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9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF CALIFORNIA  
12 (FRESNO DIVISION)  
13

14 **STATE OF CALIFORNIA,**

15 Plaintiff,

16 v.

17 **PICAYUNE RANCHERIA OF  
CHUKCHANSI INDIANS OF  
18 CALIFORNIA, A FEDERALLY  
19 RECOGNIZED INDIAN TRIBE,**

20 Defendant.  
21

Case No.

**PLAINTIFF'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF TEMPORARY  
RESTRAINING ORDER**

**Date:**

**Time:**

**Courtroom:**

**Judge:**

**Trial Date:**

**Action Filed:**

22 The State of California (State) seeks immediate injunctive relief to prevent an imminent  
23 threat to the public health and safety. Opposing tribal factions of the Picayune Rancheria of  
24 Chukchansi Indians of California (Tribe) operates the Chukchansi Gold Resort & Casino  
25 (Casino). An imminent threat to the public health and safety of the Tribe's members, the State's  
26 residents, patrons, and visitors at and around the Casino. Therefore, this Court should issue  
27 orders to protect the public, including a temporary restraining order prohibiting the Tribe from  
28 operating the Casino until the Court is satisfied that the Casino will be operated in a manner that

1 does not endanger, or otherwise threaten, the public health, safety, or welfare of employees,  
2 patrons, and the general public.

3 **THE FACTS JUSTIFYING EMERGENCY RELIEF**

4 The State and the Tribe entered into the a class III gaming compact on September 10, 1999  
5 (Compact). Pursuant to the Compact, the Tribe owns and operates the Casino in Madera County,  
6 California. The Compact makes provisions to protect the public health and safety. Under section  
7 8.1.2 of the Compact, the Tribe agrees to ensure “the physical safety of Gaming Operation  
8 patrons and employees, and any other person while in the Gaming Facility.” Section 10.1 of the  
9 Compact provides: “The Tribe will not conduct Class III gaming in a manner that endangers the  
10 public health, safety, or welfare . . . .”

11 The Compact also allows the State to seek a court’s aid in protecting the public health or  
12 safety. Specifically, section 9.1 provides that, in the case of an imminent threat to the public  
13 health or safety, the parties may resort to immediate judicial process. Here, the State must do so  
14 to protect the Tribe’s members, the State’s residents, and visitors and patrons at and around the  
15 Casino. (Dhillon Dec., p. 3, ¶ 8.)

16 An intra-tribal dispute exists among the Tribe’s members. As a result of this dispute, three  
17 factions, the Tex McDonald faction, the Lewis/Ayala faction, and the Reid faction, each claim  
18 tribal leadership rights and the right to the Casino’s possession and control. The intra-tribal  
19 dispute involves armed factions and thus poses a threat to the public health, safety, and welfare.  
20 At about 6:00 p.m. October 9, 2014, the Tex McDonald faction including Tex McDonald along  
21 with his head security person (John Olivera) and about twenty-five additional security personnel  
22 executed a takeover of the Casino. This was apparently done with the use of firearms. Security  
23 personnel for different factions were held at gunpoint and/or tased during the takeover. As the  
24 incident unfolded, some of the Casino security, not a part of the Tex McDonald faction, were able  
25 to maintain control of the surveillance room and are still there. They issued an emergency  
26 evacuation of the Casino, had the cage secured and contacted Madera Sheriff’s Office. The  
27 Madera County Sheriff’s Office responded with assistance from the California Highway Patrol  
28 and secured the Casino the surrounding property and roads.

**ARGUMENT**

The declaration of Joe Dhillon demonstrates the existence of a volatile situation involving armed factions that threaten the public health and safety and endanger the Tribe's members, the Casino's employees and patrons, and the State's residents and visitors, including law enforcement agents. This situation breaches the Tribe's duties under the Compact, and requires immediate action to protect the public safety until the intra-tribal dispute over the ownership and control of the Casino has been resolved.

**A. The Court Has Original Jurisdiction Over the State's Action**

The State's Complaint invokes the Court's jurisdiction under section 1331 of title 28 of the United States Code because the State's claim arises under federal statutes and the federal common law. This Court also has jurisdiction pursuant to section 2710(d)(7)(A)(ii) of title 25 of the United States Code because this action is initiated by the State to enjoin conduct related to the Tribe's class III gaming activity that violates the Compact.

