

1 MARK J. DILLON (SBN NO. 108329)
2 GATZKE DILLON & BALLANCE LLP
2762 Gateway Road Carlsbad, California 92009
Telephone: (760) 431-9501
3 Fax: (760) 431-9512
4 Email: mdillon@gdandb.com

5 CROWELL LAW OFFICE – TRIBAL ADVOCACY GROUP
6 Scott Crowell (*pro hac vice*)
1487 W. State Route 89A, Suite 8
7 Sedona, Arizona 86336
Tel: (425) 802-5369
8 Fax: (509) 235-5017
9 Email: scottcrowell@hotmail.com

Attorneys for Specially Appearing Plaintiff Guidiville Rancheria of California

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 GUIDIVILLE RANCHERIA OF
13 CALIFORNIA, a federally recognized Indian
14 tribe,

15 Plaintiff,

16 v.

17 BLUEROCK REAL ESTATE HOLDINGS,
18 LLC, a Florida limited liability company;
19 AHG GROUP, LLC, a Florida limited liability
20 company; and ALAN GINSBURG, an
21 individual,

22 Defendants.

Case No. 26-cv-01578 AGT

**PLAINTIFF GUIDIVILLE RANCHERIA
OF CALIFORNIA’S REPLY IN SUPPORT
OF MOTION FOR PRELIMINARY
INJUNCTION**

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

23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. ARGUMENT 1

 A. Defendants Fail to Establish Any Agreement to Arbitrate with Plaintiff. 1

 1. *Defendants cannot invoke the 2006 Letter Agreement because they are not parties to it.* 1

 2. *Assignment theories do not create arbitration rights.*..... 2

 B. No Clear and Unmistakable Delegation of Arbitrability. 4

 1. *A generic reference to AAA rules does not clearly and unmistakably delegate arbitrability here.*..... 4

 2. *The 2006 Letter Agreement sends any request to compel arbitration to courts, not to an arbitrator.*..... 6

 3. *Tribal sovereign immunity demands an especially exacting and explicit showing of delegation.* 7

 C. Defendants’ Merits Arguments Improperly Invite the Court to Ignore Threshold Defects..... 8

 1. *Defendants cannot recast sovereign immunity as a merits issue for AAA because the Court must decide the antecedent questions of agreement and delegation first.*..... 8

 2. *Defendants cannot rely on the SSA to bypass threshold defects because, if the SSA controls, it cuts against arbitration, and if it does not, it provides Defendants with no assistance at all.* 9

 3. *Defendants cannot ask the Court to ignore their own litigation conduct because waiver by litigation remains a threshold judicial issue.* 10

 D. Plaintiff Clearly Satisfies All Preliminary Injunction Factors. 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. *Likelihood of Success on the Merits*..... 11

2. *Guidiville will suffer irreparable harm if the Court allows AAA to proceed before this Court resolves arbitrability and sovereign immunity.* 11

3. *The equities favor Guidiville because the Tribe faces a direct sovereign injury while Defendants face, at most, a short delay in pressing arbitrability in the proper forum* 12

4. *The public interest supports an injunction because federal law protects tribal sovereign immunity and because courts, not arbitrators, must decide whether any valid agreement authorizes arbitration at all.* 12

E. Defendants’ Evidentiary Objections Fail. 13

II. Conclusion 13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases

Allen v. Gold Country Casino,
464 F.3d 1044 (9th Cir. 2006) 1, 2, 7, 11

AT&T Techs., Inc. v. Commc’ns Workers of Am.,
475 U.S. 643 (1986) 1

Blue Lake Rancheria v. Lanier,
106 F. Supp. 3d 1134 (E.D. Cal. 2015) 11, 12

Bodi v. Shingle Springs Band of Miwok Indians,
832 F.3d 1011 (9th Cir. 2016) *passim*

Brennan v. Opus Bank,
796 F.3d 1125 (9th Cir. 2015) 5

Burton v. Cruise,
190 Cal.App.4th 939 (2010).....10

Capelli Enters. v. Fantastic Sams Salons Corp.,
Case No. 5:16-cv-03401-EJD, 2017 WL 130284 (N.D. Cal. Jan. 13, 2017) 7

Caremark, LLC v. Chickasaw Nation,
43 F. 4th 1021 (9th Cir. 2022) *passim*

Caremark, LLC v. Choctaw Nation,
104 F.4th 81 (9th Cir. 2024)..... 5, 8

Cione v. Foresters Equity Services, Inc.
58 Cal.App.4th 625 (1997).....9

Davis v. Shiekh Shoes, LLC,
84 Cal.App.5th 956 (2022).....10

Deschutes River Alliance v. Portland General Electric Co.,
1 F.4th 1153 (9th Cir. 2021) 1, 6, 7

Deutsche Bank Nat’l Tr. Co. v. Williams,
Civil No. 11-00632 JMS/RLP, 2012 WL 1081174 (D. Haw. Mar. 29, 2012) 3

