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BLUEROCK REAL ESTATE HOLDINGS, INC.,
6 AHG GROUP, LLC, and ALAN GINSBURG

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 THE GUIDIVILLE BAND OF POMO
INDIANS OF THE GUIDIVILLE
11 RANCHERIA,

12 Plaintiff and
13 Counterclaim Defendant,

14 v.

15 BLUEROCK REAL ESTATE HOLDINGS,
LLC, AHG GROUP, LLC, ALAN
16 GINSBURG

17 Defendants and
18 Counterclaim Plaintiffs,

Case No. 3:26-cv-01578

**DEFENDANTS'/COUNTERCLAIM
PLAINTIFFS' OPPOSITION TO
PLAINTIFF'S/COUNTERCLAIM
DEFENDANT'S MOTION TO DISMISS**

Date: July 10, 2026

Time: 10:00 a.m.

Judge: Hon. Alex G. Tse

Place: Courtroom A, 15th Floor

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff/Counterclaim Defendant Guidiville Rancheria of California (the “Tribe”) and Counterclaim Defendant Upstream Point Molate, LLC (“Upstream”) borrowed \$6.5 million from the Scotts Valley Band of Pomo Indians (“SV”) nearly 20 years ago pursuant to two promissory notes (the “Notes”), under which the Tribe and Upstream agreed to repay the principal amount plus interest. Countercl. Compl. ¶ 10, ECF No. 24. SV later assigned the Notes to Defendant/Counterclaim Plaintiff Alan Ginsburg (“Mr. Ginsburg”). *Id.* ¶ 11. Neither the Tribe nor Upstream has alleged that any amounts due under the Notes have been repaid. *Id.* ¶ 18–20.

In 2018, the Tribe and Upstream entered into a “Settlement Sharing Agreement,” under which they acknowledged that they remained obligated under the Notes and agreed to pay AHG Group, LLC (“AHG”)—an affiliate of Mr. Ginsburg—a percentage of their proceeds from a pending land sale as “full satisfaction of all amounts due under the Notes.” *Id.* ¶ 15. Merlene Sanchez signed the Settlement Sharing Agreement on the Tribe’s behalf in her capacity as the Tribe’s Chairperson. *Id.*, Ex. 8. Although the land sale occurred, neither the Tribe nor Upstream has alleged that they paid any amounts due under the Settlement Sharing Agreement. *Id.* ¶ 18–20.

The Tribe’s and Upstream’s failure to pay as agreed forced Defendants/Counterclaim Plaintiffs to commence an arbitration against the Tribe and Upstream before the American Arbitration Association (“AAA”). In response, the Tribe filed this action seeking, among other relief, (1) an injunction barring the arbitration from proceeding before AAA, and (2) declaratory relief that the Tribe had not waived its sovereign immunity with respect to the claims asserted by Defendants/Counterclaim Plaintiffs. In its preliminary injunction motion, the Tribe did not deny that Ms. Sanchez had signed the Settlement Sharing Agreement, and contended that, if the motion were granted, Defendants/Counterclaim Plaintiffs would “face only a temporary delay in pursuing

1 claims that may be litigated, if at all, in a proper forum.” Mot. at 17, ECF No. 12. In granting the
2 Tribe’s motion, the Court accepted the Tribe’s argument on this issue, stating:
3 “[Defendants/Counterclaim Plaintiffs] contend that they may be denied a forum for their claims if
4 this motion is granted. However, as discussed at the hearing, [Defendants/Counterclaim Plaintiffs]
5 could litigate their claims in this Court.” Order at 9, ECF No. 23 (internal citations omitted).
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7 In response to this Court’s order, Defendants/Counterclaim Plaintiffs withdrew their claims
8 from AAA and filed them here. The Tribe’s motion to dismiss contends that
9 Defendants/Counterclaim Plaintiffs cannot, in fact, litigate their claims in this Court, because the
10 Tribe’s sovereign immunity deprives this Court of jurisdiction over those claims.

