

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

Civil Action No. 14 cv \_\_\_\_ (\_\_\_\_)

-against-

DISCOUNT TOBACCO & THINGS, INC., and GABY Y.  
NOUHRA,

**COMPLAINT**

Defendants.

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Plaintiff the City of New York (the “City”), by its counsel Zachary W. Carter, Corporation Counsel of the City of New York, respectfully alleges, with knowledge of its own actions and on information and belief as to the actions of others, as follows:

**Nature of the Action**

1. This is an action for injunctive relief, damages and penalties arising out of the defendant Discount Tobacco & Things, Inc. (“DT&T”) and Gaby Y. Nouhra’s (“Nouhra”) distribution of and conspiracy to distribute Virginia-stamped cigarettes into New York City and elsewhere.<sup>1</sup> Defendants are known to have sold thousands of cartons of Virginia-stamped cigarettes to persons that defendants knew were transporting the cigarettes for re-sale in New York City and/or other out-of-state locations.

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<sup>1</sup> Cigarettes possessed for sale or use in New York City must be affixed with New York State and New York City excise tax stamps, the purchase of which serves as the payment of State and City cigarette excise taxes. Cigarettes found in New York that do not bear New York tax stamps are “contraband” cigarettes within the meaning of the Contraband Cigarette Trafficking Act (“CCTA”), 18 U.S.C. § 2341 *et seq.*, regardless of whether the cigarettes bear the tax stamp of another jurisdiction.

2. Interstate differences in state-imposed cigarette taxes give rise to disparities in the price of cigarettes purchased in a low-tax jurisdiction and sold in a high tax jurisdiction, creating a lucrative, but illegal opportunity for traffickers willing to bootleg cigarettes between states. *See United States v. Di Maria*, 727 F.2d 265 (2d Cir. 1984) (“‘Bootleg cigarettes’ are those purchased in a low-tax state, *e.g.*, North Carolina, and then transported to a high-tax state, *e.g.*, New York.”). DT&T trades in cigarettes from an establishment located in the State of Virginia, where the tax imposed on a carton of cigarettes is \$3.00. DT&T sells bulk quantities of cigarettes to cigarette traffickers, whom DT&T knows transport the cigarettes into New York City (the “City”) and other out-of-state locations, where higher cigarette taxes (*e.g.*, \$58.50 per carton cigarette in New York City) allow the traffickers to sell the cigarettes on the illegal market for far more than the Virginia purchase price. By selling to traffickers, DT&T increases the volume of cigarettes it would otherwise sell, increasing its profits commensurately.

3. By knowingly distributing and/or conspiring to distribute cigarettes that are not affixed with the tax stamps of the jurisdiction to which they are destined, *e.g.*, New York, DT&T violates the Contraband Cigarette Trafficking Act, 18 U.S.C. § 2341 *et seq.* (“CCTA”), and the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* (“RICO”).

4. DT&T’s conduct injures both the public health and the fiscal integrity of New York State and New York City, entitling the City to: i) an order enjoining DT&T from distributing or conspiring to distribute Virginia-stamped cigarettes into New York City and State or other out of state locations; (ii) damages, including treble damages; (iii) civil penalties and/or disgorgement and (iv) attorney’s fees.

## **JURISDICTION AND VENUE**

5. The Court has jurisdiction over the subject matter of this action pursuant to 18 U.S.C. § 1964, 18 U.S.C. § 2346 (b)(1), and 28 U.S.C. § 1331.

6. Venue is proper in this district under 18 U.S.C. § 1965(a) and (b) and 28 U.S.C. § 1391(b), because a substantial part of the events and omissions giving rise to the claims occurred in this district.

## **PARTIES**

7. The City is a municipal corporation organized under the laws of the State of New York.

8. Defendant Discount Tobacco & Things, Inc. (“DT&T”) is a corporation incorporated under the laws of the State of Virginia, located at 14435 Jefferson Davis Hwy, Woodbridge, VA 22191. DT&T is engaged in the retail sale of cigarettes, among other business activities.

9. Defendant Gaby Y. Nouhra is the president, registered agent and a principal of DT&T, and a resident of the State of Virginia, residing at 7511 Ashby Lane, Unit N, Alexandria, VA 22315.