Doers v. Golden Gate Bridge District,
23 Cal.3d 180 (1979).....10

Engasser v. Tetra Tech, Inc.,
519 F. Supp. 3d 703 (C.D. Cal. 2021) 13

1 *Galilea, LLC v. AGCS Marine Ins. Co.*,
 2 879 F.3d 1052 (9th Cir. 2018) 5

3 *Henry Schein, Inc. v. Archer & White Sales, Inc.*,
 4 586 U.S. 63 (2019)..... 6

5 *Hill v. Xerox Business Services, LLC*,
 6 59 F.4th 457 (9th Cir. 2023) 10

7 *Hofer v. Boladian*,
 8 111 Cal.App.5th 1 (2025).....10

9 *Howsam v. Dean Witter Reynolds, Inc.*,
 10 537 U.S. 79 (2002) 7

11 *M&T Bank v. SFR Invs. Pool 1, LLC*,
 12 963 F.3d 854 (9th Cir. 2020) 3

13 *McConnell v. Merrill Lynch, Pierce, Fenner, & Smith, Inc.*,
 14 105 Cal.App.3d 946 (1980).....10

15 *Merrill v. Picayune Rancheria of Chukchansi Indians*,
 16 No. 1:10-cv-01155-OWW-SKO, 2011 WL 13254127 (E.D. Cal. Feb. 23, 2011)..... 6

17 *Miller v. Wright*,
 18 705 F.3d 919 (9th Cir. 2013) 6, 7

19 *Ngo v. BMW of N. Am., LLC*,
 20 23 F.4th 942 (9th Cir. 2022) 3

21 *Olson v. FCA US, LLC*,
 22 No. 24-6527, 2026 WL 934267 (9th Cir. Apr. 7, 2026)..... 1, 4

23 *Oracle Am., Inc. v. Myriad Grp. A.G.*,
 24 724 F.3d 1069 (9th Cir. 2013) 5

25 *Pan American Co. v. Sycuan Band of Mission Indians*,
 26 884 F.2d 416 (9th Cir. 1989) 12

27 *Ramirez-Baker v. Beazer Homes, Inc.*,
 28 636 F. Supp. 2d 1008 (E.D. Cal. 2008).....9

Reynoso v. Bayside Mgmt. Co., LLC, No. 13-CV-4091 YGR,
 2013 U.S. Dist. LEXIS 169027 (N.D.Cal. Nov. 25, 2013).....9

Suski v. Coinbase, Inc.,
 55 F.4th 1227 (9th Cir. 2022), *aff'd*, 602 U.S. 143 (2024)..... 9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Unite Here Local 30 v. Sycuan Band of the Kumeyaay Nation,
35 F.4th 695 (9th Cir. 2022) 7

1 Defendants’ Opposition to Plaintiff’s motion for Preliminary Injunction of Arbitration (the
 2 “Opposition”) [ECF No. 15] does not cure the threshold defects that bar arbitration here; it confirms
 3 them. Defendants still cannot identify any agreement in which Plaintiff Guidiville Rancheria of
 4 California (“Guidiville”) consented to arbitrate with them, any valid assignment that would allow
 5 them to invoke arbitration rights they never possessed, or any clear and unmistakable delegation that
 6 would permit an arbitrator—rather than this Court—to decide arbitrability. Because federal
 7 arbitration law and tribal sovereign immunity both require the Court to enforce consent and waiver
 8 strictly as written, the Court should grant Guidiville’s Motion for Preliminary Injunction [ECF No.
 9 12].

10 **I. ARGUMENT**

11 **A. Defendants Fail to Establish Any Agreement to Arbitrate with Plaintiff.**

- 12 1. *Defendants cannot invoke the 2006 Letter Agreement because they are not*
 13 *parties to it.*

14 Defendants cannot invoke the 2006 Letter Agreement because they are not parties to the
 15 Agreement, they never signed it, and the Agreement expressly excludes third parties (and Defendants
 16 do not contend otherwise).

17 Federal law treats arbitration as a matter of consent; a party cannot compel arbitration unless
 18 it shows that the opposing party agreed to arbitrate with it. *See AT&T Techs., Inc. v. Commc’ns*
 19 *Workers of Am.*, 475 U.S. 643, 648–49 (1986); *Olson v. FCA US, LLC*, No. 24-6527, 2026 WL
 20 934267, at *5–6 (9th Cir. Apr. 7, 2026) (holding that non-signatories cannot compel arbitration absent
 21 a recognized exception). That principle applies with even greater force when a federally recognized
 22 tribe is involved. *See Bodi v. Shingle Springs Band of Miwok Indians*, 832 F.3d 1011, 1016–17 (9th
 23 Cir. 2016) (holding that tribal sovereign immunity bars suit absent a clear and unequivocal waiver,
 24 and courts must strictly construe any such waiver in favor of the tribe); *Allen v. Gold Country Casino*,
 25 464 F.3d 1044, 1047 (9th Cir. 2006) (same).

