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JW Gaming Development, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JW GAMING DEVELOPMENT, LLC, a
California limited liability company,

Plaintiff,

v.

**ANGELA JAMES; LEONA L. WILLIAMS;
MICHAEL R. CANALES; MELISSA M.
CANALES; JOHN TANG; PINOLEVILLE
POMO NATION**, a federally-recognized Indian
tribe; **PINOLEVILLE GAMING
AUTHORITY; PINOLEVILLE GAMING
COMMISSION; PINOLEVILLE BUSINESS
BOARD; PINOLEVILLE ECONOMIC
DEVELOPMENT, LLC**, a California limited
liability company; **LENORA STEELE;
KATHY STALLWORTH; MICHELLE
CAMPBELL; JULIAN J. MALDONADO;
DONALD D. WILLIAMS; VERONICA
TIMBERLAKE; CASSANDRA STEELE;
JASON EDWARD RUNNING BEAR
STEELE; ANDREW STEVENSON;
CANALES GROUP, LLC**, a California limited
liability company; **LORI J. CANALES;
KELLY L. CANALES**; and **DOES 1 through
20**,

Defendants.

Case No. 3:18-cv-02669-WHO (RMI)

**PLAINTIFF'S REPLY BRIEF IN
SUPPORT OF MOTION FOR A
PRELIMINARY INJUNCTION**

Date: June 17, 2021
Time: 10 a.m.

Courtroom 2, 17th Floor
Judge William H. Orrick

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1 Plaintiff JW Gaming Development LLC (“JW Gaming”) submits this reply in support of its
 2 motion for a preliminary injunction to enjoin the Pinoleville Pomo Nation (“Tribe”) and its officers,
 3 agents, attorneys, servants, employees, and those persons in active concert or participation therewith,
 4 from taking any further actions, including but not limited to filing or service of pleadings, noticing or
 5 holding hearings, engaging in discovery, issuing orders, or any other acts in furtherance of litigation
 6 in a Tribal forum to interfere with the enforcement of the judgment and orders in this action.
 7

8 INTRODUCTION

9 In its opposition, the Tribe does not dispute that its Tribal Action attempts to undermine the
 10 integrity and validity of this Court’s proceedings by seeking an order declaring the judgment and a
 11 writ of execution entered by this Court “invalid and void.” It also remains beyond reasonable dispute
 12 that the Note, upon which the judgment is based, contains an express waiver of the Tribe’s sovereign
 13 immunity and any right to have disputes heard in any tribal forum, including associated requirements
 14 of exhaustion of remedies. Nor does the Tribe attempt to identify any possible basis for jurisdiction in
 15 the Tribal Action, which was brought against nonmembers for conduct outside the Tribe’s Indian
 16 country. The Tribe spends the majority of its opposition raising a variety of facile procedural
 17 arguments and challenges to this Court’s jurisdiction, none of which has any merit. First, this Court
 18 has both the jurisdiction and authority to issue preliminary injunctions, including post-judgment
 19 injunctions. This Court is not divested of that jurisdiction and authority simply because the Tribe has
 20 appealed several of this Court’s orders, as none of those appeals involve the specific relief requested
 21 in the injunction – enjoining the Tribe from its improper collateral attack of this Court’s judgment.
 22 Second, there is no requirement that JW Gaming file an additional complaint concurrent with its
 23 motion for preliminary injunction because the requested injunction has a nexus to its operative
 24 complaint and the judgment entered thereon – i.e., it merely asks this Court to preserve the status quo
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1 and prevent the Tribe from collaterally attacking the judgment through the Tribal Action, and the
 2 Tribe has notice of the request for injunction and an opportunity to be heard. Third, as this Court has
 3 already determined, the Tribe has expressly waived its sovereign immunity, as well as any right to
 4 adjudication in a tribal forum, with respect to all disputes related to the Note.
 5

6 The Tribe fares no better in arguing against the substantive grounds for granting an injunction.
 7 The balance of the *Winter* factors weighs in favor of granting an injunction. JW Gaming has shown it
 8 is likely to succeed on the merits, it is likely to suffer irreparable harm in the absence of preliminary
 9 relief, the balance of equities tips in its favor, and the injunction is in the public interest.
 10

