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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS, a federally recognized Indian tribe,

Plaintiff,

v.

THE CHAIR OF THE NATIONAL INDIAN GAMING COMMISSION; UNITED STATES NATIONAL INDIAN GAMING COMMISSION; NORTH FORK RANCHERIA OF MONO INDIANS, a federally recognized Indian tribe; and DOES 1-10,

Defendants.

STATION CASINOS LLC, a Nevada limited liability corporation; RED ROCK RESORTS, INC., a Delaware corporation; and SC MADERA MANAGEMENT, LLC, a California corporation,

Nominal Defendants.

Case No. 1:26-cv-04343-KES-SAB

PICAYUNE'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR STAY AND PRELIMINARY INJUNCTION

Date: October 5, 2026
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Judge: Hon. Kirk E. Sherriff
Courtroom: 6

Action Filed: June 5, 2026
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INTRODUCTION

This case concerns efforts to conduct class III gaming (i.e., Las Vegas-style gambling) at a proposed tribal casino located off Highway 99 in Madera County. North Fork, along with its Las Vegas casino partner Red Rock, are behind the proposed casino.[1] Federal law prohibits class III gaming on the proposed casino's 305-acre site (the "Madera Parcel") except as provided under narrow statutory exceptions set forth in the Indian Gaming Regulatory Act ("IGRA"). North Fork has attempted to rely upon the statutory exception known as the "two-part determination," which requires the "concurrence" of the governor of the state in which the proposed gaming would occur. 25 U.S.C. § 2719(b)(1)(A). A final judgment to which North Fork is a party confirms that North Fork has never had the required concurrence. North Fork appealed from that judgment, which resulted in a published decision issued by a unanimous panel of the California Court of Appeal, Fifth Appellate District (based in Fresno, California). *Picayune Rancheria of the Chukchansi Indians v. N. Fork Rancheria of Mono Indians*, 117 Cal. App. 5th 91, 96 (2025) ("*Picayune Rancheria*"). And that unanimous decision gave effect to a state-wide referendum, whereby millions of California voters rejected North Fork's proposed casino.

North Fork and its Las Vegas backer, Red Rock, seek to flout a final judgment, and the People's will. By this motion, Plaintiff Picayune Rancheria of the Chukchansi Indians ("Picayune") seeks to enforce the law, and prevent irreparable harm pending a final ruling of this Court.

Picayune asserts two claims. The first claim under the Administrative Procedure Act ("APA") challenges the National Indian Gaming Commission's ("NIGC") 2024 decision to approve the Third Amended and Restated Management Agreement between North Fork and Red Rock (the "Management Contract"). That decision should be set aside because the gaming operations covered by the Management Contract do not comply with IGRA due to the absence of the required concurrence. The second claim under IGRA seeks to enjoin gaming activities that violate what are known as "Secretarial Procedures"—in effect, regulations governing gaming operations by North Fork. Under those Secretarial Procedures, North Fork can only conduct

[1] "North Fork" refers to Defendant North Fork Rancheria of Mono Indians, and "Red Rock" refers collectively to Defendants Station Casinos LLC, Red Rock Resorts, Inc., and SC Madera Management, LLC.

gaming on "eligible Indian lands" where "Class III Gaming may lawfully be conducted under IGRA." Dhillon Decl., Ex. C at 9. But, again, the Madera Parcel is not eligible for class III gaming due to the absence of the required concurrence.

North Fork and Red Rock have announced that they plan to open the North Fork Mono Casino & Resort on the Madera Parcel, a resort with eight dining options, a 200-room hotel, stages for live entertainment, a casino, and more (the "North Fork Project"). For the avoidance of doubt, Picayune only seeks to enjoin unlawful gaming operations on the Madera Parcel. Picayune is not objecting to the construction of a hotel, restaurants, or the like. What Picayune seeks to prevent is irreparable harm to it and its members, as detailed in the supporting declarations. North Fork strategically seeks to conduct *off-reservation* gaming right by a major highway and at a location that will siphon business from Picayune's Chukchansi Gold Resort and Casino, which is located on Picayune's reservation lands. The injuries to Picayune resulting from unlawful gaming would be significant and have cascading effects, including damage to tribal sovereignty and loss of the ability to deliver essential government services and benefits. Against that background, the public interest and balance of equities firmly support issuance of the requested relief.

We ask that the Court grant this motion, as more fully explained below.

BACKGROUND

A. Class III Gaming Under IGRA

IGRA provides "a statutory basis for the operation of gaming by Indian tribes." 25 U.S.C. § 2702(1). Relevant here, IGRA prohibits class III gaming (i.e., Las Vegas-style gambling) on lands taken into trust by the federal government after October 17, 1988, unless an exception applies.[2] 25 U.S.C. § 2719(a)-(b). One such exception, referred to colloquially as the "two-part determination," allows an Indian tribe to offer casino-style gaming if the Secretary of the Interior ("Secretary") "determines that a gaming establishment . . . would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community." 25 U.S.C. § 2719(b)(1)(A). This exception applies only if "the Governor of the State in which the gaming

[2] Lands acquired by the Secretary in trust for the benefit of a tribe after October 17, 1988 are often referred to as "after-acquired lands."

activity is to be conducted concurs in the Secretary's determination." *Id.* And separately a tribe must then enter into a compact with the State or—if the State fails to negotiate with a tribe in good faith—the Secretary must prescribe procedures under which gaming will be conducted. 25 U.S.C. § 2710(d)(1)(C), (d)(3)(A), (d)(7).

B. Picayune's Chukchansi Gold Resort and Casino

Picayune is a federally recognized Indian tribe located near Coarsegold, Madera County, California. Picayune is the beneficial owner of the Picayune Rancheria in Madera County, California, where it owns and operates the Chukchansi Gold Resort and Casino. Since opening in 2003, Picayune has conducted class III gaming at the Chukchansi Gold Resort and Casino in compliance with IGRA. McCombs-Esquivel Decl., ¶ 6; Dhillon Decl., Ex. A.

Picayune obtains gaming revenues from its Chukchansi Gold Resort and Casino, which opened in 2003 after more than 16 years of planning and development. McCombs-Esquivel Decl., ¶¶ 6, 8, 12. Picayune members are currently employed at the Chukchansi Gold Resort and Casino. There are approximately 1,400 members of the Tribe, including children, who depend on gaming revenues for benefits and essential services. Sanders Decl., ¶ 4; *see also* Kamalani Decl., ¶¶ 7-11; McCombs-Esquivel Decl., ¶¶ 11, 16-17; Hammond Battles Decl., ¶¶ 4, 6-7; Hopkins Decl., ¶¶ 4-10. Since 2003, revenues from the Chukchansi Gold Resort and Casino have funded education, healthcare, public safety, infrastructure, housing, elder services, social services, cultural and spiritual programs, stipends, after-school programs, language programs, economic development programs, and charitable giving. McCombs-Esquivel Decl., ¶¶ 6-11; Sanders Decl., ¶¶ 6-10; Kamalani Decl., ¶¶ 7-11. These programs support the present and future health, welfare, and sovereignty of the Tribe and its members. Hammond Battles Decl., ¶ 7; Alcantar Decl., ¶ 8; Kamalani Decl., ¶¶ 7-11. On August 20, 2026, and as a precautionary matter to protect Tribal members from the consequences of illegal gaming by North Fork, Picayune's Tribal Council adopted an *Emergency Proclamation on Reduction of Essential Government Services and Benefits* (Res. No. 2026-95). Kamalani Decl., Ex. B.

