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11 Chukchansi Indians, a federally recognized  
12 Indian tribe

13 **UNITED STATES DISTRICT COURT**

14 **EASTERN DISTRICT OF CALIFORNIA**

15 STATE OF CALIFORNIA,

16 Plaintiff,

17 vs.

18 PICAYUNE RANCHERIA OF  
19 CHUKCHANSI INDIANS OF CALIFORNIA,  
20 A FEDERALLY RECOGNIZED INDIAN  
21 TRIBE,

22 Defendant.

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

**DECLARATION OF GIFFEN TAN**

23 I, GIFFEN TAN, declare as follows:

24 1. I am over the age of eighteen, am competent and of sound mind, and I am not a party  
25 to this action. I have personal knowledge of the matters set forth in this Declaration except as to  
26 those matters stated on information and belief, and as to those matters, I am informed and believe  
27 them to be true. If called as a witness, I could and would testify competently to the matters set forth  
28 in this Declaration.

2. I am currently the General Manager of the Chukchansi Gold Resort and Casino  
("Casino"), a wholly owned enterprise of the Picayune Rancheria of the Chukchansi Indians

CASE NO.: 1:14-CV-01593 LJO SAB

DECLARATION OF G. TAN

1 ("Tribe"). I worked at the Casino as Interim General Manager from October 2012 through  
2 April 2013. Beginning in April 2013, I assumed my current position as General Manager. Since  
3 September 2014, I have been working at the Casino in this capacity pursuant to an employment  
4 contract with the 2014 Unification Council, comprised of Nancy Ayala, Reggie Lewis, Chance  
5 Alberta, Karen Wynn, Nokomis Hernandez, and Tracey Hopkins.

6 3. During my tenure as the Casino's General Manager, I have always recognized the  
7 authority of the Picayune Rancheria Tribal Gaming Commission ("PRTGC") as led by PRTGC  
8 Chairperson Dyann Eckstein and PRTGC Executive Director Khammy Chhom, and presently  
9 including PRTGC Commissioners Joe Ayala, Josh Atkins, David Works, III, and Mike Ramirez.  
10 Recently, the PRTGC recognized the 2014 Unification Council as the lawful Tribal Council for the  
11 Tribe and, by virtue of that, the lawful members of the Chukchansi Economic Development  
12 Authority ("CEDA"), which is a wholly owned Tribal entity that owns and operates the Casino.

13 4. On the evening of October 9, 2014, under the supervision of Khammy Chhom,  
14 Executive Director, I ordered the evacuation of Casino guests and personnel and the temporary  
15 closure of the Casino in light of the violent and armed attempted take-over of the Casino by persons  
16 affiliated with the McDonald Faction.

17 5. I am informed and believe that the PRTGC also ordered a temporary closure of the  
18 Casino on October 9, 2014 due to the actions of the McDonald Faction, including the forcible and  
19 armed takeover of the PRTGC's offices and files in the Casino, and the refusal of the Madera  
20 County Sheriff's office to remove these persons from the Casino premises despite my repeated  
21 requests to do so, as General Manager.

22 6. On October 10, 2014, I received the Notice of Violation and Temporary Closure  
23 Order (NOV-14-03, TCO-14-02) addressed to the "Chairman (Agent for Service)" of the Tribe,  
24 Khammy Chhom, Executive Director of the PRTGC, and myself as the General Manager ("NIGC  
25 Closure Order"). A true and correct copy of the NIGC Closure Order is attached hereto as  
26 **Exhibit A**, and it indicates that the NIGC issued this order in light of the McDonald Faction's  
27 actions on October 9, 2014 and occupation of the Casino thereafter, and the resulting "real and  
28

1 immediate threat to human health and well-being, which if uncorrected, could result in serious harm  
2 or death.”

3 7. On October 10, 2014, I also received the Temporary Restraining Order, issued by  
4 this Court and as requested by the State of California.

5 8. Casino Management and key personnel are maintaining a continuous presence at the  
6 Casino and working, under the escort of Madera County Sheriff's officers, to address various issues  
7 related to the abrupt closure on the evening of October 9, 2010. We are also diligently working to  
8 ensure that the Casino is ready for reopening as soon as the same is permitted by this Court, the  
9 National Indian Gaming Commission, and the PRTGC.

