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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

PECHANGA BAND OF INDIANS, Plaintiff, v. ROBERT F. KENNEDY, JR., *et al.*, Defendants.	No. 5:25-CV-03605-JGB-SP **PECHANGA'S NOTICE OF MOTION AND MOTION FOR IMMEDIATE INJUNCTIVE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES** Date: April 27, 2026 Time: 9:00 a.m. Ctrm: Courtroom 1, 2nd Floor Honorable Jesus G. Bernal

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 27, 2026 at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Jesus G. Bernal, United States District Judge, in Courtroom 1, 2nd Floor of the George E. Brown, Jr. Federal Building and United States Courthouse, located at 3470 Twelfth Street, Riverside, CA 92501-3801, Plaintiff Pechanga Band of Indians will and does hereby move for issuance of an immediate injunction compelling Defendants, acting through the Indian Health Service (IHS), to award and fund a proposed compact and funding agreement to operate an opioid treatment facility, as described in Pechanga's "final offer" to IHS of May 20, 2025 (Dkt.1, Compl. Attachment A), and as provided for in § 5387(b) of Title V of the Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. §§ 5381-5399.

This motion is made pursuant to (1) the statutory injunction provisions set forth in 25 U.S.C. § 5331(a) on the ground that Pechanga is highly likely to prevail on the merits of its assertion that Defendants' rejection of the "final offer" was contrary to law as set forth in 25 U.S.C. § 5387(a)-(d); and, in the alternative, (2) the equitable injunction provisions set forth in Federal Rule of Civil Procedure 65 on the additional grounds that Pechanga faces irreparable harm, and the balance of equities and the public interest tip sharply in Pechanga's favor.

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This motion is based upon this Notice of Motion and Motion, the following Memorandum of Points and Authorities, and all other pleadings and papers on file herewith, as well as Pechanga's verified complaint and such other arguments and other materials as may be presented before the Motion is taken under submission.

Dated: March 24, 2026

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR IMMEDIATE INJUNCTIVE RELIEF

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INTRODUCTION

The Pechanga Band of Indians (Pechanga or Tribe) seeks immediate injunctive relief to reverse the Indian Health Service's (IHS) unlawful refusal to enter into a compact with the Tribe to operate a desperately needed opioid treatment facility under the Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. §§ 5301-5423.[1]

Title V of the ISDA authorizes IHS to enter into self-governance compacts with an Indian tribe, at the tribe's sole option, to operate healthcare programs for the benefit of the tribal community. If IHS wishes to reject a tribe's final offer to operate such a program, it may do so only for limited reasons and following strict statutory protocols. Here, Pechanga negotiated a proposed compact with IHS that would allow Pechanga to move approximately $12,000 of IHS funds that are already designated to the Tribe and, using additional Pechanga funds and program revenues, open a multi-million dollar state-of-the-art opioid treatment facility to serve Pechanga members, other Native Americans, and other community members in an area that currently lacks these critical services.[2] Based on IHS's initial

[1] All statutory citations are to Title 25 of the United States Code.

[2] The Tribe also negotiated for unrelated purchased/referred care (PRC) program services that IHS has agreed to sever and that are not currently disputed. Although the PRC portion of the final offer was approved by operation of law, the Tribe is still awaiting an executed compact and funding agreement from IHS.

representations that the proposed compact would be acceptable, and IHS's history of approving similar compacts with other tribes, the Tribe invested millions of dollars into a facility for the proposed program, which now sits empty due to IHS's unlawful rejection. Meanwhile, Pechanga's members and others continue without these desperately needed treatment services.

Because IHS's rejection letter does not "clearly demonstrate[]" that any of the statutorily permissible grounds for rejection were met, the rejection is unlawful. § 5387(c). The ISDA's unique judicial review provisions provide for "injunctive relief against any action" by an agency that is contrary to the ISDA, including "immediate injunctive relief to reverse a declination" (or a compact rejection) or to "compel the Secretary to award and fund" a valid compact. §§ 5331(a), 5391(a). Because Pechanga is likely to prevail on the merits of its claim that IHS's rejection is unlawful, under section 5331(a) Pechanga is entitled to a preliminary statutory injunction directing IHS to award and fund the proposed compact. In the alternative, Pechanga is entitled to an equitable preliminary injunction, pursuant to Federal Rule of Civil Procedure 65, ordering the same relief.

FACTUAL AND STATUTORY BACKGROUND

A. The 1975 Indian Self-Determination Act

Compacting Overview. The ISDA established a "meaningful Indian self-determination policy" intended to transition away "from the Federal domination of

programs" serving Indians "to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services." § 5302(b). The ISDA authorizes a tribe to step into IHS's shoes to serve eligible IHS beneficiaries and receive the federal funds IHS would otherwise spend for those beneficiaries. The ISDA contemplates the transfer of an IHS program to a tribe either through a Title I contract (§§ 5321-5332) or a Title V compact (§§ 5381-5399). This case concerns a proposed Title V compact.

