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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

GUIDIVILLE RANCHERIA OF CALIFORNIA, a federally recognized Indian tribe,

Plaintiff,

v.

BLUEROCK REAL ESTATE HOLDINGS, LLC, a Florida limited liability company; AHG GROUP, LLC, a Florida limited liability company; and ALAN GINSBURG, an individual,

Defendants.

Case No. 26-cv-01578 AGT

PLAINTIFF GUIDIVILLE RANCHERIA OF CALIFORNIA'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION; MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Date: April 24, 2026
Time: 2:00 p.m.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 24, 2026, at 2:00 p.m., or as soon thereafter as the matter may be heard before the Honorable Magistrate Judge Alex G. Tse, in Courtroom A, 15th Floor, of the United States District Court for the Northern District of California, San Francisco Division, located at 450 Golden Gate Avenue, San Francisco, California, plaintiff Guidiville Rancheria of California ("Plaintiff" or the "Tribe"), specially appearing herein while preserving and asserting its sovereign immunity from unconsented litigation will, and hereby does, move pursuant to Federal Rule of Civil Procedure 65 for issuance of a preliminary injunction enjoining and restraining defendants Bluerock Real Estate Holdings, LLC, AHG Group, LLC, and Alan H. Ginsburg (together, "Defendants") from prosecuting the arbitration styled as *Bluerock Real Estate Holdings, LLC, et al. v. Guidiville Band of Pomo Indians of the Guidiville Rancheria*, American Arbitration Association Case No. 01-25-0005-6716. The Motion is based upon this Notice, the Memorandum which follows, the supporting Declarations of Donald Duncan, David Galarza and Mark Dillon filed herewith, the entire file and record herein, and such other and further evidence and argument as the Court may consider.

This Motion is made on the grounds that Defendants are prosecuting a private arbitration against the Tribe in violation of the Tribe's sovereign immunity, in the absence of any applicable agreement to arbitrate, and despite defendant Bluerock Real Estate Holdings, LLC having waived arbitration (on behalf of all defendants) by previously initiating state court litigation on the same claims which it now seeks to arbitrate. As a matter of law, forcing the Tribe to arbitrate in these circumstances poses a threat of irreparable harm necessitating issuance of a preliminary injunction.

MEMORANDUM

I. INTRODUCTION

Plaintiff Guidiville Rancheria of California, specially appearing herein while preserving and asserting its sovereign immunity from unconsented litigation, seeks a preliminary injunction[1] prohibiting defendants Bluerock Real Estate Holdings, LLC, AHG Group, LLC, and Alan H. Ginsburg (together, "Defendants") from prosecuting a private arbitration against the Tribe (as well as third-party, Upstream Point Molate, LLC ("Upstream")) in violation of the Tribe's sovereign immunity and in violation of the very agreements on which Defendants found their demand for arbitration.

This case presents two straightforward, but fundamental questions of federal law:

(1) Whether a federally recognized Indian tribe may be forced to arbitrate absent a clear and unequivocal waiver of sovereign immunity to arbitrate the claims being asserted; and

(2) Whether the arbitral forum has jurisdiction to determine arbitrability where the Tribe has neither waived sovereign immunity nor consented to such jurisdiction.

The answer to both these questions is "no." Indian tribes retain sovereign immunity unless it is waived in unmistakably clear terms, and threshold issues of immunity and jurisdiction must be decided by courts - not arbitrators. As discussed below, there is no valid waiver for Defendants' inconsistent and contradictory claims. The only limited waiver that exists regarding any of the various purported agreements at issue expressly limits its application to the parties to a November 9, 2006 letter agreement. No Defendant is a party to that agreement. Accordingly, Defendants are expressly excluded from the scope of the very agreement on which they rely as a basis for arbitration.

In addition to the two federal law issues identified above, each of which independently precludes Defendants from proceeding with the arbitration, Defendants have waived their right to arbitrate. Defendant Bluerock, prior to demanding arbitration, filed a California state court action

[1] The Tribe met and conferred with Defendants' legal counsel on the day after the Complaint was filed regarding the Tribe's intention to seek a Temporary Restraining Order. Defendants' counsel agreed that it would refrain from pursuing the arbitration pending this courts deliberation and resolution of a motion for preliminary injunction and inform AAA of its agreement. Accordingly, a motion for a Temporary Restraining Order was not needed.

asserting the same claims against the Tribe and Upstream, premised upon the same series of transactions and, in fact, the very same documents upon which their Demand for Arbitration is based. By commencing and prosecuting that action, with full awareness of the arbitration clause upon which the current Demand for Arbitration is based, Defendants have waived any claimed right to arbitrate.

Immediate relief is necessary. The American Arbitration Association ("AAA") has determined, over the Tribe's objections, that it will proceed with arbitration and allow an arbitrator to decide the threshold issues of arbitral jurisdiction and sovereign immunity. This threshold determination by AAA usurps the Tribe's rights as a sovereign nation and exposes the Tribe to irreparable harm. No agreement authorizes this arbitration, and no waiver permits it. Moreover, the 2006 Letter Agreement, to which Defendants are not a party and on which Defendants rely, expressly provides that the question of arbitrability be resolved by specified judicial forums, not by AAA.

