

1 KAMALA D. HARRIS
 Attorney General of California
 2 SARA J. DRAKE, State Bar No. 102565
 Senior Assistant Attorney General
 3 TIMOTHY M. MUSCAT, State Bar No. 148944
 Deputy Attorney General
 4 WILLIAM P. TORNGREN, State Bar No. 58493
 Deputy Attorney General
 5 1300 I Street, Suite 125
 P.O. Box 944255
 6 Sacramento, CA 94244-2550
 Telephone: (916) 323-3033
 7 Fax: (916) 323-2319
 E-mail: William.Torngren@doj.ca.gov
 8 *Attorneys for Plaintiff State of California*

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA

12
 13
 14 **STATE OF CALIFORNIA,**
 15
 Plaintiff,
 16
 v.
 17 **PASKENTA BAND OF NOMLAKI**
INDIANS, A FEDERALLY RECOGNIZED
 18 **INDIAN TRIBE,**
 19
 Defendant.
 20
 21

Case No. 2:14-cv-01449-KJM-CMK

PLAINTIFF'S REQUEST FOR DISMISSAL WITHOUT PREJUDICE

Date: October 2, 2014
Time: 2:30 p.m.
Courtroom: 3, Fifteenth Floor
Judge: The Honorable Kimberly J. Mueller

22 Pursuant to Federal Rule of Civil Procedure 41(a)(2), plaintiff State of California (State)
 23 respectfully requests that the Court dismiss the State's action without prejudice and dissolve the
 24 preliminary injunction entered on July 8, 2014, with each side to bear its own costs.

25 For the reasons set forth in the attached Declaration of William P. Torngren (Torngren
 26 Declaration), the State submits that the preliminary injunction has served its purpose. The
 27 Paskenta Band of Nomlaki Indians appears to have cured its alleged breach of compact, and no
 28

1 imminent threat to the public health, safety, and welfare presently exists. This request is based
2 upon the Torngren Declaration and the pleadings in this Case.

3 Dated: October 1, 2014

Respectfully submitted,

4 KAMALA D. HARRIS
5 Attorney General of California
6 Sara J. Drake
7 Senior Assistant Attorney General
8 Timothy M. Muscat
9 Deputy Attorney General

/s/ WILLIAM P. TORNGREN

10 WILLIAM P. TORNGREN
11 Deputy Attorney General
12 *Attorneys for Plaintiff State of California*

SA2014116414

DECLARATION OF WILLIAM P. TORNGREN

I, William P. Torngren, declare:

1. I am a Deputy Attorney General employed by the California Department of Justice, Office of the Attorney General, and am one of the attorneys of record for plaintiff State of California (State) in this action. I am an attorney duly licensed, and admitted, to practice before all courts within the State of California. I have personal knowledge of the facts set forth below and if called as a witness, I could, and would, competently testify to them.

2. The State commenced this action by filing a complaint on June 17, 2014, along with pleadings requesting a temporary restraining order. The State's complaint alleged, among things, that: an intra-tribal dispute existed among the members of defendant Paskenta Band of Nomlaki Indians (Paskenta or Tribe), a federally recognized Indian tribe; the intra-tribal dispute involved armed factions thus posing an imminent threat to the public health, safety, and welfare; and the alleged acts and omissions breached the class III gaming compact (Compact) between the Tribe and the State.

3. The intra-tribal dispute involved two groups, each of which claimed tribal leadership rights and the right to possession and control of the Rolling Hills Casino (Casino) located in Corning, California. For purposes of this declaration, the groups are referred to as the Freeman Group, which is represented by Rosette LLP, and the Swearinger Group, which is represented by Orrick, Herrington & Sutcliffe LLP.

4. After a hearing in which all parties participated, the Court issued a temporary restraining order and set a preliminary injunction hearing. The emergency relief sought by the State was intended to be the least intrusive and most neutral order that maintained the status quo and protected the public health, safety, and welfare. On the date and at the time set for hearing the State's preliminary injunction request, the parties advised the Court that they had reached a stipulation. The Court entered an Order Granting Preliminary Injunction (Order) as a result of that stipulation. The Court stayed all other proceedings pending a status conference on October 2, 2014. Consequently, no responsive pleading has been filed with respect to the State's complaint.

1 5. The Order provides, in part, “[t]his preliminary injunction will remain in effect until
2 resolution of the case by settlement or judgment or the court’s further order.”

3 6. In anticipation of the scheduled status conference, I spoke with attorneys for both the
4 Freeman Group and the Swearinger Group. As a result of those conversations, I prepared and
5 circulated a draft stipulation under which the parties agreed to, among others, dismissal of the
6 State’s action without prejudice, dismissal of the Swearinger Group’s third-party action without
7 prejudice, and dissolution of the preliminary injunction.

8 7. With certain suggested changes, the Swearinger Group agreed with the draft
9 stipulation.

10 8. On September 30, 2014, the attorneys for the Freeman Group, however, advised that
11 the Freeman Group did not agree with the draft stipulation. Instead, they requested that the State
12 agree to extending the preliminary injunction. The reason given for that request was that over the
13 September 27-28 weekend, a fight occurred in which the stepson of Andrew Freeman, the
14 Freeman Group’s leader, was injured. I later learned that the fight was at a bar in Chico,
15 California. The Order does not pertain to any lands located in Chico or Butte County.

16 9. I reviewed documents submitted by the Tribe to the State. I have received reports from
17 the Tehama County Sheriff, as well as other law enforcement agencies, with respect to conditions
18 at the Casino. Those reports and the Tribe’s documents uniformly advise that a tribal election
19 was conducted on September 13, 2014, to determine the Tribe’s Tribal Council. A neutral third-
20 party election monitor supervised the tribal election. The election resulted in the Freeman Group
21 being installed as Tribal Council.

22 10. I am advised, and understand, that no incidents involving law enforcement and related
23 to the intra-tribal dispute occurred before, during, or after the September 13th election. I further
24 am advised, and understand, that an orderly transition to the newly elected Tribal Council has
25 occurred.

26 11. Based upon the information that I have received and my consultations with state and
27 local officials, I believe that the preliminary injunction has served its purpose, which was to
28 preserve the peace and prevent further escalation of conditions that existed in June 2014. As a

1 result of complying with the preliminary injunction, the September 13th election, and the orderly
2 transition to the newly elected Tribal Council, the Tribe appears to have cured the alleged breach
3 of the Compact. Finally, despite a bar fight in Chico, I am not aware of any imminent threat to
4 the public health, safety, and welfare in the Casino's vicinity or on lands covered by the Order.
5 Nor has any law enforcement agency reported any such threat.

6 12. In view of the foregoing, the State respectfully requests that this Court dismiss the
7 State's action without prejudice and dissolve the preliminary injunction.

8 I declare under penalty of perjury that the foregoing is true and correct. This declaration
9 is executed on October 1, 2014.

/s/ WILLIAM P. TORNGREN

William P. Torngren

CERTIFICATE OF SERVICE

Case Name: **State of California v. Paskenta** No. **2:14-cv-01449-KJM/CMK**
Band of Nomlaki Indians

I hereby certify that on October 1, 2014, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

PLAINTIFF'S REQUEST FOR DISMISSAL WITHOUT PREJUDICE

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 1, 2014, Sacramento, California.

William P. Torngren
Declarant

/s/ WILLIAM P. TORNGREN
Signature