11 **A PRELIMINARY INJUNCTION SHOULD ISSUE**

12 **I. This Court Has Jurisdiction to Issue an Injunction**

13 A federal district court has jurisdiction to enforce its judgments. *Peacock v. Thomas*, 516 U.S.
 14 349, 356 (1996) (without “inherent power to enforce its judgments,” the federal courts’ jurisdiction
 15 “would be incomplete and entirely inadequate”); *see also Duchek v. Jacobi*, 646 F.2d 415, 418 (9th
 16 Cir. 1981). This includes the “authority to issue preliminary injunctive relief in a post judgment
 17 setting” to enjoin acts that inhibit or impair the ability of a plaintiff to enforce its judgment. *Smagin v.*
 18 *Yegiazaryan*, No. 2:14-CV-09764-R, 2016 WL 11676607, at *1 (C.D. Cal. Nov. 14, 2016), *aff’d* 733
 19 F. App’x 393 (9th Cir. 2018); *see also Forreststream Holdings Ltd. v. Shenkman*, No. 16-CV-01609-
 20 LB, 2018 WL 6421866, at *6-8 (N.D. Cal. Dec. 6, 2018) (discussing cases granting post-judgment
 21 preliminary injunctions and issuing injunction to preserve documents and data regarding judgment
 22 debtor’s assets). Indeed, a district court retains the ability to enter “an order suspending, modifying,
 23 restoring, or *granting an injunction while an appeal is pending*.”¹ Fed. R. App. Proc. 8(a) (emph.
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26
 27 ¹ Rule 8(a) provides that a party “*must* ordinarily move *first in the district court*” for such an
 28 injunction. *Id.* (emph. added).

1 added). As amply demonstrated in JW Gaming’s moving papers, an injunction is necessary to
 2 preserve the status quo, protect JW Gaming’s right to rely on the orders and judgment duly issued by
 3 this Court, and prevent JW Gaming from choosing between default, litigating in a forum expressly
 4 disclaimed under its contract with the Tribe and which in any case lacks jurisdiction over the
 5 defendants and subject matter before it, and more generally, relitigating issues that were either
 6 already adjudicated by this Court or that should have been raised in this action.
 7

8 Ignoring Federal Rule of Appellate Procedure 8(a), the Tribe argues this Court lacks
 9 jurisdiction to issue an injunction pending an appeal. But as the Tribe’s own cited authority expressly
 10 recognizes, the Ninth Circuit’s divestiture rule only controls those aspects of a case involved in the
 11 appeal. Dkt. No. 346 at 7:21-23 (citing *Rodriguez v. Cty. of Los Angeles*, 891 F.3d 776, 790 (9th Cir.
 12 2018)). This is because the purpose of the rule is “to avoid confusion or waste of time resulting from
 13 having the *same issues* before *two courts* at the *same time*.” *Rodriguez* at 790 (emph. added). The
 14 rule is not “jurisdictional” because “only Congress may determine a lower federal court’s subject-
 15 matter jurisdiction.” *Id.* at 790 (internal notations omitted), quoting *Hamer v. Neighborhood Hous.*
 16 *Servs. of Chicago*, __ U.S. __, 138 S. Ct. 13, 17 (2017). As such, the rule may be applied with greater
 17 flexibility than jurisdictional rules. *Id.*
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20 Here, the divestiture rule has no application because the issue presented before this Court –
 21 whether the Tribe should be enjoined from proceeding with, or otherwise asserting jurisdiction
 22 through, the Tribal Action – is separate from the issues before the Ninth Circuit on appeal: the order
 23 to quash the writ of execution (Dkt. No. 315); the order denying the motion to vacate (Dkt. No. 316)
 24 and the order granting the stipulation of dismissal (Dkt. No. 317).² The preliminary injunction motion
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26
 27 ² The Tribe has not appealed the order granting judgment on the pleadings (Dkt. No. 178), the order
 28 to enter judgment (Dkt. No. 278), or the judgment (Dkt. No. 279).

1 does not seek to modify or change any of these orders. Rather, it simply seeks to preserve the status
 2 quo; i.e., to prevent JW Gaming from risking a default, being forced to litigate in a disclaimed forum
 3 without lawful authority, relitigating issues that were either already adjudicated by this Court or that
 4 should have been raised in this action, and thus incurring unnecessary fees and costs in an improper
 5 collateral attack on the judgment.
 6