The Tribe satisfies each element for injunctive relief under applicable Ninth Circuit authority. The motion should be granted to preserve the status quo and to prevent further violation of the Tribe's sovereign rights.

II. FACTUAL BACKGROUND

This matter has a long and complex history. We focus below only on those facts directly relevant to the issue of arbitrability. This begins with the written document that contains the alleged agreement to arbitrate, a November 9, 2006 letter agreement between the Tribe, Upstream, and another federally recognized Indian tribe, the Scotts Valley Band of Pomo Indians ("Scotts Valley") (the "2006 Letter Agreement"). None of the Defendants is a party or signatory to the 2006 Letter Agreement, which, as detailed below, expressly excludes such "third parties" from the alleged agreement to arbitrate.

A. The 2006 Letter Agreement.

In November 2006, the Tribe, Upstream and Scotts Valley - and only these three parties - entered into the 2006 Letter Agreement concerning Guidiville's then-proposed development of real property located at Point Molate, in Richmond, California and Scotts Valley's then-proposed

development of real property on Parr Blvd., also in Richmond, California. Declaration of Guidiville Tribal Secretary David Galarza (Galarza Decl., Ex. B-1.) Under the 2006 Letter Agreement, Scotts Valley agreed, *inter alia*, to extend a $6.5 million loan to the Tribe and Upstream jointly, with the loan to be evidenced by promissory notes. (*Id*., ¶¶1 & 6(e).)

The 2006 Letter Agreement contains two provisions relating to arbitration.

First, Paragraph 10 recites narrow waivers of the sovereign immunity of the two tribal governments solely for the limited purpose of permitting a court to hear a petition to compel arbitration or to enforce an arbitration award, and only in a sequential listing of forums, beginning with tribal court as the preferred forum. Specifically, Paragraph 10 states in relevant part as follows (emphasis added):

> Each of Guidiville and Scott's Valley expressly and irrevocably waives its sovereign immunity from suit by the respective parties to this agreement for the express limited purpose of compelling arbitration as provided below (including the promissory notes) and consents to be sued in the Tribal Court of either the Guidiville Band of Pomo Indians or the Scotts Valley Band of Pomo Indians Tribal Court as applicable (including any appellate courts of the respective Tribal governments), if the Tribal Court(s) do not exist or lack jurisdiction over the suit, then in the United District Court in the district where the parties to this agreement are located . . . for the expressly limited purposes of compelling arbitration and enforcing any arbitration award or judgment arising out of this agreement. If the Tribal Court and the United States District Court for the District where the Parties are is [sic] located lack jurisdiction, or decline to hear the matter, the parties consent to be sued in the California State Court system or any other court of competent jurisdiction for the expressly limited purposes described in the arbitration provisions below.

(*Id*., ¶10.) This provision sets forth not only the limited scope of the Tribe's waiver of its sovereign immunity, but also the specific judicial process required to commence any arbitration, expressly committing any determination of arbitrability to the court rather than to the arbitrator.

Second, Paragraph 11 contains a strictly limited arbitration clause, expressly limited to the three named parties (the Tribe, Upstream, and Scotts Valley), referring disputes among them to binding arbitration with AAA. It states in pertinent part: "All disputes, controversies or claims by or between the parties to this agreement (**but specifically excluding any third parties**) arising out of this agreement . . . shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and the Federal Arbitration Act . . . ." [*Id*., ¶11 (emphasis added).]

B. The Notes.

The Tribe and Upstream subsequently executed two promissory notes dated December 20, 2006 and November 29, 2007 ("Notes") in the total amount of $6.4 million (attached to Galarza Dec. as Exs. B-2 and B-3, respectively). Both Notes contain an express provision restricting and prohibiting assignment of the Notes to any party other than NORAM, Alan Ginsburg or AHG Group, Inc.[2] The Notes contain no arbitration provision, no delegation clause, no forum-selection clause, and no waiver of the Tribe's sovereign immunity. Nothing in the Notes purports to subject the Tribe to private arbitration or to authorize a non-judicial body to determine questions of arbitrability or tribal sovereign immunity.

C. Subsequent Purported Assignments and the Purported Settlement Sharing Agreement.

There have been at least three purported (and contradictory) assignments of the Notes or the claimed right to payment thereunder, as described below.

First, Defendants plead a document entitled "Agreement Regarding Assignment of Notes," appended to their November 12, 2025 Demand for Arbitration ("Demand") which purports to reflect an assignment of the Notes by Scotts Valley to defendant Alan Ginsburg and non-parties, Seminole SV Entertainment and NORAM in February 2012. (*See* Galarza Decl. ¶10 & Ex. B-4.)

Second, Defendants also plead, appended to the Demand, and assert claims based on a document entitled "Settlement Sharing Agreement" dated "March __, 2018" ("SSA") purportedly between Upstream, the Tribe, and Ginsburg's limited liability company, AHG Group, LLC ("AHG").[3] (*See* Galarza Decl., ¶ 11 & Exs. B-8 & B-11.) (blank date in original).

Directly contradicting Scotts Valley's alleged February 2012 assignment of the Notes to

[2] Bluerock Real Estate Holdings claims to be the assignee of the Notes (Galarza Decl. Ex. B-11 at p.1), even though the Notes on their face prohibit assignment to anyone other than Ginsburg and AHG, and despite documentation otherwise relied upon by Bluerock which negates the validity of the claimed chain of assignments.

