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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, et al.,

Defendants.

STATION CASINOS LLC, a Nevada limited liability corporation, et al.,

Nominal Defendants.

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

PICAYUNE'S OPPOSITION TO NOMINAL DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT

Date: October 5, 2026
Time: 1:30 p.m.
Judge: Hon. Kirk E. Sherriff
Courtroom: 6

Action Filed: June 5, 2026
Trial Date: None

TABLE OF CONTENTS

Page

INTRODUCTION 1
BACKGROUND 2
A. Gaming Under IGRA 2
B. Picayune's Chukchansi Gold Resort and Casino 3
C. The Madera Parcel and North Fork's Casino Project 4
D. The Concurrence, Referendum, and Secretarial Procedures 5
E. Federal Court Litigation 6
F. State Court Litigation 7
G. North Fork's Continued Plan To Offer Gaming at the Madera Parcel 8
STANDARD OF REVIEW 9
ARGUMENT 9
A. Red Rock's Challenge to Picayune's APA Claim Fails 9
B. Red Rock's Challenge to the Second Claim Also Fails 13
1. Picayune States a Claim Pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii) 13
2. Red Rock's Statute of Limitations Argument Defies Common Sense 18
CONCLUSION 21

TABLE OF AUTHORITIES

Page(s)

Cases

Addison v. State of Cal.,
21 Cal.3d 313 (1978) 20

Aldaco v. RentGrow, Inc.,
921 F.3d 685 (7th Cir. 2019) 11

Angeles Chem Co. v. Spencer & Jones,
44 Cal. App. 4th 112 (1996) 19

Ashcroft v. Iqbal,
556 U.S. 662 (2009) 9

AT & T Corp. v. Coeur d'Alene Tribe,
295 F.3d 899 (9th Cir. 2002) ..... *passim*

Bates v. United States,
522 U.S. 23 (1997) 12

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007) 9

Blue Lake Rancheria v. Kalshi Inc.,
No. 25-CV-06162-JSC, 2025 WL 3141202 (N.D. Cal. Nov. 10, 2025) ..... *passim*

Confederated Tribes of Siletz Indians of Oregon v. United States,
110 F.3d 688 (9th Cir. 1997) 1, 12

Daviton v. Columbia/HCA Healthcare Corp,
241 F.3d 1131 (9th Cir. 2001) 20

I.T. Consultants, Inc. v. Republic of Pakistan,
351 F.3d 1184 (D.C. Cir. 2003) 16

Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin,
599 U.S. 382 (2023) 18

Lambert v. Commonwealth Land Title Ins. Co.,
53 Cal.3d 1072 (1991) 20

Michigan v. Bay Mills Indian Cmty.,
572 U.S. 782 (2014) 17, 18

Midway Orchards v. Cnty. of Butte,
220 Cal. App. 3d 765 (1990) 5

North Fork Rancheria of Mono Indians of Cal. v. California,
No. 15-cv-419, 2015 WL 11438206 (E.D. Cal. Nov. 13, 2015) 5

Picayune Rancheria of the Chukchansi Indians v. N. Fork Rancheria of Mono Indians,
117 Cal. App. 5th 91 (2025) ..... *passim*

Picayune Rancheria of Chukchansi Indians v. U.S. Dep't of the Interior,
No. 1:16-cv-950, 2017 WL 3581735 (E.D. Cal. Aug. 18, 2017) 6

Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am.,
768 F.3d 938 (9th Cir. 2014) 9

Romano v. Rockwell Int'l, Inc.
(1996) 14 Cal.4th 479 (1996) 19, 20

Spear v. Cal. State Auto. Assn.,
2 Cal.4th 1035 (1992) 19

Stand Up for California! v. California,
64 Cal. App. 5th 197 (2021) ..... *passim*

Stand Up for California! v. U.S. Dep't of the Interior,
204 F. Supp. 3d 212 (D.D.C. 2016), *aff'd* 879 F.3d 1177 (D.C. Cir. 2018) 3, 6, 12

Stand Up for California! v. U.S. Department of the Interior,
959 F.3d 1154 (9th Cir. 2020) ..... *passim*

Taylor v. Johnston,
15 Cal.3d 130 (1975) 19

Title v. United States,
263 F.2d 28 (9th Cir. 1959) 11

United Auburn Indian Cmty. of Auburn Rancheria v. Newsom,
10 Cal. 5th 538 (2020) 7, 8

Von Saher v. Norton Simon Museum of Art at Pasadena,
592 F.3d 954 (9th Cir. 2010) 9

Zuniga v. United Can Co.,
812 F.2d 443 (9th Cir. 1987) 16

Statutes

15 U.S.C. § 1175(a) 2

25 U.S.C. § 2702 3

25 U.S.C. § 2702(1) 2

25 U.S.C. § 2703(4)(B) 16
25 U.S.C. § 2710(b) 12
25 U.S.C. § 2710(d)(1)(C) 3
25 U.S.C. § 2710(d)(3)(A) 3
25 U.S.C. § 2710(d)(6) 2, 15
25 U.S.C. § 2710(d)(7) 3, 14, 15
25 U.S.C. § 2710(d)(7)(A)(ii) 2, 13, 17, 18
25 U.S.C. § 2710(d)(7)(B)(vii) 6, 17
25 U.S.C. § 2710(d)(9) 10
25 U.S.C. § 2714 12
25 U.S.C. § 2719 ..... 1, 12, 16
25 U.S.C. § 2719(a) 3
25 U.S.C. § 2719(b) 3
25 U.S.C. § 2719(b)(1)(A) 3

Rules

Fed. R. Civ. P. 12(b)(6) 9

Regulations

25 C.F.R. § 531.1 ..... 9, 12
25 C.F.R. § 531.1(a) 8, 10, 11, 12
25 C.F.R. § 531.2 9
25 C.F.R. § 533.6 12
25 C.F.R. § 533.6(a) 10, 12
25 C.F.R. § 533.7 ..... 9, 10

Constitutional Provisions

Cal. Const., art. II
§ 9 5
§ 10 5

Cal. Const., art. IV
§ 19(f) 5

Other Authorities

North Fork Mono Casino Homepage, https://perma.cc/85YV-FXU8 9

Plaintiff Picayune Rancheria of the Chukchansi Indians ("Picayune") respectfully submits this opposition to the Motion to Dismiss First Amended Complaint filed by Nominal Defendants Station Casinos LLC, Red Rock Resorts, Inc., and SC Madera Management, LLC (together, "Red Rock"). (ECF No. 35 ["MTD"].)