## **BACKGROUND**

10. Cigarette smoking is a deadly and costly public health problem. Smoking causes a host of crippling and deadly diseases, including cardiovascular disease, coronary heart disease, emphysema, and a wide range of cancers. *Report on the Global Tobacco Epidemic* (WHO 2008 Reports).<sup>2</sup> Cigarette smoking is the single leading cause of preventable death in the United States, killing over 400,000 people each year. U.S. Dept. of Health and Human Services,

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<sup>2</sup> Available at <http://www.who.int/tobacco/mpower/en/>.

*The Health Consequences of Smoking—50 Years of Progress, A Report of the Surgeon General*, at 11, 678 (2014). Tobacco kills more people than AIDS, alcohol, drug abuse, car accidents, murders, suicides, and fires combined. *Id.* For the millions of people living with a smoking-related disease, the health care costs are substantial. *Id.* Persons living in the State of New York, for example, were recently estimated as spending \$10 billion annually on tobacco-related health care costs. RTI International, *2012 Independent Evaluation Report of the New York Tobacco Control Program*, at 2–3 (2012). Tobacco-related disease and death costs have been estimated as costing \$193 billion a year in health-care spending and lost productivity. CDC, *Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses—United States, 2000-2004*, *supra*. Annual Medicaid and Medicare costs attributable to smoking-related illnesses have been estimated to be \$30 billion (in 2006) and \$14.2 billion (in 1993) respectively. CDC, *Sustaining State Programs for Tobacco Control: Data Highlights 2006*, at 17 (Medicaid);<sup>3</sup> Xiulan Zhang et al., *Cost of Smoking to the Medicare Program, 1993*, 20 *Health Care Financing Rev.* No. 4 at 183 (1999) (Medicare).<sup>4</sup>

11. To protect the health of its citizens, the State and City of New York—as do the federal government, all 49 other states, and the District of Columbia—place high taxes on the sale and use of cigarettes. *See* N.Y. Tax Law § 470 *et seq.*; N.Y.C. Ad. Code § 11-1302(a)(1); Surgeon General Rept. 2014, at 788.

12. Taxing cigarettes is highly effective as a public health measure, because higher taxes decrease cigarette consumption, while at the same time increasing public revenue

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<sup>3</sup> Available at [http://www.cdc.gov/tobacco/data\\_statistics/state\\_data/data\\_highlights/2006/pdfs/dataHighlights06rev.pdf](http://www.cdc.gov/tobacco/data_statistics/state_data/data_highlights/2006/pdfs/dataHighlights06rev.pdf).

<sup>4</sup> Available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/HealthCareFinancingReview/downloads/99summerpg179.pdf>.

that can be used to combat the detrimental health effects of smoking. *Surgeon General Rept.* 2014, at 788. Raising cigarette prices “is one of the most effective interventions to prevent and reduce cigarette use.” RTI International, *2011 Independent Evaluation Report of the New York Tobacco Control Program*, at 40 (2011) (citation omitted); *see also* Institute of Medicine, *Ending the Tobacco Problem: A Blueprint for the Nation*, at 182 (2007); U.S. Dept. of Health and Human Services, *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease, A Report of the Surgeon General*, at 654 (2010) (noting that “increases in the price of cigarettes through excise taxes ... are an effective policy intervention to prevent smoking initiation among adolescents and young adults, reduce cigarette consumption, and increase the number of smokers who quit”).

13. A ten-percent increase in cigarette prices is estimated to reduce cigarette use among adults by approximately three to five percent. Frank J. Chaloupka & Rosalie Liccardo Pecula, *The Impact of Price on Youth Tobacco Use*, National Cancer Institute Monograph No. 14, at 194 (Nov. 2001).<sup>5</sup> The response of youths to price increases is even greater: a ten-percent price increase is estimated to reduce the number of youth smokers by at least six or seven percent. *See Prevent All Cigarette Trafficking Act of 2007, and the Smuggled Tobacco Prevention Act of 2008: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary*, 110 Cong. 50, 52 (May 1, 2008) (Statement of Matthew L. Myers, President, Campaign for Tobacco-Free Kids); “Tax hike cuts tobacco consumption,” *USA Today*, September 11, 2012 (“A giant federal tobacco tax hike has

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<sup>5</sup> Available at [http://cancercontrol.cancer.gov/tcrb/monographs/14/m14\\_12.pdf](http://cancercontrol.cancer.gov/tcrb/monographs/14/m14_12.pdf) (last visited Nov. 19, 2014).