7 The Tribe's argument that the Court has no right to bind the Tribe with respect to the tribal
 8 action against JW Gaming's attorneys is equally faulty. The Tribe is a party to this action and thus
 9 subject to this Court's authority to issue injunctions. The Tribe sued JW Gaming's attorneys only to
 10 enjoin their efforts on behalf of JW Gaming to enforce this Court's judgment.³ In this way, complete
 11 relief likely could not be afforded if an injunction could only shield JW Gaming from the Tribal
 12 Action, while leaving its attorneys subject to an action to block them from working on behalf of JW
 13 Gaming to enforce the Judgment. Moreover, federal courts' power under the All Writs Act extends
 14 to nonparties who are in a position to frustrate the implementation of a court order or the proper
 15 administration of justice. *United States v. New York Tel. Co.*, 434 U.S. 159, 174 (1977); *see also*
 16 *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (recognizing that Federal Rule of Civil
 17 Procedure 65(d) provides that an injunction binds "the parties to the action, their officers, agents,
 18 servants, employees, **and attorneys**, and those persons in active concert or participation with them
 19 who receive actual notice of the order.") (internal notations omitted; emphasis added).
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25 ³ That the Tribe chose to sue JW Gaming's attorneys in the Tribal Action simply for their efforts to
 26 enforce this Court's lawful judgment shows that the Tribal Action is nothing more than an improper
 27 attempt to harass JW Gaming, and to avoid, delay and impair this Court's authority and judgment.
 28 Notably, the Tribe fails to address whether the PPN Court has jurisdiction over JW Gaming's
 attorneys. As discussed below, it clearly does not.

II. The Requested Injunction Has a Nexus to JW Gaming's Complaint and the Judgment

Equally meritless is the Tribe's argument that the injunction must be denied because JW Gaming has not filed a new complaint concurrent with its motion for preliminary injunction. Nothing in the Federal Rules or Local Rules require JW Gaming to separately file a new complaint.⁴ See, e.g., Fed. R. Civ. Proc. 65(a), Local R. 65-2; 28 U.S.C. § 1651 (authorizing all United States federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law"). Nor has the Tribe cited a single case holding that a party must file an additional complaint before it is entitled to seek injunctive relief.

Here, JW Gaming seeks an order enjoining the Tribe from proceeding with, or asserting jurisdiction through, the Tribal Action, the entire premise of which is to evade this Court's judgment by declaring it illegal and void. Dkt. 314-1 at Ex. A, ¶70. Thus, the request for injunctive relief – to enjoin the Tribal Action from proceeding – necessarily has a relationship or nexus to JW Gaming's operative complaint in this action. See *Al Otro Lado v. Wolf*, 952 F.3d 999, 1006 n.6 (9th Cir. 2020) (upholding district court's authority under the All Writs Act, 28 U.S.C. § 1651(a), to enjoin a new immigration rule that was not challenged in the complaint, where the rule "would interfere with the court's jurisdiction" to resolve the plaintiffs' claims, thus creating a "sufficient 'relationship between the injury claimed in the motion for injunctive relief and the conduct asserted in the underlying complaint'"), quoting *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 636 (9th

⁴ The present hearing is for a preliminary injunction, which is governed by Local Rules 65-2 and 7-2, not Local Rule 65-1 (which pertains solely to TROs). As the Tribe's counsel is aware, this Court did not issue a TRO based on the Tribe's counsel's May 7, 2021 representation to the Court that the Tribe would not take any further action, including discovery, in the Tribal Action for 60 days. Thus, Local Rule 65-1 is not at issue. However, even with respect to JW Gaming's prior request for a TRO, Local Rule 65-1 was satisfied because JW Gaming's original complaint had already been filed and served on all parties to the action, including the Tribe.

1 Cir. 2015). Additionally, the request for injunctive relief has a relationship or nexus to the judgment
 2 entered pursuant to the operative complaint. For this reason, the Tribe’s reliance on *Pacific Radiation*
 3 is entirely misplaced. There, unlike here, there was no nexus between the underlying complaint
 4 (alleging unfair and illegal trade practices, due process, and other state law claims) and the motion for
 5 preliminary injunction (seeking to preclude the improper review and use of confidential patient
 6 information in violation of HIPAA and the Hawaii Constitution). *Id.* at 637 (“PRO fails to explain
 7 how the privacy claims underlying the motion for injunctive relief relate to the unfair trade practices
 8 claims in its complaint. ... PRO itself admitted in the district court that its motion for injunctive relief
 9 has nothing to do with the underlying claim.”).