INTRODUCTION

The stack of briefing before this Court is high and deep. And while the tentacles of this case might suggest it reaches in many directions, it does not. At its core, this case can be simply stated: Defendant North Fork Rancheria of Mono Indians ("North Fork") would like to offer gaming at a parcel in Madera County that was acquired into trust by the federal government after October 17, 1988. Gaming on such lands is generally barred under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §2719, unless an exception applies. North Fork would like to rely on an exception that requires a Governor in the state where the gaming occurs to concur. Whether and how a Governor concurs and when and whether it is effective is, per established Ninth Circuit authority, a question of *state* law. *Confederated Tribes of Siletz Indians of Oregon v. United States*, 110 F.3d 688, 697 (9th Cir. 1997). Here, the People of California exercised their reserved state constitutional powers, through a vote on Proposition 48, to confirm there is no valid Governor's concurrence and there never has been: The one offered by Governor Brown was rendered void ab initio by the People themselves. All of that is known and knowable because it has already been litigated. North Fork actively litigated those issues on the merits in state court leading to a published decision in *Picayune Rancheria of the Chukchansi Indians v. N. Fork Rancheria of Mono Indians*, 117 Cal. App. 5th 91 (2025) ("*Picayune Rancheria*"), and denial of review by the California Supreme Court this year.

Why then this litigation? Because even after North Fork *lost* on that critical state law issue, North Fork and its Las Vegas casino partner Red Rock have confirmed that they intend to offer gaming—legal or otherwise. This suit, by challenging the approval of a Management Contract by the National Indian Gaming Commission ("NIGC") Chair and by seeking to enforce the Secretarial Procedures, seeks to give effect to the People of California's vote on Proposition 48, to enforce the

effect of that vote as confirmed by the decision in *Picayune Rancheria*, and ultimately to bring respect to the state law determination that North Fork fought *for years*.

Come now to this motion. North Fork's partner, Red Rock, does all that it can to confuse the issue. But the answers to Red Rock's arguments are simple. Red Rock moves to dismiss Picayune's first claim on the theory that the NIGC Chair need not comply with IGRA and its regulations when it approves a management contract. *See* MTD 9. The Ninth Circuit holds the opposite. "[M]anagement contracts must meet IGRA requirements before they can win NIGC approval." *AT & T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899, 907 (9th Cir. 2002). Here, the California court system has confirmed the necessary Governor's concurrence is missing: Governor Brown's purported concurrence was "annulled" and rendered "void ab initio" by the People's vote. *Picayune Rancheria*, 117 Cal. App. 5th at 113-14. It never had legal effect. Thus, no gaming authorized by IGRA could occur, and a Management Contract covering such gaming should have been rejected.

As to Picayune's second claim—to enforce the Secretarial Procedures—Red Rock argues that section 2710(d)(7)(A)(ii) does not authorize Picayune to bring suit. Courts in this Circuit hold the opposite. *Stand Up for California! v. U.S. Department of the Interior*, 959 F.3d 1154 (9th Cir. 2020), confirms that such a claim is authorized—and in *Blue Lake Rancheria v. Kalshi Inc.*, No. 25-CV-06162-JSC, 2025 WL 3141202, at *5 (N.D. Cal. Nov. 10, 2025), the Hon. Jacqueline Scott Corley of the Northern District rejected the same argument advanced by Red Rock here. This Court should do the same.

As detailed more fully below, Red Rock's motion should be denied in full.

BACKGROUND

A. Gaming Under IGRA

IGRA provides "a statutory basis for the operation of gaming by Indian tribes." 25 U.S.C. § 2702(1). Although the Johnson Act of 1951 generally prohibits the transport, possession, or use of "any gambling device . . . within Indian country," 15 U.S.C. § 1175(a), IGRA creates a narrow exemption from this prohibition. *See* 25 U.S.C. § 2710(d)(6); *Stand Up for California! v. U.S. Dep't of the Interior*, 959 F.3d 1154, 1159 (9th Cir. 2020). And relevant here, 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).

North Fork and its casino partner Red Rock tried to invoke an exception, referred to colloquially as the "two-part determination," that allows an Indian tribe to offer class III 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 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). Critically, each precondition "is a separate requirement for gaming to take place." *Stand Up for California! v. U.S. Dep't of the Interior*, 204 F. Supp. 3d 212, 250 (D.D.C. 2016), *aff'd* 879 F.3d 1177 (D.C. Cir. 2018). Thus, while "[t]he Secretary's two-part determination is not contingent upon the Governor's concurrence," "*gaming* on land acquired in trust by the Secretary after October 17, 1988, is contingent upon the Governor's concurrence." *Id.* at 249-50 (emphasis in original).

B. Picayune's Chukchansi Gold Resort and Casino

Picayune is a federally recognized Indian tribe located near Coarsegold, Madera County, California. First Amended Complaint ("FAC") ¶ 7. Picayune is the beneficial owner of the Picayune Rancheria in Madera County, California, where it owns and operates the Chukchansi Gold Resort and Casino ("Chukchansi Casino"). *Id.* Picayune conducts class III gaming at the Chukchansi Casino in compliance with IGRA. *Id.* IGRA "provide[s] a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments[,]" and is intended for the benefit of Indian tribes, including Picayune. 25 U.S.C. § 2702. Picayune's members live in or around Madera County, California, and depend on gaming revenues from the Chukchansi Casino for benefits and essential services. FAC ¶ 25.

