

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 (E.D. Cal. Sept. 5, 2025) · No. No. 2:23-cv-0743-KJM-SCR · Decided September 8, 2025

SUMMARY

The United States District Court for the Eastern District of California denies defendants’ motion for reconsideration of an order finding Darren Rose in contempt of a preliminary injunction concerning cigarette deliveries under the PACT Act. The court concludes that defendants did not establish clear error, an intervening change in controlling law, newly discovered evidence, or manifest injustice, and explains that Bracker balancing had already been addressed in the preliminary-injunction proceedings.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	September 8, 2025
DOCKET	No. 2:23-cv-0743-KJM-SCR
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved for reconsideration of an order finding Darren Rose in contempt for violating a preliminary injunction. The district court denied the motion without a hearing.
STANDARD OF REVIEW	Reconsideration of a district court's pretrial decision is generally appropriate only upon newly discovered evidence, clear error or manifest injustice, or an intervening change in controlling law. A motion for reconsideration may not be used to raise arguments or evidence that could reasonably have been presented earlier or to rehash previously presented arguments.
PRECEDENTIAL VALUE	unpublished

TOPICS

- motion for reconsideration
- contempt
- tribal sovereignty
- injunctions
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether defendants established a basis for reconsideration of the contempt order under the standards governing newly discovered evidence, clear error or manifest injustice, or an intervening change in controlling law.
2. Whether the district court was required to reengage in Bracker balancing when determining whether Rose violated an already-issued and affirmed preliminary injunction.

HOLDINGS

1. Reconsideration was unwarranted because defendants did not identify newly discovered evidence, clear error, manifest injustice, or an intervening change in controlling law.
2. The court was not required to reengage in Bracker balancing when finding Rose in contempt because the court had already considered Bracker in issuing the preliminary injunction, and the affirmed injunction clearly prohibited the conduct at issue.

KEY QUOTATIONS

“Having considered Bracker in issuing the preliminary injunction order, the court did not need to reengage in Bracker balancing to find Mr. Rose in contempt of the injunction.” (at 7-14)

“The motion does not identify any legal or factual error in the court’s contempt order. Considered in the context of the procedural history of this case, it appears defendants instead are, once again, attempting to obtain reconsideration of the court’s preliminary injunction order, which has now been affirmed by the Ninth Circuit.” (at 19-25)

FACTUAL BACKGROUND

Azuma Corporation, a tribal corporation owned by the Alturas Indian Rancheria, allegedly distributed cigarettes to retailers owned by other tribes in violation of the PACT Act. The court entered a preliminary injunction prohibiting Darren Rose from completing or causing cigarette deliveries in California on Azuma's behalf in violation of 15 U.S.C. § 376a(e)(2)(A), and the Ninth Circuit affirmed the injunction. Rose later implemented a delivery method involving third-party pickups on the Tribe's reservation; the district court found that method violated the injunction, held Rose in contempt, and imposed \$68,000 in sanctions. Defendants sought reconsideration based on the court's alleged failure to conduct Bracker balancing in the contempt proceeding.

PROCEDURAL HISTORY

California brought claims alleging that Azuma Corporation distributed cigarettes in violation of the PACT Act. The court entered a preliminary injunction against Darren Rose, and the defendants unsuccessfully appealed that injunction to the Ninth Circuit. After finding Rose in contempt and imposing \$68,000 in sanctions, the court considered defendants' motion for reconsideration and denied it because the motion identified no clear legal or factual error, newly discovered evidence, intervening change in controlling law, or manifest injustice.

DISPOSITION

other

CASES CITED

- White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980)
- California v. Azuma Corp., No. 23-16200, 2024 WL 4131831, at *2 (9th Cir. Sept. 10, 2024)
- City of Los Angeles, Harbor Division v. Santa Monica Baykeeper, 254 F.3d 882, 885 (9th Cir. 2001)
- Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993)
- Kona Enters., Inc. v. Est. of Bishop, 229 F.3d 877, 890 (9th Cir. 2000)
- Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003)
- United States v. Navarro, 972 F. Supp. 1296, 1299 (E.D. Cal. 1997), rev'd on other grounds, 160 F.3d 1254 (9th Cir. 1998)

OPINION

State of California v. Phillip Del Rosa, et al.

PER CURIAM.

1 2 3 4 5 6 7

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 Vv. 14 Phillip Del
15 Rosa, et al., 15 Defendants. 16 17 Defendants seek reconsideration of a prior court order finding
18 defendant Darren Rose in 18 | contempt. As explained below, the court denies the motion.