[3] Though affirmatively pleaded by Defendants as a basis for their claims, the SSA's validity is subject to dispute. Among other issues, there is no waiver of the Tribe's sovereign immunity nor did Upstream's Manager have the requisite authority to enter into the agreement.

Ginsburg, the purported SSA recites that "Scotts Valley has delivered, and assigned all of its right, title and interest in the Notes to AHG Group, Inc." and that "no other person or entity has claimed or now claims any interest in the Notes . . . ." (Galarza Decl., ¶ 11 & Ex. B-8 [SSA, Recital B & ¶ 3.]) The purported SSA further recites that Upstream and Guidiville "are currently negotiating a settlement" of litigation with the City of Richmond relating to the proposed Point Molate development project, and that "AHG, Upstream, and Guidiville desire to set forth the terms on which AHG, Upstream, and Guidiville will share in the net proceeds of the Settlement in full satisfaction of all obligations remaining under the Notes." (*Id*. at 1, recital F (emphasis added).) The purported SSA also contains an integration clause, which states that "this Agreement constitutes the entire agreement between the parties herein named." (*Id*. at ¶ 6.) The purported SSA does not contain any language that could conceivably constitute a waiver of Guidiville's sovereign immunity, or an arbitration clause, and does not, in any way, purport to adopt or integrate the limited agreement to arbitrate from the 2006 Letter Agreement. (*See id.*) Moreover, there is no record that Guidiville ever adopted a resolution approving the purported SSA or authorizing any limited waiver of tribal sovereign immunity related thereto. (Galarza Decl., ¶ 11.)

Third, Defendants further allege that "[o]n December 15, 2020, AHG assigned its rights, duties, privileges and obligations under the purported SSA to Claimant Bluerock." (Galarza Decl., Ex. B-1 at ¶14.) Ex. 9 to the Demand includes a purported "Assignment of Contract" , which recites consideration of $10 for the assignment of a claim allegedly worth over $8 million. (Galarza Decl., Ex. B - 9, Recitals.) Bluerock is not an authorized assignee of the Notes which, as noted above, expressly prohibit assignment of the Notes to anyone other than Ginsburg, AHG or NORAM. (Galarza Decl., Exs. B-2 and 3.)

D. Bluerock Initiates Litigation in Contra Costa County Superior Court.

After years of pursuing having certain lands from a closed Navy fuel depot (a/k/a Point Molate) taken into trust by the United States for the benefit of the Tribe, and additional years of contentious litigation regarding those efforts, the Tribe secured title to the lands in settlement of litigation between the Tribe and Upstream on one side and the City of Richmond on the other. Duncan Decl., ¶ 12. To fulfill its obligations under the settlement agreement with the City of

Richmond, the Tribe negotiated terms with the East Bay Regional Parks District (EBRPD) to sell the land to be used as parkland. *Id*. Escrow was opened with Chicago Title Company to consummate the transaction. *Id*.

On July 29, 2025, Bluerock commenced a civil action in the California Superior Court for Contra Costa County (Case No. C25-02165) against the Tribe, Upstream and Chicago Title Company ("Superior Court Action"). Request for Judicial Notice, Ex. 1. The Superior Court Action sought the same relief that is now requested in the Demand for Arbitration against the Tribe and Upstream (breach of contract and declaratory relief).

Chicago Title Company refused to close the sale transaction of the subject property at Point Molate so long as it was named as a defendant in the Superior Court Action. (Duncan Decl., ¶ 12.) Hence, the dismissal of Chicago Title was necessary to move forward with the sale. To that end, the parties stipulated to the Tribe interpleading approximately $8.2 million into the Superior Court Action in exchange for the dismissal of Chicago Title. (*Id*.; Request for Judicial Notice, Ex. 2.) Having secured the interpleading of funds, Bluerock then changed legal counsel, and dismissed the Superior Court Action (without prejudice) on November 13, 2025. (Request for Judicial Notice, Exs. 3 & 4.)

E. The Demand for Arbitration

On November 12, 2025 (nearly 20 years after the 2006 Letter Agreement and the day before the dismissal of the Superior Court Action), Defendants Bluerock, AHG, and Ginsburg filed a Demand for Arbitration with AAA, naming the Tribe and Upstream as respondents. (Galarza Decl., Ex. B-1.) The Demand asserts four causes of action (breach of contract and declaratory relief). However, none of the alleged theories provide a basis for finding the Tribe agreed to arbitration or waived its sovereign immunity.

The Demand's First Cause of Action, by Ginsburg personally for breach of contract, alleges that Ginsburg "is entitled to the amounts due from the Notes." There is no explanation how Ginsburg holds any interest under the Notes given the recitation in the SSA that, as of March 2018, Scotts Valley had assigned the Notes to AHG and AHG's corresponding warranty that "no other person or entity has claimed or now claims any interest in the Notes . . . ." (SSA, Recital B & ¶3.)

Nor does the Demand explain how Ginsburg can maintain any claim based on the Notes given the recitation that the SSA is intended to set forth the terms "on which AHG, Upstream, and Guidiville will share in the net proceeds of the Settlement in full satisfaction of all obligations remaining under the Notes."