11 The Court should deny the Tribe’s motion. Whether the Tribe waived sovereign immunity
12 presents a factual issue, which should not be resolved without discovery. There is, moreover,
13 reason to believe that discovery will reveal whether the Tribe waived sovereign immunity with
14 respect to the claims asserted by Defendants/Counterclaim Plaintiffs. Specifically, in connection
15 with its preliminary injunction motion, the Tribe submitted declarations stating, in relevant part,
16 that (1) the Tribe’s decisions regarding sovereign immunity are embodied in tribal resolutions, and
17 (2) that the Tribe has passed resolutions regarding many of the key documents in this case, including
18 the Notes. Declaration of Donald Duncan (“Duncan Decl.”) ¶ 5, ECF No. 12-1; Declaration of
19 David Galarza (“Galarza Decl.”) ¶¶ 7-11, ECF No. 12-2. The Tribe, however, did not include any
20 of those resolutions in the record, nor did the declarations quote their contents.
21 Defendants/Counterclaim Plaintiffs should therefore be permitted to take discovery regarding the
22 tribal resolutions concerning the agreements relevant to their claims.
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24 Such discovery is particularly appropriate because the Tribe’s complaint seeks affirmative
25 relief regarding its sovereign immunity, specifically declaratory relief that it is immune from the
26 claims asserted by Defendants/Counterclaim Plaintiffs in the AAA arbitration, which parallel the
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1 claims asserted here. The Court has not yet ruled on the merits of that claim, and the Tribe has
 2 provided no evidence in support of it. Defendants/Counterclaim Plaintiffs should therefore be
 3 permitted to take discovery on an issue the Tribe itself has placed before the Court.

4 The Court should deny the Tribe's motion.

5 **II. SUMMARY OF RELEVANT ALLEGATIONS**

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 7 On November 9, 2006, the Tribe and Upstream entered into a Letter Agreement with the
 8 Scotts Valley Band of Pomo Indians ("SV"), under which SV agreed to loan \$6,500,000 to assist
 9 the Tribe and Upstream with building a casino in Contra Costa County. Countercl. Compl. ¶ 8, ECF
 10 No. 24. In exchange, The Tribe and Upstream agreed to issue two promissory notes to SV. *Id.* ¶
 11 10. The first was dated December 20, 2006 for \$3,500,000 (the "2006 Note") and the second was
 12 dated November 29, 2007 for \$2,900,000 (the "2007 Note"), with interest. *Id.* The Notes, executed
 13 by the Tribe and Upstream, expressly permitted assignment by SV, their holder, to NORAM LLC
 14 ("NORAM"), Mr. Ginsburg, and/or AHG. *Id.*

15
 16 On February 28, 2012, a few days before the principal and interest on the Notes became
 17 due, SV assigned the Notes to Mr. Ginsburg, through an Agreement Regarding Assignment of
 18 Notes. *Id.* ¶ 10–11.

19
 20 In early 2018, the Tribe and Upstream were in settlement discussions of a litigation
 21 involving, among others, the City of Richmond. *Id.* ¶ 14. Under the terms of the Tribe's and
 22 Upstream's settlement with the City of Richmond, the Tribe and Upstream would receive certain
 23 revenues from the City of Richmond's sale of the land. *Id.* This settlement was entered into as a
 24 stipulated judgment by this Court on April 12, 2018, which judgment was signed by Merlene
 25 Sanchez on behalf of the Tribe and James Levine on behalf of Upstream. *Id.*, Ex. 8.

26
 27 While these settlement discussions were underway, in March 2018, the Tribe and Upstream
 28 entered into a Settlement Sharing Agreement with AHG whereby AHG would receive certain

allocations of the Net Revenues received by the Tribe and Upstream under the settlement. *Id.* ¶ 15.

In the Settlement Sharing Agreement, the Tribe and Upstream acknowledged that (1) “*Scotts Valley has delivered, and assigned all of its right, title and interest in, the Notes to AHG,*” (2) the Tribe and Upstream remained obligated under the Notes, and (3) that the Settlement Sharing Agreement was meant to resolve the amounts due by the Tribe and Upstream to AHG under the Notes. *Id.*, Ex. 8 (emphasis added).

Under the Settlement Sharing Agreement, AHG would receive 25% of the first \$20,000,000 of the Net Proceeds and subsequently receive 20% of any Net Proceeds above \$20,000,000. *Id.* ¶ 16. The Settlement Sharing Agreement defined Net Proceeds as “all amounts received by [the Tribe and Upstream] as a result of the Settlement,” with certain specified deductions. *Id.* The Settlement Sharing Agreement was signed by Merlene Sanchez on behalf of the Tribe and James Levine on behalf of Upstream. *Id.*, Ex. 8.

While the sale contemplated by the Settlement Sharing Agreement has been completed, the Tribe and Upstream have refused to pay under the Settlement Sharing Agreement. *Id.* ¶ 18–20.

