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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE GUIDIVILLE BAND OF POMO INDIANS OF THE GUIDIVILLE RANCHERIA,

Plaintiff,

vs.

BLUEROCK REAL ESTATE HOLDINGS, LLC, AHG GROUP, LLC, and ALAN GINSBURG,

Defendants.

Case No. 3:26-cv-01578

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION OF ARBITRATION

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I. INTRODUCTION

Plaintiff, the Guidiville Rancheria of California ("the Guidiville Tribe" or the "Tribe") does not dispute that, in 2006, it entered into a Letter Agreement, in which it agreed to arbitrate disputes arising out of or relating to: (1) that Letter Agreement, and (2) "any agreement collateral thereto, including, the promissory notes." Moreover, the Tribe does not dispute that the signatory of that Agreement on behalf of the Tribe – then-Tribal Chairperson Merlene Sanchez – was authorized to sign it pursuant to a resolution by the Tribal Council.

Defendants Bluerock Real Estate Holdings, LLC, AHG Group, LLC, and Alan Ginsburg ("Defendants") are (1) assignees of those promissory notes, and (2) signatories to a "Settlement Sharing Agreement" ("SSA"), also signed by Ms. Sanchez as Tribal Chair – which agreement was, by its terms, meant to resolve the Tribe's obligations under the Notes. Defendants initiated an arbitration in front of the American Arbitration Association ("AAA") – the forum the Letter Agreement selected – seeking to collect millions of dollars the Tribe owes under the Notes and SSA but has refused to pay.

This Court should deny the Tribe's motion to preliminarily enjoin that AAA arbitration.

First, the Tribe's suit before this Court has *no* likelihood of success on the merits, because the suit asks this Court to decide issues that the Tribe agreed would be decided by arbitration, not a court. The Letter Agreement contains a "delegation clause." Specifically, the Letter Agreement's arbitration clause selects "binding arbitration ***in accordance with the Commercial Arbitration Rules of the American Arbitration Association***." It is well-settled that "incorporation of the AAA rules constitutes clear and unmistakable evidence that contracting parties agreed to arbitrate arbitrability." *Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015). The contract thus has a delegation clause, and therefore, "when the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract, even if the court thinks that the arbitrability claim is wholly groundless." *Henry Schein, Inc. v. Archer & White Sales, Inc*., 586 U.S. 63, 65 (2019).

All of the issues that the Tribe's motion asks this Court to decide are issues of arbitrability. For example, the Tribe's main argument in support of its motion is that it did not waive its sovereign immunity.[1] However, where, as here, the arbitration clause at issue contains a delegation clause, "whether there has been a waiver of tribal immunity for particular claims for which arbitration is sought is an enforceability question delegated to the arbitrator." *See Caremark, LLC v. Choctaw Nation*, 104 F.4th 81, 86 (9th Cir. 2024). And, in any event, the Tribe's sovereign immunity argument is flawed.

The Tribe's other arguments on the merits suffer from a similar defect – they regard issues that have been delegated to the arbitrator, and, in any event, the Tribe is wrong on those issues' merits.

Second, the Tribe shows no irreparable injury. On this, the Tribe argues that, because it has not waived sovereign immunity, proceeding with the AAA arbitration will infringe on that immunity, and cause it to incur unnecessary costs in the arbitration. However, where, as here, a party has delegated issues of arbitrability to the arbitrator, the arbitrator's deciding those issues does not cause that party irreparable injury. *Capelli Enters. v. Fantastic Sams Salons Corp.,* 2016 U.S. Dist. LEXIS 115036, at *16-17 (N.D. Cal. Aug. 26, 2016). Moreover, "[m]ere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury." *Travelers Indem. Co. of Conn. v. Cremer*, No. 2:25-cv-00963-MEMF-AJR, 2025 U.S. Dist. LEXIS 216587, at *12 (C.D. Cal. Aug. 20, 2025) (quoting *Renegotiation Bd. v. Bannercraft Clothing Co*., 415 U.S. 1, 24 (1974).)

Third, denying the motion will cause the Tribe no hardship, but impose substantial hardship on Defendants. If the motion is denied, the Tribe will still be able to assert the arguments that its motion raises, but in the proper forum. By contrast, if the Tribe's motion is granted, Defendants will be denied a forum for its claims. The Tribe denies that any state or federal court has jurisdiction over Defendants' claims against it, and identifies no other forum where those claims may be heard.

[1] See Plaintiff's Motion For a Preliminary Injunction ("Motion") at 12.

Fourth, denying the motion will serve the public interest. Specifically, arbitration, and enforcing contractual obligations, both further the public interest.

The Court should deny the Tribe's motion.

