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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA,

Plaintiff,

vs.

PICAYUNE RANCHERIA OF  
CHUKCHANSI INDIANS OF CALIFORNIA,  
A FEDERALLY RECOGNIZED INDIAN  
TRIBE,

Defendant.

Case No.: 1:14-CV-01593 LJO SAB

**DEFENDANT'S RESPONSE TO  
TEMPORARY RESTRAINING  
ORDER AND REQUEST FOR  
MODIFICATION OF ORDER**

**I. INTRODUCTION**

The Picayune Rancheria of Chukchansi Indians, a federally-recognized Indian tribe, ("Tribe" or "Defendant") respectfully submits the following response to the Order Granting Plaintiff's Motion for Temporary Restraining Order, (Dkt. No. 5), issued by this Court on October 10, 2014 ("Order"). For the reasons provided herein, the Tribe acknowledges the importance of the injunctive relief sought by the Plaintiff. However, the Tribe requests that the current Order be modified to preserve the *status quo* as it existed just prior to the violent actions of a group of transgressors – enjoining solely the instigators of the violent events that led to the

1 Order from any further attempts to take-over or otherwise occupy the Chukchansi Gold Resort &  
2 Casino (“Casino”), and mandating that these individuals immediately return the sensitive and  
3 proprietary documents removed from the Casino. As set forth below, such a modification would  
4 permit the Tribe’s regulatory body to perform its required functions pursuant to tribal and federal  
5 law and the gaming compact between Plaintiff and the Tribe. Such a modification would also  
6 address Plaintiff’s concerns regarding public health and safety, thereby removing the basis for the  
7 existing prohibition on Casino operation and discontinuing the irreparable harm currently  
8 experienced by the Tribe, the Casino employees, and the citizens of Madera, Fresno, and Merced  
9 Counties, California.

## 10 II. STATEMENT OF FACTS

### 11 A. **Background of the Tribe and the Picayune Rancheria Tribal Gaming Commission.**

12 The Tribe is a federally-recognized Indian tribe with reservation land located in  
13 Coarsegold, California. Located on these lands is the Tribe’s gaming facility – the Chukchansi  
14 Gold Resort and Casino (“Casino”) – which the Tribe has owned and operated for more than a  
15 decade. The Casino is operated under the authority of an unincorporated arm of the Tribe – the  
16 Chukchansi Economic Development Authority (“CEDA”) – whose composition mirrors that of  
17 the Tribal Council – the Tribe’s governing body.<sup>1</sup>

18  
19  
20 <sup>1</sup> On May 16, 2013, United States Department of Interior, Bureau of Indian Affairs (“BIA”), affirmed  
21 that it recognized the following as the Tribal Council: Nancy Ayala, Chairperson, Reggie Lewis, Vice-  
22 Chairperson, Karen Wynn, Treasurer, Chance Alberta, Member-at-Large, Charles Sargosa, Member-at-  
23 Large, Carl Buzz Bushman, Member-at-Large . . .” See Declaration of Robert A. Rosette , filed herewith,  
24 (“Rosette Decl.”), ¶ 9 and Exhibit C attached thereto. Various factions appealed this decision, including  
25 those led by Reggie Lewis, Nancy Ayala, and Morris Reid. Upon review of these three appeals, the BIA  
26 issued a decision on February 11, 2014, establishing, in relevant part, that the BIA “will conduct business,  
27 on an interim basis, with the last uncontested Tribal Council [citation omitted] elected December 2010,  
28 consisting of Dora Jones, Chance Alberta, Jennifer Stanley, Nancy Ayala, Morris Reid, Reggie Lewis,  
and Nokomis Hernandez, until such time as the issue is resolved in accordance with the Tribe’s laws.”  
(Emphasis added). Rosette Decl. ¶ 10 and Exhibit D attached thereto. On August 24, 2014 the Tribal  
Council that was most recently recognized by the BIA (i.e., the Tribal Council elected in December, 2010)  
came together to form and recognize the “2014 Unification Council” as the legal and valid leadership of  
the Tribe. See Rosette Decl., ¶ 13 and Exhibit G attached thereto. Thus, Morris Reid, for whom a Notice  
of Appearance was just recently filed (Dkt. No. 7), is an individual that was elected as part of prior Tribal  
Councils, and, as such, has no separate standing on behalf of the tribe.

