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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
(FRESNO DIVISION)

STATE OF CALIFORNIA,

Plaintiff,

v.

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

Defendant.

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

**PLAINTIFF'S REQUEST FOR
PRELIMINARY INJUNCTION**

Date: October 29, 2014

Time: 9:00 a.m.

**Courtroom Four – 7th Floor
Before the Honorable Lawrence J. O'Neill
Judge of the United States District Court**

Because the underlying circumstances that gave rise to the extraordinary events that threatened public safety and led to this Court's issuance of a temporary restraining order have not been resolved and continue to present a risk of violence, the State of California (State) respectfully requests that the Court enter a preliminary injunction that is substantively the same as the temporary restraining order, as modified on October 15, 2014 (TRO). (*See* [Proposed] Preliminary Injunction, filed concurrently.) That preliminary injunction is necessary to protect the public health and safety and to ensure that the general public is not endangered by actions

1 taken by opposing tribal groups of the Picayune Rancheria of Chukchansi Indians of California
2 (Tribe).

3 Extraordinary relief is required when extraordinary events endanger the public health and
4 safety. Employees, patrons, law enforcement, and the general public never should risk injury, and
5 possibly death, by entering into a tribal, or other gaming, facility in California. But armed
6 invasions and confrontations are at this case's center. Escalating tensions and confrontations
7 culminated in those events. All evidence points to the tensions and confrontations continuing, not
8 abating. By any measure, the facts here are extraordinary and thus require a preliminary
9 injunction that is substantively the same as the TRO.

10 The Tribe operates the Chukchansi Gold Resort & Casino (Casino) in Madera County. The
11 Tribe also is engaged in an intra-tribal dispute that began in December 2011. That dispute
12 involves shifting allegiances and ever-increasing tensions and provocations. On October 9, 2014,
13 the intra-tribal dispute escalated to one group invading the Casino and a confrontation between
14 armed security forces of opposing groups. In view of the imminent threat to the public health and
15 safety of the Tribe's members, the State's residents, the patrons, employees, visitors at and
16 around the Casino, and law enforcement personnel, the State requested, and this Court issued, a
17 temporary restraining order which enjoined the tribal groups from deploying tribal police,
18 possessing weapons, or taking steps to repossess or take control of the Casino.

19 In response to the October 9, 2014 events, the National Indian Gaming Commission
20 (NIGC) issued a Notice of Violation and Temporary Closure Order (NIGC Order). (See ECF
21 Nos. 9-1, Exh. A & 10-3, Exh. A.) Following its modification, the TRO also prohibited the Tribe
22 from operating the Casino until the NIGC closure order is lifted although the Court retained
23 discretion to determine whether it is satisfied that the Casino will be operated in a manner that
24 does not endanger, or otherwise threaten, the public health, safety, or welfare of employees,
25 patrons, and the general public. Because the NIGC order remains in place and the intra-tribal
26 dispute that resulted in the armed invasion that justified the TRO has not been resolved, the State
27 is entitled to a preliminary injunction barring the Tribe from reopening the Casino, as well as
28 engaging the other activities that the TRO enjoins.

FACTS

The facts underlying the State's request for a preliminary injunction and in support of the TRO are not disputed. An intra-tribal dispute exists between three groups within the Tribe.¹ Each group claims to be the Tribe's duly constituted leadership and to have the right and power to control the Tribe's gaming activities. The State takes no position as to the groups' claims and defers to the Tribe's sovereign authority to resolve intra-tribal disputes pursuant to tribal and federal law. The State's interest in this action is to protect the health, safety, and welfare of its residents, the Tribe's members, the Casino's patrons and employees, and law enforcement. The State's authority to take action to further its interest in protecting public health, welfare and safety arises from the tribal-state class III gaming compact, dated September 10, 1999 (Compact) between it and the Tribe.²

Pursuant to the Compact, the Tribe owns and operates the Casino and carries on gaming activities. The Compact includes provisions to protect the public health and safety. Under section 8.1.2 of the Compact, the Tribe agrees to ensure "the physical safety of Gaming Operation patrons and employees, and any other person while in the Gaming Facility." Section 10.1 of the Compact provides: "The Tribe will not conduct Class III gaming in a manner that endangers the public health, safety, or welfare"