spurred a historic drop in smoking, especially among teens, poor people and those dependent on government health insurance”).<sup>6</sup>

14. Tax evasion that illegally reduces the price at which cigarettes are sold to consumers thwarts the deterrent effect of high cigarette prices. Accordingly, “limit[ing] smuggling and the availability of untaxed tobacco products is essential to maximizing the effectiveness of higher taxes in reducing tobacco use[.]” Report of the Surgeon General, *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease* (2010), at 654.<sup>7</sup>

#### **NEW YORK CITY AND STATE CIGARETTE TAX LAW**

15. The New York State cigarette tax is imposed principally by New York Tax Law § 471(1): “There is hereby imposed and shall be paid a tax on all cigarettes possessed in the state by any person for sale.” The tax levied under N.Y. Tax Law § 471 is presently \$4.35 per 20-cigarette pack. N.Y. Tax L. § 471(1). New York City’s separate tax of \$1.50 per 20-cigarette pack is imposed on all cigarettes possessed by any person for sale or use in the City. *See* Administrative Code of the City of New York (“Ad. Code”) §§ 11-1302(a)(1), (2). All cigarettes within the State and City are presumptively subject to tax unless the contrary is established. N.Y. Tax L. § 471(1); Ad. Code § 11-1302(d).

16. New York State and City tax laws require a tax stamp to be affixed to cigarette packages to evidence payment of the taxes imposed pursuant to the Tax Law and Administrative Code. N.Y. Tax L. §§ 471, 473; Ad. Code §§ 11-1302, 1304.

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<sup>6</sup>Available at <http://www.usatoday.com/news/nation/story/2012-09-10/cigarette-tax-smoking/57737774/1>

<sup>7</sup> Available at [http://www.cdc.gov/tobacco/data\\_statistics/sgr/2010/index.htm](http://www.cdc.gov/tobacco/data_statistics/sgr/2010/index.htm)

17. New York State and City license or designate entities known as “stamping agents,” who pre-pay the State and City cigarette taxes by purchasing tax stamps at a cost equal to the amount of the tax and affixing the stamps to the cigarette packs that the stamping agents sell at wholesale. The agents must by law incorporate an amount equal to the amount of the tax into the wholesale price of the cigarettes; that amount must in turn be included in the price of each subsequent sale of the cigarettes, so that the tax burden is passed along to each subsequent purchaser in the distribution chain, ultimately falling upon the consumer. N.Y. Tax L. §§ 471, 473 and Ad. Code § 11-1302(a) (3), (e) and (h). Stamping agents are the only entities lawfully permitted to purchase and affix State and City tax stamps to cigarettes and the only entities that may lawfully import unstamped cigarettes into the City and State.

#### **VIRGINIA TO NEW YORK CIGARETTE BOOTLEGGING**

18. Cigarette bootlegging from Virginia to New York City and many other states on the I-95 corridor is a well-known phenomenon, and has been for at least two decades. *See* Cigarette Smuggling Increase Prompts Crackdown by States, *Bloomberg News*, March 25, 2014. (“There’s a rate disparity as high as \$4.18 per pack between tobacco-producing states like Virginia and North Carolina and places such as New York, where an estimated 57 percent of cigarettes smoked are smuggled.”)<sup>8</sup>; I-95 New Tobacco Road Smugglers Net Big Bucks Driving Cig Up To N.Y.”, *NY Daily News*, March 11, 2000 (“With cigarettes now costing up to \$50 a carton in the city, smugglers are earning as much as \$60,000 for a single round-trip run between New York and Virginia.”)<sup>9</sup>; “Cigarette Bootlegging Is Still Big Business,” *Christian Science Monitor*, June 3, 1996 (many active federal

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<sup>8</sup> <http://www.bloomberg.com/news/2014-03-25/cigarette-smuggling-increase-prompts-crackdown-by-states.html> (last visited November 21, 2014)

<sup>9</sup> <http://www.nydailynews.com/archives/news/i-95-new-tobacco-road-smugglers-net-big-bucks-driving-cig-n-y-article-1.861345> (last visited November 21, 2014).

investigations involve “cases of bootlegging between low-tax states such as Virginia and high-tax states such as New York.”).<sup>10</sup>

### **ACTIONS OF THE DEFENDANTS**

19. DT&T is a small retail outlet located in a strip mall in Woodbridge, Virginia, a Richmond suburb. DT&T is not licensed by the State of Virginia to affix Virginia-stamped cigarettes, and does not possess a wholesale cigarette license. DT&T is not licensed by the State of New York or City of New York to purchase and affix State and City tax stamps.