1           The Picayune Rancheria Tribal Gaming Commission (“PRTGC” or “Gaming  
2 Commission”) is an independent Tribal regulatory authority, charged with regulating the gaming  
3 activities of the Casino, pursuant to the Indian Regulatory Gaming Act, the Tribe’s Gaming  
4 Ordinance, and the Gaming Compact between the Tribe and the State of California. *See*  
5 Declaration of Khamphilia Chhom filed herewith (“Chhom Decl.”), ¶¶ 2, 3, and 5. The PRTGC  
6 maintains various responsibilities under its regulatory authority, including licensing various  
7 Casino employees and vendors and performing background checks as part of that process,  
8 maintaining detailed files regarding employees and vendors, and performing other functions. *See,*  
9 *id.* The PRTGC works regularly and closely with Casino Management in ensuring that regulatory  
10 requirements pursuant to tribal federal law are properly adhered to, and similar to Casino  
11 Management, the PRTGC works closely with and pursuant to the authority of CEDA and the  
12 Tribal Council – currently comprised as the 2014 Unification Council. *See* Chhom Decl., ¶ 4; *see*  
13 *also* Declaration of Giffen Tan, filed herewith (“Tan Decl.”), ¶¶ 3 and 4.

14           **B. PRTGC and the Casino Were Actively Working to Comply With NIGC Requests**  
15 **and Avoid Temporary Closure**

16           Immediately prior to the McDonald Faction’s armed occupation of the Casino and  
17 PRTGC offices (below), the PRTGC was regulating the Casino 24 hours a day, 7 days a week.  
18 *See* Chhom Decl., ¶ 11. Part of this regulation included the PRTGC diligently working with  
19 Casino management and auditors from Ernst & Young to comply with National Indian Gaming  
20 Commission (“NIGC”) requests for information and audit materials in a timely manner so as to  
21 avoid threatened closure for failure to comply with such requests. *See, id.* Ernst & Young has  
22 nearly completed its audit of the Casino and PRTGC, and is expected to provide these materials  
23 to the Casino and PRTGC imminently. *See, id.* PRTGC would, in turn, produce those materials  
24 to the NIGC immediately upon receipt. *See, id.* The McDonald Faction’s recent actions,  
25 including its theft of countless PRTGC documents, computer servers, and other materials  
26 threatens to delay the Casino and PRTGC’s ability to comply with the NIGC’s request, which  
27 will be separate and independent grounds for further closure of the Casino. *See, id.*

1                   **C. The McDonald Faction’s October 9, 2014 Violent and Armed Take Over of the**  
2                   **Casino and PRTGC Offices.**

3                   On the evening of October 9, 2014, the Casino and PRTGC offices located on the first  
4 floor of the Casino were subjected to a violent and armed take-over attempted by persons  
5 affiliated with Tribal member Tex McDonald (“McDonald Faction”), including his hired  
6 personnel, John Olivera (State MPA at p. 2) and purported tribal police forces. *See* Chhom Decl.,  
7 ¶ 6, *see also* Declaration of Leonard Rosson (“Rosson Decl.”), ¶¶ 3 and 6, and Exhibits A and B  
8 attached thereto; Declaration of Casey Cotroneo (“Cotroneo Decl.”), ¶¶ 3-5 and Exhibit A  
9 attached thereto; Declaration of Cincy Cruz (“Cruz Decl.”), ¶¶ 3, 5 and 6, and Exhibit A attached  
10 thereto; Declaration of Randy Atkins (“Atkins Decl.”), ¶¶ 3, 5 and 6, and Exhibit A attached  
11 thereto; Declaration of Rudy Flores (“Flores Decl.”), ¶¶ 3, 5 and 6, and Exhibit A attached  
12 thereto; Declaration of Steve Jones (“Jones Decl.”), ¶¶ 3, 5 and 6, and Exhibit A attached thereto;  
13 Declaration of Trevor A. Davies (“Davies Decl.”), ¶¶ 3, 5 and 6 and Exhibit A attached thereto,  
14 each of which is filed herewith. Mr. McDonald is the leader of a group that claims to have Tribal  
15 authority, but neither Mr. McDonald nor his supporters have been recognized by any state or  
16 federal agency or government as having any authority on behalf of the Tribe, the Casino, or  
17 CEDA. *See* Chhom Decl., ¶ 6.