In the evening of October 9, 2014, the intra-tribal dispute erupted to a confrontation between two armed security forces inside the Casino.³ At about 6:00 p.m., Tex McDonald along

¹ In this request, the State refers to the groups involved in the intra-tribal dispute as the "McDonald Group," the "Ayala/Lewis Group," and the "Reid Group." Tex McDonald apparently leads the McDonald Group, which currently controls the Tribe's tribal compound near the Casino. Nancy Ayala and Reggie Lewis apparently lead the Ayala/Lewis Group, which currently controls the Casino's offices, computer servers, surveillance system, and cage. Morris Reid apparently leads the Reid Group, which controls none of the Tribe's properties. The Reid Group, however, has sued some state agencies and officers, as well as federal officials and agencies, purportedly on the Tribe's behalf in the United States District Court for the Northern District of California. *Picayune Rancheria of Chukchansi Indians v. U.S. Dept. of the Interior*, No. 3:14-cv-04273 (N.D. Cal. filed Sept. 23, 2014) (Reid Group Suit).

² The Compact is Exhibit A to the State's complaint. (ECF No. 1-2.)

³ The events are shown in part on surveillance video that the Ayala/Lewis Group authenticated and filed with Court. (ECF No. 10-5, Exh. A.) The Ayala/Lewis Group also filed declarations recounting the events and violence. (ECF Nos. 10-6 & 10-9 – 10-18.)

1 with his head security person (John Olivera) and about twenty-five additional security personnel
2 executed a takeover of the Casino on the McDonald Group's behalf. Firearms or other weapons
3 were drawn and brandished by both sides. The opposing groups' security forces were held at
4 gunpoint and/or tased during the takeover. As the incident unfolded, some of the Casino security,
5 not a part of the McDonald Group, maintained control of Casino surveillance. The Casino's
6 patrons and employees were evacuated. Casino security secured the cage and contacted the
7 Madera County Sheriff's Office. The Madera County Sheriff's Office responded with assistance
8 from the California Highway Patrol and secured the Casino, as well as the surrounding property
9 and roads.

10 The situation was tense and volatile and endangered the health, safety, and welfare of the
11 State's residents, the Tribe's members, the Casino's patrons and employees, and law enforcement
12 personnel responding to the call. The McDonald Group made clear its intent to take the Casino
13 by any means, while the Ayala/Lewis Group showed that it was intent on defending the Casino.
14 Surveillance video and declarations submitted by the Ayala/Lewis Group demonstrate the events
15 of October 9, 2014. *See supra* note 3.

16 On October 10, 2014, the State filed this action, alleging that the actions taken by the
17 various tribal groups created a situation that breaches the Compact's provisions requiring that the
18 Tribe ensure the physical safety of patrons and employees and not conduct class III gaming in a
19 manner that endangers the public health, safety, or welfare. (ECF No. 1-1, 4.) The State's
20 complaint sought injunctive and declaratory relief. (*Id.* at 5.) The injunctive relief specifically
21 requested was to enjoin the Tribe, as well as its officers, agents, and others acting under its
22 direction and control, from (1) attempting to use force or other means to disturb, modify, or
23 change the status quo with respect to the Casino's operation or control, (2) deploying armed
24 personnel within 100 yards of the Casino and other nearby properties, (3) possessing, carrying,
25 displaying, or otherwise having firearms at the Casino properties, and (4) operating the Casino
26 without establishing to the Court's satisfaction that the public health and safety of Casino patrons,
27 employees, and tribal members can be adequately protected from violent confrontations. (*Id.*)
28

1 Concurrently with filing the complaint, the State moved for a temporary restraining order.
2 (ECF No. 2-1.) That motion requested an order that mirrored the complaint's prayer. (*Compare*
3 ECF No. 2-1, 2, with ECF No. 1-1, 5.) The State's moving papers included, among other
4 pleadings, a supporting memorandum (ECF No. 2-2), a proposed order granting a temporary
5 restraining order (ECF No. 2-4), and a proposed order to show cause regarding a preliminary
6 injunction (ECF No. 1-4).