III. PROCEDURAL HISTORY

On November 12, 2025, Defendants/Counterclaim Plaintiffs filed a Demand for Arbitration for Breach of Contract and Declaratory Relief against the Tribe and Upstream before AAA. *Id.* ¶ 21. On February 23, 2026, the Tribe filed this suit. Compl., ECF No. 1. The suit, in relevant part, seeks to enjoin the arbitration, and a declaratory judgment “that questions concerning sovereign immunity, waiver, and arbitrability must be decided by a federal court, the Tribe’s own tribal court pursuant to federal Indian law, a federal court, or, only if the tribal court and federal court decline to hear the matte [sic], by a California state court.” *Id.* at 40.

On March 10, 2026, the Tribe filed a motion for preliminary injunction, asking this Court to enjoin the arbitration. ECF No. 12. In connection with the motion, the Tribe submitted the

1 declarations of Donald Duncan and David Galarza, both of whom purportedly serve in the Tribe's
2 government. Mr. Duncan, who claims to be Chairman of the Tribe, asserted that the Tribe's
3 waiver of sovereign immunity must be adopted in resolutions by the Tribe's council. *See*
4 Declaration of Donald Duncan ("Duncan Decl.") ¶ 5, ECF No. 12-1. Mr. Galarza, who claims to
5 serve on the Tribe's council, contends that while the Tribe passed resolutions regarding the Notes
6 and the Letter Agreement, none of those resolutions include language that, to his belief, waived
7 sovereign immunity with regard to Defendants/Counterclaim Plaintiffs' claims against the Tribe.
8 *See* Declaration of David Galarza ("Galarza Decl.") ¶¶ 7–11, ECF No. 12-2. However, Mr.
9 Galarza does not attach any of the resolutions at issue, nor does he even purport to quote their
10 language. *See id.*

12 In its preliminary injunction motion, the Tribe did not deny that Ms. Sanchez signed the
13 Settlement Sharing Agreement. ECF No. 12. The Tribe also contended that, if the motion were
14 granted, Defendants/Counterclaim Plaintiffs would "face only a temporary delay in pursuing claims
15 that may be litigated, if at all, in a proper forum." *Id.* at 17. In granting the Tribe's motion, the
16 Court accepted the Tribe's argument on this latter issue: "[Defendants/Counterclaim Plaintiffs]
17 contend that they may be denied a forum for their claims if this motion is granted. However, as
18 discussed at the hearing, [Defendants/Counterclaim Plaintiffs] could litigate their claims in this
19 Court." Order at 9, ECF No. 23 (internal citations omitted).

22 On May 7, 2026, Defendants/Counterclaim Plaintiffs filed their Amended Answer,
23 Affirmative Defenses, and Counterclaims ("Counterclaims"). ECF No. 24. The allegations
24 substantively parallel those in their AAA arbitration demand. *See id.* The Counterclaims seek to
25 recover from the Tribe under the Settlement Sharing Agreement or, in the alternative, the Notes.
26 *Id.* ¶¶ 23–37.

1 **IV. LEGAL ARGUMENT**

2 **A. Whether the Tribe’s Sovereign Immunity Bars this Suit is a Factual Issue**
 3 **That Should Be Decided Only After Discovery.**

4 Jurisdictional discovery should be granted “where pertinent facts bearing on the question of
 5 jurisdiction are controverted . . . or where a more satisfactory showing of the facts is necessary.”
 6 *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977); *see also Laub*
 7 *v. U.S. Dep’t of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003). A party is entitled to such discovery
 8 if they demonstrate a “colorable basis” for jurisdiction or if discovery “might well demonstrate
 9 facts sufficient to sustain jurisdiction.” *Laub*, 342 F.3d at 1093. “When . . . there is a factual
 10 question regarding a . . . sovereign’s entitlement to immunity, and thus a factual question regarding
 11 a district court’s jurisdiction, the district court must give the [party contesting tribal sovereign
 12 immunity] ample opportunity to secure and present evidence relevant to the existence of
 13 jurisdiction.” *Finn v. Great Plains Lending, LLC*, 689 F. App’x 608, 610 (10th Cir. 2017); *see also*
 14 *Sault Ste. Marie Tribe of Chippewa Indians v. Hamilton*, No. 2:09-CV-95, 2010 WL 299483, at *2
 15 (W.D. Mich. Jan. 20, 2010) (permitting limited discovery “with regard to the Tribe’s governance
 16 or its charter documents, which might disclose a basis for waiver” of tribal sovereign immunity
 17 before ruling on motion to dismiss counterclaims).¹

18 Here, the Tribe’s assertion of sovereign immunity presents a factual question, and there is
 19 a strong basis to expect that discovery will uncover facts relevant to whether this Court has
 20 jurisdiction over Defendants’/Counterclaim Plaintiffs’ claims.