20. Nouhra owns, manages and operates DT&T. Nouhra has full knowledge of all of DT&T’s business activities and makes all decisions related to DT&T’s business activities, including DT&T’s bulk sales of cigarettes to persons that Nouhra knows transport cigarettes out of state for re-sale in their states of residence.

21. On November 4, 2014, New York City police arrested an individual named Michael Zekry in Staten Island, New York, after discovering more than 2500 cartons of Virginia-stamped cigarettes in his van. The cigarettes recovered are shown below.<sup>11</sup>

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<sup>10</sup> <http://www.csmonitor.com/1996/0603/060396.us.us.5.html> (last visited November 21, 2014).

<sup>11</sup> <http://nypost.com/2014/11/07/nyc-man-busted-with-500000-untaxed-cigarettes-in-his-van/> (last visited December 1, 2014)



22. Zekry admitted to police that “I go to Virginia every 10 weeks” to purchase Virginia-stamped cigarettes, which he re-sold in New York City.<sup>11</sup> A search of Zekry’s home revealed an additional 500 cartons of Virginia-stamped cigarettes, \$40,000 in cash and a cash-counting machine.<sup>11</sup>

23. On information and belief, DT&T sold Zekry all of the Virginia-stamped cigarettes seized in Zekry’s possession. Zekry had for at least the prior two years purchased similar quantities of cigarettes from DT&T, and made those purchases far more frequently than every 10 weeks.

24. On information and belief, Zekry re-sold in Brooklyn and Staten Island the Virginia-stamped cigarettes he purchased at DT&T.

25. Based on the quantity, frequency, brands and styles of Zekry’s purchases, DT&T and Nouhra knew that Zekry was transporting the cigarettes out of the State of Virginia for re-sale. For example, Zekry purchased brands and styles of cigarettes known to be far more popular in New York City than in Virginia.

26. Based on the well-known existence of a bootleg cigarette pipeline running from Virginia to New York and to other states on the I-95 corridor, DT&T and Nouhra knew

that Zekry was transporting the cigarettes purchased from DT&T and Nuhra to New York or another state on the I-95 corridor.

27. Further evidence that DT&T and Nuhra knowingly distributed contraband cigarettes is that a 2013 audit of DT&T's cigarette sales established that DT&T purchased far more cigarettes than could be accounted for by DT&T's sales records. That is, DT&T's wholesale purchases of cigarettes vastly exceeded its reported in-store sales. On information and belief, the discrepancy between DT&T's "incoming" cigarette purchases and "outgoing" sales reflects DT&T's bulk sales to cigarette bootleggers.

28. Still further evidence that DT&T and Nuhra knowingly supply cigarette traffickers is that DT&T and Nuhra, after having been told that the cigarettes involved would be transported to New York for re-sale, repeatedly sold hundreds of cartons of Virginia-stamped cigarettes to undercover purchasers under the direction of the Criminal Investigations Division of the New York State Department of Taxation and Finance.

29. In the course of the purchases described in paragraph 28, DT&T and Nuhra concealed the cigarettes in black garbage bags and directed the purchasers to load their vehicles at the rear of the store, where they could not be seen from the street.

30. By selling cigarettes to Zekry and others for transport to and distribution in high-tax, out-of-state jurisdictions, DT&T and Nuhra substantially increased the volume of cigarette sales that DT&T otherwise would have made, and increased DT&T's profits from cigarette sales.

### **Allegations Related to Violation of the CCTA**

31. The CCTA, 18 U.S.C. §§ 2341-2346, was enacted to assist state and local governments in enforcing their tobacco laws. With exceptions not relevant here, the CCTA makes it a felony punishable by up to five years' imprisonment for any unauthorized person to ship, transport, receive, possess, sell, distribute or purchase contraband cigarettes, defined as more than 10,000 cigarettes that bear no evidence of the payment of applicable cigarette taxes of the State or locality in which the cigarettes are found, if that jurisdiction requires stamps to be placed on packages or other containers of cigarettes to evidence tax payments. 18 U.S.C. §§ 2341(2); 2342. 18 U.S.C. §§ 2341(2), 2342. The CCTA was amended in 2006 to authorize state and local governments to bring enforcement actions for damages and penalties. 18 U.S.C. § 2346.