C. The Madera Parcel

The North Fork Rancheria of Mono Indians is a federally recognized Indian tribe with a reservation or "rancheria" in the Sierra Nevada foothills. *Stand Up for California! v. California*, 64 Cal. App. 5th 197, 202 (2021) ("*Stand Up II*"). In March 2005, North Fork asked the Department of the Interior to take into trust for North Fork's benefit a 305-acre parcel of land in Madera County—the Madera Parcel. *See Picayune Rancheria*, 117 Cal. App. 5th at 98. When North Fork began this process, "the parcel was owned by a subsidiary of North Fork's development partner." *Id.* at 99 (citation omitted). "That entity, Nevada-based Station Casinos, LLC ["Station Casinos"] is partially owned by Red Rock Resorts, Inc., a publicly traded company." *Id.* (citation omitted). In November 2012, the Secretary approved taking the Madera Parcel into trust, and the federal government took the land into trust in February 2013. *See Stand Up II*, 64 Cal. App. 5th at 203.

The Madera Parcel is located next to State Route 99, a heavily trafficked highway running through the major cities of California's Central Valley. *See Picayune Rancheria*, 117 Cal. App. 5th at 98; McCombs-Esquivel Decl., ¶ 14. The fastest and most direct route to Picayune's Chukchansi Gold Resort and Casino for patrons driving from major population centers in the Central Valley or elsewhere in California is via State Route 99 and then State Route 41, a smaller, less-trafficked highway. *See id.*; Dhillon Decl., Ex. J. Many patrons must pass the exit to the Madera Parcel on State Route 99 on the way to the Chukchansi Gold Resort and Casino. *See id.*; McCombs-Esquivel Decl., ¶ 14. The Chukchansi Gold Resort and Casino is approximately 26.4 miles away from the Madera Parcel. *See* Dhillon Decl., Ex. J.

D. The Concurrence, Referendum, and Secretarial Procedures

In September 2011, the Secretary of the Interior made a two-part determination that North Fork's proposed casino "(1) would 'be in the best interest of the Tribe and its members' and (2) 'would not be detrimental to the surrounding community.'" *See Picayune Rancheria*, 117 Cal. App. 5th at 99. On August 30, 2012, then-Governor Jerry Brown issued a letter concurring in the Secretary's determination. *See id.*; Dhillon Decl., Ex. I. And the following day, the Governor and North Fork executed a Tribal-State Gaming Compact (the "Compact") for North Fork's proposed casino project. Dhillon Decl., Ex. B (Compact); *see Picayune Rancheria*, 117 Cal. App. 5th at 99.

Although the Governor has the power to negotiate the terms of a gaming compact, the California Constitution provides that tribal-state gaming compacts are "subject to ratification by the Legislature." Cal. Const., art. IV, § 19(f). The Legislature subsequently ratified the Compact in Assembly Bill No. 277 ("AB 277"), and the Governor signed the bill in July 2013. *Picayune Rancheria*, 117 Cal. App. 5th at 101. AB 277 did not immediately go into effect, however, because it was subject to California's statewide referendum process. If a voter referendum on a piece of legislation qualifies for the ballot, that legislation does not go into effect (if at all) until after the vote on the referendum. Cal. Const., art. II, §§ 9, 10; *Midway Orchards v. Cnty. of Butte*, 220 Cal. App. 3d 765, 781-82 (1990). Opponents of North Fork's proposed casino project succeeded in getting a referendum on AB 277—Proposition 48—onto the ballot, and in November 2014, 61% of Californian voters rejected AB 277. *Picayune Rancheria*, 117 Cal. App. 5th at 101. As a result, AB 277 never went into effect.

Following the referendum, the State refused to negotiate another gaming compact with North Fork, and North Fork filed suit in federal court alleging that the State had failed to negotiate in good faith. *North Fork Rancheria of Mono Indians of Cal. v. California*, No. 15-cv-419, 2015 WL 11438206 (E.D. Cal. Nov. 13, 2015). As noted above, if the State does not negotiate in good faith to reach a compact, the Secretary must prescribe procedures for conducting class III gaming. 25 U.S.C. § 2710(d)(7)(B)(vii). The federal court ruled for North Fork, and in July 2016, the Secretary issued procedures governing class III gaming at the Madera Parcel. Dhillon Decl., Ex. C; *see Stand Up II*, 64 Cal. App. 5th at 205-06. As relevant here, those Secretarial Procedures provide that North Fork may conduct class III gaming only "on *eligible* Indian Lands held in trust for the Tribe . . . and on which Class III Gaming may lawfully be conducted under IGRA." Dhillon Decl., Ex. C at 9 (emphasis added) (Secretarial Procedures § 4.2, Authorized Gaming Facility).

E. The State-Court Litigation

As noted above, a valid Governor's concurrence is a prerequisite for the two-part determination exception that allows class III gaming on after-acquired lands. 25 U.S.C. § 2719(b)(1)(A). And the validity of a Governor's concurrence is a matter of State law. *Confederated Tribes of Siletz Indians of Or. v. United States*, 110 F.3d 688 (9th Cir. 1997).

There has been litigation on both whether California's governor has the power to concur, and whether the People of California have retained the power as a matter of state constitutional law to annul that concurrence once given. As relevant, the California Supreme Court held in *United Auburn Indian Community of Auburn Rancheria v. Newsom*, 10 Cal. 5th 538 (2020), that "California law permits the Governor's concurrence in the Interior Secretary's determination to allow class III gaming on Indian land taken into trust for an Indian tribe after IGRA was enacted." *Id.* at 564. It also concluded, however, that the Governor's power "isn't an indefeasible one," and that "the legislative branch is capable of enacting legislation that would reduce the Governor's concurrence power." *Id.* at 563.

The Court of Appeal subsequently held in *Stand Up II* that "the people of California retain[] the authority to annul a concurrence . . . after it has been issued by the Governor," 64 Cal. App. 5th at 212, and that California voters annulled Governor Brown's concurrence in the Secretary's two-part determination with respect to the Madera Parcel (at issue here) when they rejected AB 277 through Proposition 48, *see id.* at 216. The Court of Appeal also addressed North Fork's contention that Proposition 48 rejected only the Compact but not the concurrence, explaining that such an approach "treats the voters as rejecting the [Compact] negotiated by the Governor and favoring the [Secretarial Procedures] that would be subsequently created and imposed by the federal government pursuant to IGRA." *Id*. at 215-16. The Court of Appeal concluded that the "probability" of that interpretation "accurately identifying the people's will is, in our view, extremely low." *Id*. at 216. Rather, the Court of Appeal determined that the vote on Proposition 48 "is reasonably interpreted as an expression of [the voters'] intent to reject class III gaming on the 305-acre Madera site taken into trust in February 2013," and that this rejection "implie[d] the voters disapproved the Governor's concurrence . . . because that concurrence is one of IGRA's conditions that must be satisfied for class III gaming to be allowed at the site." *Id*.