10
 11 Nor is this a case where JW Gaming is solely a defendant and not entitled to affirmative relief
 12 (cf. *Fischler Kapel Holdings, LLC v. Flavor Producers, LLC*, No. 2:19-CV-10309-ODW (GJSx),
 13 2020 WL 6939887, at *4 (C.D. Cal. Nov. 25, 2020); *Profil Institut Fur Stoffwechselforschung GmbH*
 14 *v. ProSciento, Inc.*, No. 16CV1549-LAB (BLM), 2017 WL 1394089, at *1 (S.D. Cal. Feb. 28,
 15 2017)),⁵ or where this Court has dismissed JW Gaming’s complaint for failure to state a claim (cf.
 16 *Williams v. Duffy*, No. 18-CV-06921-BLF, 2019 WL 95924 (N.D. Cal. Jan. 3, 2019), or refused leave
 17 to amend to add new claims upon which the injunction is based (cf. *Center for Food Safety v. Vilsack*,
 18 No. C-10-04038-JSW, 2011 WL 672802, at *3 (N.D. Cal. Feb. 18, 2011)). As such, the Tribe’s other
 19 cited authorities are equally inapposite. For example, in *Williams*, the court dismissed a pro se
 20 plaintiff’s complaint for alleged civil rights violations and denied his motion for a TRO because he
 21 did not “establish that he is likely to succeed or that there are serious questions going to the merits of
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 26 ⁵ To the contrary, as discussed above, district courts routinely enter preliminary injunctions post-
 27 judgment in favor of plaintiffs where defendants improperly attempt to impair or delay enforcement
 28 of judgments.

1 his claims.” 2019 WL 95924 at *3. In *Center for Food Safety*, the district court had previously issued
 2 a preliminary injunction regarding an agency decision, which was on appeal and which injunction
 3 had been stayed by the Ninth Circuit; thus, the district court lacked jurisdiction to adjudicate
 4 substantial rights involved in that appeal. 2011 WL 672802 at *2. To the extent plaintiffs sought to
 5 enjoin a new and separate agency decision, the court denied the injunction because it denied leave to
 6 amend the complaint to add a “distinct cause of action seeking injunctive relief relating to a separate
 7 agency decision.”⁶ *Id.* at *5.

8
 9 As such, none of the issues in *Williams* or *Center for Food Safety* are present here. Unlike
 10 *Williams*, JW Gaming has established a likelihood of success. Not only has this Court already issued
 11 judgment in JW Gaming’s favor, but as addressed in JW Gaming’s moving papers, the Tribe
 12 expressly and unequivocally waived tribal court jurisdiction and any associated requirement to
 13 exhaust tribal remedies in the Note at 3-4, Dkt. 1-4 at pp. 12-13.⁷ The waiver applies not only to
 14 adjudication but also enforcement. *Id.* And unlike *Center for Food Safety*, JW Gaming is not seeking
 15 a modification of an injunction that itself is subject to pending appeal or a new injunction that is
 16 unrelated to its existing claims. Rather, the injunction is directed at precluding the Tribe from
 17 collaterally attacking this Court’s judgment through the Tribal Action.
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19
 20 Similarly meritless is the Tribe’s argument that due process requires JW Gaming to file a
 21 separate complaint in which it details the Tribe’s actions to thwart this Court’s authority. The Tribe
 22 has not, and cannot, cite to a single authority for this proposition. This is because the precise dictates
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24 ⁶ Notably, the court held that judicial economy was not served by litigating that separate agency
 25 decision in the pending action because (1) it involved an entirely separate administrative record from
 26 that which was presently before the court, and (2) the new agency action was already being litigated
 in a separate district court proceeding. *Id.*

27 ⁷ Indeed, this Court has already determined that the Tribe has waived sovereign immunity. Dkt. 178
 at p. 12 (citing Note at p. 3).

1 of due process are flexible and vary according to context. *Mathews v. Eldridge*, 424 U.S. 319, 334
 2 (1976) (“due process, unlike some legal rules, is not a technical conception with a fixed content
 3 unrelated to time, place and circumstances”) (internal notations omitted). All that is required to
 4 satisfy due process is reasonable notice and an adequate opportunity to respond to the motion.
 5 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Such notice and
 6 opportunity satisfy due process even where a party is not provided with “formal notice and hearing of
 7 a possible mandatory injunction,” so long as the party is “aware of the possibility and had an
 8 opportunity to be heard.” *Penthouse Int’l, Ltd. v. Barnes*, 792 F.2d 943, 950 (9th Cir. 1986)
 9 (“Although the district court did not provide Penthouse with formal notice and hearing of a possible
 10 mandatory injunction against publication using Barnes’ name, Penthouse was aware of the possibility
 11 and had an opportunity to be heard. Penthouse was on notice of Barnes’ claims. Barnes’ answer
 12 raised affirmative defenses which put Penthouse on notice of the issues. Further, the nature of the
 13 remedy Barnes sought was raised in her trial brief and was discussed during closing argument.”).