19 | IT. BACKGROUND

20 California alleges Azuma Corporation (Azuma), a tribal corporation wholly owned by the 21 |
22 federally recognized Alturas Indian Rancheria (the Tribe), distributes cigarettes to various 22 |
23 retailers owned by other Indian tribes (Tribal Retailers) in violation of the PACT Act. See 23 |
24 generally First Am. Compl., ECF No. 68. Finding California likely to succeed on the merits and 24 |
25 balancing the hardships of an injunction and the public interest, the court imposed a preliminary
25 | injunction on September 8, 2023, enjoining defendant Darren Rose from completing or
26 causing to 26 | be complete any delivery, or any portion of a delivery, of packages containing
27 cigarettes on 27 | behalf of Azuma Corporation to anyone in California in violation of 15 U.S.C. §
28 376a(e)(2)(A) of 28 | the PACT Act. See Injunction Order at 24-25, ECF No. 43. In briefing the
29 motion for a 1 preliminary injunction, each party discussed the applicability of Bracker balancing
30 under White 2 Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980). See Mot. Preliminary Inj.,
31 Ex. B at 59, 3 ECF No. 13-3; Opp’n Preliminary Injunction at 15, ECF No. 23. The court
32 addressed Bracker in 4 its order, finding defendants did not sufficiently show California’s taxation
33 scheme would 5 unlawfully infringe on tribal sovereignty so as to preclude a preliminary

injunction. Injunction

6 Order at 20.

7 Defendants unsuccessfully appealed the court's order imposing a preliminary injunction. 8 See Notice of Appeal (Sept. 15, 2023), ECF No. 44; U.S. Court of Appeals Mem. (Sept. 10, 9 2024), ECF No. 94; *California v. Azuma Corp.*, No. 23-16200, 2024 WL 4131831 at *2 (9th Cir.

10 Sept. 10, 2024). Defendants squarely presented the issue of Bracker balancing to the Ninth
11 Circuit, arguing California's taxation scheme could not pass muster under the balancing test,
but 12 the Ninth Circuit also found defendants' argument unconvincing: 13 At the preliminary
injunction stage, the Defendants have not made a 14 sufficient showing that the "exercise of state
authority" with respect 15 to any of the Tribal Retailers would unlawfully infringe on tribal 16
sovereignty or violate federal law. Bracker, 448 U.S. at 144–45. 17 Thus, California has shown a
sufficient likelihood of success on the 18 merits of its PACT Act claim. 19 *Azuma Corp.*, 2024 WL
4131831, at *2. 20 In relatively recent orders, the court found defendant Darren Rose in contempt
for 21 violating the preliminary injunction and ordered Mr. Rose to pay sanctions in the amount of
22 \$68,000. Contempt Order (May 27, 2025) at 6–7, ECF No. 131; Sanctions Order (Aug. 15, 23
2025), ECF No. 162. Defendants filed the instant motion for reconsideration, styled as seeking 24
reconsideration of the court's contempt order, before the court held a sanctions hearing on
25 July 7, 2025. See Contempt Order (May 27, 2025); Mot., ECF No. 136; Mins. Sanctions Hr'g,
26 ECF No. 144. Defendants did not request the court continue the hearing on sanctions in light of
27 the pending motion for reconsideration. During the sanctions hearing, defendants' counsel 28
provided a short summary of the reconsideration motion, and appeared to concede the court's 29
resolution of the motion would not affect the court's determination of appropriate sanctions. 30
Transcript (July 11, 2025) at 13, ECF No. 149. The court imposed monetary sanctions of \$68,000
1 and Mr. Rose has since paid the sanctions. See Sanctions Order (Aug. 15, 2025); Receipt
2 No. 200014489; Rose Decl., ECF No. 168.

3 In finding Mr. Rose in contempt, the court concluded that a new business method he 4
implemented, involving third-party pick-ups on the Tribe's reservation, violated the preliminary 5
injunction. See generally Contempt Order (May 27, 2025). The court explained the preliminary 6
injunction "is specific and definite" and found Mr. Rose's argument that the use of a third-party 7
courier circumvented PACT Act violations to "border[] on frivolous." Contempt Order (May 27, 8
2025) at 6–7. The court also warned Mr. Rose and his counsel of a "troubling pattern" of 9
"attempt[ing] to 'escape the consequences of the court's order.'" Id. at 7 (quoting Order (Feb. 28,
10 2024), ECF No. 71). The court addressed Mr. Rose's argument that his transactions fell into a
11 narrow exception under § 376a(e)(2)(A)(ii), allowing delivering to persons "lawfully engaged"
in 12 the cigarette business. Id. at 8. The court concluded Rose's sales to non-Member Indians
could 13 not be considered "conduct involving only Indians" as defined by the law and that
Azuma's sales 14 therefore were not "lawful" and not exempt from regulation under § 376a(e)(2)
(A) of the PACT 15 Act. Id. (internal quotations and citations omitted). 16 Defendants' motion for