26 Courts also refuse to allow nonparties to invoke contractual waivers or dispute-resolution
 27 provisions that a tribe granted only to specific counterparties. In *Deschutes River Alliance v. Portland*
 28 *General Electric Co.*, the Ninth Circuit held that a tribe’s limited waiver did not apply to a plaintiff

1 that was not a party to the agreement containing the waiver. 1 F.4th 1153, 1159 (9th Cir. 2021). The
2 court enforced the waiver as written and rejected any attempt to extend it to nonparties. *Id.*

3 These principles resolve the threshold issue here. The 2006 Letter Agreement identifies only
4 three parties: Guidiville, Upstream, and the Scotts Valley Tribe. ECF No. 12 at 3. Defendants do not
5 dispute that none of them is a signatory to that Agreement. The arbitration clause reaches only disputes
6 “by or between the parties to this agreement” and expressly excludes “any third parties.” *Id.* at 4. The
7 Agreement therefore does not authorize arbitration with nonparties—and it does not grant them any
8 right to compel arbitration.

9 Defendants nevertheless attempt to invoke that clause to force Guidiville into arbitration. *See*
10 ECF No. 15 at 11–13. That attempt fails for a straightforward reason: Defendants seek to enforce an
11 arbitration agreement to which they are strangers. They identify no language in the Letter Agreement
12 that extends arbitration rights to nonparties, and none exists. The Court cannot rewrite the Agreement
13 to create such rights. And because Defendants are not parties to the only agreement that contains an
14 arbitration clause, they cannot compel arbitration.

15 Defendants’ reliance on a surplusage theory does not change the text. The clause expressly
16 excludes “any third parties,” and the Court must enforce that limitation as written. Because no valid
17 agreement to arbitrate exists between Guidiville and Defendants, the Court should grant the requested
18 injunction.

19 2. *Assignment theories do not create arbitration rights.*

20 Defendants’ assignment theories do not create arbitration rights because an assignee acquires
21 only the rights held by the assignor, cannot expand the scope of an arbitration agreement or a tribe’s
22 limited waiver of sovereign immunity, and cannot rely on assignments that the governing contracts
23 themselves prohibit.

24 Federal law imposes two constraints that control here. First, tribal sovereign immunity
25 precludes suit absent a clear and unequivocal waiver by the tribe, and courts interpret any purported
26 waiver narrowly in the tribe’s favor. *See Bodi*, 832 F.3d at 1016–17; *Allen*, 464 F.3d at 1047. A court
27 may not infer consent where none exists. *See Bodi*, 832 F.3d at 1018; *Allen*, 464 F.3d at 1047.

28 Second, assignment law does not permit an assignee to obtain greater rights than the assignor

1 possessed. The Ninth Circuit applies the settled rule that “an assignee stands in the shoes of his
2 assignor, deriving the same but no greater rights and remedies than the assignor then possessed.” *M&T*
3 *Bank v. SFR Invs. Pool 1, LLC*, 963 F.3d 854, 858 (9th Cir. 2020) (quoting *FDIC v. Bledsoe*, 989 F.2d
4 805, 809–11 (5th Cir. 1993)). In the arbitration context, the Ninth Circuit also requires a party seeking
5 to compel arbitration to demonstrate that the opposing party agreed to arbitrate with that party, not
6 merely that the underlying dispute falls within an arbitration clause. *See Ngo v. BMW of N. Am., LLC*,
7 23 F.4th 942, 946–48 (9th Cir. 2022) (distinguishing between the scope of arbitrable claims and who
8 may compel arbitration).

9 These principles foreclose Defendants’ reliance on assignment, both legally and contractually.
10 Defendants contend that they may compel arbitration because they acquired rights under the
11 promissory notes or the Settlement Sharing Agreement (the “SSA”) through a series of assignments.
12 ECF No. 15 at 1, 3–5, 8–9, 11–12. But the promissory notes themselves expressly prohibit assignment
13 except to a limited set of identified entities: NORAM, LLC, Alan Ginsburg or AHG Group, LLC.
14 ECF No. 12 at 5; ECF No. 15 at 3–4. That restriction is not incidental; it is a substantive limitation on
15 transfer. Any purported assignment outside that narrow class is invalid and conveys no rights at all.