18                   Authenticated video surveillance and witness statements signed under the penalty of  
19 perjury illustrate that, as part of their illegal activities, the McDonald Faction used drawn  
20 firearms, tazers, and other weapons against Casino and PRTGC employees for the purpose of  
21 taking physical control over the Casino and the Tribe’s assets on October 9 and 10, 2014. *See*  
22 Declaration of Ken Frazel (“Frazel Decl.”), ¶¶ 5-6 and Exhibit A attached thereto; *see also*  
23 Rosson Decl, ¶¶ 6 and 7 and Exhibit A attached thereto; Cotroneo Decl., ¶¶ 4 and 5 and Exhibit A  
24 attached thereto; Cruz Decl., ¶¶ 5 and 6, and Exhibit A attached thereto; Atkins Decl., ¶¶ 5 and 6,  
25 and Exhibit A attached thereto; Flores Decl., ¶¶ 5 and 6, and Exhibit A attached thereto; Jones  
26 Decl., ¶¶ 5 and 6, and Exhibit A attached thereto; Davies Decl., ¶¶ 5 and 6 and Exhibit A  
27 attached thereto. The McDonald Faction handcuffed Casino personnel, held them at gunpoint,  
28 extensively and unreasonably subjected them to electric shock by tazer and detained them for

1 lengthy periods of time, during this violent takeover and occupation. *See id; see also*  
2 PLAINTIFF’S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
3 TEMPORARY RESTRAINING ORDER, Dkt. No 2-2 (“Plaintiff’s MPA”), at 2:20-23;  
4 Declaration of Joginder Dhillon Dkt. No 2-3 (“Dhillon Decl.”) at 2:8018 and Exhibits B through J  
5 attached thereto.

6 During these violent events, the McDonald Faction also removed a great deal of PRTGC  
7 documentation, which the Tribe and PRTGC are required to maintain pursuant to applicable  
8 federal and Tribal law, as well as the Compact. *See Chhom Decl.*, ¶¶ 5, 8 and 9. The McDonald  
9 Faction also removed computer servers housing very sensitive information, including licensed  
10 employee social security numbers, birthdates, home addresses and other sensitive personal  
11 information. *See, id.*

12 **D. Closure Orders by the National Indian Gaming Commission and This Court**

13 In light of the McDonald Faction’s violent actions of October 9, 2014, on October 10,  
14 2014, the NIGC, the federal regulatory agency charged with overseeing tribal gaming activities  
15 pursuant to IGRA, issued a Notice of Violation and Temporary Closure Order (NOV-14-03,  
16 TCO-14-02) addressed to the “Chairman (Agent for Service)” of the Tribe, Khamphilia  
17 “Khammy” Chhom, Executive Director of the PRTGC, and Giffen Tan, Casino General Manager  
18 (“NIGC Order”). *See Chhom Decl.*, ¶ 7 and Exhibit A attached thereto. In its Order, the NIGC  
19 directs that the Tribe “cease and desist from all gaming activity” on the Casino due to “real and  
20 immediate threat to human health and well-being” caused by the actions of the McDonald  
21 Faction. *See, id.*

22 On October 10, 2014, the State of California sought and obtained the instant Order from  
23 this Court, explaining that “the [attempted] takeover of the Casino by the MacDonald [sic]  
24 Faction demonstrates a clear and ongoing threat to the public safety of the Casino.” *See*  
25 Plaintiff’s MPA, 5:2-3; *see also, id.*, 2:18-28.