II. STATEMENT OF FACTS

On November 9, 2006, the Guidiville Tribe and Upstream Point Molate, LLC ("Upstream") entered into a Letter Agreement with the Scotts Valley Band of Pomo Indians ("SV"), concerning (1) the development of a piece of property in Contra Costa County, and (2) a Land Disposition Agreement regarding that property. Under the Letter Agreement, SV agreed to loan $6,500,000 to assist Guidiville and Upstream with developing that property. In exchange, Guidiville and Upstream agreed to issue two promissory notes to SV. Significantly, the Letter Agreement contained an arbitration clause, copied in pertinent part below:

> 11. All disputes, controversies or claims by or between the parties to this agreement, (but specifically excluding any third parties) arising out of or relating to this agreement, and/or any agreement collateral thereto, including, the promissory notes referred to above, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Rules") and the Federal Arbitration Act ("Act") and in the case of a conflict the Act shall govern over the Rules. The parties agree that binding arbitration shall be the sole remedy as to all disputes arising out of the agreement. All arbitration hearings shall be held at a place designated by the arbitrator in Oakland, or Richmond, California or such other place as shall be agreed to by the parties."

See Dkt. 1-1 ("Demand for Arbitration"), pp. 11-18 of 87 ("Letter Agreement"), paras. 10, 11. Merlene Sanchez, the Tribe's Tribal Chairperson, signed the Letter Agreement on the Tribe's behalf. *See* Letter Agreement, p. 6.

Pursuant to the Letter Agreement, Guidiville and Upstream issued the two promissory notes to SV. The Notes provided that Guidiville and Upstream would pay 7.5% interest, and, absent certain conditions not relevant here, that Guidiville Tribe and Upstream would pay all principal and interest on the notes by March 1, 2012. Both Notes provided that SV could only assign them to Ginsburg: "This note is not assignable other than to NORAM, LLC, a Florida Limited Liability Company, Alan Ginsburg or AHG Group, LLC, a Florida Limited Liability

Company." See Dkt. 1-1 ("Demand for Arbitration") pp. 25-33 of 87 ("Notes").[2] Merlene Sanchez, as Tribal Chairperson, signed the Notes on the Tribe's behalf.

On February 28, 2012, a few days before the principal and interest on the Notes became due, SV assigned the Notes to Ginsburg, through an Agreement Regarding Assignment of Notes. See Dkt. 1-1 ("Demand for Arbitration") pp. 35-40 of 87 ("Assignment of Notes"). There is no evidence that either Upstream or the Guidiville Tribe objected to the Assignment, nor any indication that they paid any of the amounts due under the notes.

In March 2012, the Guidiville Tribe and Upstream sued the City of Richmond in this Court, regarding the property that was the subject of the Letter Agreement. *See Guidiville Rancheria of California and Upstream Point Molate, LLC, et al. v. The United States of America, et al.,* Case No. CV 12-1326 YGR. In April 2018, Upstream, the Guidiville Tribe, and the City of Richmond entered into a settlement agreement, in the form of a judgment signed by, among others, Judge Yvonne Gonzalez Rogers, under which the Guidiville Tribe and Upstream would receive certain revenues from the City of Richmond's sale of the land. Merlene Sanchez, as Tribal Chairperson, signed the Judgment on the Tribe's behalf. West Decl. ¶ 3, Ex. 1.

While these settlement discussions that led to the Judgment were underway, in March 2018, the Guidiville Tribe and Upstream entered into a Settlement Sharing Agreement with Ginsburg, whereby Ginsburg would receive certain allocations of the Net Revenues received by the Guidiville Tribe and Upstream under the settlement. In the Settlement Sharing Agreement, (1) the Guidiville Tribe and Upstream acknowledged that "***Scotts Valley has delivered, and assigned all of its right, title and interest in, the Notes to AHG,***" (2) the Guidiville Tribe and Upstream acknowledged that they remained obligated under the Notes, and (3) that the Settlement Sharing Agreement was meant to resolve the amounts due by Guidiville and Upstream to Ginsburg under the Notes. See Dkt. 1-1 ("Demand for Arbitration") pp. 60-66 of 87.

Under the Settlement Sharing Agreement, Ginsburg would receive 25% of the first $20,000,000 of the Net Proceeds and subsequently receive 20% of any Net Proceeds above

[2] NORAM, LLC was an entity owned and operated by Ginsburg.

$20,000,000. The Settlement Sharing Agreement defined Net Proceeds as "all amounts received by [Guidiville and Upstream]" as a result of the land sale in the Judgment, with certain specified deductions. *Id.* at para. 1. Merlene Sanchez, as Tribal Chairperson, signed the Settlement Sharing Agreement on the Tribe's behalf.