16 Defendants’ own theory depends on precisely the kind of prohibited transfer the notes forbid.
17 They allege that AHG later assigned its rights to Bluerock. ECF No. 15 at 5. But Bluerock is not
18 among the entities authorized to receive an assignment under the notes. *See* ECF No. 12 at 5; ECF
19 No. 15 at 3–4. Because the notes bar assignment to Bluerock, AHG could not transfer any enforceable
20 rights to it. An invalid assignment transfers nothing. *See Deutsche Bank Nat’l Tr. Co. v. Williams*,
21 Civil No. 11-00632 JMS/RLP, 2012 WL 1081174, at *4 (D. Haw. Mar. 29, 2012) (assignee failed to
22 establish a valid assignment of the promissory note and therefore lacked any legal right to enforce the
23 note). And because Bluerock acquired no rights under the notes, it necessarily acquired no arbitration
24 rights.

25 Nor can Defendants use assignment to expand any arbitration clause found elsewhere. Even if
26 an earlier party possessed limited arbitration rights, an assignee could acquire only those same
27 rights—subject to all contractual limitations, including the express prohibition on assignment—and
28 could not enlarge them to cover additional parties, claims, or forums. *See M&T Bank*, 963 F.3d at 858.

1 And because courts strictly construe any waiver of tribal sovereign immunity, *Bodi*, 832 F.3d at 1016–
 2 17, an assignment cannot transform a limited, contract-specific consent into a broader agreement to
 3 arbitrate disputes beyond the original scope.

4 Defendants’ allegations also expose the instability of their assignment theory. They assert
 5 shifting and contradictory chains of assignment [ECF No. 12 at 5–6]—first from Scotts Valley to
 6 Seminole SV Entertainment and NORAM; second, from Scotts Valley to AHG solely, sometime prior
 7 to 2018; third, from AHG to Bluerock in 2020—while also pursuing overlapping and contradictory
 8 claims under both the notes and the SSA. These theories not only conflict with the notes’ express
 9 assignment restrictions but also fail to identify any agreement in which Guidiville consented to
 10 arbitrate with an assignee or authorized expansion of arbitration rights through assignment.

11 In sum, Defendants rely on assignments that the governing contracts prohibit and that, even if
 12 valid, could not create or expand arbitration rights. Because assignment cannot override contractual
 13 limits or supply the clear and unequivocal waiver that federal law requires, Defendants’ theory fails
 14 as a matter of law.

15 **B. No Clear and Unmistakable Delegation of Arbitrability.**

- 16 1. *A generic reference to AAA rules does not clearly and unmistakably delegate*
 17 *arbitrability here.*

18 Defendants cannot manufacture a clear and unmistakable delegation by pointing to a generic
 19 reference to AAA rules. *See Olson*, 2026 WL 934267, at *3–4 (holding that a non-signatory cannot
 20 invoke a delegation clause where the agreement is limited to the contracting parties and lacks clear
 21 assent to arbitrate arbitrability with third parties). The Ninth Circuit’s tribal-arbitration cases clarify
 22 the order of operations. In *Caremark, LLC v. Chickasaw Nation*, the court held that a district court
 23 must decide two antecedent questions before it sends gateway issues to an arbitrator: first, whether
 24 the parties ever formed an agreement to arbitrate; and second, whether a party’s challenge specifically
 25 defeats the delegation clause itself. 43 F.4th 1021, 1031 (9th Cir. 2022). Only after the court answers
 26 both questions in favor of arbitration may the arbitrator decide the remaining gateway issues. *Id.* Here,
 27 Defendants ask this Court to infer—before any valid agreement is established—a separate antecedent
 28 agreement that lets an arbitrator decide whether Guidiville must arbitrate at all.

1 Defendants’ opposition rests on precisely that inference. They argue that Paragraph 11
2 “contains a ‘delegation clause’” because it selects AAA Commercial Rules. ECF No. 15 at 6–7. But
3 Guidiville contests the existence of any agreement to arbitrate with these Defendants in the first place,
4 and *Chickasaw Nation* reserves that formation question for the court even when the contract references
5 AAA rules. 43 F.4th at 1031. Guidiville also contests the delegation theory itself. Guidiville explained
6 in its opening brief that Paragraph 10 routes any effort to compel arbitration to courts, not to AAA,
7 and that the Agreement’s limited waiver never says that an arbitrator may decide arbitrability. ECF
8 No. 12 at 4, 13. *Chickasaw Nation* requires this Court—not an arbitrator—to decide that specific
9 challenge to delegation before sending anything further to AAA. 43 F.4th at 1031. Defendants
10 therefore cannot leap from a general AAA reference to a clear and unmistakable delegation,
11 particularly where they have not shown they may invoke the clause at all.