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27 ///

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1                   **E. Casino Management and PRTGC's Efforts Following the McDonald Faction's**  
2                   **Violent and Armed Take Over of the Casino and PRTGC Offices**

3                   Casino Management and the PRTGC recognized the exigency of the situation and  
4 immediately took necessary action for the protection of Casino patrons and personnel. *See*  
5 Chhom Decl., ¶¶ 10 and 12; *see also* Tan Decl., ¶¶ 4, 5 and 8. Soon after the McDonald Faction's  
6 violent activities took place, the PRTGC issued an immediate temporary closure order of the  
7 Casino and Casino Management ordered that the Casino be closed and that patrons be evacuated  
8 from the premises to ensure their protection and safety. *See, id.* In doing so, the PRTGC and  
9 Casino Management effectively maintained control of the Casino, the Casino cage (where cash is  
10 held) and the surveillance room (and continue to maintain this control) and they subsequently  
11 contacted the Madera County Sherriff's Office, which responded with assistance from the  
12 California Highway Patrol and secured the Casino, the surrounding property and roads. *See, id.*;  
13 *see also* Plaintiff's MPA 2:25-28.

14                   Casino Management and key personnel, as well as the regulatory body – PRTGC – are  
15 maintaining a continuous presence at the Casino and working, in some instances under the escort  
16 of Madera County Sheriff's officers, to address various issues related to the abrupt closure on the  
17 evening of October 9, 2010. *See* Tan Decl., ¶ 8; *see also* Chhom Decl., ¶¶ 10 and 12; Declaration  
18 of Sheila Olson, filed herewith ("Olson Decl."), ¶ 9. They are also working hard to ensure that  
19 the Casino is ready for reopening as soon as the same is permitted by this Court, the NIGC, and  
20 the PRTGC.

21                   Following the McDonald Faction's armed occupation of the Casino, PRTGC has  
22 continued working to regulate the Casino 24 hours a day, 7 days a week, even though there is  
23 presently no active gaming activity in the Casino. *See* Chhom Decl., ¶¶ 10 and 12.

24                   **F. The Significant Practical and Economic Impact of Indefinite Casino Closure for**  
25                   **the Tribe, Casino Employees, and the Larger Communities of Madera, Fresno,**  
26                   **and Merced Counties**

27                   Though there is no public gaming activity in the Casino, it remains open and operational  
28 for all intents and purposes. Slot machines are turned on and operable, the underlying  
infrastructure is in place and operable, televisions are still on, music is still playing, the bars are

stocked and all Casino employees remain on the Casino's payroll. *See* Chhom Decl., ¶ 13. However, the Tribe can maintain this "open" status for only a few short days if the Casino is going to be closed indefinitely. *See, id.* If the Casino is not permitted to reopen, it will have to turn off slot machines, and that is no simple feat. *See, id.* Further, restarting these slot machines following closure is not simple or quick task. *See, id.* Finally, if the Casino must make the decision to turn off the slot machines, mass layoffs will ensue. *See, id.* If the mass layoffs occur, then the management team will be required to rehire the employees upon reopening. *See, id.* Once the employees are hired, the employees will need to be reissued a gaming license which includes a credit check and background check, which can take an additional three weeks. *See, id.*

Given the Casino's operations, the prospect of a mass layoff should not be taken lightly. At present, the Casino employs 1,044 employees, who collectively provide a total of 1,852,308 labor hours annually, generating a total payroll of more than \$31.8 Million. *See* Olson Decl., ¶¶ 3 and 5. Of that group, 68 are members of the Tribe, while the remaining 976 are non-Tribal members of the public. *See* Olson Decl., ¶ 4. Nearly 900 of these employees, and nearly 1,200 employee dependents receive medical benefits through the Casino. *See* Olson Decl., ¶ 6. In addition, nearly 400 employees participate in the Casino's retirement benefits program, and nearly 1,000 employees enjoy paid time off benefits to care for themselves and their families. *See, id.*

