559.1 and all
9 rules and regulations associated with it, to establish an additional State premarket
10 review and foreign importation regulation process under the guise of publishing a list
11 of unflavored tobacco products (the “Unflavored Tobacco List”).

12 2. Since 2022, California statutory law has banned the sale of tobacco
13 products with ingredients beyond natural tobacco that add a flavor to the product.
14 *See* Cal. Health & Safety Code § 104559.5. On September 28, 2024, Governor
15 Newsom signed California Assembly Bill 3218, which requires the Attorney General
16 to establish and to maintain into the future the Unflavored Tobacco List: A list of
17 “tobacco product brand styles that lack a characterizing flavor.” Cal. Health & Safety
18 Code § 104459.1(a). Assembly Bill 3218 provides that any “brand style” not
19 included on this list will be banned from sale in California as a flavored tobacco
20 product. The bill goes into effect on January 1, 2026. The Attorney General, in turn,
21 promulgated “emergency” regulations enforcing this requirement. These regulations
22 set up the Attorney General as its own, state-run U.S. Food and Drug Administration
23 (“FDA”), demanding piles of paper and massive fees from tobacco manufacturers in
24 order to conduct a review of each tobacco product before it goes to market and then
25 make a determination whether it is a flavored tobacco product. *See* Cal. Code Reg.
26 tit. 11, § 942 *et seq.*

27 3. The Plaintiffs are manufacturers and importers of premium cigars and
28 trade associations whose members do the same.

1 4. Premium cigars are different than other tobacco products. They are
2 made entirely by hand, from the highest quality, artisan-selected tobacco grown in
3 the best tobacco fields the world has to offer. As currently defined through the federal
4 regulation of premium cigars, they are made solely from natural tobacco, water, and
5 an adhesive: They have no artificial flavors injected into them. *See* 21 C.F.R.
6 § 1114.3. By definition, they are not and cannot be flavored tobacco products.
7 Otherwise, they would fall outside the federal government’s definition of premium
8 cigars.

9 5. They are also used very differently than other tobacco products. They
10 are not abused by those seeking to feed a nicotine addiction, like cigarettes and vapes.
11 They are instead used infrequently, on special occasions, with the median consumer
12 of premium cigars enjoying the product a few times a month. There is no problem
13 of youth using premium cigars. Rather, premium cigar consumers are adults; there
14 is no statistically significant youth usage of premium cigars. Premium cigar
15 consumers average older and better educated on the risks of tobacco products than
16 consumers of other tobacco products. For these reasons, the federal government—
17 under well-reasoned and lengthy administrative and judicial decisions—does not
18 regulate premium cigars like other tobacco products, exempting them from many of
19 the FDA’s premarket review and large product warnings. 21 C.F.R. § 1114.1(d)
20 (exempting premium cigars from premarket review); *see also Cigar Ass’n of Am. v.*
21 *FDA*, 480 F. Supp. 3d 256 (D.D.C. 2020); *Cigar Ass’n of Am. v. FDA*, 5 F.4th 68
22 (D.C. Cir. 2021).

23 6. Enter Assembly Bill 3218 and the California Attorney General’s
24 regulations implementing it. They set up a parallel premarket review system
25 (alongside the federal system) for all tobacco products, including most premium
26 cigars. Under the auspices of rooting out “flavored tobacco products,” they require
27 manufacturers and importers to submit rafts of data, paperwork, product samples, and
28 fees, so the Attorney General can put them under the microscope to determine

1 whether they are flavored. In the hasty process of standing up the regulatory scheme,
2 done without a meaningful opportunity for public comment, the Attorney General
3 bypassed exempting those that qualify as premium cigars under the federal regulatory
4 scheme from this process. After all, premium cigars, as the federal government
5 defines them, are not and cannot be flavored; they may be made only from all-natural
6 tobacco, water, and an adhesive. At the same time, the Attorney General has required
7 a separate submission for each Stock Keeping Unit of a tobacco product. Cal. Health
8 & Safety Code § 104559.1(s)(1). Because premium cigars are made by hand, in
9 different sizes and cuts and box quantities, this is a particularly massive burden from
10 premium cigars. In short, the Attorney General’s regulation places the largest
11 regulatory burden on a sliver of tobacco products—premium cigars—for which *there*
12 *is literally no risk that they are flavored*. This is the very definition of arbitrary and
13 capricious decision-making.

14 7. That is only the beginning of the California regulatory scheme’s
15 illegality. As a part of the Attorney General’s process for determining which tobacco
16 products are flavored, the scheme places greater regulatory burdens on tobacco
17 products—including premium cigars—based on what manufacturers and importers
18 *say* about those products. If a manufacturer were to observe the tasting notes of the
19 all-natural tobacco in a premium cigar, the statute and regulation would classify them
20 as “presumptively flavored” and ineligible for possession or sale. This happens all
21 the time, as the connoisseurs of premium cigars try to describe the qualities of what
22 they are sensing from a particular blend of all-natural tobacco by analogizing them
23 to the tastes or aromas of food and other items. Banning or placing regulatory
24 burdens on products due to what is said about them is a First Amendment problem,
25 and the regulatory scheme does nothing to justify its burden on speech.

26 8. The layering of a new premarket review scheme, on top of the federal
27 government’s, is also preempted. It is one thing to ban the sale of certain products.
28 It is quite another to set up a state official—frankly with no medical or public health

1 expertise—as a parallel U.S. Food and Drug Administration, augmenting the FDA’s
 2 laboratory testing and data submission process for approving the marketing of
 3 tobacco products. California’s effort is preempted by federal law and a violation of
 4 the U.S. Constitution’s Supremacy Clause.

5 9. The regulatory scheme’s treatment of importers under the Unflavored
 6 Tobacco List regime further violates the Import-Export and Foreign and Interstate
 7 Commerce Clauses of the United States Constitution. The challenged regulatory
 8 scheme effectively levies a tax on the import of tobacco products, a privilege reserved
 9 to the federal government. And it requires out of state and foreign corporations—
 10 today—to enter California and remove from local shelves products sent into the State
 11 years ago. This is particularly burdensome with respect to premium cigar
 12 manufacturers, whose products do not fly off the display behind the convenience
 13 store counter in weeks but are stored in specialty shop humidors for years. The
 14 regulatory scheme would hold companies outside the state accountable for products
 15 sent into the State a half-decade or more ago. In the same way, the penalties imposed
 16 by Cal. Health & Safety Code § 104559.1 are retroactive in nature, in violation of the
 17 Due Process Clauses of the Fourteenth Amendment to the United States Constitution
 18 and of Article I, Section 7 of the California Constitution.

19 10. Due to the truncated and rushed pace at which the regulations were
 20 noticed by the Attorney General and subsequently approved, in addition to the
 21 impending deadline for product review for inclusion on the Unflavored Tobacco List,
 22 Plaintiffs are forced to seek emergency relief to avoid significant damages.

23 **JURISDICTION AND VENUE**

24 11. This Court has jurisdiction over the subject matter of this civil action
 25 pursuant to 28 U.S.C. § 1331. This civil action arises under the Constitution, laws, or
 26 treaties of the United States, including the federal Family Smoking Prevention and
 27 Tobacco Control Act and Article I, Sections 8 and 10, and Article VI, Clause 2 of—
 28 and the First and Fourteenth Amendments to—the United States Constitution. The

1 Court also has jurisdiction over the subject matter of this civil action pursuant to 28
2 U.S.C. § 1332. This civil action arises between citizens of different states such that
3 complete diversity exists, and the amount in controversy exceeds \$75,000. The Court
4 has supplemental jurisdiction over claims arising under California law pursuant to 28
5 U.S.C. § 1367.

6 12. The Court has general personal jurisdiction over the Attorney General
7 of California because his actions and authority extends across the State of California,
8 including in the Central District of California.

9 13. Venue is proper in the Central District of California under 28 U.S.C.
10 § 1391(b)(1) because a substantial part of the events or omissions giving rise to the
11 claim occurred, or a substantial part of property that is the subject of the action is
12 situated, in the Central District of California. The regulatory scheme specifies in
13 detail how premium cigars must be handled through the Central District, including
14 requiring premium cigar manufacturers and retailers to police the shelves of scores
15 of corner store tobacconists located throughout the Central District of California.