The land sold, but the Guidiville Tribe has stated that it will not pay the amounts due under either the Notes, or the Settlement Sharing Agreement, to any of Defendants, and disputes its obligation to pay under either document. *See* May 6, 2025 Letter from Mark Dillon to Joel Siegal. West Decl. ¶ 4, Ex. 2

On December 15, 2020 AHG assigned its rights, duties, privileges and obligations under the Settlement Sharing Agreement to Claimant Bluerock. See Dkt. 1-1 ("Demand for Arbitration") pp. 68-70 of 87.

III. PROCEDURAL HISTORY

On November 12, 2025, Defendants filed a Demand for Arbitration for Breach of Contract and Declaratory Relief against the Guidiville Tribe and Upstream. The Demand seeks recovery from the Guidiville Tribe and Upstream the amounts due under the Settlement Sharing Agreement or, in the alternative, under the Notes. See Dkt. 1-1 ("Complaint"), Ex. A, p. 2-9 of 87.

On November 20, 2025, the Guidiville Tribe and Upstream emailed AAA objecting to AAA's arbitral jurisdiction. West Decl. ¶ 5, Ex. 3. In response, AAA directed Guidiville and Upstream to submit formal objections by December 4, 2025, to which Ginsburg could reply by December 11, 2025. The Parties proceeded to make formal submissions to AAA, as requested. In them, the Guidiville Tribe made the same objections to AAA's arbitration going forward as its preliminary injunction motion now before this Court. See Dkt. 12-5 ("Dillon Decl.") ¶ 8, Ex. B.

On January 7, 2026, AAA ruled: "Under the Rules, the arbitrators have the power to determine the extent of their own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement and the existence or validity of a contract of which an arbitration clause forms a part. Therefore, the parties' contentions have been made a

part of the files and will be forwarded to the arbitrator or arbitrators upon appointment, at which time the parties may submit their jurisdictional or arbitrability arguments to the arbitrator(s) for determination." AAA went on to state that Defendants have "met the AAA's filing requirements by filing a demand for arbitration providing for administration by the AAA under its Rules or by naming the AAA as the dispute resolution provider. Accordingly, in the absence of an agreement by the parties or a court order staying the case, the AAA will proceed with the administration of the arbitration." West Decl. ¶ 6, Ex. 4.

On January 30, 2026, counsel for Upstream emailed AAA and Defendants: "[T]he Tribe will be commencing litigation seeking declaratory and injunctive relief, including preliminary injunctive relief precluding this arbitration from proceeding until such time as the Court has ruled on the issue of arbitrability." West Decl. ¶ 7, Ex. 5.

IV. LEGAL ARGUMENT

To obtain a preliminary injunction, the moving party "must establish that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest." *Idaho v. Coeur D'Alene Tribe*, 794 F.3d 1039, 1046 (9th Cir. 2015) (quoting *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1124 (9th Cir. 2014)).

The Tribe's motion establishes none of these.

A. Guidiville Will Not Succeed on the Merits.

The Guidiville Tribe will not succeed on the merits, because it asks the Court to decide issues that the Tribe agreed would be decided by the arbitrators at AAA. Moreover, even if the issues the Guidiville Tribe's motion raises were properly before this Court, the Guidiville Tribe arguments on these issues are flawed.

1. The Letter Agreement Delegates Questions of Arbitrability to AAA.

The Letter Agreement states that "[a]ll disputes, controversies or claims by or between the parties to this agreement, (but specifically excluding any third parties) arising out of or relating to this agreement, and/or any agreement collateral thereto, including, the promissory notes referred

to above, shall be settled by binding arbitration ***in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Rules")*** and the Federal Arbitration Act ("Act") and in the case of a conflict the Act shall govern over the Rules." See Dkt. 1-1 ("Complaint"), Ex. A, p. 15 of 87, ¶ 11 (emphasis added). The AAA rules, in relevant part, provide that "[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement."[3] As the Ninth Circuit has repeatedly ruled, "incorporation of the AAA rules constitutes clear and unmistakable evidence that contracting parties agreed to arbitrate arbitrability." *Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015).[4]

The Tribe argues that "there is no language anywhere in the agreements on which Defendants rely to remotely suggest Guidiville agreed to arbitrate arbitrability" (Motion at 13) but that ignores the language of the arbitration clause itself. Instead, the Tribe argues that a separate provision of the Letter Agreement,[5] under which the Tribe waived immunity and consents to jurisdiction in court, for the "expressly limited purposes of compelling arbitration and enforcing any arbitration award or judgment arising out of this agreement[,]" "expressly commit[s] any determination of arbitrability to the court rather than to the arbitrator." *Id.*