7 On October 10, 2014 – the same day the NIGC issued its Order – the Court issued a
8 temporary restraining order. (ECF No. 5.) The Court found that an intra-tribal dispute exists that
9 involved armed factions and posed a threat to the public health, safety, and welfare. (*Id.* at 2.)
10 The Court's order maintained the status quo, created a 1,000-yard buffer zone around the Casino
11 and related properties, enjoined firearms there, and effectively shut down the Casino "unless and
12 until it is established . . . that the public health and safety of Casino patrons, employees, and tribal
13 members can be adequately protected from violent confrontations" (*Id.* at 3.)

14 On October 15, 2014, the Court conducted a hearing at which the State, each competing
15 tribal leadership group, and the purported gaming agencies of the Ayala/Lewis Group and the
16 McDonald Group appeared. After hearing extended argument, the Court modified the temporary
17 restraining order, established a briefing and hearing schedule, and directed the parties to meet and
18 confer to agree to a mandatory settlement conference date. As modified, the Court's TRO
19 maintained the status quo as it existed on October 8, 2014, created a 1,000-yard weapons-free
20 buffer zone around the Casino, enjoined firearms there, and prohibited operating the Casino
21 unless and until the parties satisfy the Court that the public health and safety of Casino patrons,
22 employees, and tribal members can be adequately protected from the violent confrontations, and
23 threats of violent confrontations, among the groups involved in the intra-tribal dispute. With
24 respect to the Casino's operation, the Court's modification of the TRO allows the Tribe to open
25 the Casino to the public upon the NIGC lifting its Order while providing the State half of a court
26 day to object.

ARGUMENT

As set forth above, the State defers to the Tribe's sovereign authority to resolve intra-tribal disputes in accordance with tribal and federal law. The State's interest in this action is to protect the health, safety, and welfare of its residents, the Tribe's members, the Casino's patrons and employees, and law enforcement personnel. (Suppl. Decl. of Joginder Dhillon, 2, ¶ 6.) The TRO has accomplished that to date. (*Id.* at 2, ¶ 4.) Presently, the opposing forces appear no longer to be armed, and no major incidents have occurred. (*Id.*) The groups in the intra-tribal dispute, however, have not resolved their dispute and remain poised to take actions which could threaten public safety. (*Id.* at 2, ¶ 5.) Therefore, the State believes that a preliminary injunction that is substantively the same as the TRO is appropriate, given the facts as they currently exist. (*Id.* at 3, ¶ 7.)

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

The State's Complaint invokes the Court's jurisdiction under 28 U.S.C. § 1331 because the State's claim arises under federal statutes and the federal common law. Contrary to the McDonald Group's assertions,⁴ this Court has jurisdiction under section 1331 to enforce a 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 the McDonald Group does now, 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

⁴ In its Opposition to Temporary Restraining Order, the McDonald Group, purportedly on the Tribe's behalf, asserts that this Court lacks subject matter jurisdiction. (ECF No. 9, 2-12.)

1 *Id.* at 1056. Here, the same analysis applies. The Tribe's obligation to the State arises from the
 2 Compact, which is a creation of federal law and entered into pursuant to the Indian Gaming
 3 Regulatory Act (IGRA), 25 U.S.C. §§ 2701-2721, 18 U.S.C. §§ 1166-1168. Importantly, the
 4 State seeks to enforce the Compact.⁵

5 The Court also has jurisdiction pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii) because this
 6 action is initiated by the State to enjoin conduct related to the Tribe's class III gaming activity
 7 that violates the Compact.⁶ In *Cabazon*, the Ninth Circuit also addressed jurisdiction under
 8 IGRA. The court observed that "the State construes both federal question jurisdiction and IGRA
 9 too narrowly and underestimates the federal interest at stake." *Cabazon*, 124 F.3d at 1056. The
 10 court concluded that "IGRA necessarily confers jurisdiction onto federal courts to enforce Tribal-
 11 State compacts and the agreements contained therein." *Id.* This is exactly what the State seeks to
 12 do in this case – *i.e.*, enforce the Tribe's public safety duties under the Compact.

