

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

State of California v. Phillip Del Rosa et al.

No. 2:23-cv-0743-KJM-SCR · No. No. 2:23-cv-0743-KJM-SCR · Decided August 15, 2025

OPINION

State of CA v. Del Rosa

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 State of California, No. 2:23-cv-0743-KJM-SCR 12 Plaintiff, ORDER 13 v. 14 Phillip Del
Ros,a et al., 15 Defendants. 16 17 In light of the court’s prior order finding defendant Darren Rose
in contempt for violating 18 | the preliminary injunction, the court held a hearing to determine
whether to impose sanctions and 19 | if so in what amount or in what manner. Order (May 27,
2025), ECF No. 131. Having reviewed 20 | the record and the parties’ respective statements, the
court orders Darren Rose to pay sanctions 21 | in the amount of \$68,000.

22 | I. BACKGROUND

23 In multiple previous orders, the court has summarized the relevant background of this case 24 |
and the court incorporates that background by reference here. See id.; Prelim. Inj. Order, ECF 25 |
No. 43; Mot. Dismiss Order (Jan. 24, 2024), ECF No. 58; Mot. Dismiss Order (Nov. 18, 2024), 26
| ECF No. 97; Prospective Sanctions Order (Nov. 18, 2024), ECF No. 95. In summary, California
27 | alleges Azuma Corporation (Azuma), a tribal corporation wholly owned by the federally 28 |
recognized Alturas Indian Rancheria (the Tribe), distributes cigarettes to various retailers owned 1
by other Indian tribes (Tribal Retailers) in violation of the PACT Act. See generally First Am. 2
Compl., ECF No. 68. 3 On September 7, 2023, the court granted California’s Motion for a
Preliminary Injunction 4 against Mr. Rose in his official capacity as the Vice Chairperson of the
Tribe and 5 president/secretary of Azuma Corporation. Prelim. Inj. Order at 24–25. Specifically,
the court 6 issued the following injunction: 7 Defendant Darren Rose, in his official capacity as
vice-chairman of 8 the Alturas Indian Rancheria and as president/secretary of Azuma 9
Corporation, and his employees and agents are hereby enjoined from 10 completing or causing to
be completed any delivery, or any portion 11 of a delivery, of packages containing cigarettes on
behalf of Azuma 12 Corporation to anyone in California in violation of section 13 376a(e)(2)(A)
of the PACT Act.

14 Id. at 24.

15 Defendants appealed the injunction, unsuccessfully. See Notice of Appeal (Sept. 15, 16 2023),

ECF No. 44; U.S. Court of Appeals Mem. (Sept. 10, 2024), ECF No. 94; California v. 17 Azuma Corp., No. 23-16200, 2024 WL 4131831 at *2 (9th Cir. Sept. 10, 2024). While the appeal 18 was pending the court found California submitted sufficient evidence to show Mr. Rose violated 19 the preliminary injunction. Order (Feb. 28, 2024). The court also found Mr. Rose did not 20 demonstrate an inability to comply with the preliminary injunction and held Mr. Rose in 21 contempt, awarded attorneys' fees and provided for prospective and conditional sanctions. Id. at 22 7–8 (citing Int'l Union, United Mine Workers of Am. v. Bagwell, 512 U.S. 821, 827 (1994)); Mot. 23 Sanctions, ECF No. 82; Opp'n Sanctions, ECF No. 87; Reply Sanctions, ECF No. 91; Prospective 24 Sanctions Order (Nov. 18, 2024). 25 The court, having anticipated Mr. Rose's possible future noncompliance, provided for 26 prospective and conditional sanctions: 27 Any future noncompliance with the preliminary injunction or the nonmonetary 28 sanctions [provided by this order] will result in the following further sanctions: 29 \$10,000 for the first day of noncompliance, \$12,000 for the second day of 30 noncompliance, \$14,000 for the third day of noncompliance, \$16,000 for the fourth 31 // 1 day of noncompliance, and \$16,000 for the fifth day of noncompliance. 2 Noncompliance beyond the sixth day may result in a custodial sanction. 3 Prospective Sanctions Order (Nov. 18, 2024). The plain language of the order indicates the 4 proposed dollar amounts are additive and cumulative. That is, on the fifth day of noncompliance 5 the total sanctions amount is \$68,000. The court also made clear it would not impose these 6 sanctions without giving defendants a chance to respond: 7 The court will not impose any sanction . . . unless the state files a notice of violation 8 on the docket of this action, supported by a declaration of a person with knowledge 9 of the violation. The court will then promptly set a hearing on an order to show 10 cause why additional sanctions should not be imposed under this order. 11 Id. 12 California asserts it requested Azuma's reporting and recordkeeping within thirty days 13 after the court issued the Sanctions Order on November 18, 2024. Not. of Violation at 3, ECF