That does not follow at all. Judge Davila considered and rejected a nearly identical argument in *Capelli Enters. v. Fantastic Sams Salons Corp*., No. 5:16-cv-03401-EJD, 2016 U.S. Dist. LEXIS 115036 (N.D. Cal. Aug. 26, 2016) ("*Capelli*"). The arbitration clause in *Capelli* incorporated AAA rules, which, the Court ruled, meant that the parties had agreed to delegate arbitrability questions to the arbitrator. *Capelli,* 2016 U.S. Dist. LEXIS 115036 at *11. There, as here, the plaintiff argued that a provision in the agreement under which it consented to

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[3] AAA Commercial Arbitration Rules and Mediation Procedures, Rule R-7, Jurisdiction, https://www.adr.org/media/qielmf0g/2025_commercialrules_web.pdf (last visited March 24, 2026)

[4] S*ee also Oracle America, Inc. v. Myriad Group A.G*., 724 F.3d 1069 (9th Cir. 2013) ("virtually every circuit to have considered the issue has determined that incorporation of the [AAA] arbitration rules constitutes clear and unmistakable evidence that the parties agreed to arbitrate arbitrability."); *Galilea, LLC v. AGCS Marine Insurance Company*, 879 F.3d 1052, 1062 (9th Cir. 2018) ("the agreement to arbitrate according to AAA rules is sufficient to show clear and unmistakable intent to resolve arbitrability questions in arbitration, rather than federal court.")

[5] See Dkt. 1-1 ("Complaint"), Ex. A, p. 14-15 of 87, ¶ 10

jurisdiction in a particular court for the purposes of compelling arbitration and enforcing an arbitration award meant that the parties agreed that a court would decide questions of arbitrability. *Id*. at 14. The Court disagreed: "The provision of the Agreement permitting the court to enforce the arbitration clause is not inconsistent with a delegation of arbitrability issues to the arbitrator . . . an arbitration provision can be enforced without also delving into arbitrability and without invading the province of any issues delegated to the arbitrator." *Id.* at 15-16.

Under the Letter Agreement, the Tribe agreed that AAA would decide questions of arbitrability. And, as discussed below, the issues the Guidiville Tribe raises here are all questions for arbitrability, which the Guidiville Tribe may raise at AAA, not here. Moreover, its arguments regarding these issues are all flawed.

2. Whether The Tribe Waived Sovereign Immunity for the Purposes of Arbitration is a Question of Arbitrability.

The central argument that the Tribe raises in support of its motion is that it did not waive sovereign immunity with regard to the claims Defendants seek to pursue before AAA. *See* Motion at 10. However, where, as here, the arbitration clause at issue contains a delegation clause, "whether there has been a waiver of tribal immunity for particular claims for which arbitration is sought is an enforceability question delegated to the arbitrator." *See Caremark, LLC v. Choctaw Nation*, 104 F.4th 81, 86 (9th Cir. 2024). Thus, the Tribe may raise that issue before AAA, not here.

In any event, the Guidiville Tribe's contention that it failed to waive sovereign immunity for the purposes of arbitration of Defendants' claims is flawed. The Guidiville Tribe admits that it executed the Letter Agreement, under which it agreed to arbitrate "all disputes, controversies or claims *by or between* the parties to this agreement, (but specifically excluding any third parties) *arising out of or relating to this agreement*, *and/or any agreement collateral thereto,* including, the promissory notes referred to above."[6] Moreover, the Tribe admits that the Tribal Council specifically authorized this Agreement's execution. See Dkt. 12-2 ("Galarza Decl.") ¶ 7. The

[6] See Dkt. 1-1 ("Complaint"), Ex. A, p. 15 of 87, ¶ 11

claims that Defendants are pursuing before AAA arise out of and relate to the Promissory Notes. Indeed, Defendants sue directly under the Promissory Notes, and also under the Settlement Sharing Agreement, which was expressly meant to was meant to resolve the amounts due under the Notes. *See* Settlement Sharing Agreement, para. 3.3 ("The Notice and payments provided for in this Agreement will constitute full satisfaction of all amounts due under the Notes.") *Id.* Where, as here, a tribe enters into an agreement containing an arbitration clause, enforcement of that clause does not infringe its sovereign immunity. *Unite Here Local 30 v. Sycuan Band of the Kumeyaay Nation,* 35 F.4th 695, 704 (9th Cir. 2022).

The Tribe argues that it did not waive sovereign immunity specifically as to the litigation over the promissory notes, the assignment thereof, or the Settlement Sharing Agreement. Motion at 12. That argument misses the point. In the Letter Agreement, the Tribe agreed to arbitrate all agreements "*arising out of or relating to this agreement*, *and/or any agreement collateral thereto,* including, the promissory notes referred to above." The Letter Agreement specifically states that disputes over "arising out of or relating to" the notes are to be arbitrated – and thus a dispute over (1) the notes, and (2) the Settlement Sharing Agreement (which "aris[es] out of or relat[es] to" the notes) falls within the scope of the arbitration clause. Where, as here, a tribe signs a contract with a broad arbitration clause, the tribe waives sovereign immunity as to all issues falling within the clause's scope. *Unite Here Local 30 v. Sycuan Band of the Kumeyaay Nation*, 35 F.4th 695, 704 (9th Cir. 2022) ("Sycuan cites no law supporting its argument that the arbitration agreement must expressly list all issues to which the Tribe waives sovereign immunity.")