32. New York State and the City each impose an excise tax on cigarettes possessed for sale or use in the City or State, and require that all cigarettes subject to the tax be affixed with tax stamps. *See* N.Y. Tax L. §§ 471, 471-a; Ad. Code § 11-1302.

33. None of the cigarettes shipped and distributed by DT&T and Noughra were affixed with the joint New York State/New York City tax stamp.

34. The cigarettes shipped and distributed by DT&T and Noughra are contraband cigarettes within the meaning of the CCTA: because i) there is a State and a City cigarette tax applicable to the cigarettes; ii) New York State and City both require a stamp to be placed on packages of cigarettes to evidence payment of cigarette taxes; (iii) the cigarettes were found within the State and the City without New York tax stamps; and (iv) more than 10,000

cigarettes were involved; and (v) none of the exceptions to definition of contraband in 18 U.S.C. § 2341(2) apply.

35. DT&T and Nouhra knew that the cigarettes they shipped and distributed would become contraband, because they knew the cigarettes were stamped only with Virginia stamps and that the cigarettes were to be transported to states other than Virginia.

### **Allegations Related to Violations of RICO**

36. The RICO statute, 18 U.S.C. § 1961 *et seq.*, 18 U.S.C. § 1962(c), makes it unlawful for any person employed by or associated with any enterprise engaged in or affecting interstate commerce to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity.

### **The Predicate Offenses**

37. "Racketeering activity" includes any act indictable under 18 U.S.C. § 2341 *et seq.*, trafficking in contraband cigarettes in violation of the CCTA. *See* 18 U.S.C. § 1961(1). A CCTA violation is accordingly a RICO "predicate offense"; violation of the CCTA constitutes racketeering activity within the meaning of the RICO statute.

### **The DT&T Enterprise**

38. At all times relevant to this complaint, DT&T, a corporation, has been an "enterprise" within the meaning of 18 U.S.C. § 1961(4). DT&T engaged in, and its activities affected, interstate commerce.

39. At all times relevant to this complaint, Zekry and Nouhra have been employed by or associated with the DT&T Enterprise.

### **The Purposes, Methods and Means of the Enterprise**

40. The principal purpose of DT&T has been to generate money for its associates by engaging in sales of cigarettes, including the shipment and distribution of

contraband cigarettes. This purpose has been implemented by Nuhra through various legal and illegal activities, including the shipment and distribution of contraband cigarettes into New York City and elsewhere.

41. Nuhra has participated in the conduct of the affairs of DT&T by shipping and distributing contraband cigarettes into New York City and elsewhere, or arranging therefor with Zekry and others unknown to the City.

42. At all times relevant to this complaint, Nuhra conducted the affairs of DT&T through a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(1)(B), consisting principally of multiple and continuing instances of contraband cigarette trafficking in violation of 18 U.S.C. § 2341 *et seq.*

#### **Racketeering Acts**

43. At all times relevant to this complaint, Nuhra knowingly and intentionally shipped and distributed contraband cigarettes, namely, more than 10,000 cigarettes lacking joint New York State/New York City tax stamps, in violation of the CCTA, 18 U.S.C. § 2341 *et seq.* Each transaction or aggregate of transactions involving 10,000 cigarettes constitutes a violation of the CCTA and hence a separate racketeering act under RICO. Nuhra committed more than two CCTA violations during the ten years preceding the filing of this complaint.

44. At all times relevant to this complaint, Zekry knowingly and intentionally transported, sold and distributed contraband cigarettes, namely, more than 10,000 cigarettes lacking joint New York State/New York City tax stamps, in violation of the CCTA, 18 U.S.C. § 2341 *et seq.* Each transaction or aggregate of transactions involving 10,000 cigarettes constitutes a violation of the CCTA and hence a separate racketeering act under RICO. Zekry committed more than two CCTA violations during the ten years preceding the filing of this complaint.

45. The racketeering acts committed by Zekry and Nouhra constitute a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961, in that there have been two or more racketeering acts related by a common goal or plan within a ten-year period.