### III. ARGUMENT

**THE ORDER SHOULD BE MODIFIED TO PRESERVE THE *STATUS QUO* AS IT EXISTED JUST PRIOR TO THE MCDONALD FACTION'S HOSTILE ACTIONS THAT FORCED CASINO CLOSURE**

While a Court has broad discretion to grant or deny a request for injunctive relief, permitting an overbroad injunction constitutes an abuse of that discretion. *See United States v. BNS, Inc.*, 858 F.2d 456, 460 (9th Cir. 1988). Thus, a court must narrowly tailor injunctive relief to “remedy the specific harm alleged.” *See Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9<sup>th</sup> Cir. 1991); *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (“injunctive relief

1 should be no more burdensome to the defendants than necessary to provide complete relief to the  
2 plaintiffs”).

3 The overwhelming evidence before this Court demonstrates that it is a limited group of  
4 individuals – the McDonald Faction and the McDonald Faction alone – that took armed violent  
5 actions in an effort to take physical control of the Casino. It was these violent activities that  
6 resulted in the State seeking and obtaining the current Order from this Court in order to preserve  
7 and protect public health and safety. Thus, an Order enjoining solely the McDonald Faction from  
8 attempting to repossess or otherwise take physical control of the Casino will not only address the  
9 Plaintiff’s concerns related to public health and safety, but it will also allow the Casino to take the  
10 necessary steps to resume operations, alleviating a devastating burden to the Tribe, Casino  
11 employees and the surrounding community.

12  
13 1. A Modified Order Preserving the Status Quo Will Allow for Public Health and  
14 Safety to Be Protected, While Allowing the PRTGC to Perform Its Required  
Regulatory Functions

15 The Tribe, Casino management and the PRTGC – like this Court – are all interested in  
16 taking actions necessary for the protection of public health and safety. And, the Tribe, Casino  
17 management and the PRTGC – presumably like this Court – want to ensure that in taking such  
18 actions, we do not actually create additional threats to the public health and safety. Thus, the  
19 Tribe, Casino management and the PRTGC believe that a modified order preserving the status  
20 quo as it existed immediately before the McDonald Factions violent take over and occupation on  
21 October 9 and 10, 2014, and allowing for the reopening of the Casino, will remove the threats to  
22 public health and safety caused by the McDonald Faction without creating additional threats to  
23 public health and safety stemming from indefinite Casino closure. *See* Tan Decl., ¶ 9; Chhom  
24 Decl., ¶ 16; Ayala Decl., ¶ 17; Lewis Decl. ¶17.

25 The PRTGC, as led by Chairperson Dyann Eckstein and Executive Director Khammy  
26 Chhom, was working diligently, before the events of October 9, 2014, to effectively regulate the  
27 Casino on site, in its offices on the first floor of the Casino. For example, the PRTGC was  
28

1 working with Casino management and auditors from Ernst & Young to comply with NIGC  
2 requests for information and audit materials in a timely manner so as to avoid threatened closure  
3 for failure to comply with such requests. *See* Chhom Decl. ¶ 11. Ernst & Young has nearly  
4 completed its audit of the Casino and PRTGC, and is expected to provide these materials to the  
5 Casino and PRTGC imminently, so the Tan and the PRTGC can in turn produce those materials  
6 to the NIGC immediately upon receipt. *See, id.* Unfortunately, the McDonald Faction's recent  
7 actions, including its theft of countless PRTGC documents, computer servers, and other materials  
8 threatens to delay the PRTGC and Casino's ability to comply with the NIGC's request. *See, id.*  
9 That, in turn, will constitute a separate and independent ground for further closure of the Casino.  
10 *See, id.*