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 27 ¹ *United States ex rel. Cain v. Salish Kootenai Coll., Inc.*, 862 F.3d 939, 945 (9th Cir. 2017) (holding that the
 28 district court erred in determining tribal sovereign immunity at the motion to dismiss stage where sovereign
 immunity turned on unresolved jurisdictional facts, and remanding for limited jurisdictional discovery before
 determining immunity or dismissal under Rule 12(b)(1)).

Specifically, Defendants’/Counterclaim Plaintiffs’ claims turn largely on four agreements, all of which were signed by Merlene Sanchez, as Tribal Chairperson, on the Tribe’s behalf: (1) the Letter Agreement, (2) the 2006 Promissory Note, (3) the 2007 Promissory Note, and (4) the Settlement Sharing Agreement. Countercl. Compl. Exs. 1–3, 8, ECF No. 24. The Tribe’s preliminary injunction motion included the declarations of Donald Duncan and David Galarza, both of whom purportedly serve in the Tribe’s government. Mr. Duncan, who claims to be Chairman of the Tribe, asserts that the Tribe’s waiver of sovereign immunity must be adopted in resolutions by the Tribe’s council. *See* Duncan Decl. ¶ 5, ECF No. 12-1. Mr. Galarza, who claims to serve on the Tribe’s council, contends that while the Tribe passed resolutions regarding the Notes and the Letter Agreement, none of those resolutions include language that, in his view, waived sovereign immunity with regard to Defendants/Counterclaim Plaintiffs’ claims against the Tribe. *See* Galarza Decl. ¶¶ 7–11, ECF No. 12-2. However, Mr. Galarza does not attach any of the resolutions at issue or even quote their relevant language. *See id.* We are instead supposed to simply accept his interpretation of these key documents. He also claims to not have found resolutions in the Tribe’s records regarding the Settlement Sharing Agreement, but his declaration does not discuss the Tribe’s policies regarding retaining records like its resolutions, nor the steps he took to search for the relevant records. *See id.*

Moreover, neither declaration addresses the circumstances under which Ms. Sanchez signed that Agreement. As discussed, Ms. Sanchez, acting as Tribal Chairperson, signed a stipulated judgment entered by this Court just one month after she executed the Settlement Sharing Agreement, and that judgment addressed the disposition of land also covered in the Settlement Sharing Agreement. *See supra*, Sections I, II. Accordingly, additional context surrounding Ms. Sanchez’s execution of the Settlement Sharing Agreement exists that has not been presented to this Court and may be relevant to the question of sovereign immunity and whether it was waived.

1 The Duncan and Galarza declarations therefore raise more questions than they answer, and
2 there is a substantial basis to believe that discovery concerning the information they reference, such
3 as the Tribal resolutions—or the lack thereof—will bear directly on the Tribe’s assertion of
4 sovereign immunity. For example, discovery of the resolutions themselves may reveal that (1) Mr.
5 Galarza’s interpretation of the language in the resolutions regarding those agreements may be
6 wrong, and/or (2) additional resolutions exist relating to the relevant agreements that were not
7 identified in Mr. Galarza’s review of the available documents. The Court should therefore permit
8 Defendants/Counterclaim Plaintiffs to take discovery regarding these areas before determining
9 whether the Court has jurisdiction over Defendants’/Counterclaim Plaintiffs’ claims.
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11 Such discovery is particularly appropriate since the Tribe seeks a declaratory judgment from
12 this Court regarding its sovereign immunity: “Tribe also seeks a declaration that questions
13 concerning sovereign immunity, waiver, and arbitrability must be decided by a federal court, the
14 Tribe’s own tribal court pursuant to federal Indian law, a federal court, or, only if the tribal court
15 and federal court decline to hear the matte [sic], by a California state court.” Compl. ¶ 40, ECF No.
16 1. Having placed the scope of its sovereign immunity at issue and sought affirmative relief on that
17 question, Defendants/Counterclaim Plaintiffs should be permitted to take limited discovery before
18 the Court determines whether their affirmative claims may proceed.
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20 **V. CONCLUSION**

21 Defendants/Counterclaim Plaintiffs respectfully request that the Court deny the Tribe’s
22 Motion to Dismiss.
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1 Dated: June 11, 2026

MORGAN, LEWIS & BOCKIUS LLP

2 By

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4
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7 Counterclaim Plaintiffs
8 BLUEROCK REAL ESTATE
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