C. The Madera Parcel and North Fork's Casino Project

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—so that North Fork could build and operate the North Fork Mono Casino & Resort, a large casino where it would offer class III gaming ("North Fork Project"). *See Picayune Rancheria*, 117 Cal. App. 5th at 98.

When North Fork began this process, the Madera 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). Whereas Red Rock is a Delaware corporation formed to manage and own Station Casinos, FAC ¶ 12, Station Casinos is a large casino company that owns and operates seven major gaming facilities and ten smaller casino properties in the Las Vegas regional market, *id.* ¶ 10. Contracts between Red Rock and North Fork entitle North Fork to a management fee of 30% of net income from the North Fork Project, plus a development fee of 4% of construction costs. *Id.* ¶ 32. Red Rock has also bankrolled both the North Fork Project's development and its legal defense. *Id.* ¶ 33. By April 2025, Red Rock had paid approximately $117.1 million of reimbursable advances to North Fork to complete an environmental impact study, purchase the Madera Parcel, cover the cost of litigation, and more. *Id.*

The Madera Parcel that North Fork and its Las Vegas partners seek to develop is located next to State Route 99, a heavily trafficked highway running through the major cities of California's Central Valley. FAC ¶ 45. The fastest and most direct route to Picayune's Chukchansi 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. *Id.* ¶ 46. Many patrons must pass the exit to the Madera Parcel on State Route 99 on the way to the Chukchansi Gold Resort and Casino. *Id.* The North Fork Project would compete with the lawful gaming Picayune offers at the Chukchansi Casino and substantially reduce Picayune's gaming revenue. *Id.*

¶ 28. It would prevent Picayune from providing essential governmental programs, benefits, and services to its members, and interfere with the ability of Picayune to govern itself under its own laws in its reservation. *Id.*

D. The Concurrence, Referendum, and Secretarial Procedures

In September 2011, the Secretary of the Interior, at North Fork's request, 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 purporting to concur in the Secretary's determination. *See id.*; FAC ¶ 48. On the same day, the Governor and North Fork also purported to approve a Tribal-State Compact (the "Compact") for North Fork's proposed casino project. FAC ¶ 48. In November 2012, the Secretary made the final decision to take the Madera Parcel into trust, and the land was taken into trust in February 2013. *See Stand Up II*, 64 Cal. App. 5th at 203.

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 tried to ratify the Compact via Assembly Bill No. 277 ("AB 277"), which the Governor signed 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. In California, 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—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, 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. FAC ¶ 51; *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." FAC ¶ 6 (emphasis added).

E. Federal Court Litigation

In December 2012, Picayune and others sued the Department of the Interior and the Bureau of Indian Affairs in federal court in the District of Columbia, challenging certain federal approvals and acts by the Secretary of the Interior. *Stand Up for California!*, 204 F. Supp. 3d 212. Picayune argued, among other things, that the Department's decision to take the Madera Parcel into trust for North Fork violated IGRA because the Governor's concurrence was invalid. *Id.* at 235. In a decision that the D.C. Circuit later affirmed, the district court concluded that it could not "address the validity of the California Governor's concurrence under California law" because the State could not be joined as a party due to sovereign immunity, and "any challenge to the validity of the Governor's concurrence may not proceed in the State's absence." *Id.* at 251-53. The court also noted that "[t]he issue regarding the legality of the gubernatorial concurrence . . . has not been finally resolved by the California state court system." *Id.* at 255. Accordingly, the court held that Picayune's "claims in any way involving the Governor's concurrence must be dismissed due to the absence of an indispensable party." *Id.* at 254.

In July 2016, Picayune filed suit in the Eastern District of California, where it also challenged federal approvals. *Picayune Rancheria of Chukchansi Indians v. U.S. Dep't of the Interior*, No. 1:16-cv-950, 2017 WL 3581735 (E.D. Cal. Aug. 18, 2017). As in the D.C. action, the court dismissed Picayune's claims, all of which "depend[ed] (at least in part) upon the validity of the Governor of California's . . . concurrence." *Id.* at *1. In an opinion written by Judge Ishii, the court explained that "[t]he State of California remains a necessary party for the same reasons articulated by the District of Columbia district court." *Id.* at *10. And echoing the court in the D.C.

action, Judge Ishii noted that state court litigation was ongoing in which California was a party and was defending the validity of concurrences issued by the Governor. *Id.* at *9-10. Federal courts, in other words, thought the state court should resolve the state law concurrence issue.

F. State Court Litigation

As just discussed, both federal courts referenced ongoing state court litigation regarding the Governor's concurrence power. 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*—a challenge brought by the proponents of Proposition 48 to the concurrence at issue here—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 the court held that California voters annulled Governor Brown's concurrence in the Secretary's two-part determination with respect to the Madera Parcel 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*.

With *United Auburn* and *Stand Up II* on the books, and with the federal courts having directed Picayune to resolve the validity of Governor Brown's concurrence in state court, Picayune sought a state-court judgment holding that the concurrence was invalid. North Fork resisted entry of that judgment, taking the position that it was valid for a period of time. Years of litigation followed, resulting in the judgment *against* North Fork that the California Court of Appeal affirmed last year in *Picayune Rancheria*. There, the Court of Appeal held that the Governor's concurrence with respect to the Madera Parcel was "void ab initio," meaning that it was "ineffective from its inception." 117 Cal. App. 5th at 113-14. In so holding, the court expressly rejected North Fork's argument that federal law preempted California voters' ability to annul a concurrence issued by the governor. *Id.* at 111-12. North Fork filed a petition for review, which the California Supreme Court denied. *See* Petition For Review, *Picayune Rancheria of Chukchansi Indians v. North Fork Rancheria of Mono Indians*, No. S294956 (Cal. Jan. 23, 2026), *denied* Apr. 1, 2026). As to the Madera Parcel, the issue is now final: The concurrence upon which North Fork seeks to rely never existed as a matter of California law.