13 **B. The Tribe Does Not Have Sovereign Immunity from this Action**

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

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

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

22 ⁵ The McDonald Group relies on *Wisconsin v. Ho-Chunk Nation*, 463 F.3d 655 (7th Cir.
 23 2006) to assert that this Court lacks subject matter jurisdiction. (ECF No. 9, 11-12.) That case is
 24 inapposite. There, contrary to voluminous authority, the State of Wisconsin claimed jurisdiction
 25 under the Federal Arbitration Act. 463 F.3d at 659. The court also correctly rejected the
 26 assertion that a suit to compel arbitration fell within IGRA's jurisdictional options. *Id.* at 659-60.
 The Seventh Circuit distinguished *Cabazon* as concerning, among other things, claims to enforce
 compacts – *i.e.*, the essence of the State's claim here. *Id.* at 660. The court noted that
 Wisconsin's complaint did not "even require the district court to address a breach of the compact
 that was formed under IGRA." *Id.* at 661.

27 ⁶ 25 U.S.C. § 2710(d)(7)(A)(ii) provides district court jurisdiction over "any cause of
 28 action initiated by a State . . . to enjoin a class III gaming activity located on Indian lands and
 conducted in violation of any Tribal-State 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, 29, § 9.4 (ECF No. 1-2, 33).) Clearly, this action meets those criteria to waive sovereign immunity.

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 activity⁷ under the Compact occurs on the Tribe's Indian lands. Therefore, IGRA's sovereign immunity waiver applies.

C. A Preliminary Injunction Is Appropriate in this Case

The requirements for a preliminary injunction are well settled. 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, and is governed by general federal contract law principles. *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

⁷ Contrary to the McDonald's Group's assertion, gaming activity is not limited to an actual class III game. See *County of Madera v. Picayune Rancheria of Chukchansi Indians*, 467 F. Supp. 2d 993, 1002 (E.D. Cal. 2006).

1 Ninth Circuit decisions interpreting California” contract law. *Id.* The elements for a breach of
 2 contract claim are the contract, plaintiff’s performance or excuse for nonperformance, defendant’s
 3 breach, and resulting damages to plaintiff. *Reichert v. General Ins. Co. of America*, 68 Cal.2d
 4 822, 830 (1968).

5 In this case, the Tribe’s breach of the Compact is clear. In the Compact, the Tribe agreed to
 6 ensure the physical safety of employees and patrons at the Casino (Compact, 24, § 8.1.2 (ECF
 7 No. 1-2, 28)), and to not conduct gaming in a manner that endangers the public health, safety, or
 8 welfare (*id.* at 29, § 10.1 (ECF No. 1-2, 33)). The armed confrontation, described in the
 9 declarations and shown by surveillance video submitted to this Court, constitutes a breach of the
 10 Compact. Pursuant to the cited Compact provisions, the Tribe violates the Compact when, as the
 11 result of intra-tribal disputes or otherwise, the Tribe forms armed groups that threaten to commit
 12 physical assaults, repossessions, or attacks in or near the Casino. Consequently, the situation and
 13 threats show that the State is likely to succeed on the merits.⁸

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

15 When combined with the escalating provocation and incidents, the McDonald Group’s
 16 armed invasion of the Casino demonstrates a clear and ongoing threat to the public safety at the
 17 Casino based upon confrontations among the tribal groups. This creates the risk of imminent
 18 physical injury to the State’s residents and visitors to the Casino, particularly where, as here, the
 19 groups were armed and part of a volatile situation.⁹ Absent injunctive relief disarming the
 20 groups, prohibiting any assaults or attempts to repossess the Casino, and prohibiting operation of
 21 the Casino as provided in the TRO, physical injury to the State’s residents is likely to occur.

22
 23 ⁸ Additionally, in its recent complaint against certain federal and state agencies and
 24 officials, the Reid Group alleges that the Governor, the California Attorney General, the
 25 California Gambling Control Commission and its Executive Director, and the California Bureau
 of Gambling Control and its Chief failed to enforce the Compact against the Tribe’s illegal
 gaming. Reid Group Suit, Dkt. No. 1, 32-33. The complaint is verified. *Id.* at 39. In essence,
 the Reid Group – on the Tribe’s behalf – admits to a Compact breach.