Finally, in *Picayune Rancheria*, the Court of Appeal confirmed that Governor Brown's concurrence—one of the prerequisites for offering Class III gaming—was "void ab initio," meaning that it was "ineffective from its inception on August 30, 2012." 117 Cal. App. 5th at 113-14. The Court of Appeal also expressly rejected North Fork's argument that Congress preempted the People

of California's right to annul a concurrence offered by their governor. *Id.* at 111-12. In both *Stand Up II* and *Picayune Rancheria*, the California Supreme Court denied review. *See* Cal. Sup. Ct. No. S269471 (Sept. 1, 2021); Cal. Sup. Ct. No. S294956 (Apr. 1, 2026). North Fork did not petition the U.S. Supreme Court for a writ of certiorari to seek review of that decision. *See* U.S. Sup. Ct. R. 13. As to North Fork and the Madera Parcel, the issue is now final: The concurrence upon which North Fork seeks to rely upon never existed as a matter of California law.

F. North Fork's Continued Plans To Offer Gaming at the Madera Parcel

Despite the California courts' clear holdings that North Fork has never had a legal prerequisite to conduct Class III gaming under IGRA, North Fork has chosen to plow ahead with the North Fork Project, which would make open to the public 2,400 slot machines and 40 house bank card and percentage games. Dhillon Decl., Exs. D, E (Red Rock's Form 10-Q for the quarterly period ending on March 31, 2026; North Fork Mono Casino & Resort's website, https://perma.cc/85YV-FXU8 (last visited Aug. 27, 2026)). In 2023, North Fork, Red Rock, and the North Fork Rancheria Economic Development Authority (the "Authority") executed a Management Contract, pursuant to which Station Casinos (an entity managed by Red Rock) has committed to assisting North Fork and the Authority in operating the North Fork Project on the Madera Parcel.[3] Dhillon Decl., Ex. F (News Releases, Red Rock Resorts, Inc., *North Fork Rancheria of Mono Indians and Station Casinos LLC Announce the Approval of a Management Agreement by the NIGC* (Jan. 11, 2024), https://perma.cc/64NY-YXYF (last visited Aug. 27, 2026)). In 2024, the NIGC approved that Management Contract. *See id.* Under the applicable regulations, a management contract must ensure "that all gaming covered by the contract will be conducted in accordance with [IGRA] and governing tribal ordinance(s)." 25 C.F.R. § 531.1(a). Management contracts that are not "approved by the Chairman in accordance with the requirements of [25 C.F.R. §§ 531.1-531.2] are void." *Id.* § 533.7. North Fork and Red Rock have nevertheless continued construction of the North Fork Project, and as of August 2026, they anticipate an opening

[3] Picayune alleges that Station Casinos, SC Madera Management, LLC, or Red Rock (or multiple parties) is a party to the Management Contract. *See* ECF No. 28 (First Am. Compl. ¶ 13).

date in fall 2026. Dhillon Decl., Ex. E (North Fork Mono Casino & Resort's website, https://perma.cc/85YV-FXU8).

LEGAL STANDARD

The purpose of a preliminary injunction is "to preserve the *status quo* with provisional relief until the merits can be sorted out." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011) (citation omitted). The moving party must establish: (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its favor, and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council Inc.*, 555 U.S. 7, 20 (2008). These factors also govern requests for stay of agency action under the APA. *Nat'l TPS All. v. Noem*, 150 F.4th 1000, 1015–16 (9th Cir. 2025).

Courts in the Ninth Circuit follow a "'sliding scale' approach to preliminary injunctions," in which "a stronger showing of one element may offset a weaker showing of another." *Cottrell*, 632 F.3d at 1131. "[I]f a plaintiff can only show that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the 'balance of hardships tips sharply in the plaintiff's favor,' and the other two *Winter* factors are satisfied." *Pacito v. Trump*, 169 F.4th 895, 919 (9th Cir. 2026) (citation omitted).

ARGUMENT

On this record, the Court is well within its discretion to both issue a stay of the decision to approve the Management Contract, and to enjoin unlawful gaming on the Madera Parcel. Picayune is likely to succeed on the merits, and the other preliminary injunction/stay factors are easily satisfied. Should the Court follow the sliding-scale approach, serious questions certainly exist regarding the merits, and the balance of hardships tips heavily in favor of Picayune.

A. Picayune Is Likely To Succeed on the Merits.

Picayune asserts two claims: (1) the Chair's approval of the Management Contract was arbitrary and capricious under 5 U.S.C. § 706(2)(A); and (2) North Fork and its partners conducting class III gaming on the Madera Parcel would be inconsistent with the Secretarial Procedures in violation of 25 U.S.C. § 2710(d)(7)(A)(ii). Picayune is likely to succeed on both claims because

the People of California resoundingly rejected gaming on the Madera Parcel, annulling and rendering void ab initio the concurrence that North Fork needs to conduct its planned gaming.

1. Picayune is likely to succeed on its APA claim.

Under the APA, a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The NIGC's approval of the Management Contract is a final agency action. *See* 25 U.S.C. § 2711 (providing for the NIGC Chair's approval of management contracts); *id.* § 2714 (providing that "[d]ecisions made by the Commission pursuant to sections 2710, 2711, 2712, and 2713 . . . shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to [the APA]"). And the NIGC's approval of a management contract is lawful only if all gaming covered by the contract will be conducted in accordance with IGRA. 25 C.F.R. §§ 531.1(a), 533.6(a); *see AT & T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899, 909 (9th Cir. 2002) ("The NIGC is statutorily obliged to reject any . . . proposal that does not conform to IGRA.").

Here, gaming at the Madera Parcel would not comply with IGRA, and the NIGC's approval of the Management Contract is accordingly unlawful. IGRA prohibits gaming on lands taken into trust by the federal government after October 17, 1988, unless an exception applies. 25 U.S.C. § 2719(a), (b). And the two-part determination exception on which North Fork seeks to rely applies only if three separate conditions are satisfied: First, the Secretary must "determine[] that a gaming establishment . . . would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community." *Id.* § 2719(b)(1)(A). Second, the Governor must "concur[] in the Secretary's determination." *Id.* And third, there must be a valid tribal-state compact or valid secretarial procedures. *Id.* § 2710(d)(1)(C).