The Demand's Second Cause of Action, by Bluerock for breach of contract, alleges that Bluerock "is the current owner and holder of the amounts due under the Settlement Sharing Agreement" and alleges the Tribe and Upstream "have breached the Settlement Sharing Agreement by failing to pay the full amount due to Claimant Bluerock." (Demand, ¶¶25-26.) This claim is not pleaded in the alternative, yet there is no attempt to explain the facial inconsistency with the First Cause of Action, whereby Ginsburg personally seeks to recover on the underlying Notes. Nor is there any allegation that the SSA – which is the agreement on which Bluerock's claim is premised – contains an agreement to arbitrate.

The Demand's Third Cause of Action, by Ginsburg personally for declaratory relief, seeks a declaration that "Respondents owe Mr. Ginsburg the full amount due under the Notes." (Demand, ¶30.) The Demand's Fourth Cause of Action, by Bluerock for declaratory relief, seeks a declaration that "Respondents owe Bluerock the full amounts due under the Settlement Sharing Agreement." Each of these claims suffers the same fundamental defects and inconsistencies as the first two causes of action.

The Demand asserts no claims on behalf of nominal Claimant AHG.

Of the four documents purportedly executed by the Guidiville Tribe on which Defendants rely in making their claims (the 2006 Letter Agreement, the two notes and the SSA), the 2006 Letter Agreement is the sole document that conceivably provides any agreement by the Tribe to consent to AAA arbitration.

F. Tribe's Timely Objections and Assertion of Sovereign Immunity

Upon receipt of the Demand, the Tribe promptly and unequivocally objected to arbitration on multiple grounds, including sovereign immunity, by correspondence dated December 3, 2025 and December 29, 2025, which also incorporated by reference objections asserted by Upstream. (Declaration of Mark Dillon ("Dillon Decl."), ¶¶ 8-11 & Exs. B - E.)

G. AAA's January 7, 2026 Determination and Imminent Threat of Irreparable Harm

On January 7, 2026, AAA informed the Tribe that its Administrative Review Council "has determined that the Claimant has met AAA's filing requirements" and that AAA would continue administering the arbitration "in the absence of an agreement by the parties or a court order staying the case." (Dillon Decl., ¶ 12, Ex. F.) AAA further stated that, under its rules, arbitrators would decide questions of jurisdiction, arbitrability, and the existence or scope of any arbitration agreement. *Id*. This position squarely places the Tribe's sovereign immunity at immediate risk and creates an imminent threat of irreparable harm absent immediate judicial intervention.

H. Tribe's Complaint for Declaratory and Injunctive Relief

On February 23, 2026, the Tribe filed a Complaint for Declaratory and Injunctive Relief ("Complaint") in this matter. The Complaint seeks, among other relief, declarations that (a) Defendants lack a jurisdictional basis to pursue a determination from AAA regarding the arbitrability of the claims asserted in the Demand, (b) there is no agreement to arbitrate the claims asserted in the Arbitration, (c) the Tribe has not waived sovereign immunity as to the claims asserted in the Arbitration or consented to any proceedings in AAA or any judicial or quasi-judicial forum; and (d) Defendants waived any alleged right to arbitrate. The Complaint further seeks preliminary and permanent injunctive relief barring Defendants from proceeding with the arbitration.

III. LEGAL STANDARD TO ENJOIN ARBITRATION

A district court may enjoin arbitration proceedings where there is no valid and applicable agreement to arbitrate. *Textile Unlimited, Inc. v. ABMH & Co.*, 240 F.3d 781, 786 (9th Cir. 2001); *Ingram Micro Inc. v. Signeo Intern., Ltd.*, No. SACV 13-1934-DOC ANX, 2014 WL 3721197, at *2 (C.D. Cal., Jul. 22, 2014,); *Morgan Stanley & Co., LLC v. Couch*, 134 F. Supp. 3d 1215, 1233 (E.D. Cal. 2015); *Johnson v. Oracle America, Inc.*, No. 17-CV-05157-EDL, 2017 WL 11493479, at *2 (N.D. Cal., Oct. 4, 2017). In the Ninth Circuit, a party seeking to preliminarily enjoin arbitration proceedings meets its burden by demonstrating either (1) a combination of probable success on the merits and the possibility of irreparable injury, or (2) that serious questions are raised and the balance of hardships tips sharply in its favor. *Textile Unlimited, Inc.*, 240 F.3d at 786;

Johnson, 2017 WL 11493479, at *2; *Morgan Keegan & Co. v. McPoland*, 829 F. Supp. 2d 1031, 1034 (W.D. Wash. 2011). Here, both prongs are satisfied.

IV. ARGUMENT

A. The Tribe is Likely to Succeed on the Merits.

The Tribe's likelihood of success on the merits is based on multiple independent grounds, each of which is sufficient on its own to warrant an injunction.

1. The Tribe Did Not Waive Sovereign Immunity.

Defendants' attempt to arbitrate the claims asserted in their Demand is improper because the Tribe never waived sovereign immunity with respect to those claims. The *only* potentially applicable waiver of sovereign immunity is the very limited waiver set forth in Paragraph 10 of the 2006 Letter Agreement. The Tribe *never* waived sovereign immunity for claims brought "by third parties," never waived sovereign immunity for claims asserted under the SSA, and never waived its right to have the issue of sovereign immunity decided by a tribal or federal court.