11 Similarly, it was the PRTGC, as led by Chairperson Eckstein and Executive Director  
12 Chhom that was the recipient of the NIGC closure order. *See* Chhom Decl., ¶ 7, and Exhibit A  
13 attached thereto. As the recipient of that order, the PRTGC must be permitted to remain on site,  
14 performing its regulatory functions so that it has an opportunity to comply with all terms of the  
15 order. In summary, it is this PRTGC that is required to fulfill regulatory obligations under the  
16 Gaming Ordinance and Compact. *See* Chhom Decl., ¶¶ 2-5. And, it is this PRTGC that must be  
17 permitted to address the concerns recently raised by the NIGC, including the production of  
18 outstanding audit materials and demonstration that all threats to public health and safety have  
19 been addressed. In the context of an amended Temporary Restraining Order or Preliminary  
20 Injunction that would: (i) prohibit all firearms and weapons at the Casino and on the surrounding  
21 property (e.g., parking lots, the Hotel, Lucky Lane and other roadways connected to the Casino);  
22 (ii) prohibit members of the McDonald Faction from any further attempts to possess, take over or  
23 otherwise occupy any part of the Casino through any means; and (iii) require the McDonald  
24 Faction to immediately return all Casino and PRTGC materials that it stole during its October 9  
25 and 10 occupation, the PRTGC would be able to perform its mandated regulatory functions and  
26 assist in the protection of all aspects of public health and safety.

1           2.       Continued Casino Closure Would Create, Not Prevent, Immediate and Irreparable  
2                    Injury to the Tribe, Tribal Members, and the Surrounding Community.

3           Pursuant to Rule 65 of the Federal Rules of Civil Procedure, the Court may grant  
4 preliminary injunctive relief in order to **prevent** “immediate and irreparable injury.” Fed. R. Civ.  
5 P. 65(b). It “is an extraordinary remedy never awarded as of right.” *Winter v. Natural Res. Def.*  
6 *Council, Inc.*, 555 U.S. 7, 24 (2008). In light of these standards, such relief must **not** be awarded  
7 when it will do nothing to prevent immediate and irreparable injury and will actually create injury  
8 that is equally immediate and irreparable.

9           While the Tribe believes that injunctive relief remains critically necessary in these  
10 circumstances, the current Order, if left unmodified to continue a prohibition on Casino  
11 operations, will result in irreparable harm to not only the Tribe and its citizens, but, significantly  
12 to the citizens of Madera, Fresno and Merced Counties, and the local economy as a whole.

13           As described above, an indefinite closure will imminently result in a mass layoff of  
14 virtually all Casino employees. This means, in no uncertain terms:

- 15           • The loss of 1,044 Casino jobs, 976 of which are currently held by non-Tribal  
16 members of Madera, Fresno, and Merced counties;
- 17           • The loss of more than 1,852,308 labor hours annually;
- 18           • The loss of an annual payroll of more than \$31,800,000.00;
- 19           • The loss of revenue for local businesses as Casino employees will no longer be  
20 spending their non-existent paychecks in local businesses;
- 21           • The loss of comprehensive medical benefits for nearly 900 Casino employees;
- 22           • The loss of comprehensive medical benefits for nearly 1,200 Casino-employee  
23 dependents;
- 24           • The loss of retirement benefits for roughly 400 Casino employees;
- 25           • The loss of paid time off benefits for nearly 1,000 Casino employees.

26       *See Olson Decl.*, ¶¶ 3 – 6.

27           In addition, indefinite Casino closure will have a tremendous negative impact on the  
28

1 Tribe, since it utilizes revenues from the Casino as the primary source of funding for critical  
2 governmental and social programs for tribal members, including healthcare, education and  
3 eldercare. *See* Declaration of Nancy Ayala, filed herewith, (“Ayala Decl.”), ¶¶ 14-16; *see also*  
4 Declaration of Reginald Lewis, filed herewith (“Lewis Decl.”), ¶¶ 14-16.

5 In addition to the impact on the substantial number of Casino employees and on the Tribe  
6 and its citizens, continued Casino closure will result in a devastating economic impact on the  
7 Madera County as a whole and on the local economy. If the Casino is not allowed to open to the  
8 public within the next few days, decisions will have to be made that will require the Casino to be  
9 closed for several months, which would have a devastating economic impact on the entire region.