10 9. I believe that if there is an Order that: 1) prohibits all firearms or other weapons at  
11 the Casino and on the property surrounding the Casino or Casino Facilities, including the Butler  
12 Building (e.g., parking lots, the Hotel, Lucky Lane and other roadways leading to the Casino)  
13 (hereinafter, “All Casino Properties”; and 2) requires All Casino Properties’ Security be solely  
14 directed and controlled by and through Casino Management then, and only then, Casino  
15 management and employees will be able to reopen the Casino and adjoining hotel and provide  
16 related services to the public in a manner that does not jeopardize public safety, health or welfare.

17 I declare under penalty of perjury under the laws of the United States and the State of  
18 California that the foregoing is true and correct. Executed on this 14 day of October, 2014, in  
19 Coarsegold, California.

20  
21   
22 Giffen Tan

## **EXHIBIT A**

# NATIONAL INDIAN GAMING COMMISSION

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## NOTICE OF VIOLATION and TEMPORARY CLOSURE ORDER

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NOV-14-03  
TCO-14-02

TO: Chairman (Agent for Service)  
Picayune Rancheria of the Chukchansi Indians  
46575-B Road 417  
Coarsegold, CA 93614

Picayune Rancheria of the Chukchansi Indians Tribal Gaming Commission  
Khammy Chhom, Executive Director  
46575-B Road 417  
Coarsegold, CA 93614

Giffen Tan, General Manager  
Chukchansi Gold Resort & Casino  
711 Lucky Lane  
Coarsegold, CA 93614

A. Notification of Violation and Temporary Closure Order

In light of the emergency situation existing at the gaming facility of the Picayune Rancheria of the Chukchansi Indians (Chukchansi Tribe), the Chukchansi Gold Resort & Casino, located at located at 711 Lucky Lane, in Coarsegold, California, off State Route 41, involving a volatile takeover, the Chairman of the National Indian Gaming Commission (NIGC) gives notice that Respondents failed, and are failing, to operate the Chukchansi Tribe's casino in a manner that adequately protects public health and safety. Thus, Respondents are in substantial violation of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710(b)(2)(E), NIGC regulations, 25 C.F.R. § 573.4(a)(12), and the Chukchansi Tribe's approved Gaming Ordinance, No. 2010-22, §§ 5.14.1, 7.7.1, and 9.2.2.

**As a consequence of such failure, under 25 U.S.C. §§ 2705 and 2713(b), the Chairman gives notice that the Respondents are ordered to cease and desist from all gaming activity in the Chukchansi Gold Resort & Casino. This order is effective immediately.** The Chairman may rescind the Temporary Closure Order for good cause shown.

B. Authority

Under IGRA and NIGC regulations, the NIGC Chairman may issue a notice of violation to any person for violations of any provision of IGRA, NIGC regulations, or an approved tribal gaming ordinance or resolution. 25 U.S.C. § 2713(a); 25 C.F.R. § 573.3(a). Further, under IGRA, the NIGC Chairman may issue an order of temporary closure of an Indian gaming operating for substantial violation of IGRA, NIGC regulations, or an approved tribal ordinance. 25 U.S.C. §§ 2705(a)(1) and 2713(b)(1). NIGC regulations also provide that “[s]imultaneously with or subsequently to the issuance of a notice of violation ..., the Chairman may issue an order of temporary closure of all or part of an Indian gaming operation if one or more [] substantial violations are present.” 25 C.F.R. § 573.4(a).