16 **THE PARTIES**

17 14. The individual manufacturer and distributor Plaintiffs are the most
18 renowned artisans of premium cigars in the world. Their companies' namesakes are
19 synonymous with tradition and quality in growing and selecting the best tobacco and
20 crafting it by hand into the finest cigars: Jorge Padrón, Rocky Patel, Carlito Fuente,
21 Litto Gomez, and Jose Pepin Garcia. Their companies' brands announce the highest
22 quality product, Padrón Cigars, Rocky Patel Premium Cigars, Arturo Fuente Cigars,
23 Oliva Cigar, and Ashton Cigars.

24 15. Plaintiff Rocky Patel Premium Cigars, Inc. ("RPPC") is and was at all
25 times material here a corporation incorporated in Florida and with its headquarters at
26 4244 Corporate Square, Naples, Florida, 34104. Plaintiff Oliva Cigar Co. ("Oliva")
27 is and was at all times material here a corporation incorporated in Florida and with
28 its headquarters at 13955 N.W. 60th Avenue, Miami Lakes, Florida, 33014. Plaintiff

1 Piloto Cigars, Inc. d/b/a Padrón Cigars, Inc. (“Padrón”) is and was at all times
2 material here a corporation incorporated in Florida and with its headquarters at 1575
3 S.W. 1st Street, Miami, Florida, 33135. A. Fuente & Co., LLC (“Arturo Fuente”) is
4 and was at all times material here a corporation incorporated in Florida with its
5 headquarters as 2701 North 16th Street, Tampa, Florida 33605. Premium Imports,
6 Inc. d/b/a/ La Flor Dominicana (“La Flor Dominicana”) is and was at all times
7 material here a corporation incorporated in Florida and with its headquarters at 123
8 San Lorenzo Avenue, Coral Gables, Florida 33146. Plaintiff My Father Cigars, Inc.
9 is and was at all times material here a corporation incorporated in Florida and with
10 its headquarters at 1890 NW 96th Avenue, Doral, Florida 33172. RPPC, Oliva,
11 Padrón, Arturo Fuente and its affiliates, La Flor Dominicana, and My Father Cigars
12 manufacture, import, and distribute premium cigars from Nicaragua, Honduras,
13 and/or the Dominican Republic with only the highest quality ingredients and with the
14 utmost care to produce fine, artisan cigars sold and enjoyed around the world.

15 16. Plaintiff Ashton Distributors, Inc. (“Ashton”) is and was at all times
16 material here a corporation incorporated in Pennsylvania and with its headquarters at
17 12270 Townsend Road, Philadelphia, Pennsylvania, 19154. Ashton imports
18 premium cigars, as defined by the federal regulatory scheme, from the Dominican
19 Republic, Nicaragua, and other countries and then distributes them into California.

20 17. Plaintiff Cigar Rights of America (“CRA”) is a national trade
21 association comprised of premium cigar manufacturers, distributors, and retailers,
22 giving a voice to the premium cigar industry on matters of legislation and regulation.
23 With a membership that spans 50 states, CRA advocates for members across the
24 supply spectrum, including growers, logistics, and associated supporting enterprises
25 for the premium cigar industry.

26 18. Plaintiff Premium Cigar Association (“PCA”) is a national trade
27 association representing specialty tobacco retailers and supports manufacturers of the
28 finest tobacco products. PCA advocates for the premium tobacco industry, including

1 premium cigar manufacturers, importers, and distributors, at the state and federal
2 level to raise issues of concern to legislators across the country.

3 19. Plaintiffs RPPC, Oliva, Padrón, Arturo Fuente, Ashton, La Flor
4 Dominicana, and My Father Cigars, import and distribute premium cigars that meet
5 the eight-part definition of those products used by the FDA. Specifically, these
6 premium cigars are (1) wrapped in whole-leaf tobacco; (2) contain 100 percent
7 whole-leaf tobacco binder; (3) contain at least 50 percent (filler by weight) long-filler
8 tobacco; (4) made by hand (handmade or hand rolled); (5) do not have a filter,
9 nontobacco tip, or nontobacco mouthpiece; (6) do not have any characterizing flavor
10 other than tobacco; (7) contain only tobacco, water and vegetable gum with no other
11 ingredients or additives; and (8) weigh more than 6 lbs. per 1,000 units. 21 C.F.R.
12 § 1114.3. Those companies, in conjunction with the CRA and PCA on behalf of their
13 manufacturer and distributor members, are seeking relief from the aforementioned
14 California regulatory scheme solely to the extent it applies to their products meeting
15 the federal definition of a premium cigar.

16 20. The Plaintiff manufacturers carefully select the best tobacco from each
17 harvest to blend superb products. As do vintners of the finest wines, the Plaintiff
18 manufacturers often seek to describe the features of their masterpiece, all-natural
19 tobacco blends in terms that analogize the tastes and aromas of the tobacco to those
20 coming from foods or other items. These descriptions do not make the tobacco
21 anything other than tobacco, just as similar descriptions of a Bourdeaux wine make
22 it anything other than fluid from crushed grapes. Taste profiles of cigars often
23 emphasize notes of fruit, leather, nuts, or caramel.

24 21. Plaintiffs import their premium cigars from the Dominican Republic,
25 Nicaragua, Honduras, and a handful of other countries where the climate is right to
26 grow the finest tobacco to their domestic headquarters in Florida and Pennsylvania.
27 From there, the cigars are sold wholesale and shipped to corner store tobacconists
28 with specialized humidors to store the products. There, premium cigars can stay for

1 years or decades, continuing to age and improve, waiting for a consumer to come in
2 and select them. Alternatively, some of the Plaintiffs sell and ship premium cigars
3 directly to consumers from their domestic headquarters through online and other
4 remote sales.

5 22. Because of how premium cigars are made—by artisans selecting best
6 tobacco from a harvest and by hand—they come in many different blends and sizes.
7 Just one artisan manufacturer of premium cigars can have thousands of Stock
8 Keeping Units (“SKUs”) of premium cigars, each representing a different blend, size,
9 and aging of a fine, high-quality artisan product revered the world over. This massive
10 number of premium cigars SKUs set the burden of the regulatory scheme on premium
11 cigars manufacturers and importers apart from that on manufacturers of cigarettes
12 and other tobacco products. Cigarette and mass-produced cigar manufacturers have
13 a few dozen SKUs, each representing millions of sales. The burden and expense of
14 the regulatory scheme multiplies with each SKU, bizarrely placing the largest load
15 on the premium cigar manufacturers who cannot produce a flavored product.

16 23. Each Plaintiff has sold premium cigars in the United States for more
17 than three decades, and as such many of its products sold in years and even decades
18 past are likely still held by tobacconists and other retailers in California. Premium
19 cigars do not expire, but instead continue to age and refine for years after they are
20 first offered for sale, much like a bottle of fine wine.

21 24. Defendant, Robert Andres Bonta, is and was at all times material here a
22 resident of the State of California. Defendant currently serves as the Attorney
23 General of the State of California, serving in this role since April 23, 2021. The
24 Attorney General’s principal office is located at 1300 I Street, Sacramento, CA
25 95814.

BACKGROUND FACTS

A. Premium Cigars are by Definition Made of All-Natural Tobacco and Not Flavored

25. Premium cigar making is a labor-intensive art form that requires dedication, passion, skill, knowledge, and love. It can take four to five years from the time a seedling is planted in the ground to the time the cigar is placed in a box. Around 300 different hands touch the tobacco along the way.

26. The federal regulatory scheme defines what is a premium cigar. They must (1) be wrapped in whole-leaf tobacco; (2) contain 100 percent whole-leaf tobacco binder; (3) contain at least 50 percent (filler by weight) long-filler tobacco; (4) made by hand (handmade or hand rolled); (5) not have a filter, nontobacco tip, or nontobacco mouthpiece; (6) not have any characterizing flavor other than tobacco; (7) contain only tobacco, water and vegetable gum with no other ingredients or additives; and (8) weigh more than 6 lbs. per 1,000 units. 21 C.F.R. § 1114.3.