12 The *Caremark* cases do not alter that sequence. In both *Chickasaw Nation* and *Choctaw*
13 *Nation*, *Caremark* sought to compel arbitration under direct contractual relationships with the tribal
14 pharmacies, and the agreements included delegation language—through AAA incorporation and, in
15 later versions, express language assigning questions of “interpretation, applicability, enforceability or
16 formation” to the arbitrator. See *Chickasaw Nation*, 43 F.4th at 1026; *Caremark, LLC v. Choctaw*
17 *Nation*, 104 F.4th 81, 84 (9th Cir. 2024). Just as important, *Chickasaw Nation* explained that a court
18 must still decide whether an agreement to arbitrate was formed and must resolve any challenge
19 directed specifically to the delegation clause before compelling arbitration of remaining gateway
20 issues. 43 F.4th at 1031. Defendants seek to use *Choctaw Nation* to bypass the very prerequisite that
21 *Chickasaw Nation* requires: a judicial determination that a valid arbitration agreement exists between
22 the parties invoking it. Here, that threshold question turns on whether Defendants—who are expressly
23 excluded as “third parties”—can invoke Paragraph 11 at all, a formation issue that *Chickasaw Nation*
24 reserves for the Court.

25 Furthermore, Defendants’ AAA-incorporation cases do not alter that threshold point because
26 each involves what happens after a court determines that the litigants are actually bound by an
27 arbitration agreement or delegation provision. See *Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th
28 Cir. 2015); *Oracle Am., Inc. v. Myriad Grp. A.G.*, 724 F.3d 1069, 1074–76 (9th Cir. 2013); *Galilea*,

1 narrow waiver and limited the fora in which the parties may invoke it. *See Deschutes River Alliance*,
2 1 F.4th at 1159; *Miller*, 705 F.3d at 923–26.

3 Defendants’ reading also drains Paragraph 10 of real meaning. If AAA may decide arbitrability
4 immediately because Paragraph 11 references AAA rules, then Paragraph 10’s careful sequence of
5 tribal court, federal court, and state court would do nothing at the front end of a dispute. The Court
6 should reject that reading. The Ninth Circuit requires exacting adherence to the terms of a tribal
7 waiver, not a rewrite that strips those terms from the contract. *See Bodi*, 832 F.3d at 1016–17;
8 *Deschutes River Alliance*, 1 F.4th at 1159. The Court should therefore enforce Paragraph 10 as written
9 and decide arbitrability itself.

10 Nor do *Howsam*, *Sycuan*, or *Capelli* save Defendants’ position. *Howsam* distinguishes
11 procedural defenses presumptively for the arbitrator from gateway questions for the court, including
12 whether the parties are bound by a given arbitration clause. *Howsam v. Dean Witter Reynolds, Inc.*,
13 537 U.S. 79, 84 (2002). That is this case. *Sycuan* likewise rested on an actual agreement to arbitrate
14 between the tribe and the party invoking arbitration, together with an express waiver tied to that
15 agreement. *Unite Here Local 30 v. Sycuan Band of the Kumeyaay Nation*, 35 F.4th 695, 703–04 (9th
16 Cir. 2022). And *Capelli* arose in an ordinary franchise dispute with no tribal sovereign immunity, no
17 tribal-law requirement of council authorization, and no clause expressly excluding third parties.
18 *Capelli Enters. v. Fantastic Sams Salons Corp.*, Case No. 5:16-cv-03401-EJD, 2017 WL 130284, at
19 *1–2 (N.D. Cal. Jan. 13, 2017). *Capelli* therefore cannot do the work Defendants ask of it here.

20 3. *Tribal sovereign immunity demands an especially exacting and explicit*
21 *showing of delegation.*

22 The Ninth Circuit does not permit courts to infer waiver or surrender of sovereign prerogatives
23 from ambiguity, implication, or ordinary litigation conduct. *Allen* held that contractual language that
24 might “imply a willingness to submit to federal lawsuits” still falls short because “waivers of tribal
25 sovereign immunity may not be implied.” 464 F.3d at 1047. *Bodi* reaffirmed that rule and held that
26 even removal to federal court did not express the “clear and unequivocal waiver” that tribal immunity
27 requires. 832 F.3d at 1016–17. *Miller* makes the same point in the arbitration setting: neither a contract
28 nor its dispute-resolution clause automatically waives tribal immunity. 705 F.3d at 924–26. And

1 *Chickasaw Nation* itself rejected the premise that an agreement to arbitrate always and necessarily
2 waives tribal sovereign immunity; the court explained instead that an arbitration clause merely
3 designates a forum for disputes for which immunity was waived. 43 F.4th at 1032.

4 Defendants ask this Court to infer much more than those cases allow. Their opposition asks
5 the Court to treat Paragraph 11's general reference to AAA rules as a second-order agreement that
6 lets an arbitrator decide whether Guidiville waived immunity for these claims, whether Defendants
7 may invoke the contract, and whether the dispute falls within the arbitration clause. *See* ECF No. 15
8 at 6–12. But Paragraph 10 never says that AAA may decide sovereign-immunity questions. Paragraph
9 11 never says that AAA may decide whether Guidiville consented to arbitrate with these Defendants.
10 And no provision says that Guidiville clearly and unmistakably surrendered its right to have a court
11 decide whether any arbitrable dispute exists at all. The Court cannot turn a general procedural
12 reference into that much authority.