As explained above, the second condition is not satisfied because California voters annulled the Governor's concurrence and rendered it void ab initio through Proposition 48. In other words, the concurrence on which North Fork seeks to rely never had any legal effect whatsoever as a matter of California law. That determination is critical because the Ninth Circuit has already held that state law governs the validity of a gubernatorial concurrence under IGRA. As the court explained

in *Confederated Tribes of Siletz Indians of Oregon v. United States*, "[w]hen the Governor exercises authority under IGRA, the Governor is exercising state authority," and "[i]f the Governor concurs, or refuses to concur, it is as a State executive, under the authority of state law." 110 F.3d at 697. And here, California courts have made clear that the Governor's concurrence *as to the Madera Parcel specifically* was "annul[led]," *Stand Up II*, 64 Cal. App. 5th at 216, and rendered "void ab initio," meaning it was "ineffective from its inception," *Picayune Rancheria*, 117 Cal. App. 5th at 113-14.

With California courts having declared the Governor's concurrence as to the Madera Parcel annulled and void ab initio, the success of Picayune's APA claim follows as a matter of course. The Management Contract provides for gaming at the Madera Parcel. Gaming at the Madera Parcel is unlawful, however, because—as a matter of California law—there is no valid concurrence in the Secretary's two-part determination, and IGRA's general prohibition on gaming on after-acquired lands applies. The NIGC Chair approved the Management Contract in 2024, moreover, nearly three years after the Court of Appeal declared that the Governor's concurrence had been annulled. *Stand Up II*, 64 Cal. App. 5th at 216. That decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), and the approval accordingly must be set aside. Indeed, the Ninth Circuit has expressly stated that "[t]he NIGC is statutorily obliged to reject any . . . proposal that does not conform to IGRA." *AT & T Corp.*, 295 F.3d at 909. Because the NIGC failed to follow that directive here, Picayune is likely to succeed on the merits of its APA claim.[4]

2. Picayune is likely to succeed on its Secretarial Procedures claim.

For the same reasons, Picayune is likely to succeed on its claim that the North Fork Project violates the Secretarial Procedures. As explained above, the Secretarial Procedures provide that North Fork may conduct class III gaming only "on eligible Indian Lands held in trust for the

[4] The Chair's approval was arbitrary and capricious for other reasons as well. The Johnson Act prohibits the transport, possession, or use of "any gambling device . . . within the United States or Indian country," including the Madera Parcel. 15 U.S.C. § 1175(a). Although IGRA provides for narrow exemptions from the Johnson Act, the Madera Parcel does not qualify because it lacks a Governor's concurrence. North Fork's gaming accordingly violates the Johnson Act, and the Chair's approval of the Management Contract was arbitrary and capricious.

Tribe . . . and on which Class III Gaming may lawfully be conducted under IGRA." Dhillon Decl., Ex. C (Secretarial Procedures § 4.2). And IGRA expressly provides that a tribe such as Picayune can bring an action to enjoin "class III gaming activity" conducted in violation of a tribal-state compact, 25 U.S.C. § 2710(d)(7)(A)(ii), or "functionally equivalent" secretarial procedures, *Blue Lake Rancheria v. Kalshi Inc.*, No. 25-cv-6162, 2025 WL 3141202 at *5 (N.D. Cal. Nov. 10, 2025) (quoting *Stand Up for California! v. U.S. Dep't of the Interior*, 959 F.3d 1154, 1160 (9th Cir. 2020)). Indeed, Congress's enactment of 25 U.S.C. § 2710(d)(7)(A)(ii) "partially abrogate[d] tribal sovereign immunity," which allows this Court to exercise jurisdiction over North Fork. *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 791 (2014).

Because class III gaming cannot be conducted lawfully on the Madera Parcel under IGRA, gaming on the Madera Parcel would violate the Secretarial Procedures.

3. Defendants' anticipated arguments fail.

Having lost on the essential issue in state court, Picayune anticipates North Fork will throw the proverbial "kitchen sink" to distract from the clear implications of *Picayune Rancheria*, 117 Cal. App. 5th 91. When raised, Picayune can explain why these arguments all lack merit, but here Picayune responds to certain arguments it anticipates Defendants will raise: (1) Picayune lacks Article III and/or prudential standing; (2) IGRA somehow modified California law; (3) Picayune is collaterally attacking either the land-to-trust decision or the issuance of the Secretarial Procedures; or (4) this Court lacks jurisdiction under section 2710(d). Each contention fails, and any other miscellaneous arguments asserted by Defendants would fare no better.

a. Picayune has Article III and prudential standing.

"To have standing under Article III, a plaintiff must have (1) a concrete and particularized injury that (2) is caused by the challenged conduct and (3) is likely redressable by a favorable judicial decision." *Juliana v. United States*, 947 F.3d 1159, 1168 (9th Cir. 2020). Picayune readily satisfies those requirements. With respect to injury and causation, the Supreme Court has explained that "commonsense economic inferences about the operation of" a given market can support standing. *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 120 (2025). And "the Court has identified a variety of familiar circumstances where government regulation of a third-party

individual or business may be likely to cause injury in fact to an unregulated plaintiff," including where "the government regulates (or under-regulates) a business," and "the regulation (or lack thereof) may cause downstream or upstream economic injuries to others in the chain, such as certain manufacturers, retailers, suppliers, *competitors*, or customers." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 384 (2024) (emphasis added).

Here, the opening of the North Fork Project will injure Picayune because it will cause individuals who otherwise would have patronized Picayune's Chukchansi Gold Resort and Casino to patronize the North Fork Project instead. Indeed, Treasurer of the Tribal Council and Chukchansi Economic Development Authority (CEDA), Ms. Denise McCombs-Esquivel, anticipates that if the North Fork Project offers class III gaming, Picayune will lose between 30% and 50% in gaming revenues, which translates to tens of millions of dollars of annual lost revenue, and those revenue losses, in turn, would result in cascading and irreparable injuries to Picayune and its members (e.g., loss of sovereignty, loss of essential services). McCombs-Esquivel Decl., ¶¶ 12, 15; Kamalani Decl., ¶¶ 12-15; Sanders Decl., ¶¶ 12-13; Hammond Battles Decl., ¶¶ 6-7. A ruling in favor of Picayune would redress those injuries because it would prevent unlawful gaming at the Madera Parcel from impacting Picayune's lawful gaming operations.

Picayune also has "prudential standing" under the APA. As the Supreme Court has explained, "a person suing under the APA" must assert an interest that is "'arguably within the zone of interests to be protected or regulated by the statute' that he says was violated." *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 224 (2012) (quoting *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970)). This test "is not meant to be especially demanding," and "the benefit of any doubt goes to the plaintiff." *Id.* at 225 (citation omitted). Indeed, the "test forecloses suit only when a plaintiff's 'interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.'" *Id.* (citation omitted).

Courts addressing the question in the context of IGRA have held that "a party allegedly affected by the improper federal regulation of 'Indian tribe' gaming comes within its zone of interests." *Cherokee Nation v. U.S. Dep't of the Interior*, 643 F. Supp. 3d 90, 110 (D.D.C. 2022).

"Such parties include market competitors, even one whose 'objectives' in bringing suit 'are not eleemosynary in nature.'" *Id.* (citation omitted). They also include "[t]hose in the surrounding community who are impacted by gambling." *Amador Cnty. v. Salazar*, 640 F.3d 373, 379 (D.C. Cir. 2011). Picayune satisfies the standard in two separate ways—it is a member of the surrounding community and a competitor who will be adversely affected if North Fork is permitted to game in violation of IGRA. Kamalani Decl., ¶¶ 12-16; McCombs-Esquivel Decl., ¶¶ 12-16; Hopkins Decl., ¶¶ 9-13.

b. IGRA did not modify state law.