27. The Plaintiffs use all-natural, aged, expensive, long-filler, wrapper, and binder tobaccos. The high-quality tobacco required for this artisanal product is sourced from several countries such as Ecuador, Mexico, Brazil, Nicaragua, Honduras, the Dominican Republic, the United States, and Cameroon. Each country and farm have different growing regions and several varieties of seeds, notable because the geological location of a farm along with the seed varietal that is used impacts the flavor, taste, and aroma of each tobacco crop. Just like in the wine industry where the grape varietal (chardonnay, cabernet, etc.) and country of origin/region are relevant to a wine's unique taste, the countries of origin, the region, the seed varietal, and the method of how the tobacco is farmed determines the taste profiles for premium cigars. Several hundred people farm and pick the tobacco, which takes about 90 to 100 days to grow.

28. Once the tobacco is harvested, it must be cured in a curing barn, a process by which the stem of each leaf is tied with a sewing needle and thread.

1 Curing barns can be up to 80 yards long and 50 feet wide, filled from top to bottom
2 with hung tobacco and maintained at exactly the right temperature and humidity. It
3 takes 90 days for the tobacco to be dried and cured.

4 29. To make a high-quality cigar, the most important part of the process is
5 the fermentation and aging of the tobacco. After adding nothing but the cleanest
6 water to the tobacco, the tobacco is gently and carefully laid in artisan piles called
7 “pilónes.” Depending on the temperature, every 15 to 30 days the leaves are carefully
8 reshuffled from top to bottom, bottom to top, inside out, and outside in. It takes a
9 true artisan with years of experience to recognize when the tobacco will be ready
10 based on smell, touch, and feel. Fermentation can take as long as four years.

11 30. Craftsmen then allow most of the tobacco to age for at least four years.
12 In the case of vintage blends, the tobacco can be aged for seven to ten years. It is a
13 very expensive proposition that requires inventory management and storage.

14 31. The fermenting and aging processes require physical infrastructure for
15 proper storage of the tobacco leaves. Once completed, the cigars must be hand-rolled
16 by teams of two artisan rollers working in tandem. These teams dedicate several
17 minutes of time and attention to each cigar, which are then moved to molds and
18 pressed. Within the molds, the cigars are rotated every 15 minutes, and then pressed
19 again, until they are perfectly round. The process can take up to an hour and the
20 roller teams produce only a couple hundred cigars per day on average. The cigars
21 then go through an inspection process, including layers of quality control by artisans
22 with decades of experience, before they are let to rest for months in an aging room.
23 Alongside this lengthy process, producers design the artistry around the cigar bands
24 and the boxes, and commission their production, often from overseas.

25 32. Cigar aficionados look forward to limited releases, vintage releases,
26 and new blends every year, always searching for new, interesting products. Premium
27 cigars come in different sizes and shapes with different taste profiles enjoyed by
28 connoisseurs across the world. Their characteristics are rich and complex, delivering

1 balanced tasting notes from the carefully selected, all-natural tobacco. Just as a
 2 sommelier would describe a prize vintage wine, premium cigars might be
 3 characterized in magazines, such as Cigar Aficionado, by tasting notes of fruit,
 4 leather, nuts, or caramel. Manufacturers and their leaders and employees attempt to
 5 capture these qualities of the natural tobacco as well, in describing the tasting or
 6 aroma notes of the blends they have curated. Just as a description of the tasting notes
 7 of a fine wine does not mean it has anything in it other than what has come from the
 8 grapes, these observations about premium cigars does not mean they have any
 9 physical characteristics other than all-natural tobacco leaf and water.

10 33. Premium cigars are different than other tobacco products, including
 11 mass-produced cigars, cigarettes, and vaping products, because they are consumed
 12 infrequently, often to celebrate a special occasion, like a fine wine or a rare bourbon.
 13 Consumers of premium cigars are generally older and better educated about the risks
 14 of tobacco products than consumers of other tobacco products. That is reflected in
 15 usage patterns that do not reflect an abuse of those products.

16 **B. Congress Gave the FDA Authority to Decide Which Tobacco Products to**
 17 **Subject to a Premarket Review System, and How.**

18 34. In 2009, Congress enacted the Family Smoking Prevention and Tobacco
 19 Control Act (“FSPTCA” or the “Act”) to grant FDA the authority to regulate tobacco
 20 products. In pertinent part, Congress “recogniz[ed] [the FDA] as the primary federal
 21 regulatory authority with respect to the manufacture, marketing, and distribution of
 22 tobacco products....” Pub. L. No. 111-31 § 3, 123 Stat. 1776, 1781-82 (2009). The
 23 Act immediately subjected cigarettes, smokeless tobacco, and roll-your-own tobacco
 24 to detailed statutory and regulatory requirements. The Act further granted the FDA
 25 sole authority to apply that regulatory scheme to or otherwise regulate “any other
 26 tobacco products” it “deems to be subject to this subchapter.” 21 U.S.C. § 387a(b).

27 35. Among other things, Congress set up and put the FDA in charge of a
 28 detailed and massive “premarket review system.” Under that system, tobacco

1 manufacturers must submit tobacco products entering the market after 2007 to the
 2 FDA for extensive testing and affirmative approval. 21 U.S.C. § 387j(a)(1)-(2). In
 3 addition, manufacturers must submit all manner of information and materials for
 4 products that entered the market prior to 2007. Failure to obtain pre-market review
 5 subjects tobacco manufacturers to civil or criminal penalties from FDA, as well as
 6 seizure of products, for “adulterated” or “misbranded” products. 21 U.S.C. §§ 332-
 7 334, 387(b), 387(c)(6).

8 36. On April 25, 2014, FDA proposed a rule to make a series of decisions
 9 about whether and which tobacco products other than cigarettes, smokeless tobacco,
 10 and roll-your-own tobacco should be similarly regulated. 79 Fed. Reg. 23,142 (Apr.
 11 25, 2014) (“Proposed Deeming Rule”). Therein, the FDA considered whether it
 12 should treat premium cigars differently than other tobacco products. *Id.* at 23,143.
 13 FDA proposed to treat premium cigars differently because studies show that premium
 14 cigars are consumed less frequently and have significantly lower youth-smoking
 15 rates as compared to other tobacco products, and thus impact public health
 16 differently. *Id.*

17 37. To date, the FDA has not issued a valid rule requiring that premium
 18 cigars go through the premarket review, testing, and other requirements that apply to
 19 other cigars and cigarettes. The FDA previously attempted to do so, but the rule was
 20 vacated by the federal courts as to premium cigars because it did not sufficiently
 21 address data that the FDA requested and received regarding the differences between
 22 premium cigars and other tobacco products, and the different need for premarket
 23 review and other regulatory measures for premium cigars given these differences.
 24 *See Cigar Ass’n of Am. v. FDA*, 436 F. Supp. 3d 70 (D.D.C. 2020)¹; *see also Cigar*
 25 *Ass’n of Am. v. FDA*, 964 F.3d 56, 63 (D.C. Cir. 2020); *Cigar Ass’n of Am.*, 480 F.
 26 Supp. 3d at 261. The FDA adopted this special regulatory treatment for premium

27 ¹ In crafting its remedy when striking down the product warning requirements, the District Court
 28 for the District of Columbia adopted the definition of “premium cigars” provided by the FDA,
 which is the definition reflected in Paragraph 26, *supra*.

1 cigars into its formal regulations, including a definition of what cigars would qualify
2 as “premium.” *See* 21 C.F.R. § 1107.12; *see also* 21 C.F.R. § 1114.3.

3 38. Under federal policy, therefore, premium cigars that meet each of the
4 eight parts of the federal regulatory scheme’s definition of premium cigars need not
5 go through a SKU by SKU, product by product, premarket review process. A big
6 part of the rationale for the federal approach to premium cigars is that the FDA’s
7 definition of them forbids them from being flavored.²

8 **C. California Seeks to Impose Its Own Pre-Market Review Process That**
9 **Incorrectly Defines Premium Cigars and Would Restrict**
10 **Constitutionally-Protected Speech.**

11 39. On August 28, 2020, Senate Bill 793 (“SB 793”) passed the California
12 Senate and was presented to Governor Gavin Newsom for approval and enrollment.
13 SB 793’s stated purpose was to “prohibit a tobacco retailer . . . from selling, offering
14 for sale, or possessing . . . a flavored tobacco product[.]” S.B. 793, Gen. Assemb.,
15 Reg. Sess. (Cal. 2020). Sales of flavored tobacco products became prohibited
16 following the law’s approval in a 2022 referendum. *See* Cal. Health & Safety Code
17 § 104559.5. For the purposes of the law, a flavored tobacco product is one that
18 contains a constituent that imparts a characterizing flavor, which is a taste or odor
19 other than tobacco. *See* Cal. Health & Safety Code § 104559.5(a)(1), (6).