G. North Fork's Continued Plan To Offer Gaming at the Madera Parcel

Even after the *Picayune Rancheria* court's clear holding that North Fork has *never* had a legal prerequisite to conduct class III gaming under IGRA (and rejecting North Fork's position to the contrary), 117 Cal. App. 5th at 114, North Fork and its Las Vegas partner Red Rock have chosen to plow ahead and offer gaming. FAC ¶ 60. In 2023, while that litigation was pending, North Fork, Red Rock, and the North Fork Rancheria Economic Development Authority (the "Authority") decided to execute a Management Contract, pursuant to which Station Casinos (an entity managed by Red Rock Resorts, Inc.) has committed to assisting North Fork and the Authority in operating the North Fork Project on the Madera Parcel.[1] FAC ¶ 56.

In 2024, the NIGC approved that Management Contract. *Id.* ¶ 5. 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);

[1] Picayune alleges that Station Casinos, SC Madera Management, LLC, or Red Rock (or multiple parties) is a party to the Management Contract. *See* FAC ¶ 13.

see AT & T Corp., 295 F.3d at 909 ("The NIGC is statutorily obliged to reject any [gaming] proposal that does not conform to IGRA."). 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. Even after the California Supreme Court denied review in *Picayune Rancheria* in April 2026—meaning the question of the concurrence's validity was conclusively resolved against them—North Fork and Red Rock confirmed they still intend to offer gaming, legal or otherwise. As of August 2026, they anticipate an opening date in Fall 2026. *See* North Fork Mono Casino Homepage, https://perma.cc/85YV-FXU8.

STANDARD OF REVIEW

On a motion to dismiss under Rule 12(b)(6), the Court "must accept as true all factual allegations in the complaint and draw all reasonable inferences in favor of the nonmoving party." *Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am.*, 768 F.3d 938, 945 (9th Cir. 2014). To avoid dismissal, a plaintiff need only allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim for relief is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The Court may only grant a Rule 12(b)(6) motion based on a statute of limitations where "'the running of the statute is apparent on the face of the complaint.'" *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010) (quoting *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006)). The Court cannot dismiss a complaint on statute of limitations grounds "unless it appears beyond doubt that the plaintiff can prove no set of facts that would establish the timeliness of the claim." *Id.* (quoting *Supermail Cargo, Inc. v. U.S.*, 68 F.3d 1204, 1206 (9th Cir. 1995)).

ARGUMENT

A. Red Rock's Challenge to Picayune's APA Claim Fails.

Picayune has easily met the requirements to assert an APA claim. As alleged, NIGC's approval of the Management Contract was arbitrary and capricious because it covers gaming that

lacks a valid Governor's concurrence and does not comply with IGRA. *See* FAC ¶¶ 69-72. Red Rock moves to dismiss by arguing that NIGC need not comply with IGRA and its regulations when it approves a management contract. *See* MTD 9. But nothing in IGRA and its regulations supports that view, and binding Ninth Circuit precedent provides that "[t]he NIGC is statutorily obliged to reject any [gaming] proposal that does not conform to IGRA." *AT & T Corp.*, 295 F.3d at 909.

At the outset, Red Rock misreads the law. It asserts that IGRA and its regulations impose on NIGC a mere paper review, and "simply require[] the Chair to verify that the management contract includes *a statement* that gaming 'will be conducted in accordance with [IGRA].'" MTD 9 (emphasis added) (citing 25 C.F.R. § 531.1(a)). The law does not assign to the NIGC such a meaningless and perfunctory role. Rather, as Picayune has explained, under IGRA an Indian tribe may only "enter into a management contract for the operation of a class III gaming activity if such contract has been submitted to, and approved by, the Chairman." 25 U.S.C. § 2710(d)(9). The Chair "may approve a management contract if it meets the standards of part 531." 25 C.F.R. § 533.6(a). Those standards require, as relevant, that the contract "[p]rovide that all gaming covered by the contract will be conducted in accordance with [IGRA]." *Id.* § 531.1(a). "Management contracts . . . that have not been approved by the Chairman in accordance with the requirements of part 531 of this chapter and this part, are void." 25 C.F.R. § 533.7. A contract cannot provide that all gaming will be conducted in accordance with IGRA while also purporting to authorize gaming that lacks a requirement that IGRA imposes—here, a valid concurrence.

The Ninth Circuit has already addressed this precise question and rejected Red Rock's reading of IGRA and its regulations. In *AT & T Corp.*, the court considered a challenge to a lottery held by the Coeur d'Alene Tribe in Idaho, which allowed participants to purchase tickets by telephone from outside the State, 295 F.3d at 901. Although the compact between the tribe and the State did not specify that off-reservation telephone purchases would be permitted, a management contract that NIGC approved made clear they would be. *See id.* at 902. AT&T sued in federal court seeking, among other things, a declaration that it was not required to provide service for the lottery because the lottery's off-reservation purchases violated IGRA. *See id.* at 903. AT&T did not challenge the NIGC's approval of the management contract.

The district court ruled in AT&T's favor and held that IGRA required lottery participants to be present on Indian lands when purchasing a ticket. *See id.* The Ninth Circuit reversed. *See id.* at 910. The court explained that "management contracts must meet IGRA requirements before they can win NIGC approval," and that "NIGC must consider the legality of Class III gaming before approving . . . management contracts." *Id.* at 907-08. Citing 25 U.S.C. § 2706(b)(10) and 25 C.F.R. § 531.1(a), the court noted that "NIGC is statutorily obliged to reject any lottery proposal that does not conform to IGRA," and therefore "the NIGC's approval of the Tribe's management contract evidences the NIGC's determination that IGRA permits operation of the Lottery even though it allows ticket sales via off-Reservation phone calls." *Id.* at 909. Because the NIGC's approval of the contract was a final agency decision regarding the lawfulness of the lottery, the court held the proper mechanism for challenging the lottery's compliance with IGRA was a challenge to that agency action, not a suit against the tribe. *See id.* ("Unless and until the NIGC's decision is overturned by means of a proper challenge and appeal, the IGRA governs the Lottery.").