Under Title V, at a tribe's request "[t]he Secretary *shall* negotiate and enter into a written compact [and funding agreement] with each Indian tribe participating in self-governance in a manner consistent with the Federal Government's trust responsibility, treaty obligations, and the government-to-government relationship between Indian tribes and the United States." § 5384(a) (emphasis added); *see also* § 5385. The funding agreement, in turn, "*shall* . . . authorize the Indian tribe to plan, conduct, consolidate, administer, and receive full tribal share funding . . . for all programs, services, functions, and activities that are carried out for the benefit of Indians because of their status as Indians . . . ." § 5385(b)(1) (emphasis added). When a tribe compacts to run a program, the direct program funding provided by IHS must match what the "Secretary would have otherwise provided for the operation of the programs." § 5325(a)(1) (Title I contract funding provision), § 5388(c) (same funding level for Title V compacts).

Title V includes broad authority for programs and services to be included in a tribal funding agreement. *See* § 5385(b)(2), (c). When a tribe withdraws from an intertribal consortium that is already compacting with IHS and using the Tribe's allocated funds, or (as relevant here) withdraws only certain programs from the intertribal entity, the tribe is "entitled to its tribal share of funds supporting those [programs] that the Indian tribe will be carrying out under its own . . . compact and funding agreement." § 5386(g)(2).

Final Offer Process and Judicial Review. The ISDA tightly constrains IHS's discretion in the compacting process. If a tribe and IHS cannot agree on the terms for a compact or funding agreement, the tribe may submit a final offer to the Secretary. § 5387(b). The Secretary then has 45 days to review the offer. *Id.* If the Secretary rejects the offer, the Secretary must provide the tribe with:

> a timely written notification . . . that contains *a specific finding that clearly demonstrates*, or that is supported by a controlling legal authority that—
> (i) the amount of funds proposed in the final offer exceeds the applicable funding level to which the Indian tribe is entitled under [Title V];
> (ii) the program, function, service, or activity (or portion thereof) that is the subject of the final offer is an inherent Federal function that cannot legally be delegated to an Indian tribe;
> (iii) the Indian tribe cannot carry out the program, function, service, or activity (or portion thereof) in a manner that would not result in significant danger or risk to the public health; or
> (iv) the Indian tribe is not eligible to participate in self-governance . . . .

§ 5387(c)(1)(A) (emphasis added). If the Secretary does not provide a

rejection that is *both* “timely” and “in compliance with” these criteria, “the offer shall be deemed agreed to by the Secretary.” § 5387(b).

The ISDA authorizes a tribe to challenge the Secretary’s rejection in federal court. §§ 5331(a), 5391(a). In such an action, “the Secretary shall have the burden of demonstrating by clear and convincing evidence the validity of the grounds for rejecting the offer.” § 5387(d); *see also* § 5398 (similar). In addition, every provision of the ISDA and all compact provisions “shall be liberally construed for the benefit of the Indian tribe participating in self-governance and any ambiguity shall be resolved in favor of the Indian Tribe.” § 5392(f); *see also* § 5321(g) (similar); *Salazar v. Ramah Navajo Chapter*, 567 U.S. 182, 197 (2012) (“ISDA is construed in favor of tribes . . . .”). In other words, “[t]he Government, in effect, must demonstrate that its reading is clearly required by the statutory language.” *Salazar*, 567 U.S. at 194 (citing § 450*l*(c) (now codified at § 5329(c), Model Agreement § 1(a)(2))).

B. Pechanga’s Proposed Compact

The need for opioid treatment in Native communities is well documented, *see* Dkt. 1, Compl. ¶¶ 38-41, and IHS itself acknowledges “[t]he impact of the opioid crisis on American Indian and Alaska Native (AI/AN) populations is immense,” Indian Health Serv., *Community Opioid Intervention Pilot Projects*, 85 Fed. Reg. 65,845 (Oct. 16, 2020). After experiencing multiple tribal member

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deaths due to opioid addiction and overdose, Pechanga decided to establish its own opioid treatment program to provide desperately needed services for its members and other Indians in the area. Compl. ¶ 46; *see* Macarro Decl. ¶¶ 11-18.[3]

Pechanga is a member of the Riverside San-Bernardino County Indian Health, Inc. (Riverside), a consortium of nine federally recognized tribes that provides health care services to IHS beneficiaries. Riverside operates federal IHS programs pursuant to a Title V compact but does not provide comprehensive opioid addiction treatment.[4] In order to expand the services available to its members, Pechanga proposed to enter into its own compact with IHS under which it would transfer 2.5% of Pechanga's existing share of IHS funds from Riverside to the Tribe, and of which Pechanga would devote $12,644 annually to the proposed opioid treatment program. Compl. ¶ 46.[5] The proposal would require *no* additional program funding from IHS. Pechanga would then stand up and operate the proposed program using a combination of these IHS funds, several million dollars

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[3] "A verified complaint or supporting affidavits may afford the basis for a preliminary injunction . . . ." *K-2 Ski Co. v. Head Ski Co.*, 467 F.2d 1087, 1088–89 (9th Cir. 1972) (citations omitted); *see also, e.g.*, *Perlot v. Green*, 609 F. Supp. 3d 1106, 1116 (D. Idaho 2022) (similar).