20 40. On September 28, 2024, Governor Newsom signed Assembly Bill 3218
21 (“AB 3218”), which sought to layer a premarket review system and speech
22 restrictions on tobacco products, somehow in the name of advancing enforcement of
23 the flavored tobacco products ban. A.B. 3218, Gen. Assemb., Reg. Sess. (Cal. 2024).

24 41. The new law directs the Attorney General to establish and maintain an
25 Unflavored Tobacco List of approved unflavored tobacco products. That sounds

26 ² U.S. Food and Drug Administration, *Enforcement Priorities for Electronic Nicotine Delivery*
27 *Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization*
28 *(Revised)** at 31 (April 30, 2020), <https://www.fda.gov/media/133880/download> (stating that premium cigars are the agency’s lowest enforcement priority with respect to the premarket authorization requirements).

1 innocuous enough, except for the regulations implementing the law. They require
2 manufacturers and importers of tobacco products to submit a full-fledged premarket
3 review application for every brand of tobacco product they have. This phalanx of
4 data includes detailed descriptions of the products dimensions and ingredients, high-
5 resolution image files of the product's packaging, trademark information for the
6 product, every determination by a governmental authority on the product, and
7 documentation for the product's submission for FDA pre-market review or why such
8 review has not been sought or received. Cal. Health & Safety Code § 104559.1(a)-
9 (b); *see also* Cal. Code Reg. tit. 11, § 945(c). The law further states that each separate
10 Stock Keeping Unit constitutes a separate product for which a separate application to
11 the Unflavored Tobacco List must be submitted. Cal. Health & Safety Code
12 § 104559.1(s)(1).

13 42. If the Attorney General—for some or any reason, including an omission
14 in the detailed records required for submission—decides not to place a tobacco
15 product on the Unflavored Tobacco Product List, the manufacturer or importer of the
16 product is required to send an army of personnel into California retailer stores and
17 make sure those products are immediately removed from the shelf. *Id.* at (g), (o)(3).

18 43. The regulatory scheme further imposes massive burdens on
19 manufacturers or retailers depending on what they say about their products. The
20 scheme restricts speech, by creating a rebuttable presumption that a tobacco product
21 must be kept off the list and thus evaporated from California retail shelves if its
22 manufacturer or importer—their agents or employees—makes a statement or claim
23 to consumers or the public that explicitly or implicitly communicates that the product
24 has or produces a taste or odor other than tobacco. *Id.* at (d); *see also*
25 § 104559.5(a)(1) (defining “characterizing flavor” as including tastes or odors).

26 44. The Attorney General is required to publish the Unflavored Tobacco
27 List by December 31, 2025. The obligation of manufacturers and importers to make
28 sure that products not making the list are disappeared from retail stores they neither

own or control takes effect the very next day. Cal. Health & Safety Code § 104559.1(m). If an unlisted product is thereafter found in any retail store in California, no matter when the product was sent to the State, the penalties on manufacturers and retailers are massive, including exposure to civil penalties of up to \$10,000 per cigar not listed on the Unflavored Tobacco List, as well as mandatory fees and costs incurred in investigating and prosecuting the enforcement action awarded to the Attorney General. *Id.* at (o)(3), (p).

45. AB 3218 also revises the flavored tobacco product ban, exempting “premium cigars” from prohibition for possessing characterizing flavors. *See* Cal. Health & Safety Code § 104559.5(d)-(e). However, “Premium cigars” are defined differently in the new statute than the federal regulatory scheme’s eight-part definition:

any cigar that is handmade, is not mass produced by use of mechanization, has a wrapper that is made entirely from whole tobacco leaf, and has a wholesale price of no less than twelve dollars (\$12). A premium cigar does not have a filter, tip, or nontobacco mouthpiece and is capped by hand.

Id. at (a)(13). As defined by the federal system, premium cigars cannot be flavored. The California definition contemplates a flavored premium cigar, which is a categorical error in the federal system. The California definition also omits the whole-leaf binder, long-filler, and three-ingredient requirements, and includes a wholesale price threshold. In this way, the California definition contrasts with the federal definition in that the federal definition looks to how and from what materials a premium cigar is made, not the price at which it is sold. Premium cigars are expensive because of the costly process of making the product by hand and the high price of the best quality whole tobacco leaf. The California rewrite limits premium cigars to those with a wholesale price of \$12. With the standard premium markup, this limits the category to cigars sold at \$25 *each*, or \$500 for a box of 20. That is

1 not just expensive, it reaches just a fraction of the premium cigar market as defined
2 by the federal system.

3 46. On August 6, 2025, the Attorney General issued a notice of issuing the
4 Unflavored Tobacco List Regulations, implementing AB 3218. The regulations were
5 adopted on August 25, 2025, as emergency regulations necessary for the immediate
6 preservation of public health, safety, and welfare and thus eliminated any meaningful
7 opportunity for public comment on their proposed content. *Id.* at (q). The Finding
8 of Emergency made by the Attorney General indicates that the proposed regulations
9 are an emergency because of legislative mandate. The statute includes no support
10 for the proposition that implementing the statute—much less with respect to premium
11 cigars—presented an emergency to public health, safety, and welfare. *Id.*

12 47. The regulations detail the massive amount of information manufacturers
13 and importers must submit as part of the Attorney General’s new premarket review
14 process. Those items include detailed dimensions and specifications of products,
15 high-resolution images of the product’s packaging, trademark information, details on
16 whether the product has received FDA pre-market review or why such review has
17 not been sought or received. *See* Cal. Code Reg. tit. 11, § 945(c).

18 48. Premium cigar manufacturers must provide samples of each Stock
19 Keeping Unit to the Office of the Attorney General “in the largest packaging unit of
20 the Brand Style marketed for retail sale,” which for most premium cigars would be
21 an entire box of 20 cigars. *Id.* at § 947(b)(5). Requiring samples of each Stock
22 Keeping Unit is especially burdensome on the premium cigar industry because even
23 premium cigars of the same blend have numerous Stock Keeping Unit because of the
24 many different shapes, sizes, and natural tobacco blends of these hand-made
25 products. Due to the uniqueness of each blend, in part because of minor variations
26 in aging, source of the tobacco, tobacco varietal, and fermentation processes,
27 Plaintiffs each have many thousands of SKUs for their premium cigars.

28 49. The Attorney General may also require provision of further

1 information—such as that on ingredients and consumer surveys—if he finds an
2 application insufficient. *Id.* at § 949(a).

3 50. The regulations set forth massive fees: \$300 per premium cigar “brand
4 style.” Annual fees to maintain a product’s inclusion on the Unflavored Tobacco
5 List are \$150 per premium cigar “brand style.” *Id.* at § 954(a)-(c). Further, the statute
6 authorizes the Attorney General to charge up to \$1,000 per SKU to register the
7 product, as well as up to \$1,000 per year for renewal fees. Cal. Health & Safety Code
8 § 104559.1(k)(1).

9 51. In addition, tobacco manufacturers are required to purchase and
10 maintain an import license from the California Department of Tax & Fee
11 Administration (“CDTFA”). Any purchasers of foreign-manufactured premium
12 cigars “for the purpose of making a first sale or distribution within the United States”
13 are “importers” under California law. Cal. Rev. & Tax Code § 30019. Importers of
14 “tobacco products shall obtain and maintain a license” under the CDFTA “to engage
15 in the sale of tobacco products.” Cal. Bus. & Prof. Code § 22979.21.