C. Applicable Federal law, Tribal law, and Case law

1. IGRA requires that to lawfully operate Indian gaming, a tribe must have a tribal gaming ordinance approved by the NIGC Chairman. 25 U.S.C. §§ 25 U.S.C. 2710(b)(1)(B) and (d)(1)(A).
2. IGRA requires that the tribal ordinance provide that the tribe will maintain and operate its gaming facilities in a manner that adequately protects public health and safety. 25 U.S.C. § 2710(b)(2)(E).
3. NIGC regulations also mandate that the gaming ordinance provide that the tribe shall maintain and operate a gaming facility in a manner that adequately protects public health and safety. 25 C.F.R. §§ 522.4(b)(7) and 522.6(b).
4. The Chukchansi Tribe’s Gaming Ordinance, Resolution 2010-22, Section 5.14.1 states the tribal gaming commission may issue a facility license if it determines the “[g]aming [f]acility . . . shall be operated in a manner that adequately protects the environment and the public health and safety.” The ordinance was approved by the NIGC Chairman on April 16, 2010.
5. The Chukchansi Tribe’s Gaming Ordinance, Resolution 2010-22, Section 7.7.1 directs that “[t]he Enterprise shall provide adequate security to protect the public before, during, and after Gaming.”
6. The Chukchansi Tribe’s Gaming Ordinance, Resolution 2010-22, Section 9.2.2 directs that the tribal gaming commission shall promulgate rules and

regulations to “ensure the physical safety of Enterprise patrons and Employees.”

7. Class II and III gaming operations are only lawful if conducted pursuant to an ordinance that meets the requirements of IGRA, Section 2710(b). 25 U.S.C. §§ 2710(b)(1)(B) and 2710(d)(1)(A)(ii).
8. NIGC regulations state that it is a substantial violation for a tribe’s gaming operation to be maintained or operated in a manner that threatens public health and safety, in violation of a tribal ordinance. 25 C.F.R. § 573.4(a)(12).
9. Further, NIGC’s interpretative rule, “Environment, Public Health and Safety,” indicates that if a tribe fails to enforce public health and/or safety standards covering gaming operations on Indian lands and the situation presents imminent jeopardy to public health or safety, the Chairman may proceed to enforcement. 67 Fed. Reg. 46,109, 46,112 (July 12, 2002).
10. Imminent jeopardy “exists where conditions are present that pose a real and immediate threat ... to human health and well-being, which, if uncorrected, could result in serious illness or death.” *Id.*
11. Failure to comply with any provision of IGRA, NIGC regulations, or an approved tribal gaming ordinance or resolution is grounds for a notice of violation. 25 U.S.C. § 2713(a); 25 C.F.R. § 573.3(a). Further, substantial violations of IGRA, NIGC regulations, or an approved tribal ordinance are grounds for a temporary closure order. 25 U.S.C. §§ 2705(a)(1) and 2713(b)(1).
12. The Tenth Circuit Court of Appeals has underscored the NIGC Chairman’s authority to close entire gaming operations: “IGRA unambiguously authorizes the NIGC Chairman to order the temporary closure of entire gaming operations. In Section 2705(a)(1), the NIGC Chairman is authorized to ‘issue orders of temporary closure of *gaming activities* as provided in section 2713(b).’” *United States v. Seminole Nation of Oklahoma*, 321 F.3d 939, 944-45 (10th Cir. 2002).
13. “[T]he NIGC Chairman is obligated to approve tribal ordinances which, *inter alia*, provide for the protection of public health and safety at gaming facilities. The NIGC Chairman is authorized to enforce such tribal ordinances through the issuance of temporary closure orders. ... Accordingly, when § 2710(b)(2)(E) and § 2713(b)(1) are read together, the NIGC Chairman's authority to issue temporary closure orders clearly includes the power to close entire gaming facilities.” *Id.* at 945. (internal citations omitted).

