

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

COMANCHE NATION, a federally)	
recognized Indian Tribe, NUMUNU)	
PAHMU, a Limited Liability Company,)	
)	
Plaintiffs,)	
)	
vs.)	Case Number CIV-13-1228-C
)	
GOVERNOR MARY FALLIN and)	
THE STATE OF OKLAHOMA,)	
)	
Defendants.)	

TEMPORARY RESTRAINING ORDER

Plaintiffs filed a Motion seeking entry of a Temporary Restraining Order (“TRO”). The Court held a hearing on November 20, 2013, at which both parties appeared and presented evidence and argument. After consideration of the materials filed in the case, the evidence and the argument presented at the hearing, and consistent with the ruling announced at the hearing, the Court finds a TRO should enter.

To obtain a preliminary injunction, the moving party must establish: “(1) substantial likelihood that the movant will eventually prevail on the merits; (2) a showing that the movant will suffer irreparable injury unless the injunction issues; (3) proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) a showing that the injunction, if issued, would not be adverse to the public interest.”

Utah Gospel Mission v. Salt Lake City Corp., 425 F.3d 1249, 1262-63 (10th Cir. 2005) (quoting SCFC ILC, Inc. v. Visa USA, Inc., 936 F.2d 1096, 1098 (10th Cir. 1991)). The Court finds that Plaintiffs are substantially likely to prevail on the merits. It appears, based on the current evidence, that under the terms of the compact granting Most Favored Nation

status the arbitration was proper. In considering the issue of irreparable injury, the Court notes that Plaintiffs presented evidence in their brief demonstrating injury to their business concerns if they did not have a compact. While some portions of that harm are quantifiable, the ultimate loss of customers and goodwill could not be readily measured. Likewise, the harm Plaintiffs would suffer in the absence of a TRO is substantially greater than that suffered by Defendants. At most, Defendants will lose tax revenue, a loss that can be recovered in the event Plaintiffs ultimately fail. Conversely, Plaintiffs face the loss of business goodwill and sales, losses that cannot be recovered. Finally, the Court finds the issue of public interest to weigh in Plaintiffs' favor. For these reasons, the Court finds a TRO should issue consistent with the relief granted by the arbitrator.

Pursuant to this Order, Defendants are hereby Ordered to recognize, honor, and implement the terms of the October 31, 2013, Compact with the Chickasaw Nation and all of its terms, including the tax apportionment formulas, as if that Compact were entered with Plaintiffs. Further, the State shall withdraw any tobacco stamps issued inconsistently with the terms of the 2013 Compact.

The Court finds that any tax loss to the State is easily recoupable, and because this Order will expire in three weeks, in accordance with Fed. R. Civ. P. 65(c), Plaintiffs shall post a bond in the amount of \$25.00 within three days of the date of this Order.

This TRO shall expire upon entry of a ruling on Plaintiffs' Motion for Preliminary Injunction. Hearing on the Motion for Preliminary Injunction is set for Thursday, December

12, 2013, beginning at 10:00 a.m, in Courtroom 501. The parties shall file responsive briefs not later than Monday, December 9, 2013.

IT IS SO ORDERED this 21st day of November, 2013.

A handwritten signature in blue ink, reading "Robin J. Cauthron", written over a horizontal line.

ROBIN J. CAUTHRON
United States District Judge