3. Defendants Did Not Waive Their Right to Arbitrate.

The Guidiville Tribe's contention that Defendants waived their right to arbitrate by filing a civil complaint against, among others, the Guidiville Tribe, in Contra Costa Superior Court on July 29, 2025, fails, for several reasons.

First, particularly in light of the Letter Agreement's delegation clause, waiver is an issue for the arbitrator to decide. *Howsam v. Dean Witter Reynolds,* 537 U.S. 79, 84, 123 S. Ct. 588,

592 (2002) ("the presumption is that the arbitrator should decide allegations of waiver, delay, or a like defense to arbitrability.)

Second, Defendants AHG and Ginsburg were not parties to Bluerock's civil Complaint and took no action with regard to it. Thus, they waived nothing, even by the Tribe's argument. So to the extent the Tribe's argument has any merit (it doesn't) it does not apply to AHG or Ginsburg.

Third, this argument does not work even as to Defendant Bluerock. Bluerock did file a complaint, which it dismissed before anything happened in the case. There was no answer filed, no discovery, and there was no motion practice. The Tribe contends that Bluerock "leveraged" the complaint into obtaining certain things outside of the litigation, but nothing was obtained, and in looking at whether a party waived the right to arbitrate by participating in litigation, California looks at the extent of that party's conduct within that litigation, *e.g.* discovery and motion practice. *In the litigation*, all Bluerock did was file a complaint, and attempt to serve it. Under California law, that is not enough to establish waiver. See *Burton v. Cruise*, 190 Cal.App.4th 939 (2010) ("the mere filing of a complaint, without more, does not constitute the forfeiture of a right to contractual arbitration," emphasizing that courts must examine the totality of a party's litigation conduct); *see also Doers v. Golden Gate Bridge District*, 23 Cal.3d 180 (1979) ("the mere filing of a lawsuit does not constitute a waiver of the right to arbitrate.") *McConnell v. Merrill Lynch, Pierce, Fenner, & Smith, Inc*., 105 Cal.App.3d 946 (1980) (waiver requires some litigation of disputes or issues beyond mere filing).

Waiver only happens when the party engaged in far more litigation than Bluerock did here. *Hofer v. Boladian*, 111 Cal.App.5th 1 (2025) found waiver only after the plaintiffs "engaged in over four months of litigation before mentioning arbitration in email to employee, and partner and related entities waited to seek to compel arbitration until after they were counter-sued over six months after filing complaint." The court emphasized that waiver required "intentionally relinquished or abandoned their contractual right to arbitrate" based on extensive litigation conduct, not mere filing. *Id.; see also Davis v. Shiekh Shoes, LLC*, 84 Cal.App.5th 956

(2022) (a 17-month delay combined with active discovery participation and substantial pretrial activity.) Nothing of this kind occurred here.

The Tribe's waiver argument lacks merit, and, in any event, should be decided by the arbitrator.

4. Defendants Here May Invoke the Arbitration Clause.

The Tribe argues that Defendants here may not invoke the arbitration clause, since it excludes them. This argument fails.

The Letter Agreement's arbitration clause provides that the FAA governs it.[7] Because the FAA reflects a "liberal federal policy favoring arbitration agreements," "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp*., 460 U.S. 1, 24-25 (1983); *see also Simula, Inc. v. Autoliv, Inc*., 175 F.3d 716, 721 (9th Cir. 1999) ("To require arbitration, [plaintiff's] factual allegations need only 'touch matters' covered by the contract containing the arbitration clause and all doubts are to be resolved in favor of arbitrability.") *Snipes v. Dollar Tree Distribution, Inc*., No. 2:15-cv-00878-MCE-DB, 2019 U.S. Dist. LEXIS 194211, at *9 (E.D. Cal. Nov. 6, 2019).