D. Circumstances of Violation

1. The Chukchansi Tribe is a federally recognized Indian nation with tribal headquarters in Coarsegold, California.
2. The Chukchansi Tribe operates the Chukchansi Gold Resort & Casino in Coarsegold, California, on land held in trust for its benefit by the United States.
3. The Chukchansi Tribe has had an on-going internal governmental dispute over its leadership.
4. On October 9, 2014, one faction of the Chukchansi Tribal government forcibly asserted control over the Chukchansi Gold Resort & Casino, disarming and handcuffing on-site security personnel.
5. Each faction's gaming commission reports the other faction having personnel who are carrying weapons within the Chukchansi Gold Resort & Casino.
6. One faction's gaming commission reports the other faction using an electric stun gun on on-site security personnel.
7. Each faction's gaming commission, along with local law enforcement, reports that employees exited the Chukchansi Gold Resort & Casino the evening of October 9, 2014, after a fire alarm. The majority of the employees have not returned to work.
8. Members of separate factions remain in the Chukchansi Gold Resort & Casino, each asserting authority over the facility.
9. As of October 9, 2014, according to the law enforcement officials and each faction's gaming commission, the situation remains tense and volatile, creating genuine concerns for public health and safety.
10. Furthermore, imminent jeopardy exists because of the real and immediate threat to human health and well-being, which if uncorrected, could result in serious harm or death.
11. By operating the Chukchansi Gold Resort & Casino in a manner that threatens public health and safety, Respondents have committed a substantial violation of IGRA, 25 U.S.C. § 2710(b)(2)(E), NIGC regulations, 25 C.F.R. § 573.4(a)(12), and the Chukchansi Tribe's approved Gaming Ordinance, No. 2010-22, §§ 5.14.1, 7.7.1, and 9.2.2.



12. In light of this imminent jeopardy, the Chairman is issuing this notice of violation and temporary closure order. The imminent nature of the jeopardy and violation necessitates the Chairman to move directly to an enforcement action before issuing a letter of concern the Chukchansi Tribe under 25 C.F.R. § 573.2(d).

E. Measures to Correct the Violation – Temporary Closure Order

To correct this substantial violation, Respondents shall comply with this Temporary Closure Order.

F. Temporary Closure Order

**Closure Order**

**Under the authority of 25 U.S.C. § 2713(b) and 25 C.F.R. §§ 573.4(a) and (b), the Chairman gives notice that the Respondents are ordered to cease and desist from all gaming activity in the Chukchansi Gold Resort & Casino. This order is effective immediately.** The Chairman may rescind the Temporary Closure Order for good cause shown. 25 C.F.R. § 573.4(c)(3).

G. Expedited Review

Under 25 C.F.R. § 573.4(c), within seven days after service of this Order, any party served with this Order may request, orally or in writing, informal expedited review by the Chairman. The Chairman must complete such review within two days after his receipt of a timely request. Within two days after the expedited review provided by 25 C.F.R. § 573.4(c), the Chairman must decide whether to continue the Order and must provide an explanation of the basis for the decision.

H. Fine; Submission of Information

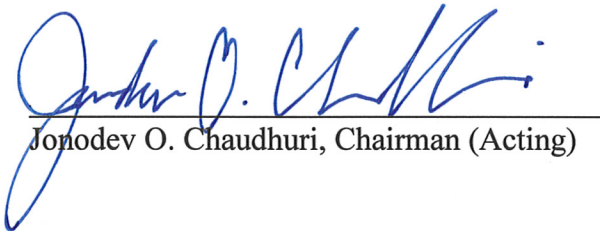
The substantial violation cited above may additionally result in the assessment of civil fines against the Respondents in an amount not to exceed \$25,000 per violation per day. Under 25 C.F.R. § 575.5(a), Respondents may submit written information about the violation to the Chairman within 15 days after service of this notice of violation (or such longer period as the Chairman may grant for good cause). The Chairman shall consider any information submitted in determining the facts surrounding the violation and the amount of the civil fine, if any.

I. Appeal

Whether or not any party seeks the informal expedited review of the Temporary Closure Order described above, within 30 days after service of this NOV and Temporary Closure Order, any party may appeal, under 25 C.F.R. part 584, by submitting a notice of appeal to the National Indian Gaming Commission, c/o Department of Interior, 1849 C Street N.W., Mailstop #1621, Washington, DC 20240. The appealing party, the appellant, has a right to assistance of counsel in such an appeal. A notice of appeal must reference this NOV and Temporary Closure Order.

Within ten days after filing a notice of appeal, the appellant must file with the Commission a brief that states with particularity the relief desired and the grounds in support and may include, when available, supporting evidence in the form of affidavits. If the appellant wishes for a closed hearing, it must include, with the brief, a request to do so and why. If the appellant wishes to present oral testimony or witnesses at the hearing, it must include a request to do so with the brief. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony. The appellant may waive its right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions, under 25 C.F.R. part 585.

Dated this 10<sup>th</sup> of October, 2014



Jonodev O. Chaudhuri, Chairman (Acting)