AT & T Corp. thus makes plain that the NIGC must assess whether gaming covered by a management contract will comply with IGRA—not just whether the contract says that it will comply. True enough that Judge Gould championed the view that Red Rock asserts in this case, *id.* at 913-14, but he expressed that position in *dissent*. The Ninth Circuit expressly held to the opposite, and this Court is bound to follow the *AT & T Corp.* majority, not the dissent. *See, e.g., Title v. United States*, 263 F.2d 28, 31 (9th Cir. 1959) ("We are, of course, bound by the majority opinion . . . ."); *Aldaco v. RentGrow, Inc.*, 921 F.3d 685, 688 (7th Cir. 2019) (court "must follow the majority, not the dissent"). Red Rock's attempts to distinguish *AT & T Corp.* lend it no aid. At the outset, Red Rock concedes that in *AT & T Corp.*, "the Ninth Circuit read 25 C.F.R. § 531.1(a) to require the Chair to consider IGRA compliance before approving a management contract." MTD 10. Picayune agrees. Red Rock's concession cuts against its position, not for it. Under controlling law, the NIGC Chair may not approve a management contract that permits gaming unauthorized by IGRA. *See* MTD 9. Indeed, if section 531.1(a) "require[s] the Chair to consider IGRA compliance before approving a management contract," MTD 10, then Picayune has stated a good

claim for relief by alleging that the NIGC failed to comply with IGRA when approving a Management Contract for gaming that lacks a valid Governor's concurrence, *see* FAC ¶¶ 62-74.

Not done, Red Rock also attempts to distinguish *AT & T Corp.* by arguing that the case's reasoning should be limited to "pre-1988 trust lands," MTD 10, but the case supports no such distinction. *AT & T Corp.* interpreted 25 U.S.C. § 2710(b), 25 C.F.R. § 531.1, and 25 C.F.R. § 533.6 to provide that "management contracts must meet IGRA requirements before they can win NIGC approval," 295 F.3d at 907, and it did not limit its holding to lands acquired before October 17, 1988. Nor do the operative regulations it interpreted, 25 C.F.R. §§ 531.1 and 533.6, limit their terms to lands acquired before October 17, 1988. The Court should not take Red Rock up on its novel proposal to create bifurcated procedures for NIGC's review of management contracts that would differ depending on whether gaming occurred on lands acquired before or after Oct. 17, 1988—especially when 25 C.F.R. §§ 531.1 and 533.6 announce no such distinction, and instead show the review is for *IGRA* compliance, of which 25 U.S.C. § 2719 is unquestionably a part.[2] *See Bates v. United States*, 522 U.S. 23, 29 (1997) (Courts should "resist reading words or elements into a statute [or regulation] that do not appear on its face.").

Finally, Red Rock also argues that the NIGC should not be allowed to "reconsider[]" or "revisit" the Secretary's prior two-part determination for the Madera Parcel when it approves a Management Contract. MTD 9. But Picayune does not suggest otherwise. Instead, it is IGRA's regulatory structure that makes the NIGC's approval of a management contract a challengeable final agency action. *See* 25 U.S.C. § 2714. That approval is subject to independent, mandatory legal requirements, and the Secretary's prior two-part determination does not excuse NIGC from complying with those requirements. *See* 25 C.F.R. §§ 531.1(a), 533.6(a).

[2] Red Rock further argues that *AT & T Corp.* provides that the Secretary's two-part determination is "law" until it is "overturned." MTD 11 (citing *AT & T Corp.*, 295 F.3d at 909). But the case does not say that or anything close to it, and it would be shocking if it did. As the Ninth Circuit has already held, the Secretary and the Governor act independently. The separateness of the acts within section 2719 makes it such 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. Put differently, "[t]he Secretary's two-part determination is not contingent upon the Governor's concurrence, but *gaming* on land acquired in trust by the Secretary after October 17, 1988, is contingent upon the Governor's concurrence." *Stand Up for California!*, 204 F. Supp. 3d at 249-50.

At bottom, Picayune has alleged sufficient facts and set forth controlling law that fully supports its APA claim. It is that simple. On that score, it is notable that the federal government did *not* believe a pleading challenge was warranted.

B. Red Rock's Challenge to the Second Claim Also Fails.

In its second claim, Picayune alleges that the gaming activities that North Fork and its partners plan to conduct on the Madera Parcel would be inconsistent with the Secretarial Procedures, and therefore in violation of 25 U.S.C. § 2710(d)(7)(A)(ii). *See* FAC ¶¶ 75-89. Notwithstanding the fact that the Secretarial Procedures only permit gaming on "eligible" lands and the Madera Parcel is not eligible, Red Rock argues that Picayune has failed to state a claim because: (1) section 2710(d)(7)(A)(ii) purportedly does not authorize Picayune to bring suit; and (2) Picayune's claim is allegedly time-barred. *See* MTD 12. Red Rock is wrong on both accounts.

1. Picayune States a Claim Pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii).

IGRA allows tribes impacted by another tribe's class III gaming to sue if the latter's gaming went beyond contractual limits. IGRA provides: "The 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—even at the expense of the People's vote—Red Rock argues that Picayune may not invoke section 2710(d)(7)(ii) to enforce the law. MTD 12-17. Red Rock claims that because here there are only Secretarial Procedures, in lieu of a compact, IGRA does not authorize suit. MTD 12. Red Rock is wrong.

Red Rock's section 2710(d)(7)(A)(ii) argument is foreclosed by contrary binding precedent. MTD 15-16. Namely, in *Stand Up for California! v. U.S. Department of the Interior*, 959 F.3d 1154 (9th Cir. 2020), the Ninth Circuit interpreted whether references to "compacts" within section 2710(d) includes "secretarial procedures." They do. The Ninth Circuit held that for purposes of section 2710, "Secretarial Procedures are functionally equivalent to a compact." *Id.* at 1160.