Particularly when it is considered in light of the FAA's liberal policy favoring arbitration, the Letter Agreement's language refutes the Tribe's interpretation. Under it, "[a]ll *disputes, controversies or claims* by or between the parties to this agreement, (but specifically excluding any third parties) arising out of or relating to this agreement, and/or any agreement collateral thereto, including, *the promissory notes referred to above*, shall be settled by binding arbitration." (emphasis added). It goes on to state that "The parties agree that binding arbitration shall be the sole remedy as to all disputes arising out of the agreement." The Agreement does not say, for example, that it governs only "disputes, controversies or claims *between the parties to this agreement*". It instead says that it applies to "*disputes, controversies or claims by or between* the parties to this agreement" (emphasis added). If the agreement was meant to apply only to disputes *between* the parties to the agreement, the "by or" language would be surplusage, thus

[7] See Dkt. 1-1 ("Complaint"), Ex. A, p. 15 of 87, ¶ 11

violating a fundamental rule of contract interpretation: an interpretation "that leaves part of a contract as surplusage is to be avoided." *Rice v. Downs*, 248 Cal. App. 4th 175, 186, (2016); Cal. Civ. Code Section 1641. Thus, the agreement was meant to cover more than just disputes between the parties to the Letter of Agreement, but also to disputes between the parties to agreements collateral to it, specifically the promissory notes, provided that that dispute involves a party to the agreement. The clause does not extend to disputes, controversies or claims by or between third parties, when a party to the Letter of Agreement is not a party those disputes, controversies or claims. That interpretation gives effect to the clause's "*by or* between" language, as well as to the limiting language regarding third parties. It also gives effect to the agreement's language that "The parties agree that binding arbitration shall be the sole remedy as to all disputes arising out of the agreement."[8]

That interpretation is consistent with not only the language of the Letter of Agreement, but with parties' actions after the Letter Agreement's execution. The Letter Agreement is explicit that it is meant to govern disputes over the Notes. *See* Letter of Agreement at para. 11 (requiring arbitration of disputes ("arising out of or relating to this agreement, and/or any agreement collateral thereto, *including, the promissory notes referred to above*, shall be settled by binding arbitration.") The Notes themselves – signed by the same people who signed the Letter Agreement – modify the Letter Agreement in one key sense. The Letter Agreement did not contemplate assignment, necessarily implying that the Notes would be given and received by parties to the Letter Agreement. *Compare* Letter Agreement, para. 9 (providing that the "rights and obligations under this letter agreement and the promissory notes are not assignable.") *with* Notes, para. 5(c) (providing that the Notes may be assigned to, among others, Claimants AHG and Alan Ginsburg). However, the Notes are silent on dispute resolution, thus leaving intact the Letter of Agreement's provision, which explicitly provided that a dispute over the Notes, or arising out of the Notes, would be arbitrated. See *Cione v. Foresters Equity Services, Inc*. 58

[8] See Dkt. 1-1 ("Complaint"), Ex. A, p. 15 of 87, ¶ 11

Cal.App.4th 625 (1997) (an arbitration agreement survives a subsequent agreement regarding the subject matter that is silent on dispute resolution).

Defendants may invoke the arbitration clause.

5. The Settlement Sharing Agreement Does Not Support the Tribe's Motion.

As noted, Defendants' claim before AAA asserts that the Guidiville Tribe and Upstream are obligated to pay Defendants under the Notes, or, in the alternative, under the Settlement Sharing Agreement. The Guidiville Tribe has consistently contended that the Settlement Sharing Agreement is invalid, and so has Upstream. *See, e.g.,* Dkt. 12-8, Dillon Decl., Ex. C. At arbitration, Defendants intend to argue that, if the Settlement Sharing Agreement is invalid, as the Guidiville Tribe and Upstream argue, then the Guidiville Tribe and Upstream are liable under the Notes.

While not retracting its argument that the Settlement Sharing Agreement is invalid, the Guidiville Tribe argues that that Agreement invalidates the Notes, and thus arbitration should not occur at all. This argument is flawed for several reasons.

First, because the Tribe contends that the Agreement has no legal effect, it cannot avoid arbitration by asserting that the Agreement supersedes another agreement. If the Tribe is right regarding the Agreement's validity, Defendants still have the right to recover at arbitration under its alternate theory that the Guidiville Tribe is liable under the Notes. Thus, Tribe's argument is thus, at its core, an argument about the merits of Defendants' claims, not about their arbitrability. And a Court may not "rule on the potential merits of the underlying" claim that is assigned by contract to an arbitrator, "even if it appears to the court to be frivolous." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019).