16 52. When the law goes into effect, it requires manufacturers and importers
17 to ensure that no retailer in the state has on its shelf cigar they at any point had
18 manufactured or imported, at any point in the past. The statute does not grandfather
19 in products already sold into California, which could subject each of the Plaintiffs to
20 millions of dollars of liability for premium cigars sent to retailers years ago should
21 the Attorney General for some reason not list the product.

22 53. AB 3218 calls for stringent penalties against manufacturers and
23 importers found to violate the statute or the regulation implementing it, allowing
24 Attorney General to assess civil penalties of not more than \$2,000, \$3,500, \$5,000,
25 or \$6,500 for the first four violations within a five-year period, respectively,
26 measured per product sold. Cal. Health & Safety Code § 104559.1(o)(3)(A)-(D).
27 For the fifth and every subsequent violation in the five-year period, the Attorney
28 General may assess a civil penalty of not more than \$10,000 per premium cigar sold

1 but not appearing on the Unflavored Tobacco List. *Id.* at § 104559.1(o)(3)(E).
2 Further, the statute provides that if the Attorney General succeeds in a civil action to
3 enforce his assessment, “the court shall award to the Attorney General all costs of
4 investigating and prosecuting the action” including attorneys’ fees and costs. *Id.* at
5 (p).

6 54. On September 18, 2025, the Attorney General issued a press release
7 reminding tobacco manufacturers to submit Unflavored Tobacco List applications in
8 a timely fashion. *See* Rob Bonta, “Committed to Protecting Youth Health: Attorney
9 General Bonta Reminds Tobacco Manufacturers and Importers to Submit
10 Applications for Unflavored Tobacco List by October 9,” Attorney General of the
11 State of California (Sept. 18, 2025), available at [https://oag.ca.gov/news/press-](https://oag.ca.gov/news/press-releases/committed-protecting-youth-health-attorney-general-bonta-reminds-tobacco)
12 [releases/committed-protecting-youth-health-attorney-general-bonta-reminds-](https://oag.ca.gov/news/press-releases/committed-protecting-youth-health-attorney-general-bonta-reminds-tobacco)
13 tobacco. In this press release, the Attorney General informed the industry that
14 applications submitted on or before October 9, 2025 would receive an inclusion
15 determination by the December 31, 2025. *Id.*

16 55. The Attorney General first noticed the regulations requiring Plaintiffs
17 collect a plethora of information on each of its thousands of Stock Keeping Units on
18 August 5, 2025, which were then approved on August 26, 2025. By requiring
19 submissions by October 9, the Attorney General provided Plaintiffs a mere 44 days
20 from approval to collect tens of thousands of data points on all of its products and
21 prepare its submission for the Attorney General’s new premarket review process. To
22 meet such truncated deadlines, Plaintiffs would have to draw hundreds of hours of
23 employee time away from actual business activities. The Attorney General has
24 arbitrarily set extremely tight compliance deadlines for Plaintiffs and denied them
25 the opportunity to comment on the proposed “emergency” regulations.

26 56. On September 10, 2025, Plaintiff PCA, a trade association representing
27 corner-store retailers and manufacturers of premium cigars, requested that the
28 Attorney General’s extend the deadline for initial premarket review submissions

1 from October 9, 2025 to December 9, 2025. The Attorney General's office responded
 2 on September 25, 2025, summarily denying the request. *See* September 25, 2025
 3 Letter at 1, attached hereto as Exhibit A. Further, the Attorney General's office took
 4 the opportunity to reemphasize the penalties for non-inclusion on the Unflavored
 5 Tobacco List, as well as further penalties to wholesalers and retailers in possession
 6 of products not on the list. *Id.* at 2.

7 **D. The Attorney General's Arbitrary October 9 Deadline Threatens**
 8 **Irreparable Harm on the Plaintiff, Family-Owned Manufacturers of**
 9 **Premium Cigars.**

10 57. The Attorney General is threatening to push the premium cigar industry
 11 off a cliff. A little more than a month ago, he set an October 9 deadline to assemble
 12 information that would take months or years to compile. Missing that deadline would
 13 blow a hole in the family-owned manufacturers of premium cigars, subjecting them
 14 to massive penalties in the largest state of the union. And the Attorney General is
 15 doing this to a class of products—premium cigars—that are *by definition* not flavored
 16 in the name of rooting out flavored products.

17 58. On this compressed schedule and absent judicial relief, one thing is for
 18 certain: Plaintiff manufacturers will have to reduce the number of products and
 19 blends they offer in California and preparing the submissions for the thousands of
 20 bespoke blends and cuts they produce, on this timeframe and at this expense, would
 21 be impossible. They will forfeit significant revenue and damage their brand presence
 22 in California, and none of these costs are likely recoverable against the State due to
 23 its sovereign immunity. Although some Plaintiffs estimate they will remove up to
 24 50% of their offerings from California, others will be forced to remove all of them.

25 59. In addition, because the certifications need to be updated on an annual
 26 basis, Plaintiffs would be restricted from releasing seasonal blends or changing
 27 packaging for their products mid-year. And the cost of complying with the AB 3218
 28 reporting requirements would require significant time and expense.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Violation of the First Amendment of the United States Constitution)

60. Plaintiffs repeat and reallege paragraphs 1 through 59 hereof, as if fully set forth herein.

61. The First Amendment to the United States Constitution forbids “abridging the freedom of speech.” U.S. Const. Amend. I.

62. The regulatory scheme presumptively bans a cigar if the “manufacturer or importer [of the cigar] . . . has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, any text, color, or images on the product’s labeling or packaging, that explicitly or implicitly communicates that the tobacco product has a characterizing flavor,” which it defines as “a taste or odor, distinguishable by an ordinary consumer either prior to or during the consumption of a tobacco product, other than the taste or odor of tobacco.” Cal. Health & Safety Code § 104559.1(d); Cal. Code Regs. tit. 11, § 942(f).

63. Each Plaintiff makes premium cigars solely of the best all-natural tobacco and describes the tasting notes of those products. Ashton describes its Heritage Puro Sol premium cigars are having notes of “cocoa, cedar, leather, caramel, [and] spices.”³ Oliva describes its Serie V premium cigar as “with rich coffee and dark chocolate tones [and] [a] subtle and well balanced spice[.]”⁴ Padrón describes its Padrón 1964 Anniversary Series Torpedo (Natural) premium cigar as possessing “[n]otes of hazelnut” that “segue into a rich, opulent smoke of cocoa bean that settles onto the palate like the fine confections of a chocolatier.”⁵ RPPC describes its

³ Ashton Distributors, “Ashton Heritage Puro Sol,” ashtoncigar.com (2025), available at <https://ashtoncigar.com/cigars/ashton/ashton-heritage-puro-sol>.

⁴ Oliva Cigar, “The Serie V,” olivacigar.com (2025), available at <https://olivacigar.com/cigars/serie-v/>.

⁵ Padrón Cigars, “2021 Cigar Aficionado Cigar of the Year,” padron.com (2025), available at <https://padron.com/2021-cigar-aficionado-cigar-of-the-year/>.

1 Conviction premium cigar as one in which “notes of caramel, honey, coffee, espresso,
 2 and chocolate intertwine harmoniously.”⁶ La Flor Dominicana describes its
 3 Andalusian Bull premium cigar as possessing flavors of “a myriad of spices and a
 4 touch of sweetness.”⁷ Arturo Fuente describes its Rare Pink Vintage 1960 premium
 5 cigars as “cedary and herbal” and taking on a “nutty, graham cracker sweetness.”⁸

6 64. The foregoing descriptions do not indicate the premium cigars are made
 7 of anything other than natural tobacco or have flavors injected into the tobacco. They
 8 are simply ways of vividly writing about the senses provided by the tobacco itself,
 9 analogizing it to the experiences of food or other items.

10 65. The descriptions are indistinguishable from what artisan vintners say
 11 about the complexity of their wine. At the end, those vintage wines are just fluid
 12 pressed from grapes, aged to perfection; premium cigars are just the best tobacco
 13 selected by experts, aged in much the same way.

14 66. Cal. Health & Safety Code § 104559.1(d) attaches a significant legal
 15 consequence and burden on a manufacturer describing the tasting notes of its product,
 16 subjecting those products to expense and potential bans.