26 ⁹ The Reid Group – on the Tribe’s behalf – describes the violence of the escalating
 27 dispute and correctly alleges that it threatens public safety. Reid Group Suit, Dkt. No. 1, 10-11.
 28 Additionally, the Bureau of Indian Affairs has described the intra-tribal dispute’s escalating
 nature, including certain violent episodes. (ECF No. 10-1, 25-26.)

1 Armed invasions of gaming facilities, such as shown by the evidence here, cannot be
2 countenanced in any way in tribal gaming operations in California.

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

4 The equities clearly favor the State and its interests to protect the public health, safety, and
5 welfare. The State seeks to prevent the potential for violence and physical harm to people.
6 Balanced against this is the Tribe's, or the competing groups', right to exercise self-help by
7 invading, and defending, the Casino with armed security forces. The Tribe put the Casino, and its
8 patrons' and employees' safety, in play in the intra-tribal dispute. This endangers public safety.
9 The Court should determine that public safety outweighs self-help.¹⁰

10 Moreover, because the Casino is independently closed as a consequence of the NIGC
11 Order, the Tribe will not suffer cognizable harm if the Court maintains the TRO which allows for
12 reopening if that order is lifted. Even though the State understands the real, and significant,
13 impact that closure has on the employees and others in the community, their safety and welfare
14 have to be deemed more a more compelling interest. Importantly, the Tribe is in a position to
15 resolve the issue in a manner that is consistent with its sovereign interests and that preserves jobs
16 and economic development for the Tribe as well as the local community.

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. For these reasons, an injunction here is in the public interest.

22 **D. The Court Has Inherent Equity Authority To Tailor Injunctive Relief**

23 Here, the State requests that the Casino remain closed to the public until the Court is
24 satisfied that the public health and safety of Casino patrons, employees, and tribal members can

25 _____
26 ¹⁰ The Tribe, or a competing group, may argue that operating the Casino with its
27 concomitant benefits to the surrounding community outweighs public safety – *i.e.*, that potential
28 economic benefits overcome the risk of injury or death. Despite that argument's inherently
antisocial consequences, the Court does not need to engage in such weighing because the NIGC
Order prohibits operating the Casino, which the modified TRO clearly takes into account.

1 be adequately protected from the violent confrontations and threats of violent confrontation
 2 among the tribal groups disputing the Tribe's leadership and the Casino's control. Armed
 3 security forces storming the Casino and confrontations between armed security forces in the
 4 Casino clearly threatens public health and safety and endangers the general public. Moreover, the
 5 Madera Sheriff and other law enforcement agencies cannot be expected to referee the intra-tribal
 6 dispute. Under the present circumstances, the Tribe has not performed its public safety duties
 7 under the Compact. Further, through escalating incidents and provocations, the Tribe has
 8 demonstrated that it cannot perform those public safety duties.

9 Injunctions are equitable remedies that require a court to carefully balance "the
 10 conveniences of the parties and possible injuries to them . . . as they may be affected by the
 11 granting or withholding of the injunction." *See Weinberger v. Romero-Barcelo*, 456 U.S. 305,
 12 312 (1982). By its nature, "[t]he essence of equity jurisdiction has been the power of the
 13 Chancellor to do equity and to mould each decree to the necessities of the particular case." *Id.* In
 14 molding such equitable orders, a federal court acts with "flexibility" and not "rigidity." *Id.*,
 15 quoting *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944). Consistent with this, the Ninth Circuit
 16 has observed, a "district court has broad powers and wide discretion to frame the scope of
 17 appropriate equitable relief." *Securities & Exchange Com'n v. United Financial Group, Inc.*, 474
 18 F.2d 354, 358-59 (9th Cir. 1973).