The issue in *Stand Up!* was the interplay of the Johnson Act and IGRA. "The Johnson Act, enacted in 1951, prohibits the possession or use of 'any gambling device . . . within Indian country,'

including slot machines." *Stand Up!*, 959 F.3d at 1158 (quoting 15 U.S.C. § 1175(a)). "IGRA, on the other hand, enacted, in 1988, provides 'a statutory basis for the operation of gaming by Indian tribes . . . .'" *Id.* (citation omitted). In the same subsection of the statute at issue here, "IGRA expressly exempts from the Johnson Act's prohibitions 'gaming conducted under a Tribal-State *compact* that . . . is entered into . . . by a State in which gambling devices are legal, and . . . [that] is in effect.'" *Id.* at 1159 (quoting 25 U.S.C. § 2710(d)(6)) (emphasis added). IGRA, conversely, "contains no express exemption for gaming conducted pursuant to *Secretarial Procedures*, and it does not indicate, as with a mediator-selected compact to which the state consents, that the Procedures 'shall be treated as a Tribal-State compact.'" *Id.* (emphasis added) (quoting 25 U.S.C. § 2710(d)(7)(B)(vi)).

The question presented in *Stand Up!* was thus whether IGRA intended for "Secretarial Procedures" to stand in the shoes of "compacts" within IGRA. The Ninth Circuit held that they do. "[I]f Secretarial Procedures are not functionally equivalent in this context," the Ninth Circuit reasoned, "then gambling pursuant to Secretarial Procedures would be subject to possible criminal liability." *Stand Up!*, 959 F.3d at 1160. The Court thus held the opposite of Red Rock's position, agreeing that "Secretarial Procedures" and a "compact" were "functionally equivalent" for purposes of section 2710 and IGRA. *Id.*

Red Rock, as it must, acknowledges *Stand Up!*, but argues that its reasoning should not apply to section 2710(d)(7)(ii). MTD 16-17. Red Rock makes effectively two arguments: (1) It is fine for "Secretarial Procedures" to mean "compact" for purposes of avoiding the Johnson Act and section 2706(d)(6), but not for purposes of Congress authorizing suits under section 2710(d)(7), MTD 15-17; and (2) IGRA's plain language and the balance it strikes means Congress did not authorize suits under section 2710(d)(7). MTD 14-15. Neither argument convinces.

In *Blue Lake Rancheria v. Kalshi Inc.*, No. 25-CV-06162-JSC, 2025 WL 3141202, at *5 (N.D. Cal. Nov. 10, 2025), the Hon. Jacqueline Scott Corley rejected the argument Red Rock advances. There, as here, the defendant sought to limit *Stand Up!* so as not to apply to section 2710(d)(7). Judge Corley turned away that argument. Answering the question Red Rock presents, Judge Corley held that the Court may "entertain claims brought for violations of secretarial

procedures because the procedures are 'functionally equivalent' to compacts under IGRA." *Id.* (quoting *Stand Up!*, 959 F.3d at 1160).

The defendants in *Blue Lake* argued that *Stand Up!* applied to section 2710(d)(1) and not to 2710(d)(7), but Judge Corley had little trouble recognizing that "*Stand Up* reasoned the compacts are equivalent to secretarial procedures for purposes of Sections 2710(d)(1) and 2710(d)(6) because there is a 'presumption that a given term is used to mean the same thing throughout a statute.'" *Id.* (citing *Stand Up!*, 959 F.3d at 1160, and in turn citing *Brown v. Gardner*, 513 U.S. 115, 118 (1994)). "So," Judge Corley continued, "the Court must presume compacts are equivalent to secretarial procedures in § 2710(d)(7), which immediately follows a subsection *Stand Up* addressed." *Id.*

Put differently, construction of the term "compact" in section 2710(d)(6) to include secretarial procedures as a functional equivalent requires the same construction in the very next subsection, section 2710(d)(7). Red Rock's only real response to *Blue Lake* is to say, in effect, "well, the facts are different." *See* MTD 16-17. But *Blue Lake*'s analysis was a legal one—and as to its legal analysis and interpretation of binding precedent in *Stand Up!*, Red Rock offers no legal response because there is none.

As for Red Rock's second position, its appeal to IGRA's plain language is the essence of a "heads I win, tails you lose" argument—a point it nearly concedes in footnote 2 of its brief. *Stand Up!* already recognized that to read IGRA's plain language in the way Red Rock does would put Red Rock and its partner North Fork in violation of the Johnson Act. They plainly do not want that, and the Ninth Circuit held the opposite. Here, Red Rock cites *Stand Up!*, 959 F.3d at 1158-61, to argue that the Johnson Act does not apply to its planned gaming on the Madera Parcel because secretarial procedures *are equivalent* to tribe-state compacts under 25 U.S.C. § 2710(d)(6). MTD 15-17. And yet, at the same time, Red Rock asserts that secretarial procedures *are not equivalent* to tribe-state compacts under the very next subsection of the statute, 25 U.S.C. § 2710(d)(7), when it comes to asserting a claim for violating secretarial procedures. *See* MTD 15-16. So Red Rock wants *Stand Up!* to apply when it helps it but not when it doesn't. No dice.

Stand Up! is binding precedent; its holding of equivalence must apply both when Red Rock invokes it (under the Johnson Act) and when it confirms Congress authorized suits under section

2710(d)(7). *See I.T. Consultants, Inc. v. Republic of Pakistan*, 351 F.3d 1184, 1191 (D.C. Cir. 2003) (per Roberts, J.) ("The district court properly rejected this argument as inconsistent with the fundamental precept of Anglo–American jurisprudence that you cannot have your cake and eat it, too . . . ."); *Zuniga v. United Can Co.*, 812 F.2d 443, 450 (9th Cir. 1987) ("District courts are, of course, bound by the law of their own circuit . . . .").