Indian tribes are "domestic dependent nations" that exercise "inherent sovereign authority." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (quoting *Okla. Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505, 509 (1991)). "Thus, unless and 'until Congress acts, the tribes retain' their historical sovereign authority." *Id*. (quoting *United States v. Wheeler*, 435 U.S. 313, 323 (1978)); *see also* U.S. Const. art. I, § 8, cl. 3 (authorizing Congress to "regulate Commerce . . . with the Indian Tribes"); *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 756 (1998).

As "distinct, independent political communities" with sovereign powers that have never been extinguished, "Indian tribes have long been recognized as possessing the common law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978); *see also Bay Mills Indian Cmty.*, 572 U.S. at 789 (sovereign immunity extends to bar suit whether on or off-reservation, whether or not the action concerns commercial activity). As such, "[a]s a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe*, 523 U.S. at 754. Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally

enjoyed by sovereign powers. *Turner v. United States*, 248 U.S. 354, 358 (1919); *Santa Clara Pueblo*, 436 U.S. at 58. Tribal sovereign immunity therefore bars suits against a tribe absent a clear waiver by the tribe. *Oklahoma Tax Comm'n*, 498 U.S. at 509; *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014); *Bodi v. Shingle Springs Band*, 832 F.3d 1011, 1016–17 (9th Cir. 2016).

It is well settled that a waiver of tribal sovereign immunity cannot be implied but must be clear and unequivocal. *Bodi*, 832 F.3d at 1016; *Engasser v. Tetra Tech, Inc.*, 519 F. Supp. 3d 703, 707 (C.D. Cal. 2021). This is not a requirement that may be flexibly applied or even disregarded based on the parties or the specific facts involved. *Ute Distribution Corp. v. Ute Indian Tribe*, 149 F.3d 1260, 1267 (10th Cir. 1998). Waivers of sovereign immunity must be strictly construed in favor of sovereign immunity and not enlarged beyond what the express language requires. *Lane v. Pena*, 518 U.S. 187, 192 (1996); *Dunn & Black, P.S. v. U.S.*, 492 F.3d 1084, 1088 (9th Cir. 2007); *Grand Canyon Skywalk Development, LLC v. Hualapai Indian Tribe of Arizona*, 966 F. Supp. 2d 876, 882–883 (D. Ariz. 2013).

In addition, "if a tribe 'does consent to suit, any conditional limitation it imposes on that consent must be strictly construed and applied.' " *Mo. River Servs., Inc. v. Omaha Tribe of Neb.*, 267 F.3d 848, 852 (8th Cir.2001) (quoting *Namekagon Dev. Co. v. Bois Forte Reservation Hous. Auth.*, 517 F.2d 508, 509 (8th Cir.1975).). Moreover, where Tribal law at issue requires a formal resolution authorizing any waiver, the absence of such authorization is dispositive and renders the purported waiver void. *Bodi*, 832 F.3d at 1017; *see also Hydrothermal Energy Corp. v. Fort Bidwell Indian Cmty. Council*, 170 Cal.App.3d 489 (1985) (holding contract invalid based on lack of proper authorization by Tribal Council); *MM&A Prods., LLC v. Yavapai-Apache Nation*, 234 Ariz. 60, 316 P.3d 1248, 1250–54 (Ariz. Ct. App. 2014) (holding agreement invalid based on lack of authorization by Tribal Council and rejecting argument that casino marketing director nonetheless had "apparent authority" to enter the contracts and bind the tribe).

Here, Guidiville Tribal Law vests *only* the Tribal Council with authority to waive the Tribe's sovereign immunity and requires a written Council resolution authorizing a tribal official to execute an agreement waiving sovereign immunity. (Duncan Decl.,¶¶_4-10; Galarza Decl., ¶ 5, Ex. A [Tribe's Constitution.])

In this case, no such waiver exists. The only arbitration clause cited by Defendants is the 2006 Letter Agreement, to which none of the Defendants is party, and it includes only a narrow, limited waiver of immunity, restricted to an action to compel arbitration brought by a signatory, in a specified forum, and expressly excluding third parties. Moreover, the 2006 Letter Agreement is the only document on which Defendants rely that was duly executed in conformance with Guidiville Tribal law and by a duly authorized tribal official. (Galarza Decl.,¶¶ 7-12.) An exhaustive search of the Tribe's records reveals no authorizing Tribal resolutions authorizing the assignments, the execution of the notes, or the SSA, as required by Guidiville tribal law. (*Id.*)

Defendants Bluerock, AHG, and Ginsburg are not parties to the 2006 Letter Agreement. They fall squarely within the class of "third parties" expressly excluded from arbitration. Undaunted, Defendants wrongly rely on the "by or between" language in the 2006 Letter Agreement to support their claims against the Tribe and Upstream. But there are no claims brought "by" Scotts Valley, Upstream, and/or Guidiville; and there are no claims "between" Scotts Valley, Upstream, and/or Guidiville. There are only the Defendants' third-party claims, and they are explicitly *excluded* by the terms of the alleged 2006 Letter Agreement (*see* ¶ 10) "but specifically excluding any third parties"). AAA's continued administration of the case violates the Tribe's sovereign immunity.