[4] Riverside supports the transfer of funds for Pechanga's program and has confirmed the need for such a program serving Indians in the area. Compl. ¶ 47; *see* Yoder Decl., Attachment 1.

[5] Title V gives Tribes authority to "redesign or consolidate" programs and to "reallocate or redirect funds . . . in any manner which the Indian tribe deems to be in the best interest of the health and welfare" of its community. § 5386(e).

of its own funds, and anticipated insurance revenues realized in operating the program. The program would be operated by Pechanga, but with the assistance of a tribally-owned contractor, One Together Solutions, that has a proven track record and successfully operates other IHS-approved tribal opioid treatment facilities in California. Compl. ¶¶ 48-49.

Pechanga initiated the compact proposal process with IHS in August 2023. *Id.* ¶ 52. Pechanga and IHS, through IHS Area Lead Negotiator Wesley Simmons, met multiple times over the following year to negotiate the terms of a compact. *Id.* ¶¶ 54-83. As relevant here, IHS initially expressed no concerns regarding the Tribe's plans to serve both IHS beneficiaries (Pechanga members and other Indians) and non-Indian patients. *Id.* ¶¶ 63-64. Indeed, IHS has approved other tribal programs that serve non-Indian patients and generate revenues that offset the cost of services to beneficiaries. *Id.* ¶ 49. IHS proceeded to assist Pechanga with drafting a resolution authorizing Pechanga to serve non-Indian patients pursuant to section 813 of the Indian Health Care Improvement Act, § 1680c(c)(2). Compl. ¶¶ 64-65, 72-74. Similarly, the parties reached agreement on the amount of funding that Pechanga would withdraw from Riverside to form the base IHS funding for the Pechanga compact, and the IHS lead negotiator agreed to Pechanga's tribal resolution authorizing the withdrawal of 2.5% of its existing IHS funding from Riverside to fund the new program. *Id.* ¶¶ 76-79.

By early October 2024, the parties had agreed on all material terms of the compact and were finalizing minor administrative details, with a mutually understood goal of opening the opioid treatment facility by February 2025. *Id.* ¶¶ 79, 82-83. On the basis of IHS's representations that the compact was proceeding toward finalization, Pechanga proceeded to invest over $5.5 million of tribal funds into the project to meet the anticipated opening date. *Id.* ¶ 84.

In mid-October 2024, IHS suddenly changed course and began asking Pechanga for information about its agreement with OneTogether Solutions. *Id.* ¶ 85. IHS demanded a copy of Pechanga's management contract with OneTogether, despite the fact that the contract was neither referenced in nor directly relevant to Pechanga's ISDA compact. *Id.* ¶¶ 91, 93-98. To advance the process, Pechanga requested technical assistance from IHS pursuant to § 5387(c)(1)(B) and conveyed its willingness to amend the OneTogether contract as necessary to address any concerns and secure compact approval. *Id.* ¶¶ 104-112, 115, 117. Despite repeated requests from Pechanga, IHS refused to provide any specific feedback on what the Tribe could do to address its concerns or to propose changes to the OneTogether contract, then unilaterally declared an impasse. *Id.* ¶¶ 113-20.

On May 20, 2025, the Tribe sent IHS a final offer seeking approval of its proposed Title V compact and the associated funding agreement. *Id.* ¶ 121; *see also* Compl. Attachment A. On July 3, 2025, IHS rejected the Tribe's final offer. *Id.*

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¶ 136. IHS listed three reasons for its rejection: (1) the opioid treatment program would not sufficiently benefit Native patients; (2) Pechanga requested too much federal program funding; and (3) the determination of what programs may be operated under the ISDA by tribes is an inherent Federal function. *Id.* ¶¶ 139, 14142; *see also* Compl. Attachment B (Rejection).

Following IHS's rejection (and in an effort to avoid litigation), Pechanga again requested IHS technical assistance pursuant to § 5387(c)(1)(B). Compl. ¶ 143. Pechanga also requested a Tribal Delegation Meeting between the Tribe's leadership and IHS Acting Director Smith, which occurred on September 30, 2025. *Id.* ¶¶ 147-49. IHS failed to offer a path forward for the Tribe's proposed opioid clinic, *id.* ¶¶ 150-152, and this lawsuit followed.