14 Here, the Tribe has received formal notice and the opportunity to be heard. On May 6, 2021,
 15 JW Gaming filed and served its application for a TRO and an order to show cause as to why an
 16 injunction should not issue. Dkt. No. 333. That application set forth both the substantive basis for
 17 injunctive relief and the specific relief sought. *Id.* On May 7, 2021, this Court set a hearing on the
 18 application for 1:30 pm that day, at which counsel for the Tribe attended. At the hearing, the Court
 19 denied the TRO based on the Tribe’s counsel’s representation that the Tribe would not take any
 20 further action, including discovery, in the Tribal Action for 60 days, and set a briefing schedule and
 21 hearing on the motion for preliminary injunction. That schedule was extended at the Tribe’s counsel’s
 22 request. On May 25, 2021, the Court further extended the briefing schedule and the hearing date at
 23 the Tribe’s counsel’s request. Dkt. No. 345. The Tribe filed its opposition papers on May 28, 2021.
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1 Dkt. Nos. 346, 347. The Tribe will further have the opportunity to submit oral argument at the June
 2 17, 2021 hearing. Clearly, the Tribe's claim it did not receive adequate notice or opportunity to be
 3 heard is wholly without merit.
 4

5 **III. The Tribe Expressly Waived Sovereign Immunity and Tribal Court Authority** 6 **and its Court Lacks Jurisdiction to Adjudicate the Tribal Action**

7 The Tribe unequivocally waived its sovereign immunity with respect to "the adjudication and
 8 enforcement of" "any dispute . . . related to th[e] Promissory Note[.]" Note [Dkt. 1-4] at 3-4. As a
 9 result, sovereign immunity is no bar to the requested injunction, which is a dispute related to the Note
 10 (or to JW Gaming's enforcement of the Note). The Tribe also expressly waived the doctrine of tribal
 11 court exhaustion "[i]n connection with" any such dispute. *Id.* Consequently, JW Gaming need not
 12 exhaust tribal court remedies before seeking an injunction in federal court. Further, the Tribe not only
 13 waived the exhaustion doctrine, but also waived "*all other rights* of any Tribal Party that might
 14 otherwise require that a Claim be heard in a tribal court" *id.* (emph. added), including any inherent
 15 authority the Tribe may possess to adjudicate a dispute related to the note. Moreover, the Tribe's
 16 argument that the waiver applies only to JW Gaming's claims is contradicted by the express terms of
 17 the Note. The Note does not limit the definition of "Claim" to JW Gaming's claims; rather, it plainly
 18 defines "Claims" as "*any* dispute between any Tribal Party or JW Gaming Development that is
 19 related to this Promissory Note." Dkt. 178 at 8 (emph. added); see also Note at 6. As such, the waiver
 20 applies equally to JW Gaming's claims and the Tribe's claims. The Tribe has not – and cannot –
 21 claim the Tribal Action does not relate to the Note; the entire purpose of the action is to declare this
 22 Court's judgment on the Note to be void and illegal and to enjoin JW Gaming and its attorneys from
 23 enforcing the judgment.
 24

25
 26 Equally faulty is the Tribe's argument that it can evade the express waivers of the Tribe's
 27 sovereign immunity and right to tribal remedies in the Note because it joined JW Gaming's attorneys
 28

1 as defendants in the Tribal Action.⁸ First, the Tribe’s waiver of sovereign immunity applies to
 2 enforcement of any claim arising under the Note, and the Tribal Action against JW Gaming’s
 3 attorneys is premised solely on their efforts to assist JW Gaming in enforcing its claims, i.e., the
 4 judgment.⁹

6 Second, and perhaps more importantly, the Tribe has no jurisdiction over such attorneys, just
 7 as it has no jurisdiction over JW Gaming. “Tribes do not, as a general matter, possess authority over
 8 non-Indians who come within their borders.” *Evans v. Shoshone-Bannock Land Use Policy Comm’n*,
 9 736 F.3d 1298, 1302 (9th Cir. 2013) (quoting *Plains Commerce Bank v. Long Family Land & Cattle*,
 10 554 U.S. 316, 328 (2008) and citing, *inter alia*, *Philip Morris USA, Inc. v. King Mtn. Tobacco Co.*,
 11 569 F.3d 932, 939 (9th Cir. 2009) (“As a general rule, tribes do not have jurisdiction, either
 12 legislative or adjudicative, over nonmembers, and tribal courts are not courts of general
 13 jurisdiction.”)) (internal marks and further citations omitted). “[T]his general rule restricts tribal
 14 jurisdiction.”))