Picayune anticipates that Defendants will argue that IGRA overrides state law, and that *Stand Up II* and *Picayune Rancheria* are irrelevant. Such an argument would be wrong. When it comes to IGRA:

> Congress relied on state law to resolve whether a governor had the authority to concur and the terms and conditions for the valid exercise of any such authority. Given this reliance on state law, it necessarily follows that Congress did not impliedly preempt the state law that answers those questions about a governor's concurrence authority.

Picayune Rancheria, 117 Cal. App. 5th at 112. As the Ninth Circuit has explained, "federal law provides the Governor with an opportunity to participate in the determination of whether gaming will be allowed," but "when the Governor responds to the Secretary's request for a concurrence, the Governor acts under state law, as a state executive, pursuant to state interests." *Confederated Tribes*, 110 F.3d at 697-98. In other words, "[t]he concurrence (or lack thereof) is given effect under federal law, but the authority to act is provided by state law." *Id.* at 697. And that authority is subject to conditions imposed by California law and California's constitutional allocation of power. *Id.* at 697-98; *see also Picayune Rancheria*, 117 Cal. App. 5th at 112-14.

Under the California Constitution, "[a]ll political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require." Cal. Const. art. II, § 1. As the California Supreme Court explained in *United Auburn*, the Governor has only an implied power to concur, and it "isn't an indefeasible one." 10 Cal. 5th at 563. *Stand Up II* elaborated that, "[w]here a constitutional power is implicit—that is, has been impliedly granted by the people to the Governor—an

appropriate balance is struck by recognizing the people may impliedly annul an exercise of that power." 64 Cal. App. 5th at 214-15. And, as discussed above, that is exactly what the People did, thereby rendering the Governor's concurrence void ab initio. *See Picayune Rancheria*, 117 Cal. App. 5th at 114 ("[T]he voter's rejection of Proposition 48 included an implied annulment of the Governor's concurrence that rendered the concurrence void ab initio.").

Defendants would be wrong to suggest that IGRA overrides state law. As the Court of Appeal agreed when it rejected North Fork's preemption argument, *Picayune Rancheria*, 117 Cal. App. 5th at 111-12, Congress invited California law into its analysis. In the context of gaming on after-acquired lands, the role IGRA gives to States is "a veto or approval" in the form of a concurrence. Virginia W. Boylan, *Reflections on IGRA 20 Years After Enactment*, 42 Ariz. St. L.J. 1, 11 (2010). And "the effect of the provision is that the Governor must agree that gaming should occur on the newly acquired trust land before gaming can in fact take place." *Confederated Tribes*, 110 F.3d at 696.

Congress, in short, having incorporated state law, must respect a State's constitutional order. As the Supreme Court has explained, "[i]n a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress." *Parker v. Brown*, 317 U.S. 341, 351 (1943); *see Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 816-17 (2015). This is not puffery, but a constitutional command at the core of our dual system of government: "A State is *entitled* to order the processes of its own governance." *Alden v. Maine*, 527 U.S. 706, 752 (1999) (emphasis added). Thus, if Congress wants to change a state's constitutional order—and there is significant reason to doubt that it could without express constitutional authorization, *see, e.g.*, *Printz v. United States*, 521 U.S. 898, 909 (1997)—the Constitution demands plain language.

The "plain statement rule is nothing more than an acknowledgment that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Gregory v. Ashcroft*, 501 U.S. 452, 461 (1991). The law's "working assumption" is that "federal legislation" alleged to be "trench[ing] on the States' arrangements for

conducting their own governments should be treated with great skepticism, and read in a way that preserves a State's chosen disposition of its own power, in the absence of the plain statement *Gregory* requires." *Nixon v. Mo. Mun. League*, 541 U.S. 125, 140 (2004).) "Absent [that] clear statement to the contrary," federal legislation "should be read to preserve, not preempt, the traditional prerogative of the States to delegate their authority to their constituent parts." *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 429 (2002).

Here, there is absolutely nothing to suggest that Congress intended anything other than to invite California law into the analysis wholesale. *Picayune Rancheria*, 117 Cal.App.5th at 111-12. California law—through the People's power—says there is no concurrence here and never has been. "There is no cause, in this case, to construe federal law in a manner that interferes with States' arrangements for conducting their own governments." *Sheriff v. Gillie*, 578 U.S. 317, 327-28 (2016) (citation omitted). California's constitutional order is for California to control.

It is outside the province of a federal court to question the finality of a California state court judgment, which establishes a valid concurrence of the Governor has never existed with respect to the Madera Parcel. *See* U.S. Const. art. IV, § 1 (Full Faith & Credit Clause).[5] This has been fully tested over North Fork's aggressive recalcitrance, and North Fork has lost. The California courts' determination that the Governor's concurrence was annulled and never had legal effect is final. The California Supreme Court has twice been offered and twice declined the opportunity to weigh in on published appellate decisions regarding the Madera Parcel—the first confirming the People "annulled" Governor Brown's concurrence, *Stand Up II*, 64 Cal. App. 5th 216, and the second

[5] North Fork is precluded from contesting the judgment in *Picayune Rancheria* that the Governor's concurrence is annulled and void. 117 Cal. App. 5th at 113-14. "In determining the collateral estoppel effect of a state court judgment, federal courts must, as a matter of full faith and credit, apply that state's law of collateral estoppel." *In re Bugna*, 33 F.3d 1054, 1057 (9th Cir. 1994) (citing 28 U.S.C. § 1738); *see also Nakash v. Marciano*, 882 F.2d 1411, 1415 (9th Cir. 1989). And under California law, the doctrine of collateral estoppel bars "a party to prior litigation from redisputing *issues* therein decided against him, even when those issues bear on different claims raised in a later case." *Vandenberg v. Superior Ct.*, 21 Cal. 4th 815, 828 (1999). The doctrine's requirements are satisfied here. *See Pac. Lumber Co. v. State Water Res. Control Bd.*, 37 Cal. 4th 921, 943 (2006) ("First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.").

affirming the judgment that "the Governor's concurrence has been annulled rendering it void *ab initio*," such that it "never took effect and is not in effect," *Picayune Rancheria*, 117 Cal. App. 5th at 105 (citation omitted). This means that *Stand Up II* and *Picayune Rancheria* are "not to be disregarded by a federal court." *West v. Am. Tel. & Tel. Co.*, 311 U.S. 223, 237 (1940). With finality in the state courts, a federal court is "not at liberty to depart from the state appellate court's resolution of . . . issues of state law" where the state supreme court "denied review."[6] *Hicks v. Feiock*, 485 U.S. 624, 629-30 (1988).[7] Congress, through IGRA, invited state law in without modification, and this Court must apply those conclusive determinations of state law.

c. North Fork's efforts at distraction should be rejected.