10 As described above, the Casino – even though it is closed to the public – remains “open”  
11 for most intents and purposes. *See* Chhom Decl., ¶ 13. Slot machines are turned on and operable,  
12 the underlying infrastructure is in place and operable, the bars are stocked and all Casino  
13 employees remain on the Casino’s payroll. *See. id.* Unfortunately, the Casino cannot maintain  
14 this status for more than a few days, before it must close everything down if the Casino will be  
15 closed indefinitely. *See, id.*

16 One of the largest tasks associated with closure involves slot machines. Unfortunately, it  
17 is not a simple task of flipping a button or unplugging a cord. *See. id.* A specialized  
18 management team under the oversight of the PRTGC must first remove the e-proms of every  
19 single machine with technical testing in place. *See. id.* This process, alone, could take at least  
20 two weeks. *See. id.*

21 Similarly, once closed down, there will be delays with restarting the slot machines. For  
22 example, to get these slot machines back into operations, the e-proms would need to be reinserted  
23 with specialized testing to ensure integrity of the games. *See. id.* That process will take at least an  
24 additional three weeks. *See. id.*

25 With respect to employees, once an indefinite closure is effectuated, all employees must  
26 be terminated. Upon reopening, the management team will be required to rehire the employees,  
27 and that could take at least four weeks. Further, once Casino management hires the employees,  
28

1 PRTGC still needs to go through the gaming license process, which includes credit and  
2 background checks. That could take an additional three weeks for each employee. See. id.

3 Finally, indefinite closure of the Casino will result in a devastating impact beyond the  
4 Tribe, the Casino employees, and their families, and to the larger communities of Madera, Fresno,  
5 and Merced Counties. Quite simply, the Casino does more than just provide jobs in the local  
6 community. It also has several surrounding businesses and vendors that provide goods and  
7 services to the Casino. The Casino flourishes because the Casino and its vendors and service  
8 companies provide opportunities for consumers to continue circulating money within the tribal  
9 and local economy. See The Harvard Project on American Indian Development, *The State of the*  
10 *Nation Nations: Conditions under U.S. Policies of Self-Determination*, (New York: Oxford  
11 University Press, 2008), 117. When money changes hands multiple times within an economy  
12 before leaving, there is a “multiplying effect” on that economy. Ideally, the Casino is a portal by  
13 which a dollar enters the local economy, and then the dollar will change five to seven hands  
14 before leaving an economy, and every dollar that does not enter the economy represents an  
15 exponential decrease in the economy’s wealth. See Robert J. Miller, *Reservation Capitalism:*  
16 *Economic Development in Indian Country*, (First Nebraska, 2013) 123-129, 135-139.  
17 Accordingly, if the Casino closes indefinitely, it is not just the jobs that will be lost, but the entire  
18 local economy will be devastated, thus demonstrating the irreparable harm that will result if the  
19 current Order is not modified.

20  
21 3. This Court Recently Navigated a Very Similar Situation Involving Hostile Forces  
22 at a Tribal Casino, Without Ordering Closure of the Tribal Casino, and Should  
Navigate the Instant Circumstances in the Same Manner

23 The current situation involving the Tribe and its Casino, while unfortunate in  
24 circumstance, is not a new or novel situation for this Court. Indeed, Judge Mueller of this very  
25 Court successfully navigated an almost identical scenario just a few months ago, whereby a  
26 disgruntled tribal faction attempted to take over a tribe’s casino through violent means. In that  
27 instance, this Court appropriately addressed the situation to preserve the status quo, while  
28

1 ensuring that public health and safety was maintained without closure of the Casino and the  
2 related irreparable economic harm to that tribe and the surrounding community.