Judge Corley's analysis likewise highlights why Red Rock's position is incorrect relative to the inclusion of a Secretarial right of suit in section 2710(d)(7)(A)(iii). MTD 13-14. Red Rock has no persuasive response because there is none. Accepting Red Rock's view, Picayune would have a right to sue for violations of a compact between North Fork and the State of California, but not for violations of the Secretarial Procedures. Judge Corley plainly rejected that argument, which is injurious to the rights of tribes. "Under Defendants' reading, Tribes would lose the ability to enjoin unlawful Class III activity[,]" Judge Corley reasoned, "whenever a state refuses to negotiate a new compact in good faith–a situation over which Tribes have no control." *Blue Lake*, 2025 WL 3141202, at *5. "Like the Ninth Circuit," she continued, "the Court 'do[es] not believe that Congress intended such a result that would permit a state to be hostile to Indian tribes.'" *Id.* (quoting *Stand Up!*, 959 F.3d at 1161). Instead, she concluded, "the Court has jurisdiction over Plaintiffs' IGRA cause of action if they are seeking to enjoin activity 'conducted on Indian lands' and in violation [of] Plaintiffs' compact or secretarial procedures within the meaning of subsection (d)(7)(A)(ii)." *Id.* at *5.

Picayune does just that. There is no dispute that the federal government currently holds the Madera Parcel in trust for North Fork, making it "Indian lands." 25 U.S.C. § 2703(4)(B). But because it was acquired after October 17, 1988, it is not *eligible* Indian lands for gaming unless an exception applies. 25 U.S.C. § 2719; *see* FAC ¶¶ 45-61. And because the operative Secretarial Procedures here allow "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," FAC ¶ 51 (emphasis added) (internal quotation marks omitted), and the Madera Parcel is not *eligible* Indian lands, no gaming can occur consistent with the Secretarial Procedures. By IGRA's plain text, the People of

California's vote, and the determinative conclusions in *Picayune Rancheria*, the Madera Parcel isn't "eligible."

Nothing in IGRA suggests that Picayune is precluded from invoking section 2710(d)(7)(B)(ii). Rather, it is the Ninth Circuit's, Judge Corley's in *Blue Lake*, and Picayune's views that harmonize the various provisions. When a compact is in place, the Secretary is not a party to it. The agreement is between the State, who agreed to it, and a tribe—and respecting the cooperative federalism view that IGRA seeks to balance, IGRA leaves it to competitor tribes and the State to enforce that compact. But when Secretarial Procedures to which a state is not a party are in place, a new party is added—the Secretary. *See* 25 U.S.C. § 2710(d)(7)(B)(vii) ("If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe . . . ."). Yet without section 2710(d)(7)(B)(iii), the Secretary would have no direct right to enforce that right under section 2710(d)(7)(B)(ii), as he isn't listed. So his inclusion in a separate provision 2710(d)(7)(B)(iii) gave him enforcement rights. That inclusion, however, does not, as Judge Corley reasoned, intend to preclude competing tribes or the State from also suing to enforce the imposed Secretarial Procedures. Instead, by reading "Secretarial Procedures" as "functionally equivalent" to a "compact" for purposes of section 2710(d)(7)(ii), the law would keep the competing tribe's (like Picayune's) right of enforcement, avoiding rendering that right a nullity, while also giving the newly added Secretary an additional right of enforcement—a conclusion Judge Corley already reached. *Blue Lake*, 2025 WL 3141202, at *5; *see also Stand Up!*, 959 F.3d at 1160.

Michigan v. Bay Mills Indian Community, 572 U.S. 782 (2014), cited by Red Rock, lends it no aid. In *Michigan*, the Court recognized that "IGRA partially abrogates tribal sovereign immunity in § 2710(d)(7)(A)(ii)," but then held that a Court could not add the word "off" into the statutory language. *Id.* at 791. In other words, the limitation to suit seeking injunctions applying to class III gaming "on Indian lands" could not be read to cover a suit enjoining gaming off "Indian lands": "A State's suit to enjoin gaming activity on Indian lands (assuming other requirements . . .)

falls within § 2710(d)(7)(A)(ii); a similar suit to stop gaming activity off Indian lands does not." *Michigan*, 572 U.S. at 791.

Here, there is no such thing afoot. The suit is about ineligible *gaming* on Indian lands. And, having already recognized that Congress abrogated tribal sovereign immunity in § 2710(d)(7)(A)(ii) for suits by tribes about illicit gaming on Indian lands, there is no reason to ignore binding Ninth Circuit precedent. As the Supreme Court recognized in *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382 (2023)—another case invoked by Red Rock—there "is not a magic-words requirement" when it comes to waivers of immunity. *Id.* at 388 (finding immunity waived).

In the end, the conclusion comes down to this: Binding circuit law and the logic that led to it compel the rejection of Red Rock's positions.

2. Red Rock's Statute of Limitations Argument Defies Common Sense.

In its second claim, as noted, Picayune alleges that class III gaming on the Madera Parcel would violate the Secretarial Procedures because, in the absence of a valid concurrence, the Madera Parcel does not qualify for any exception to lawfully conduct class III gaming under IGRA. FAC ¶¶ 76-88. Picayune also alleges that recent statements and actions by North Fork and Red Rock show that they intend to engage in unlawful class III gaming at the Madera Parcel in the near future. FAC ¶¶ 34, 60-61, 88. Red Rock does not dispute that neither it nor North Fork have yet to offer class III gaming at the Madera Parcel. Instead, it argues that Picayune was required to bring suit to stop yet-to-be-initiated unlawful gaming more than 10 years ago. The argument fails on its own terms.[3]

Assuming *arguendo* that Picayune's second claim is governed by California's four-year statute of limitations for breach of contract, Red Rock provides no cogent explanation for why that limitations period began to run in 2016. In effect, Red Rock contends that any claim for breach of contract accrued nearly a decade ago because Picayune should have known, back in 2016 when the Secretarial Procedures were issued, that Red Rock and North Fork would breach the Secretarial

[3] Although Picayune does not concede that any statute of limitations as to Count Two is governed by California breach of contract law, it is unnecessary to reach that issue here.