Picayune anticipates North Fork will argue that Picayune is making a collateral attack on decisions made in 2012 (to take the Madera Parcel into trust) and 2016 (the issuance of Secretarial Procedures). North Fork made this same argument in the state court litigation, and both the Superior Court and the California Court of Appeal did not bite. *See* Brief of Intervenor-Appellant North Fork Rancheria of Mono Indians at 32-36, *Picayune Rancheria of the Chukchansi Indians v. N. Fork Rancheria of Mono Indians*, 117 Cal. App. 5th 91 (No. F08851), 2025 WL 637423, at *34-38. Nor should this Court. North Fork is wrong.

Picayune's complaint frames the issues. Picayune in this case challenges *neither* the issuance of Secretarial Procedures *nor* the federal government's decision to take the Madera Parcel into trust. Rather, Picayune alleges here that: (1) the NIGC should not have approved the Management Agreement that North Fork entered into with its casino partners because gaming on the Madera Parcel cannot occur under IGRA, and (2) North Fork's confirmation that it will offer

[6] Respect for state law is particularly warranted here given that earlier federal courts had pointed to the state cases—where the Governor would be joined as a party—as the proper forum for resolving the validity of the concurrence. *Stand Up for California! v. U.S. Dep't of the Interior*, 879 F.3d 1177 (D.C. Cir. 2018); *Picayune Rancheria of Chukchansi Indians v. U.S. Dep't of the Interior*, No. 16-cv-950, 2017 WL 3581735 (E.D. Cal., Aug. 18, 2017). Thus, contrary to North Fork's anticipated claim that Picayune seeks to relitigate prior federal challenges, this suit follows previous federal court guidance to get a state court resolution of the state law issue—which has been done.

[7] Ninth Circuit law is, unsurprisingly, in accord. *Nelson v. City of Irvine*, 143 F.3d 1196, 1207 (9th Cir. 1998) (noting that "we are obligated to follow" "intermediate appellate court" decision on state law); *In re Watts*, 298 F.3d 1077, 1082 (9th Cir. 2002); *Owen By & Through Owen v. United States*, 713 F.2d 1461, 1464 (9th Cir. 1983); *Vestar Dev. II, LLC v. Gen. Dynamics Corp.*, 249 F.3d 958, 960 (9th Cir. 2001).

gaming notwithstanding the state court's binding decision runs afoul of the *terms* of the Secretarial Procedures, which allows for gaming on "eligible" land, which the Madera Parcel is not.

The Court need only know that IGRA has *many* requirements that must be met before gaming may occur, and one is missing here: the Governor's concurrence. Importantly, the Governor's concurrence is independent of the other conditions required to offer gaming. "The validity of a Governor's concurrence simply does not affect the validity of a Secretarial two-part determination: each is a separate requirement for gaming to take place on newly-acquired, non-reservation lands." *Stand Up for California! v. U.S. Dep't of the Interior*, 204 F. Supp. 3d 212, 250 (D.D.C. 2016); *see Picayune Rancheria*, 117 Cal. App. 5th at 98-99. Thus, Picayune's claims here are not an attack on the 2012 trust decision or the issuance of the Secretarial Procedures.

Instead, Picayune's suit is about the absence of one of *many* conditions North Fork needs to satisfy to offer gaming: the absence of the Governor's concurrence. And as to the absence of that condition, North Fork has fought tooth and nail for years (including through its petition this year to the California Supreme Court) on the merits of that state law issue, claiming the concurrence is valid. But it is not. The California courts have now confirmed "the voter's rejection of Proposition 48 included an implied annulment of the Governor's concurrence that rendered the concurrence void ab initio." *Picayune Rancheria*, 117 Cal. App. 5th at 114.

That absence means that recent entitlement decisions—like the NIGC's decision to approve the management agreement—can be challenged as authorizing gaming that IGRA does not. The Ninth Circuit has already confirmed, "[t]he NIGC is statutorily obliged to reject any . . . proposal that does not conform to IGRA." *AT & T Corp.*, 295 F.3d at 909 (citing 25 U.S.C. § 2706(b)(10) (requiring the NIGC to promulgate regulations and guidelines to implement IGRA); 25 C.F.R. § 531.1(a) ("[A]ll gaming covered by the contract will be conducted in accordance with the Indian Gaming Regulatory Act.")). Indeed, the Ninth Circuit rightly recognized that "the NIGC has previously refused to approve management agreements when it believed the proposed gaming activity will not be conducted 'on Indian lands' for IGRA purposes." *Id.* (citation omitted).

Thus, unlike in *Big Lagoon Rancheria v. California*, 789 F.3d 947, 953 (9th Cir. 2015), which North Fork invoked in the state court, this is not a "collateral attack" on either the land-to-

trust decision or the issuance of the Secretarial Procedures. As *Picayune Rancheria* confirms, the need for Secretarial Procedures is *separate* from the need for a Governor's concurrence. 117 Cal. App. 5th at 98. And, if Picayune prevails in this case, the land will still be in trust for North Fork, which may operate a hotel and resort if they wish. What North Fork won't be able to do is offer gaming. With no valid Governor's concurrence, IGRA bars it.

d. Red Rock's anticipated jurisdictional arguments are misplaced.

Red Rock has suggested that it will challenge the *second* cause of action on the ground that the Court lacks jurisdiction to hear it. While Picayune needs only one cause of action for the relief to issue on this motion, Red Rock is wrong regardless.

IGRA intended to allow tribes affected by other tribes' gaming to sue if the latter tribes' class III gaming went beyond contractual limits. IGRA provides: "[t]he United States district courts shall have jurisdiction over . . . any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect." 25 U.S.C. § 2710(d)(7)(A)(ii). Seeking to create a vacuum in which no tribal enforcement is permitted—at the expense of the People's vote—Red Rock has suggested that Picayune may not invoke section 2710(d)(7)(ii) to enforce the law. Red Rock claims that because there are only Secretarial Procedures, in lieu of a compact, this Court is without jurisdiction over Picayune's second cause.

Not so. At the outset, Red Rock fails to acknowledge that Picayune invoked various grounds for subject matter jurisdiction, including 28 U.S.C. § 1331 and 1362. First Am. Compl. ¶¶ 16, 17. Section 1331 is the general federal subject matter jurisdiction statute of which the Court is surely aware. Section 1362 may be less familiar, but it provides that: "The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States."

Both of those statutes apply to Picayune's second cause of action. The Ninth Circuit has already said so. In *Cabazon Band of Mission Indians v. Wilson*, 124 F.3d 1050 (9th Cir. 1997), the Ninth Circuit reasoned that because IGRA requires a compact, and because a compact therefore is

"quite clearly . . . a creation of federal law," whatever substantive law it may provide for, a claim seeking "to enforce the Compacts arises under federal law and thus" a federal district court has "jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1362." *Id.* at 1056. The Ninth Circuit expressly rejected, as a jurisdictional matter, that only 25 U.S.C. § 2710(d)(7)(A)(i)-(iii) set the subject matter jurisdiction of the court: "We believe that the State construes both federal question jurisdiction and IGRA too narrowly." *Id.* Jurisdiction was proper. Here, by parallel reasoning, IGRA's Secretarial Procedures are likewise a "creation of federal law," making jurisdiction in a suit brought by Picayune fully appropriate. *Cabazon* finds agreement in later Supreme Court authority which holds that "[t]he general federal-question statute, 28 U.S.C. § 1331, gives a district court subject matter jurisdiction to decide any claim alleging a violation of IGRA." *Bay Mills*, 572 U.S. at 787, n.2.

