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Honorable Kimberly J. Mueller
Judge of the U.S. Eastern District Court
Robert T. Matsui Federal Courthouse
501 I Street, Courtroom 3
Sacramento, CA 95814

RE: *State of California v. Paskenta Band of Nomlaki Indians, a Federally Recognized Tribe*, Case No. 2:14-cv-01449-KJM-CMK

Dear Judge Mueller:

This is the State of California's (State) letter brief. As stated at oral argument, the State's goal is to achieve the least intrusive and most neutral remedy that protects the public health, safety, and welfare, while leaving the tribal groups[1] to work out their disputes. Paskenta Group 2, which has sought a Casino shut down throughout the dispute, argues that the Court cannot issue the least intrusive and most neutral relief. Paskenta Group 2 contends that the Court lacks jurisdiction to do anything short of shutting down the Casino – the very relief that it sought through self-help even while it simultaneously engaged in numerous prior mediation attempts. No one disputes that the attempted self-help escalated the tensions and risks, and is the genesis of the State's complaint.

The Court Has Subject Matter Jurisdiction

This Court has jurisdiction under section 1331 of title 28 of the United States Code to enforce a class III gaming compact. *Cabazon Band of Mission Indians v. Wilson* 124 F.3d 1050, 1055-56 (9th Cir. 1997) (*Cabazon*), *cert. den. sub nom. Wilson v. Cabazon Band of Mission Indians* 524 U.S. 926 (1998). In *Cabazon*, the State asserted, as Paskenta Group 2 does here,

[1] In this letter brief, we refer to the group presently in control of the Rolling Hills Casino (Casino) as "Paskenta Group 1" and the group desiring to retake control as "Paskenta Group 2." We note that Paskenta Group 1 has not disputed the remedy that the State seeks, nor has it questioned this Court's power to fashion a remedy to protect the public health, safety, and welfare.

that the court lacked jurisdiction because the dispute was purely contractual. *Id.* at 1055. In rejecting that argument, the Ninth Circuit concluded:

> The State's obligation to the Bands thus originates in the Compacts. The Compacts quite clearly are a creation of federal law; moreover, IGRA prescribes the permissible scope of the Compacts. We conclude that the Bands' claim to enforce the Compacts arises under federal law and thus that we have jurisdiction pursuant to 28 U.S.C. §§ 1331 . . . .

Id. at 1056.

In *Cabazon*, the Ninth Circuit also rejected another argument that Paskenta Group 2 appears to make now. That argument was that Indian Gaming Regulatory Act confers federal jurisdiction over only three causes of specified in 25 U.S.C. § 2710(d)(7)(A), including an action to enjoin class III gaming activity on Indian lands that is conducted in violation of a compact. *Cabazon*, 124 F.3d at 1056. The Ninth Circuit observed that "the State construes both federal question jurisdiction and IGRA too narrowly and underestimates the federal interest at stake. *Id.* The court concluded that "IGRA necessarily confers jurisdiction onto federal courts to enforce Tribal-State compacts and the agreements contained therein." *Id.*

The Tribe Waived its Sovereign Immunity for this Action

In the State's memorandum in support of its motion for a temporary restraining order and during oral argument, the State pointed the Court to Compact section 9.4, subdivision (a), by which both the State and Paskenta waived sovereign immunity. That section provides a limited waiver for, among other things, actions arising out of the Compact that seek injunctive or declaratory relief. (Declaration of Joginder Dhillon in Support of Motion for Temporary Restraining Order (Dhillon Dec.), Exh. A, p. 29.)

Additionally, 25 U.S.C. § 2710(d)(7)(A)(ii) constitutes a congressional waiver of tribal sovereign immunity. That issue was central in the Supreme Court's recent *Michigan v. Bay Mills Indian Community*, 134 S.Ct. 2014 (2014), decision. There, the Supreme Court determined that the section's sovereign immunity waiver did not apply when Class III gaming was not conducted on Indian lands. The Court observed that IGRA partially abrogates tribal sovereign immunity in section 2710(d)(7)(A)(ii). *Id.* at 2032. Here, no dispute exists that the gaming under the Compact occurs on Indian lands. Therefore, the sovereign immunity waiver applies.

The Compact Is Not Limited to Only Gaming in the Casino Proper

Paskenta Group 2 argues that the Court does not have jurisdiction over any aspect of the Casino other than its class III gaming. As set forth above, the Court has jurisdiction to enforce the Compact. Just a small sampling of the Compact demonstrates that it is not limited to class III gaming in the Casino proper. Compact section 2.8 defines "Gaming Facility" to include, among other things, buildings and parking lots that serve the activities of the Gaming Operation.

(Dhillon Dec., Exh. A, p. 4, § 2.8.) The Gaming Operation is a business enterprise that offers and operates class III gaming "whether exclusively or otherwise." (*Id.*, Exh. A, p. 4, § 2.9.) Section 8.1.2 creates the duty to ensure the physical safety of patrons and employees and other persons while in the Gaming Facility – not just the Casino proper. (*Id.*, Exh. A, p. 24, § 8.1.2.)

The duty to conduct class III gaming in a manner that endangers the public health, safety, and welfare is not limited in geographical scope at all; it certainly is not limited to the Casino proper. (*See* Dhillon Dec., Exh. A, p. 30, § 10.1.) Other portions of Compact section 10 clearly apply beyond the bounds of the Casino proper.

The Court Has Inherent Equity Authority To Tailor Injunctive Relief

The federal courts have long recognized that injunctions are equitable remedies that require the court to balance carefully "the conveniences of the parties and possible injuries to them . . . as they may be affected by the granting or withholding of the injunction." *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (quoting *Yakus v. United States*, 321 U.S. 414, 440 (1944)). By its nature, "[t]he essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case." *Id.* (quoting *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944)). In molding such equitable orders, a federal court acts with "flexibility" and not "rigidity." *Id.*

As the Ninth Circuit observed, a "district court has broad powers and wide discretion to frame the scope of appropriate equitable relief." *Securities & Exchange Com'n v. United Financial Group, Inc.*, 474 F.2d 354, 358-59 (9th Cir. 1973).

Here, the State is requesting that the Court issue a temporary restraining order that equitably suits the facts of this case – i.e., the least intrusive and the most neutral. As the State demonstrated, a temporary restraining order can preserve the peace at the Tribal Properties and protect the public health, safety, and welfare without shutting down the Casino. The State is not requesting a Casino shut-down order when that remedy is not neutral and is not required to maintain public safety as the facts exist today. Because this Court's inherent equitable jurisdiction provides it with the power to tailor flexible injunctive orders based on a case's needs, the State's appropriately limited temporary restraining order request should be granted.

The Requested Temporary Restraining Order Should Be Entered

The State thanks you, your staff, and other counsel for making time on short notice for this important matter. The State seeks an order to protect the public health, safety, and welfare. Neither group argued today that relief was unnecessary. Instead, the two Paskenta groups argued

about the remedy's scope. The State respectfully requests that the Court enter the temporary restraining order as proposed. That order is the least intrusive and most neutral method to protect the public health, safety, and welfare.

Thank you.

Sincerely,

/s/ William P. Torngren

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