17 67. The regulatory scheme restricts the speech of Plaintiffs and other
 18 premium cigar manufacturers. If they describe their natural tobacco, they are
 19 penalized with administrative red tape and a potential ban.

20 68. Singling out products for regulatory burdens based on what is said about
 21 them, as opposed to their physical qualities, is a restriction of commercial speech.

22 69. A restriction of commercial speech violates the First Amendment to the
 23 United States Constitution unless it (i) is restricting speech that is misleading or

24
 25 ⁶ Rocky Patel Premium Cigars, Inc., “Conviction,” rockypatel.com (2025), available at
<https://www.rockypatel.com/cigar/conviction/>.

26 ⁷ La Flor Dominicana, “Andalusian Bull,” laflordominicana.com (2023), available at
<https://www.laflordominicana.com/andalusian-bull>.

27 ⁸ Arturo Fuente Cigar, Co., “Arturo Fuente Rare Pink Vintage 1960’s Series Sophisticated Hooker
 28 Awarded #10 in Cigar Aficionado’s Top 25 Cigars of 2022,” arturofuente.com (2025), available
 at [https://arturofuente.com/title-arturo-fuente-rare-pink-vintage-1960s-series-sophisticated-
 hooker-awarded-10-in-cigar-aficionados-top-25-cigars-of-2022/](https://arturofuente.com/title-arturo-fuente-rare-pink-vintage-1960s-series-sophisticated-hooker-awarded-10-in-cigar-aficionados-top-25-cigars-of-2022/).

1 concerns unlawful activity, or (ii) the restriction directly and materially advances a
2 substantial governmental interest and is no more extensive than necessary to further
3 that interest. *See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New*
4 *York*, 447 U.S. 557, 566 (1980).

5 70. Plaintiffs' describing the tasting notes of their natural tobacco premium
6 cigars is not false or misleading. Nor does that speech concern unlawful activity.

7 71. The State and its Attorney General has identified no substantial
8 government interest in restricting speech about premium cigars or their tasting notes.
9 The purpose of barring flavored tobacco products has no application to products
10 qualifying as premium cigars under the federal regulatory system, as they by
11 definition cannot be flavored. Premium cigars are a low enforcement priority for the
12 FDA because they are products catered to, and consumed primarily by, adults.

13 72. The California regulatory scheme's restriction of speech is far more
14 extensive than necessary to serve any substantial government interest.

15 73. There are obvious alternatives to the above-described restriction that
16 would impede less constitutionally protected commercial speech and achieve
17 whatever substantial state interest the State is pursuing, if there is one.

18 74. For example, the State and/or the Attorney General could have
19 exempted from their regulatory scheme products qualifying as premium cigars under
20 the federal regulatory system because they are by definition not flavored.

21 75. Second, the State and the Attorney General could have avoided any
22 speech restriction at all, by banning additives to tobacco meant to flavor a product.

23 76. The California regulatory scheme's restriction on speech also violates
24 the First Amendment because it is vague.

25 77. Vagueness "raises special First Amendment concerns because of its
26 obvious chilling effect on free speech." *Reno v. ACLU*, 521 U.S. 844, 871–72 (1997).
27 Laws touching on speech must speak "only with narrow specificity." *NAACP v.*
28 *Button*, 371 U.S. 415, 433 (1963).

78. The challenged California regulatory scheme does the opposite, making it exceedingly difficult for Plaintiffs to understand what exactly is a statement or claim, or labeling or packaging design, that “implicitly communicates that [a] tobacco product has a characterizing flavor.”

79. Plaintiffs would be left with no realistic choice but to err on the side of caution, where caution means refraining from exercising their First Amendment rights to engage in protected commercial speech, *e.g.*, communicate information about their products to consumers or the public through the use of descriptive terms or employ distinctive artistic designs.

80. The California regulatory scheme unconstitutionally infringes upon the First Amendment commercial speech rights of Plaintiffs.

SECOND CAUSE OF ACTION

(Violation of California Administrative Procedure Act – Cal. Gov’t Code §§ 13400
et seq.)

81. Plaintiffs repeat and reallege paragraphs 1 through 80 hereof, as if fully set forth herein.

82. Regulations under the California Administrative Procedure Act (“Cal. APA”), Cal. Gov’t Code §§ 13400 *et seq.*, are reviewed for whether they are reasonably necessary to implement the purpose of the statute at issue.

83. Reasonable necessity is not satisfied if a rule is arbitrary, capricious, or without rational basis, or if substantial evidence does not support the agency's determination that such a rule is reasonably necessary.

84. The regulations standing up the California Unflavored Tobacco List scheme are arbitrary and capricious. Nor does substantial evidence demonstrate that the regulations are necessary to implement the purpose of the statute.

85. First, the regulations are arbitrary, capricious, and not supported by substantial evidence that they are reasonably necessary to implement the purpose of the statute, because they do not exempt premium cigars as defined by the federal

1 regulatory system from the requirement to make the burdensome and extensive
2 premarket review submissions to the Attorney General. The purpose of the statute
3 implemented by the regulation is to require information from manufacturers so that
4 the Attorney General can identify flavored tobacco products. But those products that
5 qualify as premium cigars under the federal regulatory are, by definition, not
6 flavored. By not exempting this set of products, the Attorney General imposes a
7 spectacularly burdensome regulatory scheme on family-owned businesses for no
8 purpose related to finding flavored cigars.

9 86. Second, the Attorney General failed to consider or explain not adopting
10 the less burdensome alternative of allowing manufacturers of premium cigars to
11 provide a list of products meeting the definition, rather than make lengthy
12 submissions Stock Keeping Unit by Stock Keeping Unit.

13 87. Third, the regulation adopted an October 9 deadline, just a little more
14 than a month after the regulation became final, for premium cigar manufacturers to
15 submit reams of documentation and materials on thousands of Stock Keeping Units.
16 Because premium cigars are not flavored and should be the Attorney General's
17 lowest priority for scrutiny, the Attorney General should have extended the deadline
18 for those products qualifying as premium cigars under the federal regulatory system
19 by sixty days, to December 9, 2025. But the Attorney General did not do so in the
20 final regulation and declined a request to modify the regulation, without explanation.

21 88. In the alternative, the regulations must be declared invalid for failure to
22 properly identify and justify an "emergency" such that emergency regulatory action
23 is warranted.

24 89. Cal. Gov't Code § 11346.1(b)(2) requires an agency submitting an
25 emergency regulation submit a written statement "demonstrating the existence of an
26 emergency and the need for immediate action, and demonstrating, by substantial
27 evidence, the need for the proposed regulation to effectuate the statute being
28 implemented, interpreted, or made specific and to address only the demonstrated

1 emergency.” Cal. Gov’t Code § 11346.1(b)(2).

2 90. In the provided Finding of Emergency, the Attorney General cursorily
3 states that the regulations implementing the Unflavored Tobacco List are emergency
4 under legislative mandate, citing Cal. Health & Safety Code § 104559.1(q).

5 91. Legislative mandate does not, however, absolve the Attorney General
6 of his requirement to “demonstrate[e] the existence of an emergency,” “the need for
7 immediate action,” and present “substantial evidence” showing “the need for the
8 proposed regulation to effectuate the statute being implemented, interpreted, or made
9 specific and to address only the demonstrated emergency.” Cal. Gov’t Code
10 § 11346.1(b)(2).

11 92. The Attorney General failed to make his statutorily required showing of
12 an emergency, or present substantial evidence showing the need for the regulations
13 to address an emergency.

14 93. Therefore, Plaintiffs seek a judicial declaration that the regulations
15 promulgated at Cal. Code Reg. tit. 11, §§ 942 to 957 are invalid pursuant to Cal.
16 Gov’t Code § 11350(a), for failure to properly justify emergency action.

17 **THIRD CAUSE OF ACTION**

18 (Violation of the Import-Export, Foreign and Interstate Commerce, and Supremacy
19 Clauses of and Structural Division of Authority between federal and state
20 governments in the United States Constitution)

21 94. Plaintiffs repeat and reallege paragraphs 1 through 94 hereof, as if fully
22 set forth herein.