3 Specifically, on June 9, 2014, a disgruntled faction of the Paskenta Band of Nomlaki  
4 Indians (“Paskenta”), a federally-recognizing Indian tribe located in Corning, California,  
5 attempted a hostile takeover of the tribe’s gaming facility – Rolling Hills Casino (“Paskenta  
6 Casino”). See Rosette Decl., ¶ 5. In doing so, this faction – comprised of approximately 25  
7 individuals claiming to be a “tribal police” force (“Attacking Faction”) – was armed with various  
8 weapons, including firearms. See, *id.*

9 On June 19, 2014, the State of California obtained, from Judge Mueller of this Court, a  
10 Temporary Restraining Order that restored the status quo as it existed prior to the Attacking  
11 Faction’s violent overthrow attempt of June 9, 2014 (“Paskenta TRO”). See Rosette Decl., ¶ 6  
12 and Exhibit A attached thereto. In summary, the Paskenta TRO restored the status quo as it  
13 existed just before the attack by keeping the Attacking Faction out of the Paskenta Casino and  
14 enjoining it from attempts to disturb the status quo with respect to operation of the Paskenta  
15 Casino. See, *id.* The Paskenta TRO also disarmed all factions by prohibiting the deployment of  
16 armed personnel of any nature within 100 yards of the Casino, the Casino property, and the tribal  
17 properties surrounding the Casino (nearby hotels, gas station, and RV park) (collectively “Tribal  
18 Properties”) and the possession, carrying, and displaying of firearms on Tribal Properties. See, *id.*  
19 On July 7, 2018, this Court issued a Preliminary Injunction with the same substantive terms as the  
20 Paskenta TRO (“Paskenta PI”). See Rosette Decl., ¶ 7 and Exhibit B attached thereto. This is  
21 essentially what the Tribe, PRTGC and Casino seek here.

22 Following issuance of the Paskenta TRO and the Paskenta PI, the Paskenta Casino was  
23 permitted to remain open and has remained open from that time and to this date without any  
24 violent actions at the Paskenta Casino or further threats to public welfare and safety. See Rosette  
25 Decl., ¶ 8. Thus, this Court, through the Paskenta TRO and Paskenta PI successfully addressed  
26 and resolved the threats to public health and safety caused by the Attacking Faction’s actions, and  
27 it was able to do this without addressing any of the internal Tribal leadership issues. See Rosette  
28

1 Decl., ¶ 8. In addition, because the Paskenta Casino remained open, Casino employees were able  
2 to continue their employment, uninterrupted, and received all of the benefits that accompany that  
3 employment. *See, id.* This Court, through the Paskenta TRO and Paskenta PI, also resolved the  
4 issues while avoiding the threats to public health and safety that would have accompanied any  
5 loss of employment. *See, id.*

6 The recent circumstances involving Paskenta demonstrate that this Court appropriately  
7 addressed almost an almost identical situation to ensure that public health and safety concerns  
8 were addressed, while keeping the Paskenta Casino open and safeguarding the surrounding  
9 community and local economy in doing so. The Tribe seeks similar action from this Court  
10 through a modified Order that will preserve the status quo as it existed on October 9<sup>th</sup>, before the  
11 McDonald Faction's violent armed attack, specifically enjoining the McDonald Faction from any  
12 further attempts to take over, access, or otherwise occupy the Casino, and allowing the Casino to  
13 begin steps toward resuming operations.

#### 14 IV. CONCLUSION

15 For the foregoing reasons, the Tribe respectfully requests that the Order be modified to  
16 preserve the status quo as it existed just prior to the violent actions of the McDonald Faction.  
17 Solely the McDonald Faction and individuals associated with the McDonald Faction must be  
18 enjoined from entering the Casino premises and from any efforts aimed at repossessing the  
19 Casino. Through this modified Order, the Court will address the Plaintiff's concerns of public  
20 health and safety and will remove the basis for the existing prohibition on Casino operation –  
21 thereby discontinuing the irreparable harm currently experienced by the Tribe and the citizens of  
22 Madera Fresno, and Merced Counties, California.

23 RESPECTFULLY SUBMITTED,

24 Rosette, LLP

25 /s/ Geoffrey M. Hash

26 Attorneys for Defendant Picayune Rancheria  
27 of the Chukchansi Indians  
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