19 Here, protecting the public health, safety, and welfare required the State to seek
 20 immediate relief. That was consistent with the Compact's terms. (Compact, 27, § 9.1 (ECF No.
 21 1-2, 31).) The TRO with the Court's modifications protects public health, safety, and welfare
 22 while carefully balancing the Tribe's interests. The prohibition on operating the Casino is nearly
 23 coterminous with the NIGC Order, but gives the State four hours to object if it wishes the TRO to
 24 remain in force. Nothing in the prohibition prevents resolving the intra-tribal dispute or the Tribe
 25 showing the Court that the Casino can be operated safely. In sum, the keys to the Casino's
 26 reopening to the public are in the Tribe's hands. The injunctive relief sought by the State thus is
 27 tailored to meet the unprecedented circumstances before the Court – *i.e.*, escalating provocations
 28 culminating in an armed invasion of the Casino but will allow the Casino to re-open if the NIGC

Order is lifted unless the State can demonstrate to the Court that continued closure is required. That injunctive relief is within the Compact's scope. (*Id.* at 29, § 9.4(a)(2) (ECF No. 1-2, 33).)

The Indian Gaming Regulatory Act (IGRA) expressly provides that the parties may seek to enjoin a class III gaming activity that violates the Compact. 25 U.S.C. § 2710(d)(7)(A)(ii). Gaming activity is not limited to the actual playing or providing the games and includes "the necessary conduct associated with playing or providing" the games. *County of Madera v. Picayune Rancheria of Chukchansi Indians*, 467 F. Supp. 2d at 1002. The State's high likelihood of success supports a preliminary injunction that protects the public health, safety, and welfare – that is, one substantively the same as the TRO. That injunction is well within the Court's inherent equity authority to tailor relief fitting the facts before it.

E. The Court Should Not Require a Bond

The McDonald Group requests that the Court order the State to post a bond. (*See* ECF No. 9, 14-15.) The Court should reject that request. A bond under Federal Rule of Civil Procedure 65(c) effectively is vested to the Court's discretion, and the bond requirement may be waived. *Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011). Here, no bond is needed or appropriate.

Given the existence of the NIGC Order and the Court's modifications on October 15, 2014, the Tribe is not likely to be harmed by the proposed preliminary injunction. Nothing there can cause actual and justiciable damage to the Tribe.¹¹ *See Connecticut General Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878, 882 (9th Cir. 2003) ("bond amount may be zero if there is no evidence the party will suffer damages from the injunction").

Suggesting that being prohibited from engaging in self-help, violent confrontations, armed invasions, and armed standoffs will cause the Tribe a justiciable loss strains credulity. That leaves only the Court's injunction against operating the Casino as possibly causing a justiciable loss. But, as the McDonald Group points out and no party disputes, the NIGC issued a closure

¹¹ Federal Rule of Civil Procedure 65(c) specifically refers to the amount the court considers proper "to pay costs and damages" Damages are not recoverable under the Compact. (Compact, 29, § 9.4(a)(2) (ECF No. 1-2, 33).) Thus, a bond in any amount more than "costs" is not within Rule 65(c)'s reach.

1 order. Importantly, in the exercise of its inherent equity powers, the Court has taken this into
 2 account in the TRO. Consequently, the Casino's closure to the public should not be considered in
 3 determining whether to require a bond. Once closure is taken out of the calculus, the Court
 4 merely is preserving the public health, safety, and welfare in a fashion with which the Tribe, and
 5 each competing group, generally agrees. *See Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir.
 6 2003).

7 Moreover, the proposed preliminary injunction will protect important State and public
 8 interests.¹² Here, the State is pursuing litigation to enforce the public's interest in ensuring that
 9 the Tribe fulfills its public safety duties under the Compact. Accordingly, the Court should not
 10 require a bond. *Pharmacy Society of NY v. New York Dept of Soc. Servs*, 50 F.3d 1168, 1174-75
 11 (2d Cir. 1995); *see California Hosp. Assn v. Maxwell-Jolly*, 776 F. Supp. 2d 1129, 1160 (E.D.
 12 Cal. 2011).

13 CONCLUSION

14 In view of the foregoing, the State respectfully requests that the Court issue a preliminary
 15 injunction to protect the public and that is substantively the same as the TRO as modified by this
 16 Court on October 15, 2014.

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26 ¹² Arguably, the preliminary injunction also serves important tribal interests as the State
 27 assumes the Tribe will concede that it has an interest, and most likely a duty, in protecting tribal
 28 members' health, safety, and welfare, not endangering their safety, and keeping them out of
 harm's way.

1 Dated: October 20, 2014

Respectfully submitted,

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