23 95. The Import-Export Clause of the United States Constitution prohibits
24 States from laying “any Imposts or Duties on Imports or Exports, except what may
25 be absolutely necessary for executing it’s inspection laws.” U.S. Const. art. I, § 10,
26 cl. 2.

27 96. Under Cal. Bus. & Prof. Code § 22979.21, “[e]very manufacturer or
28 importer of tobacco products shall obtain and maintain a license under this division

1 to engage in the sale of tobacco products.” Licensees must pay to obtain an import
2 license under California law.

3 97. Any purchasers of foreign-manufactured premium cigars “for the
4 purpose of making a first sale or distribution within the United States” are
5 “importers” under California law. Cal. Rev. & Tax Code § 30019.

6 98. AB 3218 applies to both manufacturers and importers of tobacco
7 products.

8 99. AB 3218’s implementing regulations state that importers, such as
9 Plaintiffs, must pay an initial application fee of \$300 for each Brand Style submitted
10 for inclusion on the Unflavored Tobacco List, a Variant Fee of \$150 for each Variant
11 submitted for inclusion, and an annual Renewal Fee of \$150 for each Brand Style.

12 100. These fees, which can be substantial given the number of Brand Styles
13 manufactured or imported by a single company, are untethered from inspection,
14 handling, or transportation.

15 101. They amount to a tax on imports of premium cigars from foreign states.
16 They are imposed on the importer itself, because the importer is bringing premium
17 cigars into the country.

18 102. As such, the regulatory scheme violates Article I, Section 10 of the
19 Constitution, denying States the authority to levy “any Imposts or Duties on Imports
20 or Exports, except what may be absolutely necessary for executing its inspection
21 laws.”

22 103. The regulatory scheme also violates the Foreign and Interstate
23 Commerce Clauses, including their “dormant” aspects, as well as structural aspects
24 of the United States Constitution placing responsibility over foreign commerce and
25 foreign affairs with the federal government, and denying State’s authority over
26 aspects of those topics. U.S. Const. art. I, § 8, cl. 3; art. II, § 2.

27 104. First, the fees attached to the act of importing a product from a foreign
28 country to another State, including requiring licenses and the payment of fees in

1 connection with that licensure and the Unflavored Tobacco List system, is regulating
2 the means of importation from a foreign country to another State, which is an
3 authority reserved exclusively to the federal government by the Foreign Commerce
4 Clause, its dormant component, and the structure of the Constitution dividing
5 authority between federal and state governments. It also interferes with federal
6 government control over foreign affairs, as premium cigar tobacco is crucial to
7 relations with Dominican Republic, Nicaragua, and Honduras, and California's effort
8 to regulate its importation interferes with the delicate decisions Congress and the
9 President must make with respect to such matters.

10 105. Second, the California regulatory scheme requires premium cigar
11 manufacturers and importers located outside California or even the United States to
12 take actions inside California. In particular, the regulatory scheme requires those
13 out-of-state and out-of-country corporations to ensure that no products the Attorney
14 General does not list remain on California retail shelves. *See* Cal. Code Regs. tit. 11,
15 § 955(a); *see also* Cal. Bus. & Prof. Code § 22978.3. In this way, it regulates wholly
16 past acts of bringing premium cigars into the State, which can remain in retail
17 humidors, again, for years or decades.

18 106. This ambiguous possession-based penalty regime forces out-of-state
19 entities to take affirmative actions within California, as opposed to simply refraining
20 from a future sale or shipping of a product into the State. The U.S. Constitution—
21 through its Foreign and Interstate Commerce Clauses and other structure divisions of
22 authority between federal and state governments—simply deny California the
23 authority to force out-of-state and out-of-country action in this way.

24 107. AB 3218 will cause substantial and excessive commercial disruptions to
25 not only the premium cigar market, but the tobacco market as a whole, despite little
26 local benefit.

FOURTH CAUSE OF ACTION

(Express Preemption)

108. Plaintiffs repeat and reallege paragraphs 1 through 107 hereof, as if fully set forth herein.

109. The Supremacy Clause of the United States Constitution provides that the “Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land.” U.S. Const. art. VI. State laws that conflict with federal law are thus “without effect.” *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981).

110. Under the FSPTCA, “[n]o State . . . may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this subchapter relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.” 28 U.S.C. § 387p(a)(2)(A).

111. The federal government and FDA have exclusive authority to implement a premarket review scheme for tobacco products. And the federal government has done so, deciding for what tobacco products premarket review is necessary and what materials must be submitted.

112. California has set up its Attorney General as its own little FDA, establishing a separate and parallel premarket review scheme. Manufacturers and importers of tobacco products must submit reams of data and scientific information about their product, with the Attorney General to decide whether it is worthy of going on the market.

113. The California scheme even sets itself up as enforcing whether a product needs or has obtained formal authorization from the FDA under its premarket review process. *See* Cal. Code Regs. tit. 11 § 948; *see also* Cal. Health & Safety Code §

1 104559.1(b)(1)(B), (f)(1).

2 114. The Attorney General uses this information to *review* each product,
3 determining whether it is suitable to enter the California market.

4 115. AB 3218 is not a sales prohibition saved by the FSPTCA's preservation
5 and savings clauses. 28 U.S.C. § 387p(a)(1), (2)(B). It does not identify the physical
6 characteristics of a product banned for sale in the State. It instead lets the Attorney
7 General, in his discretion, decide what products will fly in California. The Family
8 Smoking Prevention and Tobacco Control Act expressly preempts State efforts to set
9 up a parallel premarket review, and that provision would be meaningless if the instant
10 California regulatory scheme were not preempted.

11 116. Moreover, AB 3218 purports to regulate storage and inventory
12 management of premium cigars by retailers through its penalty and seizure
13 provisions. Neither the preservation nor the savings clause under the FSPTCA
14 permits States to regulate that type of conduct.

15 117. The California regulatory scheme therefore violates the Supremacy
16 Clause of the United States Constitution and the federal Family Smoking Prevention
17 and Tobacco Control Act.

18 **FIFTH CAUSE OF ACTION**

19 (Implied Preemption)

20 118. Plaintiffs repeat and reallege paragraphs 1 through 117 hereof, as if fully
21 set forth herein.

22 119. Under the Supremacy Clause of the United States Constitution, a state
23 law is impliedly preempted when it “stands as an obstacle to the accomplishment and
24 execution of the full purposes and objectives of Congress.” *Freightliner Corp. v.*
25 *Myrick*, 514 U.S. 280, 287 (1995).

26 120. The Federal Food, Drug, and Cosmetic Act (“FDCA”) states
27 unequivocally that all proceedings to enforce or restrain violations of the FDCA
28 “shall be by and in the name of the United States.” 21 U.S.C. § 337(a).

1 121. AB 3218 goes beyond establishing general requirements for tobacco
2 product sales. It creates a registration regime that explicitly incorporates federal
3 premarket review standards as one of the determinative factors for inclusion on the
4 Unflavored Tobacco List.

5 122. Under Cal. Health & Safety Code § 104559.1 manufacturers are
6 required to certify for each brand style “if a formal authorization, approval, or order
7 from the [FDA] under Section 387e(j) or 387j of [FDCA] has been sought.” *Id.* at
8 § 104559.1(b)(1)(B).

9 123. If formal authorization has been sought but a brand style not yet
10 approved, or formal authorization has not been sought, manufacturers are required to
11 submit additional information addressing why approval has not been obtained or
12 authorization not sought.

13 124. A brand style is generally not eligible for listing on the Unflavored
14 Tobacco List if it requires formal premarket authorization but has not received such
15 authorization.

16 125. AB 3218 further creates a comprehensive enforcement regime, allowing
17 the Attorney General to recover civil penalties from retailers, wholesalers, and
18 delivery sellers who sell tobacco products not on the Unflavored Tobacco List, with
19 penalties escalating based on the number of violations, and to recover civil penalties
20 from manufacturers who make misrepresentations on their certifications.

21 126. The operative effect of AB 3218 is to create a California-specific
22 enforcement regime for federal premarket authorization requirements, rendering AB
23 3218 more than just a sales regulation or prohibition. Indeed, AB 3218’s statutory
24 scheme would be stripped to the bones without the extensive cross-referencing to the
25 FSPTCA.