13 The Court should therefore reject Defendants' delegation theory for an independent reason:
14 even if a commercial contract between private actors might support a stronger inference from AAA
15 incorporation, tribal sovereign immunity forbids that inference here. Guidiville wrote a narrow
16 waiver, identified specific courts to compel arbitration, and never consented to AAA deciding the
17 Tribe's own gateway immunity objections. The Ninth Circuit requires explicit language before a court
18 may find that kind of surrender. Defendants do not have that language, so they do not have a clear and
19 unmistakable delegation of arbitrability.

20 C. **Defendants' Merits Arguments Improperly Invite the Court to Ignore Threshold**
21 **Defects.**

- 22 1. *Defendants cannot recast sovereign immunity as a merits issue for AAA*
23 *because the Court must decide the antecedent questions of agreement and*
delegation first.

24 The Ninth Circuit's *Caremark* decisions require the Court to decide contract formation and
25 any specific challenge to delegation before it sends gateway issues to an arbitrator. In *Chickasaw*
26 *Nation*, the court held that a district court must decide whether the parties formed a contract with an
27 arbitration clause and whether the party resisting arbitration specifically challenges the delegation
28 provision. 43 F.4th at 1029–30. In *Choctaw Nation*, the court sent sovereign-immunity objections to

1 the arbitrator only after the court found valid contracts, valid arbitration clauses, and valid delegation
 2 clauses between the tribe and the party seeking arbitration. 104 F.4th at 86–88. And the Ninth Circuit
 3 still requires a clear and unequivocal waiver before a court may strip a tribe of immunity. *Bodi*, 832
 4 F.3d at 1016–17.

5 Defendants ask this Court to skip those antecedent questions and let AAA decide whether
 6 Guidiville waived immunity for these claims. *See* ECF No. 15 at 2, 8. But Guidiville disputes the
 7 existence of any arbitration agreement with these Defendants and disputes any clear delegation of
 8 arbitrability. ECF No. 12 at 12–13. Because those threshold defects remain unresolved, Defendants
 9 cannot use their merits arguments about the scope of immunity to avoid judicial review at the front
 10 end.

11 2. *Defendants cannot rely on the SSA to bypass threshold defects because, if the*
 12 *SSA controls, it cuts against arbitration, and if it does not, it provides*
Defendants with no assistance at all.

13 The Ninth Circuit requires the Court to decide which contract governs before it compels
 14 arbitration. In *Suski v. Coinbase, Inc.*, the court held that a later agreement with a court-forum clause
 15 displaced an earlier arbitration provision, and the court—not the arbitrator—had to decide that
 16 threshold contract issue. 55 F.4th 1227, 1230–31 (9th Cir. 2022), *aff'd*, 602 U.S. 143 (2024). And
 17 because tribal immunity turns on clear and unequivocal consent, a court should not infer a tribal waiver
 18 from a later agreement that says nothing about arbitration.

19 Defendants argue the SSA either supports their claims or, if Guidiville attacks the SSA, leaves
 20 the Notes in place. ECF No. 15 at 12–13. That argument ignores the threshold problem. If the SSA
 21 controls, it contains no arbitration clause and no waiver of sovereign immunity. ECF No. 12 at 6. If
 22 the SSA does not control, then Defendants still must solve the separate threshold defects that infect
 23 their attempt to invoke arbitration. Either way, Defendants cannot use merits arguments about which
 24 contract ultimately entitles them to money to avoid the Court’s duty to decide whether any arbitrable
 25 dispute exists in the first place.

26 Defendants’ survival-of-arbitration-clause cases are similarly inapposite. *Cione v. Foresters*
 27 *Equity Services, Inc.*, 58 Cal.App.4th 625 (1997), *Reynoso v. Bayside Mgmt. Co., LLC*, No. 13-CV-
 28 4091 YGR, 2013 U.S. Dist. LEXIS 169027, at *12 (N.D.Cal. Nov. 25, 2013), and *Ramirez-Baker v.*

1 *Beazer Homes, Inc.*, 636 F. Supp. 2d 1008, 1017 (E.D. Cal. 2008) arise from same-party employment
2 or securities settings in which an earlier arbitration agreement continued to bind the same parties, or
3 a separate arbitration agreement expressly identified the enforcing party. Those cases do not authorize
4 non-signatories to enforce a clause that expressly excludes third parties. Nor do they involve the
5 additional requirement present here: a clear, limited, resolution-backed tribal waiver. Even if those
6 cases were correct on their own facts, they do not solve Defendants’ non-signatory problem here.