B. North Fork's Unlawful Class III Gaming Would Irreparably Harm Picayune.

To establish irreparable harm at the preliminary injunction stage , Picayune need not "prove that irreparable harm is certain or even nearly certain." *Small v. Avanti Health Sys., LLC*, 661 F.3d 1180, 1191 (9th Cir. 2011). Rather, irreparable harm need be only "likely." *Id.* Picayune easily meets that requirement. Indeed, North Fork's unlawful gaming on the Madera Parcel will impose immediate irreparable harm on Picayune based on: (1) a loss of government functions and tribal sovereignty, (2) a reduction in essential services and benefits for tribal members, and (3) significant economic damages that Picayune cannot recover. Kamalani Decl., ¶¶ 4-17; McCombs-Esquivel Decl., ¶¶ 4-17.

If North Fork follows through on its plans to conduct unlawful class III gaming on the Madera Parcel in the coming months, that gaming would irreparably injure Picayune's basic governmental functions and deprive Picayune of its tribal sovereignty. "Indian tribes remain separate sovereigns pre-existing the Constitution," and they "retain their historic sovereign authority to manage their affairs." *Grondal v. United States*, 37 F.4th 610, 616-17 (9th Cir. 2022) (citation omitted). Harm to a tribe's sovereignty "cannot be remedied by any other relief other than an injunction," *Tohono O'odham Nation v. Schwartz*, 837 F. Supp. 1024, 1034 (D. Ariz. 1993), and "an invasion of tribal sovereignty can constitute irreparable injury," *Ute Indian Tribe of the Uintah*

& Ouray Rsrv. v. Utah, 790 F.3d 1000, 1005 (10th Cir. 2015) (citation omitted); *see Poarch Band of Creek Indians v. Hildreth*, 656 F. App'x 934, 944 (11th Cir. 2016).

In *Seneca-Cayuga Tribe v. Oklahoma*, 874 F.2d 709 (10th Cir. 1989), the plaintiff tribes obtained a preliminary injunction to prevent the loss of revenue and jobs from tribal bingo games. *Id.* at 716. The court affirmed the preliminary injunction on appeal and found that the tribes had established irreparable injury because without relief "the Tribes would face the prospect of significant interference with their self-government." *Id.* They "would lose income used to support social services for which federal funds have been reduced or are non-existent, and lose jobs employing Indians who face a rate of unemployment ranging from thirty-five percent . . . to close to fifty percent." *Id.* Courts have found irreparable harm in similar cases in which a loss of tribal revenue affects government services and programs. *See Sac & Fox Nation of Mo. v. LaFaver*, 905 F. Supp. 904, 907 (D. Kan. 1995) (loss of revenue used for social services, medical and education payments, law enforcement, and fire protection "would indeed meet the irreparable harm test").

Here, a loss of gaming revenue would irreparably harm Picayune's tribal sovereignty and self-government, just as a loss of gaming revenue irreparably harmed tribal sovereignty and self-government of the tribe in *Seneca-Cayuga*. The North Fork Project, if allowed to offer class III gaming, will reduce Picayune's gaming revenue from Picayune's Chukchansi Gold Resort and Casino by 30 to 50%. Kamalani Decl., ¶ 12; McCombs-Esquivel Decl., ¶¶ 7-8, 12-15; Alcantar Decl., ¶ 10. Picayune relies on that gaming revenue to support its tribal government and to provide a wide variety of services and benefits to its members. McCombs-Esquivel Decl., ¶ 11; Kamalani Decl. ¶¶ 8-11; Sanders Decl. ¶¶ 6-10. For example, Picayune uses gaming revenues to pay the salaries of tribal leadership and employees, to operate sovereign functions such as law enforcement and fire protection, to provide health and education services for members of the Tribe, to provide eligible members with stipends that act as a form of social insurance, to support cultural preservation and spiritual practices, and to revitalize Chukchansi language and culture. Kamalani Decl., ¶¶ 8-11; Sanders Decl., ¶¶ 6-10. Losses of gaming revenues would be devastating. Indeed, the Picayune Tribal Council issued its *Emergency Proclamation on Reduction of Essential Government Services and Benefits* directing members to prepare for difficult and significant

reductions across all tribal services and benefits due to the estimated 30 to 50% cut in gaming revenues. Kamalani Decl., ¶ 15, Ex. B. Like the potential losses of gaming revenue in *Seneca-Cayuga*, losses of gaming revenue here would significantly impair Picayune's tribal government and the services and benefits it offers to tribal members, and thereby irreparably injure the Tribe's self-government and tribal sovereignty. *See* Kamalani Decl., ¶¶ 5-17; Alcantar Decl., ¶¶ 5-8, 10-11.

Independent of impacts on tribal sovereignty, the Tribe's loss or reduction of essential services and benefits funded by its casino are also sufficient to constitute irreparable harm. The denial of "needed medical care" qualifies as "a risk of irreparable injury." *Beltran v. Myers*, 677 F.2d 1317, 1322 (9th Cir. 1982). The denial or discontinuation of education programs qualifies as irreparable harm. *See N.D. v. Reykdal*, 102 F.4th 982, 994-95 (9th Cir. 2024) (denial of access to special education). Reductions in social services programs constitute irreparable harm. *See Paxton v. Sec'y of Health and Human Servs.*, 856 F.2d 1352, 1354 (9th Cir. 1988) ("When a family is living at subsistence level, the subtraction of any benefit can make a significant difference to its budget and to its ability to survive."). Members of the Tribe rely on gaming revenues to access medical care, education programs, elder care, housing, and other social services. *See* Hopkins Decl., ¶¶ 4-10; Sanders Decl., ¶¶ 6-10. They also depend on disbursements from casino revenues as a form of social insurance to pay for food, medicine, utilities, and other life essentials. *See* Hopkins Decl., ¶ 6; Sanders Decl., ¶ 9; McCombs-Esquivel Decl., ¶ 16. And funds from the casino support the Tribe's spiritual practices and cultural preservation efforts. *See* Kamalani Decl., ¶¶ 10, 11. As Member-at-Large of the Tribal Council Hillary Hammond Battles attested, the Chukchansi people have suffered "generational trauma"—including murder, displacement, physical abuse, and forced loss of language and cultural practices—which has resulted in "alcoholism, drug abuse, child abuse and domestic violence." Hammond Battles Decl. ¶ 7. Taking away benefits and programs designed to help the Tribe recover from this trauma surely qualifies as irreparable injury. *See Beltran*, 677 F.2d at 1322; *Reykdal*, 102 F.4th at 994-95; *Paxton*, 856 F.2d at 1354.