ARGUMENT

I. PECHANGA IS ENTITLED TO PRELIMINARY INJUNCTIVE RELIEF UNDER § 5331(a).

The ISDA permits IHS to reject a final offer for only four reasons, § 5387(c)(1)(A), and it provides for "immediate injunctive relief" if IHS violates these strict provisions, § 5331(a) (as extended by § 5391(a)). As explained below, it is highly likely that Pechanga will prevail on its claim that IHS's rejection does not "clearly demonstrate[]" that any of the permissible rejection grounds are present here, *see* § 5387(c)(1)(A). Under § 5331(a), Pechanga is therefore entitled to a preliminary injunction ordering IHS to award the proposed compact and funding

1 agreement pending the final resolution of this suit.

2 **A. IHS Has Not Clearly Demonstrated that Any of the Statutory**
3 **Rejection Grounds Apply.**

4 IHS's primary reason for rejecting Pechanga's proposed compact is its
5 assertion that the proposed opioid treatment program is "illegal" under the ISDA
6 and "IHS lacks the contracting authority to allow" the Tribe to compact for this
7 program, Rejection at 9, because the program "would overwhelmingly benefit non-
8 Indians, rather than provide health services for the benefit of Indians because of
9 their status as Indians as mandated by the [ISDA]," *id.* at 6. IHS admits that this
10 reason for rejection is not one of the four grounds permitted under § 5387(c), but
11 asserts that if it deems the program to be illegal or "outside of the IHS's authority,"
12 the agency "need not support this finding with a specific rejection ground." *Id.* at 9.

13 As an initial matter, nothing in the ISDA permits IHS to sidestep the
14 required rejection criteria by unilaterally deeming a program to be illegal or
15 beyond its authority. That alone is reason to reject this argument. *See, e.g.*,
16 *Susanville Indian Rancheria v. Leavitt*, No. 2:07-CV-259-GEB-DAD, 2008 WL
17 58951, at *6-10 (E.D. Cal. Jan. 3, 2008) (reversing IHS's rejection of a final offer
18 for failure to clearly demonstrate that any of the permissible rejection grounds was
19 satisfied); *cf. Pyramid Lake Paiute Tribe v. Burwell*, 70 F. Supp. 3d 534, 542-45
20 (D.D.C. 2014) (invalidating declination of a contract proposal for the same reason).

21 Moreover, even if this were a valid basis on which to reject a final offer, IHS

is simply wrong that Pechanga's proposed program is not permitted under the ISDA. IHS relies on § 5385(b)(1), which provides:

> Each funding agreement required under [Title V] shall, as determined by the Indian tribe, authorize the Indian tribe to plan, conduct, consolidate, administer, and receive full tribal share funding . . . for all [programs] that are carried out for the benefit of Indians because of their status as Indians without regard to the agency or office of the Indian Health Service within which the [program] is performed.

Subsection (b)(2) further provides that "such [programs] include all [programs], including grants . . . with respect to which Indian tribes or Indians are primary or significant beneficiaries, administered by [IHS]," as well as all local and regional functions administered pursuant to other statutes under the Department's purview (including the Indian Health Care Improvement Act (IHCIA) (codified in part at §§ 1601-1685), and the Indian Alcohol and Substance Abuse Prevention and Treatment Act (codified at §§ 2401-2455)). While IHS reads these provisions to restrict program eligibility, that interpretation conflicts with the plain meaning and purpose of the text and other express provisions of the ISDA and the IHCIA, all of which are intended to *expand* program eligibility.

First, the text and legislative history both indicate that § 5385(b) was intended to *broaden* the scope of services that a tribe may compact to operate under Title V, not to limit contractibility. *See, e.g.*, S. Rep. No. 106-221 (1999) at 9 ("The Committee is concerned with the reluctance of the [IHS] to include all available federal health funding in self governance funding agreements. . . . This

section is intended to directly remedy this situation."); H.R. Rep. No. 106-477 (1999) at 21 (same). Both subsections emphasize that IHS must allow a tribe to compact for "all" programs it operates for Indian beneficiaries, no matter the level or region at which that program or service is executed within IHS. And while subsection (b)(2) does not define "primary or significant beneficiaries," the plain language indicates that Congress specifically chose to expand eligibility *beyond* programs where Indians are the only, or "primary," beneficiaries, broadening it to include programs where Indians are "significant" beneficiaries.[6] Yet IHS now seeks to impose precisely the limitation that Congress rejected. Under any reasonable interpretation, Pechanga's proposed program would "benefit" Indians, and Indians would be "significant" beneficiaries of the program, because it would serve both Pechanga members—some of whom have died of drug overdoses in the absence of these services, Compl. ¶ 40—and other Indians, with a documented need for these services as confirmed by the regional Indian healthcare provider, *id.* ¶ 47.