Second, the Tribe's argument that the Settlement Sharing Agreement extinguished the Letter Agreement's arbitration provision is wrong. The Settlement Sharing Agreement is clear that it was *not* meant to supplant prior agreements. To the contrary, the Settlement Sharing Agreement repeatedly shows that the parties acknowledged and intended that antecedent

agreements – namely, the Notes, (1) exist, (2) continue to impose obligations on the parties, and (3) will continue to impose obligations on the parties until they satisfy their obligations under the Settlement Sharing Agreement. The Settlement Sharing Agreement describes the Notes (*see* Recitals, Para. A) and states explicitly that the Guidiville Tribe's and Upstream's obligations under the Notes remain despite the execution of the Settlement Sharing Agreement. *See id.*, Para. F ("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.") (emphasis added).* It also states that "In the case of any inconsistencies between the Notes and this Agreement, this Settlement Sharing Agreement shall take precedence" (*id*., para. 2), a provision that would be totally unnecessary if the parties intended that the antecedent Notes were to be nullified. Similarly, the SSA states the conditions under which the obligations under the Notes would be suspended, and, *eventually* nullified. *See* SSA, para. 2 ("Notice and the payments provided for in this Agreement will constitute full satisfaction of all amounts due under the Notes. *From and after the Notice Date*, the Notes shall be of no further force or effect and Upstream and Guidiville shall have no liability to AHG.") That provision is flatly inconsistent with the notion that the Settlement Sharing Agreement's execution nullified the Notes.

Third, the Settlement Sharing Agreement is silent on dispute resolution. Thus, it does not extinguish the Letter Agreement's arbitration provision. *See Ramirez-Baker v. Beazer Homes,* Inc., 636 F. Supp. 2d 1008, 1017 (E.D. Cal. 2008) (integrated agreement that was silent on dispute resolution did not extinguish arbitration clause in antecedent agreement); *Reynoso v. Bayside Mgmt. Co., LLC,* No. 13-CV-4091 YGR, 2013 U.S. Dist. LEXIS 169027, at *12 (N.D. Cal. Nov. 25, 2013) (same).

The Tribe will not succeed on the merits of its claims.

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B. The Tribe Will Not Suffer Irreparable Injury if this Court Denies Their Motion.

"Because it is a threshold inquiry, when a plaintiff has failed to show the likelihood of success on the merits" the Court need not consider the other elements required for a preliminary injunction. *Garcia v. Google, Inc*., 786 F.3d 733, 740 (9th Cir. 2015). Because the Tribe has no chance of success on the merits, there is no need to consider other elements required for a preliminary injunction.

In any event, the Tribe fails to show that it will suffer irreparable injury if this Court denies its motion. Plaintiff's argument on this issue rests solely on the cost, and impact on the Tribe's sovereignty, of the Tribe's having to arbitrate before AAA, despite the fact that, in their view, the claims are not arbitrable. *See* Motion at 16-17. However, if the Court denies the Tribe's motion, that does not mean it will have to arbitrate its claims before AAA. It instead means that *AAA* will decide whether the claims are arbitrable, and/or whether the Tribe waived its sovereign immunity. That is not irreparable injury. *Capelli Enters. v. Fantastic Sams Salons Corp.,* 2016 U.S. Dist. LEXIS 115036, at *16-17 (N.D. Cal. Aug. 26, 2016) (where the arbitration agreement delegated arbitrability to the arbitrator, the party opposing arbitration cannot show irreparable injury from having the arbitrator decide arbitrability: "Plaintiffs' articulation of [irreparable injury] is based solely on harm resulting from the time and costs expended in arbitrating a non-arbitrable claim. . . [i]n light of [the court's] finding that such issue has been delegated to the arbitrator, the irreparable harm element is likewise left unsatisfied.")

Moreover, "[m]ere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury." *Travelers Indem. Co. of Conn. v. Cremer*, No. 2:25-cv-00963-MEMF-AJR, 2025 U.S. Dist. LEXIS 216587, at *12 (C.D. Cal. Aug. 20, 2025) (quoting *Renegotiation Bd. v. Bannercraft Clothing Co*., 415 U.S. 1, 24 (1974).)

The Tribe will not suffer irreparable injury if the Court denies its motion.

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C. The Equities Weigh Against The Tribe's Motion.

The equities weigh against the Tribe's requested injunction, too. Here, too, the Tribe's argument on this issue rests solely on the cost, and impact on the Tribe's sovereignty of the Tribe's having to arbitrate before AAA. And here, too, denial of the Tribe's motion does not mean it will have to arbitrate its claims before AAA, but that *AAA* will decide whether the claims are arbitrable, and/or whether the Tribe waived its sovereign immunity. It is not inequitable to require the Tribe to abide by the delegation clause that it signed.

By contrast, the inequities Defendants will suffer if the Tribe's motion is granted are substantial. They will be denied a forum for their claims, and the time and effort they have expended in pursuing their claims before AAA will have been wasted. Indeed, if the Court grants the Tribe's motion, Defendants may have no forum for their claims. While the Tribe contends that granting its motion will mean that "Defendants face only a temporary delay in pursuing claims that may be litigated, if at all, in a proper forum" (Motion at 17), Plaintiffs do not even contend that any such "proper forum" exists. To the contrary, the Tribe contends that none of AAA, federal court, or state court may properly exercise jurisdiction over Defendant's claims[9] and do not identify any tribal court exists that could or would exercise jurisdiction over them, either.