Even if the Court were to find that the threatened harm to Picayune is primarily economic, Picayune has still met the irreparable harm requirement. "[E]conomic harm is irreparable when

monetary damages are unavailable." *Washington v. Trump*, 145 F.4th 1013, 1036 (9th Cir. 2025); *see California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018) (economic harm to states was irreparable because they would not be able to recover monetary damages). Here, Picayune stands to lose millions of dollars each month as a result of the North Fork Project's unauthorized class III gaming. *See* McCombs-Esquivel Decl., ¶¶ 12, 15. But Picayune cannot recover for those harms because monetary damages are "unavailable in this case." *Washington*, 145 F.4th at 1036. As to Picayune's APA claim, the APA does not allow for monetary damages. *See* 5 U.S.C. § 702 (providing for relief "other than money damages"); *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 677 (9th Cir. 2021) ("[W]here parties cannot typically recover monetary damages flowing from their injury—as is often the case in APA cases—economic harm can be considered irreparable."). As to Picayune's IGRA claim, IGRA also does not allow for monetary damages. *See* 25 U.S.C. § 2710(d)(7)(A)(ii) (authorizing cause of action "to enjoin a class III gaming activity"); *Alabama v. PCI Gaming Auth.*, 801 F.3d 1278, 1284 (11th Cir. 2015) (holding that "[n]o remedy other than an injunction is provided" under 25 U.S.C. § 2710(d)(7)(A)(ii)). Economic harm resulting from North Fork's unlawful gaming on the Madera Parcel accordingly qualifies as irreparable harm.

C. The Balance of Equities Tips Sharply in Favor of Issuing an Injunction.

This Court must "'balance the interests of all parties and weigh the damage to each.'" *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009) (quoting *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1203 (9th Cir. 1980)). Here, that calculus decisively favors Picayune and its lawful gaming over North Fork and its plan to violate IGRA.

Importantly, "a court sitting in equity cannot 'ignore the judgment of Congress, deliberately expressed in legislation.'" *United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 497 (2001) (quoting *Virginian R. Co. v. Railway Employees*, 300 U.S. 515, 551 (1937)). And "[c]ourts of equity cannot, in their discretion, reject the balance that Congress has struck in a statute." *Id.* Here, Congress has elected to invite state law into the IGRA analysis. And, the People of California have rejected gaming at the Madera Parcel. North Fork has chosen to proceed at its peril, and the Court should not reward it for breaking ground on a new casino without the required state law concurrence. Likewise, the federal government can have no interest other than that the law is

faithfully followed and implemented. Congress has already vetoed new off-reservation casinos without a governor's concurrence, and this Court should enforce that statutory command.

Defendants may argue that the Court should weigh the irreparable harm to Picayune referenced above against North Fork's interests associated with the Madera Parcel, given that the federal government previously took the land into trust and North Fork decided to build without knowing if it could obtain a governor's concurrence and win a referendum challenge. But the Court should not reward North Fork for breaking ground on its new casino without proper authorization for class III gaming. Indeed, courts and federal regulators have regularly taken action to prevent unauthorized gaming on Indian lands. *See, e.g.*, *Bettor Racing, Inc. v. Nat'l Indian Gaming Comm'n*, 812 F.3d 648 (8th Cir. 2016) (affirming penalty for unauthorized gaming).

Nor can North Fork claim inequity because of its significant efforts to develop its casino. For years North Fork and its partner knew they were proceeding at risk when developing their proposed casino. That much should have been apparent as early as 2014, when the People of California voted overwhelmingly to reject their project. North Fork conceded as much when it intervened in the state court litigation more than a decade ago, in May 2016, claiming that action "may affect the development of North Fork's proposed gaming establishment" because the challenged concurrence "was necessary for North Fork's proposed development of a gaming establishment on the Madera Site." Dhillon Decl., Ex. G (North Fork's Ex Parte Application for Leave to Intervene, filed May 12, 2016). North Fork cannot plausibly argue it would be inequitable to prevent gaming when it has known for years that those activities may be unlawful. Rightly or wrongly, North Fork and its partners made their decisions with eyes wide open, and they cannot now claim inequity because they pushed forward on a project in the face of known risks. North Fork may certainly run a resort; it just can't offer gaming.

Furthermore, North Fork's interest in offering gaming without a concurrence is small in comparison to Picayune's continued operation and viability of the Chukchansi Gold Resort and Casino and the benefits that flow from it. Picayune's casino began operations in 2003 and funds many tribal services and government functions. *See* Kamalani Decl., ¶¶ 6-11; Sanders Decl., ¶¶ 6-10. North Fork and its members do not have comparable interests in a development that has not

begun operations and does not currently generate revenue. Even to the extent that Defendants argue that a preliminary injunction would burden North Fork's right to develop the Madera Parcel, Picayune simply requests a stay of the Management Contract and order enjoining "unlawful gaming." North Fork may otherwise develop the parcel as it wishes and run a resort. At bottom, where Picayune seeks to carry out "legally authorized" business operations and Defendants' interests involve "illegal or tortious activities," the balance of equities "undoubtedly tips" towards Picayune. *Shell Offshore, Inc. v. Greenpeace, Inc.*, 864 F. Supp. 2d 839, 851 (D. Alaska 2012), *aff'd,* 709 F.3d 1281 (9th Cir. 2013).

D. The Public Interest Supports the Requested Relief.

The public interest inquiry addresses "public consequences" of an injunction. *Bernhardt v. Los Angeles Cnty.*, 339 F.3d 920, 931-32 (9th Cir. 2003) (citation omitted). Here, as demonstrated by the lengthy state law proceedings predating this case, enjoining North Fork's unlawful gaming on the Madera Parcel is in the public interest.

Under Proposition 48, California voters unequivocally rejected class III gaming on the Madera Parcel. That is not Picayune's view alone—it is binding state law: "[T]he voter's rejection of the compact-ratifying statute is reasonably interpreted as an expression of their intent to reject class III gaming on the 305-acre Madera site." *Stand Up II*, 64 Cal. App. 5th at 216. Allowing class III gaming at the North Fork Project would undermine the will of California voters exercising their state constitutional authority and a clear articulation of the law by the State's appellate judges.

The public interest heavily favors adherence to state law determinations, issuing an injunction, and preventing North Folk from conducting class III gaming on the Madera Parcel.[8]

[8] Picayune asks that the Court exercise its discretion under Federal Rule of Civil Procedure 65(c) to dispense with the bond requirement for preliminary injunctions because it is significantly likely that Picayune will prevail on the merits. *See People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Plan. Agency*, 766 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir. 1985). Should the Court decide to require a bond, Picayune asks for a separate hearing to fix the amount of the bond, as is customary. The stay of the Management Contract does not require a bond. *Neguse v. U.S. Immigr. & Customs Enf't*, 813 F. Supp. 3d 45, 100 (D.D.C. 2025).

CONCLUSION

We ask that the Court grant this motion in full. A proposed order has been submitted for the Court's consideration.

Respectfully submitted,

DATED: August 28, 2026

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