IHS's concern about anticipated additional services to non-beneficiaries is

[6] Dictionaries define "significant" as "large enough to be noticed or to have an effect," *see* Merriam-Webster, "significant," https://www.merriam-webster.com/dictionary/significant, or "[o]f special importance; momentous, as distinguished from insignificant," *see* Black's Law Dictionary, "significant" (12th ed. 2024). None of these definitions impose the sort of numerical test or absolute threshold that IHS urges.

directly contradicted by the IHCIA, which *expressly authorizes* tribes to serve non-beneficiaries, § 1680c(c)(2), provided such patients are charged for their care, § 1680c(c)(3)(A). Indeed, additional services to non-beneficiaries are by law automatically "deemed to be provided under" the tribe's ISDA contract or compact. *Id.* These provisions set no limits on the proportion of services that can be provided to non-beneficiaries. It thus cannot be true that the provision of additional services to non-beneficiaries under the IHCIA renders a program serving Indian patients non-contractible. Moreover, the fact that the program will benefit non-Indian patients does not in any way diminish the significant benefit to Indian patients. To the contrary, revenue generated by those services will *increase* the benefit available for Indian patients.

Were there any doubt whether the terms "for the benefit of Indians" or "significant beneficiaries" capture the program here, the statute mandates that the ISDA and Pechanga's compact "shall be liberally construed for the benefit of the Indian tribe." § 5321(g); *see also* § 5329(c), Model Agreement § 1(a)(2). Title V also requires that IHS interpret all federal laws (including the ISDA) to "facilitate . . . the inclusion of [programs] and funds associated therewith" in compacts and funding agreements. § 5392(a). The fact that IHS would find it acceptable if Riverside provided the very same treatment services, but not Pechanga, *see* Rejection at 10, further undermines IHS's position that such a compact is unlawful.

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A federal district court rejected a similar IHS argument in *Susanville*. Like here, IHS argued that the tribe's proposed compact was beyond the scope of IHS's authority because it was "not a program provided to eligible beneficiaries under Federal law," nor "a program that IHS is authorized to administer." *Id.* at *6 (citing § 5385(b)(1)-(2), then codified at § 458aaa-4(b)(1)-(2)). The court rejected this argument, emphasizing that when a tribe enters an ISDA compact, IHS "turns over the provision of federal [programs] to that tribe" and the tribe is free to operate the program in the manner it deems best; it "is not required to operate a [program] in the same manner as the IHS." *Id.* at *10. The court reversed IHS's rejection because IHS "ha[d] not shown, by clear and convincing evidence," the validity of its "decision to reject Plaintiff's final offer on the ground that the ISDEAA prohibited the IHS from accepting the final offer." *Id.* The same is true here.

IHS cites two other cases in its rejection letter, but both are inapposite. First, in *Navajo Nation v. Department of Health and Human Services*, 325 F.3d 1133 (9th Cir. 2003), a tribe sought to contract for a program that is run pursuant to a separate federal statute, Temporary Assistance for Needy Families (TANF)—not an Indian health statute at all. Because the TANF program as a whole only "collaterally benefit[s] Indians as part of the general population," the court concluded programs under the statute were not contractible. *Id.* at 1138. Here, by contrast, it is undisputed that IHS-funded opioid treatment services are generally

contractible, as they fall within the core healthcare services IHS provides for the benefit of Indians. In addition to suggesting that Riverside should provide these same services, Rejection at 10, IHS has also entered into contracts with other tribes to operate programs essentially identical to Pechanga's proposed program, Compl. ¶ 49; *see also* Rejection at 5. In fact, IHS has approved such programs under ISDA for other tribes that use the very same contractor that Pechanga has proposed using. *See* Rejection at 5; Bodmer Decl. ¶ 8. IHS's reliance on *Jamestown S'Klallam Tribe v. Azar*, 486 F. Supp. 3d 83 (D.D.C. 2020), fares no better. IHS there *agreed* that the ISDA agreement with the tribe was a lawful agreement and *agreed* that the tribe could lawfully serve non-beneficiaries; it only contested whether IHS was obliged to reimburse certain leasing costs associated with services to those non-beneficiaries. *Id.* at 85-86. Nothing in *Jamestown* questions the availability of base funding for the program serving Indian patients (the only type of funds in dispute here), nor the propriety of a compact and funding agreement to cover that program. *Id.*

In sum, it is highly likely that IHS will be unable to demonstrate its narrow reading of § 5385(b) is supported by—much less "clearly required by" —the ISDA's text or purpose, the statutory scheme, or legal precedent. *See Salazar*, 567 U.S. at 194. Pechanga is therefore likely to succeed on the merits on this ground.