**Roles of Nouhra and Zekry**

46. At all times relevant to this complaint, Nouhra participated in the management and operation of the DT&T Enterprise by, among other things:

a. Engaging in the long-term planning and day-to-day activities required to ship and distribute contraband cigarettes;

b. Arranging for the shipment, transport and distribution of contraband cigarettes by Zekry and others into New York City and elsewhere; and/or

c. Selling Virginia-stamped cigarettes to Zekry and other persons whom Nouhra know will transport the cigarettes into the City and elsewhere for re-sale.

d. Employing and instructing other individuals to engage in all of the above activities.

47. At all times relevant to this complaint, Zekry participated in the affairs of the DT&T Enterprise by, among other things:

a. Engaging in the long-term planning and day-to-day activities required to ship, distribute and sell contraband cigarettes;

b. Purchasing Virginia-stamped cigarettes from Nouhra;

c. Transporting contraband cigarettes sold to him by Nouhra into New York City and elsewhere;

d. Selling contraband cigarettes sold to him by Nuhra to persons in the City;

e. Employing and instructing other individuals to engage in all or some of the above activities.

**Allegations Related to Conspiracy to Violate RICO**

48. At all times relevant to this complaint, Nuhra and Zekry, together with other persons employed by or associated with DT&T, an enterprise that engaged in, and the activities of which affected, interstate and foreign commerce, knowingly and intentionally conspired to violate 18 U.S.C. § 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of DT&T through a pattern of racketeering activity, as defined in 18 U.S.C. §§ 1961(1), (5).

49. At all times relevant to this complaint, Nuhra and Zekry conspired to violate the provisions of 18 U.S.C. § 1962(c), in violation of 18 U.S.C. § 1962(d), by agreeing to further endeavors of the DT&T Enterprise that, when completed, amount to contraband cigarette trafficking, in violation of the CCTA, 18 U.S.C. § 2341 *et seq.*

50. At all times relevant to this complaint, Nuhra and Zekry agreed to a plan whereby Nuhra would operate a tobacco store in Virginia, obtain large quantities of Virginia-stamped cigarettes, and sell those cigarettes to persons, including Zekry, whom Nuhra knew would transport those cigarettes to New York City for re-sale in the absence of New York tax stamps. Nuhra and Zekry each recognized that an essential element of the plan consisted of multiple violations of the CCTA, 18 U.S.C. § 2341 *et seq.* Nuhra and Zekry agreed that certain associates of DT&T, for example Zekry, would commit CCTA violations, such as selling Virginia-stamped cigarettes in the City, while other associates of the DT&T Enterprise, for

example Nuhra, would engage in conduct intended to support and facilitate those violations of the CCTA, such as selling Zekry the Virginia-stamped cigarettes that Nuhra knew would be transported to and distributed and sold in the City.

51. The pattern of racketeering activity through which Nuhra and Zekry agreed to conduct the affairs of the DT&T Enterprise consisted of acts of contraband cigarette trafficking into New York City. Nuhra and Zekry agreed that some conspirators would commit at least two of these acts of racketeering in the conduct of the affairs of the DT&T Enterprise.

### **FIRST CLAIM FOR RELIEF**

#### **(Violation of the Contraband Cigarette Trafficking Act)**

52. The City realleges paragraphs 1- 51 above as if fully set forth herein.

53. At all times relevant to this complaint, DT&T and Nuhra knowingly shipped and distributed contraband cigarettes within the meaning of 18 U.S.C. § 2341(2), in that DT&T and Nuhra sold Virginia-stamped cigarettes to Zekry, and others, knowing that the cigarettes would be transported to and distributed in and sold in New York City and State and elsewhere in amounts far in excess of 10,000 cigarettes while not bearing the tax stamp of the jurisdiction in which the cigarettes were sold.

54. As a direct result of the foregoing violations of the CCTA by Nuhra and DT&T, the City has suffered and continues to suffer damages.

55. Nuhra and DT&T will continue to violate the CCTA unless enjoined.

56. Pursuant to the CCTA, 18 U.S.C. § 2346, the City, as a local government, is empowered to bring an action in federal district court to prevent and restrain violations of the CCTA and to obtain any other appropriate forms of relief from such violations, including civil penalties, disgorgement and damages.