2. There is No Agreement to Arbitrate with Defendants.

Even if there were an applicable waiver of sovereign immunity (and there is not), arbitration cannot proceed because there is no agreement to arbitrate between the Tribe and Defendants. Under well-settled law, "[a] party is not obligated to arbitrate unless it has agreed to do so." *AT&T Techs. v. Commc'ns Workers*, 475 U.S. 643, 648 (1986).

Defendants rely on a 2006 arbitration clause that explicitly excludes them. The actual promissory notes (and the purported SSA) contain no arbitration clause, no delegation clause, no forum-selection clause, and no waiver of the Tribe's sovereign immunity. Moreover, there is no evidence that the actual promissory notes (and the purported SSA) were duly authorized by requisite resolutions of the Guidiville Tribal Council.

Bluerock claims rights via an assignment chain that violates the Notes' anti-assignment clauses. Ginsburg and AHG assert inconsistent and conflicting ownership claims to the same Notes.

The Tribe never agreed to arbitrate with Defendants or to delegate immunity questions to AAA.

3. The 2006 Letter Agreement Requires Judicial Determination of Arbitrability and Its Limited Waiver Does Not Apply.

Even assuming, contrary to the indisputable facts, that Defendants were parties to the 2006 Letter Agreement, they are not entitled to pursue the remedies provided by the limited waiver. Paragraph 10 the 2006 Letter Agreement expressly stated that the waiver was limited only for the "purpose of compelling arbitration and enforcing any arbitration award or judgment . . ." (Galarza Decl., ¶ 7 & Ex. B-1.) Paragraph 10 also restricts adjudication of arbitrability to judicial forums and the Tribal Court. (*Id.*) It does not authorize a private arbitrator to determine the existence, scope, or applicability of sovereign immunity. Hence, the limited waiver does not apply to Defendant's Demand which was submitted to AAA.

"[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *In re Henson*, 869 F.3d 1052, 1059 (9th Cir. 2017) (quoting *AT&T Technologies Inc. v. Communications Workers of America*, 475 U.S. 643, 649 (1986)). Moreover, "the question of arbitrability . . . is undeniably an issue for judicial determination." *AT&T Technologies*, 475 U.S. at 649; *see Nagrampa v. Mailcoups, Inc.*, 469 F.3d 1257, 1268 ("The arbitrability of a particular dispute is a threshold issue to be decided by the courts."). Thus, "[c]ourts should not assume that the parties agreed to arbitrate arbitrability unless there is 'clear and unmistakable' evidence that they did so." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995) (quoting *AT&T Technologies*, 475 U.S. at 649).

There is no language anywhere in the agreements on which Defendants rely to remotely suggest Guidiville agreed to arbitrate arbitrability. Because the parties to the 2006 Letter Agreement expressly anticipated and agreed that a party seeking to arbitrate a claim pursuant to Paragraph 11 would have to bring a petition to compel arbitration as specified in Paragraph 10 of that agreement, under applicable state and federal law, the issue of arbitrability is committed to the specified courts and cannot be determined by the arbitrators. For this reason, any argument by Defendants that the 2006 Letter Agreement's reference to AAA's Commercial Rules incorporates AAA's delegation clause, which purports to grant the arbitrator the power to determine arbitrability, necessarily fails.

The parties' express agreement concerning jurisdiction to determine arbitrability overrides the generic provision in AAA's rules. *Jadwin v. County of Kern*, 610 F. Supp. 2d 1129, 1190 (E.D. Cal. 2009) (when a general and a particular provision are inconsistent, the particular and specific provision controls); *Ireland-Gordy v. Tile, Inc.*, 760 F. Supp. 3d 946, 959 (N.D. Cal. 2024) (concluding a specific venue provision reserving "interpretation or validity" disputes to the courts controlled over general AAA delegation language).

4. The Purported Settlement Sharing Agreement, if Valid, Supersedes the 2006 Letter Agreement.

Defendants' claim is also dependent on the purported SSA between the Tribe, Upstream, and AHG. But the SSA does not contain an arbitration clause. It does, however, contain an integration clause stating it is the parties' entire agreement. That integration clause precludes any reliance on earlier agreements to impose arbitration. *See Ingram Micro Inc.*, 2014 WL 3721197, at *4 (enjoining arbitration where claimed agreement to arbitrate had been superseded by subsequent integrated agreement); *Grey v. American Management Services*, 204 Cal.App.4th 803, 808 (2012) (where alleged agreement to arbitrate predated employment agreement, "it was superseded by that contract's integration clause").

The purported SSA also recites that it was executed "in full satisfaction of all obligations remaining under the Notes," extinguishing the claims Defendants now attempt to assert. Galarza Decl., Ex. B-8 at. 1, recital F. Moreover, the purported SSA expressly states that "no other person or entity has claimed or now claims any interest in the Notes," which contradicts Ginsburg's separate and overlapping claim.

In short, the purported SSA both supersedes the 2006 Letter Agreement and extinguishes the very claims on which Defendants base their arbitration demand. The purported SSA does not adopt or reference any prior arbitration clause, and it contains no agreement to arbitrate or any other provision that could conceivably be considered a waiver of the Tribe's sovereign immunity.