7 3. *Defendants cannot ask the Court to ignore their own litigation conduct because*
8 *waiver by litigation remains a threshold judicial issue.*

9 The Ninth Circuit treats waiver through litigation conduct as a question for the court. In *Hill*
10 *v. Xerox Business Services, LLC*, the court held that waiver turns on two elements: knowledge of a
11 right to arbitrate and intentional acts inconsistent with that right. 59 F.4th 457, 468–71 (9th Cir. 2023).
12 The court looks to conduct, not labels, and it asks whether the party chose litigation instead of
13 arbitration. *Id.*

14 That rule matters here because Bluerock filed a state-court action on the same core claims,
15 named Chicago Title, forced the Tribe to interplead \$8.2 million to keep the Point Molate sale alive,
16 dismissed the case, and then turned to AAA. ECF No. 12 at 6–7, 15; Dillon Decl. ¶¶ 2–7. Defendants
17 now try to minimize that conduct and urge the Court to look past it. *See* ECF No. 15 at 9–10. The
18 Court should not do that. Defendants’ own choice of forum reinforces the threshold point: the Court
19 must decide whether Defendants preserved any right to demand arbitration before it reaches the merits
20 of anything else.

21 Defendants also overread their waiver authorities. *Doers v. Golden Gate Bridge District*, 23
22 Cal.3d 180 (1979) and *Burton v. Cruise*, 190 Cal.App.4th 939 (2010) say only that the mere filing of
23 a complaint, without more, does not automatically waive arbitration. *McConnell v. Merrill Lynch,*
24 *Pierce, Fenner, & Smith, Inc.*, 105 Cal.App.3d 946 (1980) expressly rejected the idea that waiver
25 requires litigation to final judgment and criticized using court litigation to “test the water” before
26 changing forums. *Davis v. Shiekh Shoes, LLC*, 84 Cal.App.5th 956 (2022) and *Hofer v. Boladian*,
27 111 Cal.App.5th 1 (2025), meanwhile, are waiver-found cases that emphasize the totality of a party’s
28 conduct. That framework favors Guidiville on this record. Bluerock filed the Superior Court Action,

1 named Chicago Title to disrupt the Point Molate closing, obtained an \$8.2 million interpleader,
2 dismissed the case, and then turned immediately to AAA. That is not “mere filing”; it is litigation
3 conduct undertaken to obtain leverage before pivoting to arbitration.

4 **D. Plaintiff Clearly Satisfies All Preliminary Injunction Factors.**

5 Plaintiff must show likely success on the merits, likely irreparable harm absent relief, a
6 favorable balance of equities, and alignment with the public interest. Guidiville satisfies each factor
7 here.

8 1. *Likelihood of Success on the Merits.*

9 Guidiville is likely to succeed on the merits because Defendants still cannot clear the threshold
10 defects that bar arbitration in the first place.

11 Courts must police those threshold defects before compelling arbitration. In *Chickasaw*
12 *Nation*, the court held that a court must decide whether the parties ever formed an agreement to
13 arbitrate and whether the resisting party specifically challenges delegation before sending gateway
14 issues to an arbitrator. 43 F.4th at 1031. And as Guidiville reiterates, the Ninth Circuit also requires a
15 clear and unequivocal tribal waiver and construes any purported waiver narrowly in the tribe’s favor.
16 *See Bodi*, 832 F.3d at 1016–17; *Allen*, 464 F.3d at 1047.

17 Guidiville satisfies that standard for the reasons set out above. Defendants rely on a contract
18 they did not sign on assignment theories that the Notes themselves restrict, on a generic AAA
19 reference that does not defeat Paragraph 10’s court-compulsion language, and on merits arguments
20 that skip over contract-formation, delegation, and waiver defects. Guidiville’s motion raised each of
21 those threshold problems, and Defendants’ opposition confirmed that those problems still control the
22 case. ECF No. 12 at 3–6, 10–18; ECF No. 15 at 1, 6–14.

23 2. *Guidiville will suffer irreparable harm if the Court allows AAA to proceed*
24 *before this Court resolves arbitrability and sovereign immunity.*

25 Courts in this circuit recognize that sovereign-immunity injuries qualify as irreparable when
26 damages will not remedy them. In *Blue Lake Rancheria v. Lanier*, the Eastern District held that the
27 Tribe established irreparable harm because injunctive relief provided the only effective remedy and
28 the violation of sovereign immunity itself created irreparable injury. 106 F. Supp. 3d 1134, 1140–41

1 (E.D. Cal. 2015).

2 That reasoning fits this case exactly. AAA has already told the parties that it will continue the
3 arbitration absent a court order and will send jurisdictional and arbitrability objections to the arbitrator.
4 If that process moves forward, Guidiville will have to defend against a private proceeding that no
5 agreement authorizes and no waiver permits. Money cannot repair that sovereignty injury after the
6 fact.