Neither of IHS's other asserted reasons withstand scrutiny. IHS asserts that

1 the anticipated services to non-Indians means "the amount of [federal] funds
2 proposed in the final offer exceeds the applicable funding level to which the Indian
3 tribe is entitled," § 5387(c)(1)(A)(i) *see* Rejection 9-11. But that cannot be right
4 because (1) Pechanga has not requested any new IHS funds to provide such
5 services, and (2) care to non-Indians must by law be paid for *by those patients*—
6 not IHS. § 1680c(c)(3)(A).
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8 This peculiar argument appears geared simply to shoehorn IHS's primary
9 rationale—which it acknowledges is not a statutorily permissible rejection
10 ground—into one of the ISDA's four rejection grounds. As a simple rehashing of
11 its original argument, this argument should be rejected for all the same reasons.
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13 Moreover, Pechanga's proposal does not request *any* new IHS funds; it
14 merely seeks to transfer approximately $12,000 of Pechanga's own share of
15 Riverside's funding from Riverside to the Tribe. Compl. ¶ 46. It makes no sense to
16 assert (as IHS does) that transferring a small amount of the Tribe's *own* funding
17 will "exceed the applicable funding level to which [Pechanga] is entitled." The
18 ISDA is clear that a tribe may withdraw funds from an intertribal consortium of
19 which it is a member, § 5386(g)(2), and that it may "reallocate or redirect funds for
20 such [PSFAs] in any manner which the Indian tribe deems to be in the best interest
21 of the health and welfare of the Indian community being served." § 5386(e). Since
22 Pechanga's proposed withdrawal and redesignation of funds is precisely what
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Title V envisions, reprogramming this small amount of funds cannot possibly exceed the funding level to which Pechanga is entitled in the first place.

Finally, IHS asserts that Pechanga has demanded to operate a "program" that involves "an inherent Federal function that cannot legally be delegated to an Indian tribe," § 5387(c)(1)(A)(ii), "because the determination of whether the program will be carried out for the benefit of Indians because of their status as Indians is an 'inherent Federal function.'" Rejection at 11. This confusing assertion misunderstands subsection (ii). Subsection (ii) asks whether the *program* a tribe is seeking to operate is an inherently federal function. Unlike writing federal healthcare regulations—which surely is an inherent federal function—providing healthcare services is not an inherently federal function.

Subsection (ii) therefore has nothing to do with the matter at hand. Nothing in subsection (ii) grants IHS authority to decide which health care programs do and do not benefit Indians. Further, the program "that is the subject of the final offer" here is an opioid treatment program—not "the determination of whether the program will be carried out for the benefit of Indians because of their status as Indians"—and IHS's rejection letter does not assert that opioid treatment programs are an "inherently federal function."

IHS's contorted reading of subsection (ii) contradicts the ISDA's primary goal of allowing tribes to make their own decisions about how best to serve their

members, including whether to serve non-beneficiaries in order to offer more robust programs for all patients. Worse yet, IHS's misreading would foreclose Pechanga from operating opioid services that are identical to services *already* being performed by other tribal programs under ISDA contracts with IHS. IHS's rejection offers no meaningful support for this last ground because there is none.

Given the foregoing, Pechanga is highly likely to prevail on the merits of its claim that IHS acted unlawfully in rejecting Pechanga's final offer to compact for the operation of opioid treatment services.

B. A Preliminary Injunction Should Issue Pursuant to § 5331(a).

Pechanga is entitled to immediate injunctive relief—a preliminary statutory injunction under § 5331(a)—holding that in light of Pechanga's likelihood of success on the merits, IHS must award the rejected compact and funding agreement pending the outcome of this litigation.

The ISDA's unique judicial review provisions afford federal district courts broad statutory authority to grant both monetary and injunctive relief, including "immediate injunctive relief," to remedy violations of the ISDA:

> [T]he district courts may order appropriate relief including money damages, *injunctive relief against any action* by an officer of the United States or any agency thereof contrary to this chapter or regulations promulgated thereunder, *or mandamus to compel an officer or employee of the United States, or any agency thereof, to perform a duty* provided under this chapter or regulations promulgated hereunder (including *immediate injunctive relief* to reverse a declination finding [or compact rejection] or to compel the Secretary

> to award and fund an approved self-determination contract [or self-governance compact]).

25 U.S.C. § 5331(a) (emphasis added); *see also* § 5391(a) (applying § 5331 to Title V compacts). Notable here, the provision includes express authority to grant "immediate injunctive relief . . . to compel [IHS] to award and fund" a proposed compact. *Id.*; § 5391(a) (incorporating same).

Preliminary injunctive relief is a lesser included element within the Court's broad authority to issue permanent injunctive relief. Indeed, the term "*immediate* injunctive relief" indicates that Congress intended relief to be available quickly and at the preliminary stage of a case. Accordingly, when IHS violates the ISDA or its regulations, a court "may award immediate injunctive relief without proceeding to summary judgment or to trial." *Navajo Health Found.-Sage Mem'l Hosp., Inc. v. Burwell*, 100 F. Supp. 3d 1122, 1166 (D.N.M. 2015) ("*Sage I*").