In considering a motion to enjoin arbitration, the general question becomes whether the parties objectively revealed an intent to submit the arbitrability issue to arbitration. *Ingram Micro Inc.*, 2014 WL 3721197, at *3. A court should not assume that the parties agreed to arbitrate

arbitrability in the absence of clear and unmistakable evidence that they did so. *Id*. Given a contract, clear and unmistakable evidence of intent to arbitrate arbitrability does not exist where an arbitration provision has been omitted from superseding agreements. *Id*. Claims arising from an agreement without an arbitration clause are not subject to arbitration, even when brought in conjunction with claims arising from a separate arbitrable agreement. *Id*.

Here, Defendants seek to arbitrate claims under a fully integrated agreement that excludes arbitration. Their attempt to revive a prior agreement via parol evidence violates settled law. *Sussex Financial Enterprises, Inc. v. Bayerische Hypo-Und Vereinsbank AG*, 460 Fed.Appx. 709, 711 (9th Cir. 2011); *Seoul Semiconductor Co., Ltd. v. Finelite, Inc.*, 694 F. Supp. 3d 1199, 1213 (N.D. Cal. 2023); *Grey v. Am. Mgmt. Servs.*, 204 Cal.App.4th 803, 808 (2012).

5. Defendants Waived Arbitration Through Prior Litigation.

Finally, Defendants' own litigation conduct independently bars arbitration. Defendants previously filed and actively litigated the same claims in the Superior Court Action. Under both California and federal law, a party waives arbitration when it has actual or constructive knowledge of a right to arbitrate and intentionally relinquishes or abandons that right. *Quach v. California Commerce Club, Inc.*, 16 Cal.5th 562, 584 (2024); *Morgan v. Sundance, Inc.*, 596 U.S. 411, 417 (2022) ("Waiver, we have said, 'is the intentional relinquishment or abandonment of a known right.'") "Intentional relinquishment of the right may be proved by evidence of words expressing an intent to relinquish the right or of conduct that is so inconsistent with an intent to enforce the contractual right as to lead a reasonable factfinder to conclude that the party had abandoned it." *Quach*, 16 Cal.5th at 584; accord *Hill v. Xerox Bus. Servs., LLC*, 59 F.4th 457, 472 (9th Cir. 2023) ("under our implicit waiver analysis, we are tasked with evaluating a party's actions and asking whether those actions, even if seemingly commonplace and not an express disavowal of arbitral forums, evinced the party's partiality for a judicial resolution of the claims"). In the wake of the U.S. Supreme Court's decision in *Morgan*, and the California Supreme Court's follow-on decision in *Quach*, a party opposing arbitration no longer need show prejudice to establish waiver. *Morgan v. Sundance*, 596 U.S. at 416-17; Quach, 16 Cal.5th at 583-84.

Here, Bluerock's filing of a lawsuit in Contra Costa County Superior Court seeking to

recover on the Notes and the purported SSA constituted a waiver of Defendants' alleged right to arbitrate. There is no question that Defendants knew of the alleged agreement to arbitrate, which is attached to both their (dismissed) Complaint and Demand for Arbitration. Further, Defendants engaged in a series of actions flatly inconsistent with their claimed right to arbitrate: (1) filing and then maintaining the Superior Court action for nearly four months; (2) representing to both the parties and the Court, in writing, that Bluerock would be filing an amended complaint in the Superior Court action. *See* request for judicial notice and the attachments thereto filed simultaneously herein; and (3) leveraging the claims asserted therein into a stipulation pursuant to which the Tribe agreed to, and did, interplead and deposit into Contra Costa County Superior Court more than $8 million; and (3). (*Id*. and Duncan Decl., ¶ 12.) These actions certainly "evince" Defendants' partiality for a judicial resolution. Any right to arbitrate has thus been waived.

B. Participation in Arbitration Will Cause the Tribe Irreparable Harm as a Matter of Law.

Courts have specifically recognized that it is irreparable harm as a matter of law to force a federally recognized tribe to submit to an unauthorized arbitration. *Kiowa Indian Tribe of Oklahoma v. Hoover*, 150 F.3d 1163, 1172 (10th Cir. 1998) (sovereign immunity is irrevocably lost once the tribe is compelled to endure the burdens of litigation); *Ute Indian Tribe of the Uintah and Ouray Reservation*, 790 F.3d 1000, 1005 (2015) (an invasion of tribal sovereignty can constitute irreparable injury); *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1251 (10th Cir. 2001) (injuries to tribal self-government are irreparable because they are not easily subject to valuation and cannot adequately be compensated for in the form of monetary damages.); *Tamiami Partners Ltd. v, Miccosukee Tribe*, 63 F.3d 1030, 1050 (11th Cir. 1995) ("Tribal sovereign immunity would be rendered meaningless if a suit against a tribe asserting its immunity were allowed to proceed to trial"; *see also Burlington Northern & Santa Fe Railroad Co. v. Vaughn*, 509 F.3d 1085, 1090 (9th Cir. 2007).

