

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SUSANVILLE INDIAN RANCHERIA,

Plaintiff,

v.

MIKE LEAVITT, Secretary of the
United States Department of
Health and Human Services;
CHARLES W. GRIM, Director of
the Indian Health Service; and
MARGO KERRIGAN, Area Director of
the California Area Office of
the Indian Health Service;

Defendants.

2:07-cv-259-GEB-DAD

ORDER

After 5:00 p.m. on Friday, February 9, 2007, Plaintiff filed a motion for a temporary restraining order ("TRO") and a motion for a preliminary injunction in which Plaintiff requests that Defendants be "restrained and enjoined from excluding the Tribe's pharmacy services component from the programs authorized under the Tribe's self-governance Compact and Calendar Year 2007 Funding Agreement, which by operation of law went into effect on January 29, 2007, and [be] directed to sign the Compact and CY 2007 Funding Agreement and provide such funding as is authorized under these agreements without

1 imposing any condition that would prevent the Tribe from charging
2 beneficiaries for services." (Pl.'s Proposed TRO at 1-2.) An order
3 issued late February 9, 2007 requiring Defendants to file a response
4 to Plaintiff's TRO no later than 12:00 p.m. on February 13, 2007. A
5 hearing on the TRO commenced at 1:00 p.m. on February 14, 2007, and
6 ended at approximately 3:10 p.m.

7 During the hearing, Defendants agreed to further extend the
8 parties' 2006 Annual Funding Agreement, which expires on February 15,
9 2007, until the Court issues a ruling on Plaintiff's motion for a
10 preliminary injunction. Plaintiff rejected that offer through a
11 counter-offer in which Plaintiff sought to require Defendants to sign
12 the 2007 Compact and Funding Agreement (which Plaintiff contends went
13 into effect, without the pharmacy services provision, by operation of
14 law on January 29, 2007) or to provide assurances that the portions of
15 the 2007 Compact and Funding Agreement that the parties have already
16 agreed upon will not be modified. Plaintiff agreed to extend only the
17 pharmacy services provision of the 2006 Annual Funding Agreement.
18 Defendants rejected Plaintiff's counter-offer. Defendants also argued
19 that the 2007 Compact and Funding Agreement that Plaintiff contends
20 went into effect on January 29, 2007, is not effective because the
21 Compact has not been signed due to Plaintiff's failure to comply with
22 25 U.S.C. § 458aaa-6(c)(1)(D).

23 Because it appears that the status quo will change
24 significantly as of tomorrow when the 2006 Annual Funding Agreement
25 expires, and because Plaintiff's TRO motion raises complicated
26 statutory interpretation issues that cannot reasonably be resolved
27 before then, the status quo will be preserved as agreed by Defendants
28 at the hearing; therefore, the 2006 Annual Funding Agreement is

1 extended until a ruling on Plaintiff's motion for preliminary
2 injunction issues.

3 A hearing will be held on Plaintiff's motion for a
4 preliminary injunction on February 26, 2007, at 2:00 p.m. Defendants
5 shall file a response to Plaintiff's motion no later than 4:30 p.m. on
6 February 20, 2007, and Plaintiff shall file a reply no later than 4:30
7 p.m. on February 22, 2007.

8 Further, since the parties appeared to agree at the hearing
9 to an expedited briefing schedule for summary judgment motions, each
10 side's summary judgment motion shall be filed no later than March 6,
11 2007; oppositions shall be filed no later than March 20, 2007; replies
12 shall be filed no later than March 27, 2007; and a hearing shall be
13 held on April 2, 2007 at 9:00 a.m.

14 IT IS SO ORDERED.

15 Dated: February 14, 2007

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GARLAND E. BURRELL, JR.
United States District Judge
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