Statutory injunctions of the kind at issue here differ from equitable injunctions under Rule 65. "The traditional requirements for equitable relief need not be satisfied [when a statute] expressly authorizes the issuance of an injunction." *Susanville,* 2008 WL 58951, at *11 (alteration in original) (quoting *United States v. Est. Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000)). "Because the [ISDA] specifically provides for both injunctive and mandamus relief to remedy violations of the Act, . . . the Tribe need not demonstrate the traditional equitable grounds for obtaining the relief it seeks," and a court may award

immediate injunctive relief without considering the ordinary test for a preliminary injunction. *Pyramid Lake Paiute Tribe v. Burwell*, 70 F. Supp. 3d 534, 545 (D.D.C. 2014) (first citing § 450m–1(a), now codified at § 5331(a); then citing *Susanville*, 2008 WL 58951, at *10-11; and then citing *Red Lake Band of Chippewa Indians v. Dep't of the Interior*, 624 F. Supp. 2d 1, 25 (D.D.C. 2009)). This is because "it is not the role of the courts to balance the equities between the parties [where] Congress has already balanced the equities and has determined that, as a matter of public policy, an injunction should issue where the defendant is engaged in . . . any activity which the statute prohibits." *Star Fuel Marts, LLC v. Sam's E., Inc.*, 362 F.3d 639, 652 (10th Cir. 2004) (alterations in original) (citation omitted).

Courts have routinely issued injunctions pursuant to § 5331 after concluding that IHS violated a provision of the ISDA. *E.g.*, *Susanville*, 2008 WL 58951, *10-11; *Red Lake Band*, 624 F. Supp. 2d at 25-26; *Pyramid Lake Paiute Tribe v. Burwell*, 70 F. Supp. 3d at 545-46. Although those cases involved permanent injunctions,[7] at this early stage Pechanga seeks only preliminary relief because Pechanga has shown it is likely to succeed on the merits of its claim that IHS violated § 5387 by improperly rejecting Pechanga's final offer without clearly demonstrating that any of the permissible rejection grounds were met. With a

[7] In *Susanville* the court also issued an equitable temporary restraining order prior to issuance of the statutory injunction. *See Susanville*, 2008 WL 58951, at *2.

preliminary injunction in place, Pechanga can immediately begin operating the opioid treatment facility pending the final resolution of this litigation.

II. IN THE ALTERNATIVE, PECHANGA SATISFIES THE TEST FOR AN EQUITABLE PRELIMINARY INJUNCTION.

A. All Four Factors of the Test Favor Issuance of an Injunction.

For an equitable injunction, "[a] plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted). A court evaluates these factors "on a sliding scale, such that a stronger showing of one element may offset a weaker showing of another." *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 683–84 (9th Cir. 2023) (en banc) (quotation omitted). Here, all four factors favor an injunction.

Merits. For the reasons set out above, Pechanga is likely to succeed on the merits and this factor therefore weighs heavily in Pechanga's favor.

Irreparable Harm. Pechanga and its members are already experiencing irreparable harm caused by IHS's unlawful rejection of the proposed compact. Each day members suffering addiction are going without the care they need, putting them at risk of overdose and death. This harm cannot be remedied by money damages or future relief and will continue as long as the unlawful rejection

remains in place. Pechanga has shown an urgent need for opioid treatment services, and Riverside has confirmed that need. Yoder Decl. Attachments 1, 2. Tragically, multiple Pechanga members who were addicted to opioids have died from overdoses and related problems, including one who died during the negotiations over Pechanga's compact. Compl. ¶ 40; Macarro Decl. ¶¶ 16-17. The facility in which Pechanga has invested several million dollars now sits unused while incurring maintenance costs and related expenses—yet it could be put to use immediately if the compact is approved.[8] Bodmer Decl. ¶¶ 9-12; Macarro Decl. ¶ 24. Irreparable harm to Pechanga and its members strongly favors an injunction.

Equities and the Public Interest. "The 'balance of equities' concerns the burdens or hardships to [a plaintiff] compared with the burden on [the defendant] if an injunction is ordered. The 'public interest' mostly concerns the injunction's impact on nonparties rather than parties." *That's No Moon Ent. Inc. v. Mumbauer*, No. 2:26-cv-00542-MWC-AGR, 2026 WL 246016, at *7 (C.D. Cal. Jan. 23, 2026) (quoting *Porretti v. Dzurenda*, 11 F.4th 1037, 1050 (9th Cir. 2021) (alterations in original)). "Where the government is the opposing party, balancing of the equities and the public interest merge," and the court considers whether "any significant

[8] Although the amount of funding Pechanga seeks to transfer is relatively small, entering into an ISDA compact is a necessary prerequisite to operating the proposed program. It is thus IHS's refusal to approve the compact, more than the refusal to transfer funding, that inflicts the greatest harm on the Tribe.