16 _____
 17 ⁸ The Tribe has not alleged any of the Tribal Court defendants are members of the Tribe and has
 18 repeatedly asserted under oath that one of JW Gaming’s attorneys, Gregory Narvaez, is not and never
 19 has been a Tribal member. *See, e.g.*, Dkt. 314-1, Ex. B at ¶ 14.

19 ⁹ Aside from arguing against the waiver of remedies in the Note, the Tribe does not address JW
 20 Gaming’s arguments that the remaining exhaustion exceptions also apply. *See* JW App. for TRO
 21 [Dkt. 333] at 15:6 (“Those [*Grand Canyon*] exceptions are triggered in this case.”). What is more, the
 22 new evidence submitted with the Tribe’s opposition further supports application of those exceptions.
 23 That evidence shows, *inter alia*, circumstances indicating the tribal court was formed in bad faith for
 24 the primary purpose of thwarting this Court’s judgment and harassing JW Gaming and its counsel.
 25 For example, the tribal code of civil procedure was adopted on March 17, 2021, *see* Tribal Code
 26 [Dkt. 347-2] at 36—a mere six days after JW Gaming first levied on the Tribe’s bank accounts, *see*
 27 Order [Dkt. 332] at 7 (noting date of levy). The purported standing orders were adopted about two
 28 weeks later, *see* Standing Orders [Dkt. 347-3]—a mere five days after the Court denied the Tribe’s
 motions to reconsider the judgment and recall or quash the writ of execution, *see* Order [Dkt. 306].
 Similarly, the “Pinoleville Pomo Nation Tribal Enforcement of Judgments Ordinance,” on which
 much of the Tribal Action is based, was enacted (under signatures of Angela James and Leona
 Williams) on January 20, 2021. *See* Ordinance [Dkt. 314-1] at 43 of 124. That was just six days
 after the Court’s order stating that judgment would be entered in JW Gaming’s favor [Dkt. 278], and
 just two days before said judgment was entered [Dkt. 279].

1 authority over nonmember activities taking place on the reservation, and is particularly strong when
 2 the nonmembers' activity occurs on land owned in fee simple by non-Indians[.]” *Id.* (quoting *Plains*
 3 *Commerce*, 554 U.S. at 328, which itself was quoting *Strate v. A-1 Contractors*, 520 U.S. 438, 446
 4 (1997)). Thus, the Ninth Circuit has stated that a tribe’s efforts to regulate nonmembers—even ones
 5 who own non-Indian fee land within a reservation—are “presumptively invalid.” *Id.* at 1303
 6 (“Because Evans is an owner of non-Indian fee land, the Tribes’ efforts to regulate him are
 7 ‘presumptively invalid.’”) In order to overcome this presumption, a tribe “must show that at least
 8 one of two ‘limited’ exceptions described in *Montana v. United States* applies.” *Id.*; see also *Philip*
 9 *Morris*, 569 F.3d at 937, citing *Montana v. United States*, 450 U.S. 544, 565 (1981). Here, the Tribe
 10 failed to allege any activity by JW Gaming or its attorneys ***on its reservation***, let alone on its tribal
 11 land. Rather, the complaint in the Tribal Action seems to allege jurisdiction and venue based solely
 12 on JW Gaming and its attorneys: causing levies to be made “on exempt tribal bank accounts held by
 13 the [Tribe] at WestAmerica;” and “record[ing] an Abstract of Judgment . . . against protected and
 14 exempt Tribal lands;” and “seek[ing] further relief against exempt assets of the Pinoleville Pomo
 15 Nation.” Tribal Ct. Compl. [Dkt. 314-1] at ¶¶ 6-7. As such, it has no adjudicatory authority over JW
 16 Gaming or its attorneys. And even if the Tribe had alleged activity on in its reservation, the Tribe has
 17 not, and cannot, establish that either *Montana* exception applies. The Tribe has not established any
 18 consensual relationship between JW Gaming’s attorneys and the Tribe. *Philip Morris*, 569 F.3d at
 19 937 (“The first exception relates to nonmembers who enter consensual relationships with the tribe or
 20 its members.”), quoting *Strate*, 520 U.S. at 446. Second, the Tribe has not, and cannot meet its
 21 “formidable burden” of showing that JW Gaming’s or its attorneys’ conduct in attempting to enforce
 22 a valid judgment of this Court “threatens or has some direct effect on the political integrity, the
 23 economic security, or the health or welfare of the tribe.” *Evans*, 736 F.3d at 1303. Indeed, “with
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only one minor exception, the Supreme Court has never upheld under *Montana* the extension of tribal civil authority over nonmembers *on non-Indian land*.” *Id.* (ital. in orig.; internal notations & quotations omitted), quoting *Plains Commerce*, 554 U.S. at 333. To qualify under *Montana*’s second exception, “the conduct must do more than injure the tribe, it must ‘imperil the subsistence’ of the tribal community” such that the conduct is “so severe as to ‘fairly be called catastrophic for tribal self-government.”” *Id.* at 1306, quoting *Plains Commerce*, at 341.