## **SECOND CLAIM FOR RELIEF**

### **(Violation of 18 U.S.C. § 1962(c))**

57. The City realleges paragraphs 1-51 as if fully set forth herein.

58. New York City is a “person” as defined in 18 U.S.C. § 1961(3).

59. Nouhra is a “person” as defined in 18 U.S.C. § 1961(3) and as used in 18 U.S.C. § 1962(c).

60. DT&T is an “enterprise” as defined in 18 U.S.C. § 1961(4) and as used in 18 U.S.C. § 1962(c). DT&T engages in activities affecting interstate commerce and did so at all times relevant to this complaint.

61. Nouhra is employed by and/or associated with the DT&T Enterprise and conducts or participates in the management and operation of the affairs of the DT&T Enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(5) and 1962(c), namely, multiple and repeated acts of contraband cigarette trafficking, in violation of 18 U.S.C. §§ 2341 *et seq.*

62. The acts of contraband cigarette trafficking engaged in by DT&T and Nouhra constitute a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5), because the acts are related to one another and are continuous. The acts are connected to one another as part of a plan to accomplish a uniform purpose, which is the making of a profit from the shipment and distribution of contraband cigarettes. The repeated nature of the conduct and the threat of similar conduct occurring in the future make the acts continuous.

63. New York City has suffered injury to its business or property within the meaning of 18 U.S.C. § 1964(c) by reason of the violation of 18 U.S.C. § 1962(c) by DT&T and Nouhra.

### **THIRD CLAIM FOR RELIEF**

#### **Violation of § 1962(d)**

64. The City realleges paragraphs 1-51 as if fully set forth herein.

65. New York City is a “person” as defined in 18 U.S.C. § 1961(3).

66. Nuhra is a “person” as defined in 18 U.S.C. § 1961(3) and as used in 18 U.S.C. § 1962(d).

67. DT&T is an “enterprise” within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c); it engages in and its activities have an effect on interstate commerce.

68. Nuhra is employed by and/or associated with the DT&T Enterprise.

69. Nuhra and Zekry conspired with one another, within the meaning of 18 U.S.C. § 1962(d), to violate 18 U.S.C. § 1962(c) in that they and other conspirators unknown to the City agreed among themselves to conduct the affairs of DT&T by furthering or facilitating DT&T’s business through acts that, when completed, would satisfy all of the elements of a predicate offense, to wit, contraband cigarette trafficking in violation of the CCTA, 18 U.S.C. §§ 2341 *et seq.*

70. With knowledge that Nuhra and Zekry engaged in multiple and repeated acts of contraband cigarette trafficking in violation of the CCTA, 18 U.S.C. §§ 2341, *et seq.*, Nuhra and Zekry each agreed to conduct the affairs of DT&T in a manner that would facilitate these acts and lead to the success of the scheme to traffic contraband cigarettes into New York City and elsewhere.

71. The scheme to traffic contraband cigarettes into New York City constitutes a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5) because the predicate acts are both related and continuous. The acts are connected to one another as part of a scheme to accomplish a uniform purpose, which is the making of a profit from the transport,

distribution and sale of contraband cigarettes in New York City and elsewhere. The repeated nature of the conduct during the period of the scheme and the threat of similar conduct occurring in the future make the acts continuous.

72. New York City has suffered injury to its business or property within the meaning of 18 U.S.C. § 1964(c) by reason of Nuhra and Zekry's violation of 18 U.S.C. § 1962(d).

**WHEREFORE**, New York City respectfully prays that the Court grant judgment against DT&T and Nuhra as follows:

a. On the First Claim For Relief, permanently enjoin DT&T and Nuhra from violating the CCTA, 18 U.S.C. § 2346 *et seq.*, and requiring that DT&T and Nuhra comply with the CCTA;

b. On the First Claim For Relief, requiring DT&T and Nuhra to pay the City (i) money damages in an amount equal to the City's actual damages caused by the defendants' violation of the CCTA, 18 U.S.C. § 2346 *et seq.*, and/or (ii) civil penalties provided for under the CCTA and/or (iii) disgorge all profits to the City;

c. On the Second Claim For Relief, requiring Nuhra to pay the City money damages in an amount three times the City's actual damages caused by Nuhra's violation of RICO, 18 U.S.C. § 1962(c), as well as the attorney's fees and costs incurred in bringing this action;

d. On the Third Claim For Relief, requiring Nuhra to pay the City money damages in an amount three times the City's actual damages caused by