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'public consequences' would result from issuing the preliminary injunction." *Hoang v. Santa Cruz*, No. EDCV 25-2766 JGB, 2025 WL 3141857, at *5 (C.D. Cal. Oct. 28, 2025) (first citing *Nken v. Holder*, 556 U.S. 418, 435 (2009); and then citing *Winter*, 555 U.S. at 24). As this Court has recognized, "neither equity nor the public's interest are furthered by allowing violations of federal law to continue." *Hakim v. Noem*, No. 5:26-cv-00145-CV, 2026 WL 252493, at *6 (C.D. Cal. Jan. 22, 2026) (quoting *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022)); *see also Youngblood v. Gates*, 112 F.R.D. 342, 348 (C.D. Cal. 1985) ("[T]he public has an interest in preventing government malfeasance."); *accord Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 766 (2021).

The balance of the equities and the public interest strongly favor an injunction here. If an injunction issues, the "cost" to IHS is minimal: in financial terms it is zero because Pechanga is seeking only to transfer funds IHS *already* allocated to it through Riverside. And if the Court later determines the injunction was issued in error, "[a]ny monetary harm that the United States experiences in the interim can be restored after trial." *Fort Defiance Indian Hosp. Bd., Inc. v. Becerra*, 604 F. Supp. 3d 1187, 1262 (D.N.M. 2022). On the other side of the scale, both the public *and* Pechanga would benefit from allowing Pechanga to open the proposed opioid treatment facility and begin providing critical services to its members, other Indians, and other community members in the region. Given the well-documented

need for these services, opening the facility is plainly in the public interest.[9]

Courts have relied on similar reasoning to issue preliminary injunctions in other cases where IHS violated the ISDA, including injunctions in which the court ordered IHS to award a contract and funding to the tribe as Pechanga requests here. *E.g.*, *Fort Defiance*, 604 F. Supp. 3d at 1263 (funding); *Sage I*, 100 F. Supp. 3d at 1192 (contract and funding); *see Susanville*, 2008 WL 58951, at *2 (describing preliminary relief entered prior to permanent injunction).

Because all four of the *Winter* factors weigh in favor of Pechanga, the Tribe is entitled to a preliminary injunction.

B. Pechanga Should Not Be Required to Post a Bond.

If the Court grants an equitable preliminary injunction, the Court should decline to require a bond under Federal Rule of Civil Procedure 65(c). Although Rule 65(c) permits the granting of a preliminary injunction "only if the movant gives security in an amount that the court considers proper to pay the costs and

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[9] This analysis is not altered by the fact that Pechanga seeks a mandatory injunction, which generally requires the plaintiff to "establish that the law and facts clearly favor their position, not simply that they are likely to succeed.'" *Betschart v. Oregon*, 103 F.4th 607, 619 (9th Cir. 2024) (cleaned up). "Mandatory injunctions are most likely to be appropriate when the status quo . . . is exactly what will inflict the irreparable injury upon complainant." *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017) (quotation omitted). That is precisely the case here, where IHS's illegal rejection is causing irreparable injury to Pechanga and its members. Moreover, Congress already made the judgment that mandatory injunctions may issue in these circumstances, § 5331(a), confirming that such relief is appropriate.

damages sustained by any party found to have been wrongfully enjoined or restrained," the Ninth Circuit has explained that this "seemingly mandatory language" is deceiving. *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009). In fact, the rule "invests the district court with discretion as to the amount of security required, *if any*," so "the district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant." *Id.* (cleaned up). That is precisely the case here. Pechanga's proposed compact will not require IHS to award *any* additional program funds, only the transfer of approximately $12,500 that is already allocated to Pechanga within Riverside. Any other expenditures IHS might incur to implement the compact could be "recoup[ed] . . . through its own suit" if the court ultimately resolves this litigation in IHS's favor. *See Sage I*, 100 F. Supp. 3d at 1192. Accordingly, "ordering a bond at this stage would be inappropriate." *Id.*

CONCLUSION

For the foregoing reasons, Pechanga is entitled to a preliminary statutory injunction (or, in the alternative, a Rule 65 equitable preliminary injunction) compelling IHS to award and fund the proposed compact and funding agreement.

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Respectfully submitted this 24th day of March 2026.

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LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff Pechanga Band of Indians, certifies that this memorandum complies with the limit set out in section 9.b. of this Court's Standing Order, Dkt. No. 36, because it does not exceed 25 pages. The memorandum has been prepared in a proportionally-spaced typeface using Microsoft Word for Office 365 Times New Roman 14-point font.

DATED this 24th day of March 2026 at Anchorage, Alaska.

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