reconsideration of the court's contempt order asserts the court committed a manifest error of law when it "neglect[ed] to articulate the Bracker balancing as the applicable test as to whether state law applied to transactions involving reservation Indians and non-member Indians." Mot. at 1–2. Defendants argue the court's order "articulates a test that, while making reference to a state interest, is predetermined in favor of the State in any on- reservation transaction involving a non-Indian or non-member Indian." Mem. P. & A. (Mem.) at 22–3, ECF No. 136-1. The parties did not cite to Bracker in their briefing regarding the Notice of Violation triggering the potential for sanctions or at the hearing on the appropriate sanctions. See Notice of Violation, ECF No. 108; Response, ECF No. 113; Surreply, ECF No. 121; Request to File Supplemental Brief, ECF No. 122; Mins. Mot. Hr'g (Feb. 13, 2025), ECF No. 115. As noted, the parties addressed Bracker in their briefing of the state's motion for a preliminary injunction. See Mot. Preliminary Inj., Ex. B at 59; Opp'n Preliminary Injunction at 15. The motion for reconsideration of the contempt order is fully briefed and the court, in its discretion and consistent with the Local Rules, has taken the matter under submission without holding a hearing. See Opp'n, ECF No. 150; Reply, ECF No. 152; E.D. Cal. L.R. 230(g).

4 II. LEGAL STANDARD

5 A district court has authority to reconsider its own pretrial decisions. See *City of Los Angeles, Harbor Division v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001). Reconsideration is generally appropriate when "the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (internal citations omitted). But a motion for reconsideration "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Kona Enters., Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (emphasis in original); see also *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). The court also notes that motions to reconsider are "not vehicles permitting the unsuccessful party to 'rehash' arguments previously presented." *United States v. Navarro*, 972 F. Supp. 1296, 1299 (E.D. Cal. 1997), rev'd on other grounds, 160 F.3d 1254 (9th Cir. 1998).

18 III. ANALYSIS

19 Having carefully considered the matter, the court denies the defendants' motion for reconsideration. The motion does not identify any legal or factual error in the court's contempt order. Considered in the context of the procedural history of this case, it appears defendants instead are, once again, attempting to obtain reconsideration of the court's preliminary injunction order, which has now been affirmed by the Ninth Circuit. Defendants' labeling of the motion as one for reconsideration of the contempt order is disingenuous, given their true focus is the applicability and enforceability of the injunction order. Defendants assert the court "erred in articulating Mr. Rose's position," in saying that "Rose [asserted] the new sales method is not

subject to regulation under the PACT Act because 28 the transactions are between Indians on Indian land.” Mem. at 1; Contempt Order (May 27, 1 2025) at 131. But defendants concede even if Bracker is considered, the relief they seek “may 2 not alter the outcome of the contempt order—which outcome also rests on discrete conclusions of 3 fact and law.” Id. This concession—namely that defendants’ motion asks the court to modify its 4 characterization of defendants’ position and entertain a legal principle defendants did not invoke 5 in the contempt briefing, while signaling the court likely did not commit legal error—is at the 6 core of the court’s reasons for denying the motion. The court’s contempt order answered one 7 question: did Mr. Rose violate the preliminary injunction order? That order explained that under 8 the clear language of the affirmed injunction order, Mr. Rose is prohibited from completing or 9 “causing” to be completed a delivery or “portion of delivery” for Azuma. Contempt Order 10 (May 27, 2025) at 7 (quoting 15 U.S.C. § 376a(e)(2)(A)). Having considered Bracker in issuing 11 the preliminary injunction order, the court did not need to reengage in Bracker balancing to find 12 Mr. Rose in contempt of the injunction. In affirming the preliminary injunction order, the Ninth 13 Circuit addressed Bracker balancing and affirmed the preliminary injunction is clear and 14 enforceable as articulated. 15 Because defendants have not demonstrated clear error, an intervening change in 16 controlling law, the availability of newly discovered evidence, or the prospect of manifest 17 injustice as to the court’s contempt order the motion for reconsideration purports to challenge, the 18 court denies the motion for reconsideration. 19 This order resolves ECF No. 136. 20 IT IS SO ORDERED. 21 DATED: September 5, 2025.