The parties have waived sovereign immunity with respect to the claim for relief made in the State's Complaint. Specifically, section 9.3 of the Compact provides for a limited waiver of sovereign immunity as follows:

(a) In the event that a dispute is to be resolved in federal court . . . as provided in this Section 9, the State and the Tribe expressly consent to be sued therein and waive any immunity therefrom that they may have provided that:

(1) The dispute is limited solely to issues arising under this Gaming Compact;

(2) Neither side makes any claim for monetary damages (that is, only injunctive, specific performance, . . . or declaratory relief is sought); and

(3) No person or entity other than the Tribe and the State is party to the action . . . .

(Compact, p. 29, § 9.4.)

**B. The State Is Entitled to Issuance of a Temporary Restraining Order**

The requirements for a temporary restraining order are the same as those for a preliminary injunction. A party applying for a preliminary injunction “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). Here, the evidence establishes all of these factors.

**1. The State Is Likely To Succeed on the Merits**

The State’s lone claim for relief is breach of the Compact. A compact is a contract. *Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546, 1556 (10th Cir. 1997). The general principles of federal contract law apply to compacts. *Cachil Dehe Band of Wintun Indians of the Colusa Indian Comm. v. California Gambling Control Com’n*, 618 F.3d 1066, 1073 (9th Cir. 2010). In determining federal contract law, courts rely upon both “California contract law and Ninth Circuit decisions interpreting California” contract law. *Id.* The elements for a breach of contract claim are the contract, plaintiff’s performance or excuse for nonperformance, defendant’s breach, and resulting damages to plaintiff. *Reichert v. General Ins. Co. of America*, 68 Cal.2d 822, 830 (1968).

In this case, the elements of the Tribe’s breach of the Compact are clear. In the Compact, the Tribe agreed to ensure the physical safety of employees and patrons at the Casino (Compact, p. 24, § 8.1.2), and to not conduct gaming in a manner that endangers the public health, safety, or welfare (*id.* at p. 30, § 10.1). The armed confrontation described in the Dhillon declaration submitted to this Court, constitutes a breach of the Compact. Pursuant to the cited Compact provisions, the Tribe violates the Compact when it, as the result of intra-tribal disputes or otherwise, forms armed factions that threaten to either commit or attempt to commit, or commit physical assaults, repossessions, or attacks at or near the Casino. Consequently, the situation and threats show that the State is likely to succeed on the merits.

1                   **2. The State Is Likely To Suffer Irreparable Harm in the Absence of Relief**

2           The takeover of the Casino by the MacDonald faction demonstrates a clear and ongoing  
3 threat to the public safety at the Casino based upon confrontations between the tribal factions.  
4 This creates the risk of imminent physical injury to the State's residents and visitors to the  
5 Casino, particularly where the factions are armed and part of a volatile situation. Absent  
6 injunctive relief disarming the factions, prohibiting any assaults or attempts to repossess the  
7 Casino, and prohibiting operation of the Casino unless and until it is established before this Court  
8 that the public health and safety of Casino patrons, employees, and tribal members can be  
9 adequately protected from the violent confrontations and threats of violent confrontation among  
10 the tribal factions disputing leadership of the Tribe and control of the Casino, physical injury to  
11 the State's residents is likely to occur.

12                   **3. The Balance of the Equities Tips in the State's Favor**

13           The equities clearly favor the State and its interests to protect the public health, safety, and  
14 welfare. The State seeks to prevent the potential for violence and physical harm to people.  
15 Balanced against this is the Tribe's right to exercise self-help. The Court should determine that  
16 public safety outweighs self-help.

17                   **4. An Injunction Is in the Public Interest**

18           The State is respectful of the Tribe's right to resolve its intra-tribal disputes on its own. In  
19 fact, the State takes no position with respect to the intra-tribal dispute. Nonetheless, the State and  
20 the general public have an interest in safety and not being endangered physically by an intra-tribal  
21 dispute. Clearly, an injunction here is in the public interest.

22                   **CONCLUSION**

23           In view of the foregoing, the State respectfully requests that the Court issue a temporary  
24 restraining order to protect the public. This order should include an order enjoining attempts to  
25 repossess, or take control of, the Casino, deploying armed personnel, and having firearms on the  
26 properties in the Casino's vicinity.

1 Dated: October 10, 2014

Respectfully submitted,

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