D. The Public Interest Weighs Against the Tribe's Motion.

Finally, granting the tribe's motion would not be in the public interest. To the contrary, arbitration serves the public interest, as does holding parties to their agreements.

V. OBJECTIONS TO EVIDENCE

A. The Court Should Disregard the Legal Argument and Conclusions Improperly Asserted Through Guidiville's Declarations

The Guidiville Tribe offers two witness declarations in support of its Motion. The declarations of Guidiville's Chairman Donald Duncan and Secretary David Galarza assert that only Guidiville's Tribal Council may authorize contracts, dispute resolution, and any waiver of

[9] Motion at 11.

sovereign immunity; that any such actions must be embodied in Council resolutions; and that no Tribal resolution authorized the purported Settlement Sharing Agreement or any waiver of immunity in favor of Ginsburg.

For example, the Duncan Declaration states, "[i]n order for a waiver of the Tribe's sovereign immunity to be valid, it must be specific, limiting, in writing, and evidenced by a resolution of the Tribal Council, which serves as the governing body of the Tribe." ECF 12-1 ("Duncan Declaration") ¶ 6. This retelling of the Tribe's Constitution and assertion of how sovereign immunity may be waived, *in Duncan's view*, violates several federal rules of evidence, including FRE 1002 (Best Evidence Rule); 602 (Personal Knowledge); 701 (Lay Witness Opinion); and 801 (Hearsay). See Defendants' Objections to Evidence Nos. 1-9.

The Galarza Declaration similarly recites his "review of the Tribe's records," and assessment whether the Tribe waived sovereign immunity in any resolutions or several agreements, including the Agreement regarding Assignment of Notes, Settlement Sharing Agreement, and Assignment of Contract to which Guidiville is not even a signatory. ECF 12-2 ("Galarza Declaration") ¶¶ 4, 7, 8, 9, 10, 11, 12. His assessment of the Tribe's records without attaching a complete record of the resolutions that do relate to the documents at issue in this dispute, including the resolution that he attests include an authorization to waive sovereign immunity (Galarza Decl. ¶ 7) also violate the federal rules of evidence. See Defendants' Objections to Evidence Nos. 10-16.

Courts consistently disregard conclusory statements that merely testify as to legal conclusion, including the correct interpretation of a contract. "The lay witness may not, however, testify as to a legal conclusion, such as the correct interpretation of a contract." *U.S. v. Crawford* 239 F.3d 1086, 1090 (9th Cir. 2001) (citing *Evangelista v. Inlandboatmen's Union of Pacific*, 777 F.2d 1390, 1398 n. 3 (9th Cir.1985)). In *Evangelista*, the Court disregarded a Union chairman's opinion as to correct construction of collective bargaining agreement, that is, what is or is not proper procedure for handling grievances, as an inadmissible legal conclusion.

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The Duncan Declaration likewise offers narrative legal characterizations of third-party conduct and litigation posture without the underlying evidentiary support. For example, it recounts litigation and settlement history regarding Point Molate and the Tribe's agreement to interplead $8,200,000.00 as consideration for dismissing Chicago Title Company, but it does not attach the settlement agreement, escrow instructions, interpleader pleadings, payment records, or correspondence from Chicago Title.

Neither declaration is supported by attached resolutions, meeting minutes, or written authorizations. The only tribal "record" attached to either declaration is the Guidiville Constitution attached as Exhibit A to the Galarza Declaration. ECF 12-3 ("Guidiville Constitution"). Article V, Section 1, subparagraph (k) states that the Guidiville Tribal Council shall have the powers and responsibilities to waive the Tribe's sovereign immunity for specific and limited purposes. Defendants do not dispute the authenticity of the Constitution or that this is what the Constitution says, but whether Duncan and Galarza believe that the Tribal Council exercised this power and responsibility in the instances they discuss in their declaration, are unfounded and improper legal conclusions.

These deficiencies matter because the Guidiville Tribe bears the burden of presenting admissible evidence, not legal conclusions, to support its Motion for a Preliminary Injunction. Issues such as (a) the existence and scope of any waiver of sovereign immunity; (b) who is authorized to bind or represent the Tribe; and (c) whether any third party had authority or acted with the Tribe's consent, are fact-intensive. They require production of the actual Tribal Council resolutions, formal authorizations, and contemporaneous communications—not generalized assertions about what the law requires or what never happened.

The Court should disregard the Duncan and Galarza declarations' conclusory assertions on ultimate legal issues and give those unsupported assertions no weight.

VI. CONCLUSION

Defendants respectfully request that the Court deny Plaintiff's Motion for a Preliminary Injunction.

Dated: March 24, 2026

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