Even putting aside the Tribe’s waiver of sovereign immunity and exhaustion of tribal remedies, the Tribe has no authority over JW Gaming or its attorneys. Because the PPN Court plainly lacks jurisdiction, JW Gaming is not required to exhaust tribal remedies before seeking relief in this Court. *Evans*, 736 F.3d at 1302.

IV. The Balance of the Winter Factors Weigh in Favor of an Injunction

Each of the factors enumerated in *Winter v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008), balance in favor of granting an injunction: JW Gaming is likely to succeed on the merits; it is likely to suffer irreparable harm in the absence of preliminary relief; the balance of equities tips in its favor, and an injunction is in the public interest.

A. JW Gaming Is Likely to Succeed on the Merits

As discussed above and as this court already correctly determined, the Tribe unequivocally waived its sovereign immunity. Order [Dkt. 178] at 12 (“The Tribe clearly and unequivocally waived its sovereign immunity with respect to the instant action.”) (citing Note at 3). This waiver applies not only to adjudication but also enforcement of disputes related to the Note. Because the Tribe unequivocally waived immunity, JW Gaming is likely to succeed in showing that sovereign immunity is not a bar to the relief requested.

Equally clear is that the Tribe unequivocally waived any right to pursue tribal remedies in any dispute related to the note. Note at 3-4. As a result, JW Gaming is not required to first challenge the PPN Court's jurisdiction in the Tribal Action. But even if the Tribe had not done so, the exhaustion doctrine does not bar JW Gaming from seeking relief from this Court because the four exceptions to exhaustion are triggered, including that PPN Court plainly lacks jurisdiction. *Evans*, 736 F.3d at 1302. The Tribe has not identified any on-reservation activity or any other reason the PPN Court would possess jurisdiction to adjudicate the Tribe's claims against non-member defendants. Nor has the Tribe attempted to explain how the PPN Court would have jurisdiction to declare invalid and unenforceable the orders and judgment of a United States District Court, or to impose liability on any party for attempting to enforce or comply with them. The existence of such authority clearly "would create serious anomalies," upending the two sovereigns' roles and ignoring that tribal jurisdiction must yield to "federal law to the contrary." *Nevada v. Hicks*, 533 U.S. 353, 367-68 & n.8 (2001); *see also Philip Morris*, 569 F.3d at 944 (rejecting any suggestion that tribal law can supersede applicable federal law, absent Congressional permission).

Because the Tribal Action aims to frustrate this Court's jurisdiction and the implementation of its orders and judgment, and does so devoid of colorable authority, the merits prong favors granting the injunction.

B. JW Gaming Will Be Irreparably Harmed

In the absence of an injunction, JW Gaming will be subjected to further litigation: it will either be forced to take action to unwind the orders entered by the tribal court, or to litigate in a forum that the Tribe expressly disclaimed under the Note. This harm is not speculative; under either scenario, JW Gaming will incur the attendant expense and litigation, including attorneys' fees. *See Stifel v. Lac Du Flambeau Band of Lake Superior Chippewa Indians*, No. 13-cv-372-wmc, 2014 WL

1 12489707, *24 (W.D. Wis. May 16, 2014), *aff'd*, 807 F.3d 184 (7th Cir. 2015) (holding irreparable
 2 harm exists where plaintiffs are “forced to litigate in two forums, ... deprived of the benefits of the
 3 forum for which they expressly contracted,” and “forced to litigate before, and submit to the
 4 judgment of, a [tribal] court that likely lacks jurisdiction over them”).

