

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEW MEXICO**

PUEBLO OF POJOAQUE, a federally recognized  
Indian Tribe; JOSEPH M. TALACHY, Governor  
of the Pueblo of Pojoaque,

Case No. 1:15-cv-00625 JB/GBW

Plaintiffs,

vs.

STATE OF NEW MEXICO, SUSANA  
MARTINEZ, JEREMIAH RITCHIE, JEFFERY(sic) S.  
LANDERS, SALVATORE MANIACI,  
PAULETTE BECKER, ROBERT M. DOUGHTY  
III, CARL E. LONDENE and JOHN DOES I-V,

Defendants.

**MOTION TO MODIFY OCTOBER 7, 2015 PRELIMINARY INJUNCTION  
AND TO DISMISS DEFENDANT STATE OF NEW MEXICO  
BASED ON THE STATE'S ELEVENTH AMENDMENT SOVEREIGN IMMUNITY**

Defendant State of New Mexico ("State") respectfully moves the Court for an order: (1) modifying the Court's October 7, 2015 Preliminary Injunction (Doc. 32) to remove the State as an enjoined party, and (2) dismissing Plaintiffs' Complaint as against the State. As is explained in more detail below, pursuant to the Eleventh Amendment to the United States Constitution, the State has sovereign immunity from suit in this Court. The State has sought concurrence from the Plaintiffs, but has been unable to determine their position.

1. Plaintiffs have named the State as a Defendant in their Complaint. They expressly seek relief against the State in Count I (alleged bad faith failure to negotiate a compact for the conduct of Class III gaming) and Count V (alleged tortious interference with existing contracts). In addition, Plaintiffs sought preliminary injunctive relief against the State pursuant

to Counts II, III and IV of the Complaint. See Motion for Temporary Restraining Order and/or Preliminary Injunction, at 18-20 (Doc. 23). In its October 7, 2015 Preliminary Injunction, the State is named as an enjoined party.

2. The Eleventh Amendment provides that, “The Judicial power of the United States shall not be construed to extend to any suit at law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” The Eleventh Amendment has been construed to bar the bad faith negotiation claim that the Plaintiffs assert in Count I. Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996). More generally, “[t]he Eleventh Amendment grants states sovereign immunity from suits brought in federal court by its own citizens and citizens of other states, suits by other sovereigns, and suits by an Indian tribe.” Prairie Band Potawatomi Nation v. Wagon, 402 F.3d 1015, 1026 (10<sup>th</sup> Cir. 2005).

3. The State has not waived its Eleventh Amendment immunity, and instead has asserted it in its Answer, at 20. (Doc. 16)

4. In the parties’ Joint Status Report and Provisional Discovery Plan (Doc. 45), at 4, Plaintiffs acknowledge that:

The State has discretion to consent or to not consent to the jurisdiction of this Court per its sovereign immunity from suit vested in the Eleventh Amendment to the United States Constitution.

As set forth in its Answer filed herein, the State does not consent to the jurisdiction of this Court and does not waive its sovereign immunity under the Eleventh Amendment to the United States Constitution.

5. The Court’s inclusion of the State as an enjoined party in the Preliminary Injunction was clear error. The Court has authority to modify the injunction to cure this error. “[E]very order short of a final decree is subject to reopening at the discretion of the district

judge.” Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 12 (1983). Accord Rimbart v. Eli Lilly & Co., 647 F.3d 1247, 1251 (10<sup>th</sup> Cir. 2011) (“[D]istrict courts generally remain free to reconsider their interlocutory orders.”) (internal quotation marks and citation omitted). “[A] motion for reconsideration is appropriate where the court has misapprehended the facts, a party’s position or controlling law,” as well as “to correct clear error.” Servants of the Paraclete v. Does, 204 F.3d 1005, 1012 (10<sup>th</sup> Cir. 2000). Accord, United States v. Christy, 739 F.3d 534, 539 (10<sup>th</sup> Cir. 2014), aff’g 810 F. Supp. 2d 1219, 1250 (D.N.M. 2011) (granting motion in part); Hartford Fire Ins. Co., 981 F. Supp. 2d at 1003 (granting motion in part). See also Basic Research, LLC v. Cytodyne Techs., Inc., No. 99-343, 2000 U.S. Dist. Lexis 23454, at \*34 (C.D. Utah Dec. 20, 2000) (“When considering whether to modify a preliminary injunction, a district court is not bound by a strict standard of changed circumstances but is authorized to make any changes in the injunction that are equitable in light of subsequent changes in the facts or the law, or for any other good reason.” (internal quotation marks and citation omitted)); PTI Group, Inc. v. Gift Card Impressions, LLC, No. 14-2063, 2014 U.S. Dist. Lexis 85588, at \*2 (D. Kan. June 24, 2014) (same). Given the continuing effectiveness of the injunction against the Individual Defendants, such modification will not materially affect the interlocutory appeal. Cf. Coastal Corp. v. Tex. E. Corp., 869 F.2d 817, 819-20 (5<sup>th</sup> Cir. 1989) (district court may not grant relief regarding the preliminary injunction that divests the appellate court of its jurisdiction by eliminating or materially altering the controversy).

6. In light of Seminole Tribe, Plaintiffs already have stipulated in the Joint Status Report to the dismissal of Count I of the Complaint. But more generally, given the State’s broader Eleventh Amendment immunity, the Court should dismiss Plaintiffs’ Complaint in its

entirety as against the State. The Plaintiffs have no basis for asserting any claim against the State in this Court.

For all of these reasons, Defendant State of New Mexico respectfully requests the Court to (1) modify the Court's October 7, 2015 Preliminary Injunction (Doc. 32) to remove the State as an enjoined party, and (2) dismiss Count I of Plaintiffs' Complaint and otherwise dismiss the Complaint in its entirety as against the State.

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**CERTIFICATE OF SERVICE:**

I hereby certify that on December 22, 2015, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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