14 No. 109. "After several delays," the parties stipulated to a production schedule and Mr. Rose 15 provided the required documents to the state on January 31, 2025. Id. Shortly thereafter, on 16 February 5, 2025, California filed a Notice of Violation asserting Mr. Rose "completed or caused

17 to be completed the delivery, or some portion of the delivery, of packages containing 29,376,000 18 cigarettes to persons throughout California" in the eleven months since the filing of the court's 19 contempt order. Id. at 3. The court set a hearing on an order to show cause and directed 20 Mr. Rose to respond to the Notice of Violation, which he did, through counsel. Min. Order (Feb. 21 7, 2025), ECF No. 111; Response, ECF No. 113. The court held a hearing on February 13, 2025. 22 See Mins. Mot. Hr'g, ECF No. 115. On May 27, 2025, the court issued an order finding Mr. 23 Rose in contempt of court for violating the preliminary injunction and set a hearing to address 24 appropriate sanctions. At that hearing, Peter Nascenzi, James Hart and Byron Miller appeared for 25 plaintiff. See Mins. Sanctions Hr'g, ECF No. 144. John Peebles and

Tim Hennessy appeared for 26 defendants. *Id.* As the court had ordered, defendant Darren Rose also was present. *Id.*

27 II. LEGAL STANDARD

28 The court may use its civil contempt powers “for either or both of two purposes; to coerce 29 the defendant into compliance with the court’s order, and to compensate the complainant for 30 losses sustained.” *United States v. United Mine Workers of America*, 330 U.S. 258, 303–04 1 (1947) (hereafter *UMWA*)); see also *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019) (quoting 2 *UMWA*, 330 U.S. at 303–04). This principle is equally applicable when the government is the 3 party seeking the contempt order. See, e.g., *UMWA*, 330 U.S. at 301–02. Sanctions for civil 4 contempt are considered nonpunitive and “avoidable through obedience” to the court’s order. 5 *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827, 831 (1994). Where the 6 court imposes coercive contempt fines, the requirement of an “opportunity to purge,” i.e., “reduce 7 or avoid the fine through compliance” is what distinguishes civil from criminal contempt; civil 8 contempt fines are fundamentally conditional in nature. *Id.* at 829 (citing *Penfield Co. of Cal. v. 9 SEC*, 330 U.S. 585, 590 (1947)); see also *Hicks v. Feiock*, 485 U.S. 624, 632–33; *United States v. 10 Ayres*, 166 F.3d 991, 997 (9th Cir. 1999) (“Civil contempt sanctions . . . are only appropriate 11 where the contemnor is able to purge the contempt by his own affirmative act . . .”). As the 12 court’s prior order signaled, coercive imprisonment is another form of sanctions available to the 13 court under its “contempt power.” See *Doyle v. London Guar. & Acc. Co.*, 204 U.S. 599, 606– 14 (1907). And like all coercive sanctions, a custodial sanction is only appropriate where the 15 contempt may be purged. See *id.* at 607 (“[W]hile the party may suffer imprisonment, he carries 16 the keys of the prison in his own pocket and, by compliance with the order of the court, may 17 deliver himself from punishment.” (internal quotations and citations omitted)). Consequently, 18 civil contempt sanctions “may be imposed in an ordinary civil proceeding upon notice and an 19 opportunity to be heard.” *Bagwell*, 512 U.S. at 827. “Neither a jury trial nor proof beyond a 20 reasonable doubt is required.” *Id.* In contrast, unlike here, a court exercises its criminal contempt 21 power only when it intends to punish the contemnor and vindicate the court’s authority. *UMWA*, 22 330 U.S. at 302. 23 In imposing coercive civil sanctions, the court “must . . . consider the character and 24 magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any 25 suggested sanction in bringing about the result desired.” *Id.* at 304. “[A] party’s good faith, even 26 where it does not bar civil contempt, may help to determine an appropriate sanction.” *Taggart*, 27 139 S. Ct. at 1802. In contempt cases, the court should use “[t]he least possible power adequate 1 to the end proposed.” *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 801 2 (1987) (quoting *United States v. Wilson*, 421 U.S. 309, 319 (1975)).