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 6 None of the cases cited by the Tribe support an opposite conclusion. *State ex rel. Becerra v.*
 7 *Sessions*, 284 F. Supp. 3d 1015, 1036 (N.D. Cal. 2018) involved a claim of irreparable injury due to
 8 delay in funding, not the incursion of additional and unnecessary litigation costs. *Klamath Tribes v.*
 9 *United States Bureau of Reclamation*, No. 18-CV-03078-WHO, 2018 WL 3570865, at *15 (N.D.
 10 Cal. July 25, 2018) involved the purported harm to sucker fish – a heavily disputed claim that was
 11 subject to warring expert opinions, as well as the agency’s “presumptively valid” opinion (the 2013
 12 BiOP), which had a “no-jeopardy finding.”

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 14 In addition to the additional cost and expense of re-litigating the validity of this Court’s
 15 judgment in the Tribal Action, the Tribal Action will improperly delay the enforcement of the
 16 judgment, which is a separate form of irreparable harm. Numerous courts have held that “the inability
 17 to enforce a judgment that has already been obtained through litigation on the merits, which is a
 18 matter of fundamental fairness,’ can constitute irreparable harm.” *Forreststream Holdings Ltd.*, 2018
 19 WL 6421866, at *6, quoting *Big Oak Golf Design, Inc. v. De Ubago*, No. C 08-80107-SBA, 2009
 20 WL 839087, at *3 (N.D. Cal. Mar. 30, 2009); see also *Smagin*, 2016 WL 11676607, at *4.

21 **C. The Balance of Equities Tips in JW Gaming’s Favor**

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 23 The balance of equities tips sharply in JW Gaming’s favor. The Tribe cannot dispute that
 24 allowing the Tribal Action to proceed will necessarily require JW Gaming to incur fees and costs (as
 25 well as its time) to litigate the validity of this Court’s judgment in the Tribal Action or risk default
 26 judgment. By contrast, granting the injunction does not harm the Tribe’s status as a “sovereign”
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1 because, as this Court has already determined, the Tribe “clearly and unequivocally waived its
 2 sovereign immunity with respect to the instant action.” Dkt. 178 at 12 (citing Note at 3). Enjoining
 3 the Tribe from prospectively (and collaterally) attacking this Court’s judgments does not impugn its
 4 sovereignty. Rather, the injunction merely requires the Tribe to live up to its contractual obligations.
 5 See, e.g., *Smagin*, 2016 WL 11676607, at *4 (balance of equities favors an injunction which requires
 6 a party to live up to its obligations under an award).
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8 **D. The Requested Injunction Serves the Public Interest**

9 Finally, the Tribe does not even attempt to argue that the injunction does not serve the public
 10 interest. There is a clear public interest in the integrity of judicial orders and proceedings, including
 11 the enforcement of judgments. See, e.g., *Wood v. Ryan*, 759 F.3d 1117, 1121 (9th Cir. 2014), *cert.*
 12 *denied*, 135 S. Ct. 21 (2014) (public interest in the enforcement of judgments); *Shuting Kang v.*
 13 *Harrison*, No. 3:18-CV-05399-JD, 2019 WL 4645723, at *1 (N.D. Cal. Aug. 13, 2019) (preliminary
 14 injunction “serves the public interest of enforcing settlement agreements and the integrity of judicial
 15 orders and proceedings”). Separately, the injunction “benefit[s] the public interest in maintaining the
 16 integrity of contractual agreements.” *DIRECTV, LLC v. E&E Enterprises Glob., Inc.*, No. 17-06110
 17 DDP (PLAX), 2017 WL 3610503, at *1 (C.D. Cal. Aug. 22, 2017).
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20 **CONCLUSION**

21 Accordingly, JW Gaming respectfully requests that the Court grant this motion and issue a
 22 preliminary injunction to enjoin the Tribe and its officers, agents, attorneys, servants, employees, and
 23 those persons in active concert or participation therewith, from taking any further actions, including
 24 but not limited to filing or service of pleadings, noticing or holding hearings, engaging in discovery,
 25 issuing orders, or any other acts in furtherance of litigation in a Pinoleville Pomo Nation forum to
 26 interfere with the enforcement of this Court’s judgment and orders in this action.
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1 Dated: June 7, 2021

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