7 3. *The equities favor Guidiville because the Tribe faces a direct sovereign injury*
8 *while Defendants face, at most, a short delay in pressing arbitrability in the*
9 *proper forum.*

10 In *Blue Lake Rancheria*, the court rejected equitable defenses once sovereign immunity
11 applied and explained that courts must recognize that immunity absent waiver. *Id.* at 1140. The Ninth
12 Circuit made the same point in *Pan American Co. v. Sycuan Band of Mission Indians*: tribal
13 sovereignty does not yield to ad hoc equitable balancing or commercial convenience. 884 F.2d 416,
14 419 (9th Cir. 1989).

15 Here, Guidiville faces compelled participation in an arbitration it never clearly accepted with
16 these Defendants. Defendants, by contrast, lose only speed. They can wait while this Court decides
17 the threshold questions that federal law assigns to courts. Defendants also created the present urgency
18 by first suing in Contra Costa Superior Court, securing an \$8.2 million interpleader tied to the Point
19 Molate sale, dismissing that action, and then filing at AAA. ECF No. 12 at 6–7; Dillon Decl. ¶¶ 2–7.

20 4. *The public interest supports an injunction because federal law protects tribal*
21 *sovereign immunity and because courts, not arbitrators, must decide whether*
22 *any valid agreement authorizes arbitration at all.*

23 In *Blue Lake Rancheria*, the court held that an injunction protecting tribal sovereign immunity
24 would not disserve the public interest. 106 F. Supp. 3d at 1141. The same principle follows from Ninth
25 Circuit sovereign-immunity doctrine more broadly: federal courts must respect tribal immunity unless
26 the tribe clearly waives it.

27 That public interest carries special weight here. No public interest favors forcing a sovereign
28 tribe into AAA before a court determines whether any arbitrable dispute exists. The public interest
instead favors enforcing consent limits, honoring narrow waivers as written, and preserving the
judicial role in deciding threshold arbitrability disputes. *See* ECF No. 12 at 18.

1 **E. Defendants' Evidentiary Objections Fail.**

2 Defendants' objections to the Duncan and Galarza declarations fail. The declarations do not
3 offer unsupported legal conclusions; they identify and authenticate record evidence, describe the
4 Tribe's governmental practices, and confirm the existence—or absence—of official tribal
5 authorizations reflected in the Tribe's records.

6 First, Defendants' objections improperly attempt to shift the burden. Defendants—not the
7 Tribe—must prove a clear and unequivocal waiver of sovereign immunity, and courts apply a strong
8 presumption against waiver. *See Engasser v. Tetra Tech, Inc.*, 519 F. Supp. 3d 703, 707 (C.D. Cal.
9 2021) (citing *Demontiney v. Dep't of the Interior*, 255 F.3d 801, 811 (9th Cir. 2001)). The Tribe has
10 no obligation to disprove a waiver that Defendants cannot establish.

11 Second, the declarations rely on record evidence. The Galarza Declaration attaches the Tribe's
12 Constitution, which Defendants concede is authentic. The Duncan Declaration references pleadings
13 already before the Court through the Request for Judicial Notice. *See* ECF No. 13. The declarations
14 simply direct the Court to existing documents.

15 Third, Galarza's testimony regarding the absence of authorizing resolutions is proper. As
16 custodian of tribal records, he attests that no resolutions exist authorizing the challenged agreements
17 or waivers. Where none exist, nothing can be produced. Defendants' criticism amounts to demanding
18 documents that do not exist.

19 Fourth, Defendants' position is internally inconsistent. They fault Galarza for confirming no
20 tribal authorization exists for the alleged assignments, yet they claim rights through those same
21 assignments, despite the Tribe's non-involvement. The absence of any tribal resolution confirms
22 Defendants' status as third parties.

23 Finally, the declarations provide factual, not legal, statements. Duncan and Galarza describe
24 how the Tribe authorizes actions and maintains records. That testimony falls squarely within their
25 personal knowledge.

26 **II. CONCLUSION**

27 For these reasons, the Court should grant Plaintiff's Motion for Preliminary Injunction and
28 enjoin Defendants from proceeding with the AAA arbitration. Defendants have not established any

1 valid agreement to arbitrate, any enforceable assignment creating arbitration rights, or any clear and
2 unmistakable delegation that would permit an arbitrator to decide these threshold issues.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESPECTFULLY SUBMITTED this 7th day of April, 2026.

/s/ Scott D. Crowell

SCOTT D. CROWELL (*pro hac vice*)
CROWELL LAW OFFICE – TRIBAL ADVOCACY
GROUP
1487 W. State Route 89A, Suite 8
Sedona, AZ 86336
Tel: (425) 802-5369
Fax: (509) 235-5017
Email: scottcrowell@hotmail.com

MARK J. DILLON (SBN NO. 108329)
GATZKE DILLON & BALLANCE LLP
2762 Gateway Road
Carlsbad, California 92009
Telephone: (760) 431-9501
Fax: (760) 431-9512
Email: mdillon@gdandb.com

*Attorneys for Specially Appearing Plaintiff Guidiville
Rancheria of California*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this day, April 7, 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