Forcing a party to submit to arbitration, when it did not agree to do so, constitutes per se irreparable harm. *Ingram Micro Inc.*, 2014 WL 3721197, at *4; *Morgan Keegan & Co.*, 829 F. Supp. 2d at 1036; *Intercontinental Coffee Trading, LLC v. Eximware, Inc.*, No. 3:22-CV-1841-

RBM-AHG, 2023 WL 5667893, at *19 (S.D. Cal., July 19, 2023). Irreparable injury is shown because, absent the injunction, a party would have to expend time and resources defending itself in arbitration. *Ingram Micro Inc.*, 2014 WL 3721197, at *4; *Morgan Keegan & Co.*, 829 F. Supp. 2d at 1036.

The harm is especially acute here because it threatens the Tribe's sovereign immunity. AAA has stated that it will proceed over the Tribe's objection and will allow arbitrators to determine their own jurisdiction, including immunity. Absent intervention, the Tribe will be compelled to defend itself before a private tribunal which has no jurisdiction over the Tribe, all while the Tribe's sovereign immunity is actively violated. No monetary or retrospective relief can restore the Tribe's sovereign immunity once lost. That harm is immediate and irreparable.

C. The Balance of Equities Strongly Favors the Tribe.

In balancing the equities, courts must "balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. at 24 (2008). An injunction is favored where the harm to the plaintiffs if the injunction is denied outweighs any potential harm to the defendants if the injunction is granted. *Ingram Micro Inc.*, 2014 WL 3721197, at *5.

When tribal sovereign immunity is at stake, courts must weigh the equities decisively in favor of the tribe because the harm to tribal sovereignty cannot be remedied by any other relief. *See White Mountain Apache Tribe v. State of Ariz., Dept. of Game and Fish*, 649 F.2d 1274, 1285 (9th Cir. 1981); *Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dept. of Interior*, 755 F. Supp. 2d 1104, 1121 (S.D. Cal. 2010).

The equities overwhelmingly favor the Tribe. Defendants face only a temporary delay in pursuing claims that may be litigated, if at all, in a proper forum. By contrast, the Tribe faces permanent deprivation of sovereign immunity as well as the costs of proceeding in multiple forums.

D. Public Interest Supports Enjoining the Arbitration Against the Tribe and Preserving Tribal Sovereign Immunity.

Absent an arbitration agreement, public interest weighs in favor of granting the injunction to enjoin arbitration since the FAA does not require parties to arbitrate where they have not agreed to do so. *Morgan v. Sundance*, 596 U.S. 411, 418 ; *Ingram Micro Inc.*, 2014 WL 3721197, at *5; *Johnson v. Oracle America*, Inc., 2017 WL 11493479, at *2. The Supreme Court in *Morgan* emphasized that "[t]he federal policy is about treating arbitration contracts like all others, not about fostering arbitration." *Morgan v. Sundance*, 596 U.S. at 418.[4]

Further, preservation of tribal sovereign immunity advances the public interest by respecting federal Indian law, tribal self-governance, and the constitutional allocation of authority over tribal affairs. *Blue Lake Rancheria v. Lanier*, 106 F. Supp. 3d 1134, 1141 (E.D. Cal. 2015); *Sac and Fox Nation of Missouri v. LaFaver*, 905 F.Supp. 904, 907 (D. Kan. 1995).

Here, the Tribe does not have an arbitration agreement with Defendants. Granting injunctive relief serves the public interest and affirms that questions of tribal immunity remain within the province of courts.

V. CONCLUSION

The Tribe may not be forced to arbitrate a claim it never agreed to arbitrate, nor does AAA have jurisdiction to determine arbitrability in the absence of an express waiver of sovereign immunity granting AAA such authority. For these, and the other reasons set forth above, the Tribe respectfully requests that the Court issue a preliminary injunction prohibiting Defendants from proceeding with the arbitration.

Good cause exists to waive any requirement that the Tribe post a bond in connection with the issuance of the proposed preliminary injunction. Here, the very imposition of a bond infringes on the Tribe's immunity. Public policy favors the preservation of the important federal right to

[4] The Supreme Court's decision in *Morgan* thus undercuts decades of authority favoring arbitration based on a mistaken notion that the Federal Arbitration Act evinces a "public policy" favoring arbitration over litigation. As the Court explained, it does not. It merely requires that arbitration agreements be deemed enforceable – or not – on the same grounds applicable to other contracts. *See Morgan*, 596 U.S. at 417-18 (rejecting rule adopted by numerous Circuit Courts of Appeal based on incorrect notion that there is a "liberal national policy favoring arbitration").

sovereign immunity. In such cases, where the likelihood of success on the merits is high, the bond requirement should be waived. *See Crowley v. Local No. 82*, 679 F.2d 978, 1000 (1st Cir. 1982) rev*'d on other grounds*, 467 U.S. 526 (1984); *Maine v Dept. of Agriculture*, 778 F. Supp. 3d 200, 237-38 (D. Maine 2025); *Nat'l Assn. of Diversity Officers in higher Education v. Trump*, 767 F. Supp. 3d 243, 291 (D. Md. 2025).

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By: /s/ *Scott D. Crowell*

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CERTIFICATE OF SERVICE

I hereby certify that on this day, March 10, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record in this matter who are registered on the CM/ECF system.

/s/ *Scott D. Crowell*
SCOTT D. CROWELL