3 III. ANALYSIS

4 Having found Mr. Rose in contempt, the court must determine the appropriate sanction to 5 impose. In exercising its discretion to impose civil sanctions to ensure compliance with its order, 6

the court considers “the character and magnitude of the harm threatened by continued contumacy, 7 and the probable effectiveness of any suggested sanction in bringing about the result desired.” 8 *UMWA*, 330 U.S. at 303–04. “[I]n fixing the amount of a fine to be imposed . . . as a means of 9 securing future compliance, [the court must also] consider the amount of defendant’s financial 10 resources and the consequent seriousness of the burden to that particular defendant.” *Id.* 11 The court in its discretion determines a monetary sanction is warranted given Mr. Rose’s 12 months of conduct in violation of the court’s order. The court finds its prior prospective sanctions 13 order instructive and reflective, if conservatively so, of the “character and magnitude of the harm 14 threatened by the continued contumacy.” *Parsons v. Ryan*, 949 F.3d 443, 457 (9th Cir. 2020) 15 (quoting *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1148 (9th Cir. 1983)). At hearing, the parties 16 agreed that prior prospective sanctions order, which signaled cumulative sanctions for up to five 17 days of violations, provides the appropriate monetary sanctions at this time. See *Mins. Sanctions* 18 *Hr’g*. 19 Even though its prior order cautioned Mr. Rose that a civil custodial sanction was a 20 possibility, the court in its discretion declines to impose custody at this time. The prior order does 21 not clearly set forth how a custodial sanction could be purged, and the lack of clarity weighs 22 significantly against imposing custody now. Cf. *Doyle*, 204 U.S. at 606–08. Moreover, at 23 hearing the parties agreed Mr. Rose’s documented violations do not rise to the level warranting a 24 custodial sanction. 25 The court therefore orders Darren Rose to pay sanctions in the amount provided by its 26 prior order, adding the sanctions amount for each day up to five days. Specifically, the court 27 orders Mr. Rose to pay sanctions in the total amount of \$68,000. The court reserves the 28 possibility of custodial sanctions for further clarification as appropriate if the record is 1 supplemented to support the issuance of a clarifying order putting Mr. Rose on notice and 2 spelling out ways to purge any contempt.

3 IV. FUTURE VIOLATIONS

4 As noted above, the court maintains civil contempt powers “to coerce the defendant into 5 compliance with the court’s order” and “to compensate the complainant for losses sustained.” 6 *Shell Offshore Inc. v. Greenpeace, Inc.*, 815 F.3d 623, 629 (9th Cir. 2016) (quoting *UMWA*, 330 7 U.S. at 303–04). 8 Given that the prior prospective sanctions order did not coerce defendants into 9 compliance, California may seek a revised prospective sanctions order from the court, if it 10 believes such an order is warranted and doing so is consistent with counsel’s obligations under 11 Federal Rule of Civil Procedure 11. Any proposed order must outline a clear timeline for 12 ongoing document production and any additional monetary sanctions. Should California also 13 seek an order providing for a civil custodial sanction, it must clearly identify what action it 14 believes Rose could take to purge such a sanction. See *Ayres*, 166 F.3d at 997 (“Civil contempt 15 sanctions . . . are only appropriate where the contemnor is able to purge the contempt by his own 16 affirmative act”); *Doyle*, 204 U.S. at 606–08. California shall file any proposed revised 17 prospective sanctions order within thirty days of the filing date of this order. Defendants may file 18 any objections to a proposed order within fourteen days thereafter, at which point the matter

will 19 be submitted. 20 All other conditions of the court's previous injunction and Sanctions Order remain in 21 effect unless and until the court imposes a revised and superseding prospective sanctions order.

22 V. CONCLUSION

23 For the foregoing reasons, Darren Rose is ordered to pay civil contempt sanctions in the 24 total amount of \$68,000 within seven days from the filing of this order. The sum is to be paid 25 personally by Mr. Rose. Sanctions are payable to the clerk of court. Within fourteen days from 26 the filing of this order, Mr. Rose shall file a declaration on the docket of this matter attesting to 27 his payment in compliance with this order. 1 California shall file any proposed revised sanctions order within thirty days of the filing 2 date of this order. Defendants may file any objections to the proposed order within fourteen days 3 thereafter. 4 IT IS SO ORDERED. 5 DATED: August 14, 2025.