26 127. The AB 3218 statutory scheme therefore contravenes Section 337(a) of
27 the FDCA, under which enforcement of the FDCA “shall be by and in the name of
28 the United States.” 21 U.S.C. § 337(a).

SIXTH CAUSE OF ACTION

(Violation of the Due Process Clause of the United States Constitution and the California Constitution)

128. Plaintiffs repeat and reallege paragraphs 1 through 127 hereof, as if fully set forth herein.

129. The Due Process Clause of the Fourteenth Amendment to the United States Constitution limits retroactive civil legislation that is harsh or oppressive, imposes severe retroactive consequences, and applies to conduct far back in time.

130. The Due Process Clause of Article I, Section 7 of the California Constitution provides parallel protection from retroactive civil legislation that is harsh or oppressive, imposes severe retroactive consequences, and applies to conduct far back in time.

131. Numerous provisions in Cal. Health & Safety Code §§ 104559.1 and 104559.5 are ambiguous as to potentially significant penalties that could be imposed on manufacturers, importers, wholesalers, and retailers for the possession of tobacco products excluded from the Unflavored Tobacco List, notwithstanding that many of these products would have been lawfully imported into California years prior to passage of AB 3218.

132. At the very least, “AB 3218 established additional penalties, including seizure, for wholesalers and retailers in possession of flavored tobacco products.” Exhibit A.

133. There are no temporal restrictions attached to this possession-based liability.

134. AB 3218 therefore potentially retroactively alters the rights and obligations of manufacturers, importers, wholesalers, and retailers by imposing penalties on conduct that was not unlawful when undertaken.

135. These penalties would be harsh, oppressive, and severe and would target products that could have been imported into California over half-a-decade ago.

136. The Court should enter a judgment declaring that the retroactive application of AB 3218 violates the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Rocky Patel Premium Cigars, Inc., Oliva Cigar Co., Piloto Cigars, Inc. d/b/a Padrón Cigars, Inc., A. Fuente & Co., Ashton Distributors, Inc., Premium Imports, Inc. d/b/a La Flor Dominicana, My Father Cigars, Inc., Cigar Rights of America, and the Premium Cigar Association respectfully request that this Court enter judgment in their favor as follows:

1. Declare that the statute at Cal. Health & Safety Code § 104559.1 and regulations codified at Cal. Code Reg. tit. 11, §§ 942 to 957 are invalid to the extent they apply to premium cigars as defined in the federal regulatory scheme, namely a cigar that: “(1) Is wrapped in whole tobacco leaf; (2) Contains a 100 percent leaf tobacco binder; (3) Contains at least 50 percent (of the filler by weight) long filler tobacco...; (4) Is handmade or hand rolled...; (5) Has no filter, nontobacco tip, or nontobacco mouthpiece; (6) Does not have a characterizing flavor other than tobacco; (7) Contains only tobacco, water, and vegetable gum with no other ingredients or additives; and (8) Weighs more than 6 pounds per 1,000 units” 21 C.F.R. § 1114.3;
2. Grant a temporary restraining order in favor of Plaintiffs preventing the Attorney General from enforcing the above-referenced statute and regulations on premium cigars as defined in the federal regulatory scheme and specified above;
3. Grant a preliminary injunction in favor of Plaintiffs preventing the Attorney General from enforcing the above-referenced statute and regulations on premium cigars as defined in the federal regulatory scheme specified above;
4. Grant a permanent injunction barring the Attorney General from enforcing the above-referenced statute and regulations on premium cigars as defined

1 in the federal regulatory scheme and specified above

2 5. Grant Plaintiffs' attorneys' fees, costs, and interest associated with bringing
3 this action; and

4 6. Grant any other relief the Court may deem just and proper.

5 Dated: October 3, 2025

HUNTON ANDREWS KURTH LLP

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Co., LLC, Ashton Distributors, Inc.,
20 Premium Imports, Inc. d/b/a La Flor
Dominicana, My Father Cigars, Inc.,
21 Cigar Rights of America, and Premium
Cigar Association

EXHIBIT A



C A L I F O R N I A

DEPARTMENT OF JUSTICE

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September 25, 2025

VIA EMAIL

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RE: Request for Extension of Registration Deadline

Dear Mr. Loope:

The Healthcare Rights & Access Section, Tobacco Unit is in receipt of your email dated September 10, 2025, requesting, among other things, an extension of the registration deadline for initial submissions to the Unflavored Tobacco List by two months, from October 9, 2025, to December 9, 2025. We appreciate your engagement in connection with AB 3218 and the emergency regulations. However, for the reasons set forth below, we are not able to accommodate your request.

AB 3218, the statute requiring establishment of the Unflavored Tobacco List (“UTL”), was chaptered on September 28, 2024, and sets a statutory deadline of December 31, 2025, for the Attorney General’s publication of that UTL. *See* Health & Saf. Code § 104559.1(m). The emergency regulations¹ provide that completed submissions received on or before October 9, 2025, will be guaranteed consideration for placement on the initial list. *See* Cal. Code Regs. tit. 11, § 947(f). The October 9 deadline for initial submissions is necessary to ensure that the Department of Justice can complete its review of applications by the December 31 statutory deadline. The statute does not grant the Department discretion to extend that deadline.

The regulations provide that completed UTL applications received after October 9, 2025, will be reviewed promptly and receive a response “by March 31, 2026, or within ninety (90) days of the submission, whichever is later.” *Id.* § 947(g). Accordingly, manufacturers that do not

¹ Copies of the approved emergency regulations are posted on the Attorney General’s website, <https://oag.ca.gov/tobacco/flavorban/regulations>.

September 25, 2025

Page 2

submit by October 9 will still be afforded the opportunity for prompt consideration to be added to the UTL.

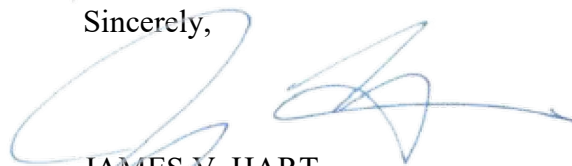
Applications for UTL accounts may be submitted by eligible manufacturers and importers at <https://utl.doj.ca.gov>. Any eligible manufacturer or importer may appoint authorized agents to prepare product forms and make submissions on their behalf. *See* Cal. Code Regs. tit. 11, § 943 (describing establishment of User and Certifying User accounts). The information requested and required for submission, including applicable fees and sample requirements, are set out in the emergency regulations. We are not accepting bulk uploads or attestations in lieu of submissions. Additional guidance on required samples, including exemplar products and packaging, are available on the Attorney General's website, <https://utl.doj.ca.gov/samples>. Special packaging of predicate tobacco products are likely "variants" under the emergency regulations and may be submitted on the variant form without additional samples as provided in the regulations. *See* Cal. Code Regs. tit. 11, § 946.

Applications made to the UTL using the variant form must also be received by October 9, 2025, to guarantee consideration for placement on the initial list. *See* Cal. Code Regs. tit. 11, § 947. We encourage your member manufacturers and importers to consider this when planning for late 2025/early 2026 promotional packaging or special offerings.

Following publication of the UTL on or before December 31, 2025, any covered tobacco product not on the UTL shall be deemed a flavored tobacco product under the flavor ban. Health & Saf. Code § 104559.1(g). The registration and listing dates set forth in the emergency regulations will apply and all potential penalties outlined in the statute and emergency regulations will be effective upon publication of the UTL on or before December 31, 2025. Note that as of January 1, 2025, AB 3218 established additional penalties, including seizure, for wholesalers and retailers in possession of flavored tobacco products, *see* Bus. & Prof. Code § 22978.3, and, upon publication of the UTL, online and other remote sellers of non-exempt tobacco products not appearing on the UTL will be subject to additional civil penalties—ranging up to \$10,000—for each product sold, *see* Health & Saf. Code § 104559.1(o) ("A delivery seller shall not sell a tobacco product not appearing on the UTL or a tobacco product flavor enhancer to a consumer in California.").

Thank you for your correspondence. We look forward to continued cooperation as the initial UTL implementation date approaches.

Sincerely,



JAMES V. HART

Supervising Deputy Attorney General

For ROB BONTA
Attorney General