Procedures in 2026. MTD 20. That is not how the law works. Indeed, Red Rock's own authority provides that "[a] cause of action ordinarily accrues when, under the substantive law, the wrongful act is done and liability arises, i.e., upon the occurrence of the *last* fact essential to the cause of action." *Angeles Chem Co. v. Spencer & Jones*, 44 Cal. App. 4th 112, 120 (1996) (emphasis added). In other words, "[a] cause of action for breach of contract does not accrue before the time of breach." *Romano v. Rockwell Int'l, Inc.* (1996) 14 Cal.4th 479, 488 (1996); *see also Spear v. Cal. State Auto. Assn.*, 2 Cal.4th 1035, 1042 (1992) ("A contract cause of action does not accrue until the contract has been breached.").

The analysis here is straightforward. Gaming has yet to occur on the Madera Parcel, so there cannot have been a breach of the Secretarial Procedures and their requirement that all gaming be conducted on eligible Indian lands in compliance with IGRA. As a result, a claim for breach of the Secretarial Procedures has yet to accrue, and it cannot be barred by any statute of limitations. Red Rock provides no authority or analysis to explain why this Court must ignore these basic precepts and instead find that a breach of contract claim should have been brought nearly a decade before any breach occurred.

Although never stated, Red Rock may be arguing that Picayune *should* have brought an action for anticipatory breach of contract, and that action is now time-barred. That argument (to the extent Red Rock seeks to make it) is also incorrect. First, Picayune had no way of knowing that Red Rock and North Fork would continue to stubbornly pursue gaming in contravention of final rulings by the California courts. *See Taylor v. Johnston*, 15 Cal.3d 130, 137 (1975) (anticipatory breach occurs when a party makes a "clear, positive, unequivocal refusal to perform" under the contract). Recall that North Fork fought its fight *on the merits* of the Governor's concurrence all the way to the California Supreme Court, even making *merits* arguments in its petition for review to that High Court. *See* Petition For Review, *Picayune Rancheria of Chukchansi Indians v. North Fork Rancheria of Mono Indians*, No. S294956 (Cal. Jan. 23, 2026), *denied* (Apr. 1, 2026). As noted in Picayune's concurrent opposition to North Fork's motion to dismiss, North Fork even made some of the same arguments it makes here. It lost.

But having fought on the merits, no spurious claim to a time bar can be countenanced now. Indeed, prior filings in the California courts led Picayune to believe that North Fork—and, by extension, Red Rock—would honor any final decision in that litigation. *See* ECF No. 34-2, Ex. G at 3 (North Fork's application for leave to intervene claiming that if Picayune prevails in the litigation, "North Fork's project may be delayed or stopped"). It was only recently that North Fork made statements and took actions that clearly and positively indicated an intent to conduct gaming in defiance of a final ruling from the California courts. FAC ¶ 34; *Romano v. Rockwell Int'l, Inc.*, 14 Cal.4th 479, 489 (1996) (citing Professor Corbin for the proposition that a statute of limitations should not be applied in a way that would "penalize[]" a plaintiff for giving a defendant "an opportunity to retract his wrongful repudiation" of contractual obligations).

Further, Picayune could not have brought such an action before April 2026 because prior to that point the validity of the Governor's concurrence had yet to be resolved by the California courts. In other words, any claim had not accrued because the judgment holding that any future gaming would be in violation of IGRA and the Secretarial Procedures had not yet become final. And even were that not the case, the doctrine of equitable tolling fully supports the conclusion that North Fork was not required to bring a breach of contract claim while the parties were engaged in active litigation to resolve whether any such gaming would be lawful, and when Nominal Defendants knew full well that litigation might impair its and its partner North Fork's ability to lawfully conduct gaming on the Madera Parcel. *See Daviton v. Columbia/HCA Healthcare Corp*, 241 F.3d 1131, 1135-38 (9th Cir. 2001) (explaining that federal courts typically borrow a state's equitable tolling rules, and summarizing California's rule); *Lambert v. Commonwealth Land Title Ins. Co.*, 53 Cal.3d 1072, 1080 (1991) (finding statute of limitations tolled while related litigation was being resolved); *Addison v. State of Cal.*, 21 Cal.3d 313, 317-21 (1978) (same).

Last, even if Red Rock can demonstrate that Picayune should have known all along that defendants would ignore the California courts, Red Rock forgets that, under California law, Picayune was under no obligation to bring an anticipatory breach of contract action and could instead wait for a breach to occur and bring a breach of contract action. *Romano*, 14 Cal.4th at 489 (explaining that if a plaintiff elects to forego an anticipatory breach claim and instead brings a

breach of contract claim, "the statute of limitations does not begin to run until the time set by the contract for performance").

In an effort to revive its doomed argument, Red Rock alludes to prior litigation brought by Picayune to claim its current lawsuit is an improper attack on the Secretarial Procedures. MTD 20. Not so. Picayune previously filed suit to challenge the Secretary's issuance of the Secretarial Procedures. In the parlance of contract law, that lawsuit sought a judicial declaration that the Secretarial Procedures were void. Picayune does not assert a similar claim here, instead arguing that any future gaming would be a breach of those Secretarial Procedures. Those are two distinct causes of action with different statutes of limitations—the first tied to when the controversy arose (issuance of the Secretarial Procedures), and the second tied to the time of a breach (violation of the terms of the Secretarial Procedures). Furthermore, in no way can Picayune's pending claim be considered a "collateral attack" on the 2016 issuance of the Secretarial Procedures. While Picayune remains concerned with how those Secretarial Procedures were issued, its pending claim for breach of the Secretarial Procedures necessarily assumes that the Secretarial Procedures are binding and fully enforceable.

CONCLUSION

We ask that the Court deny Red Rock's motion in full.

Respectfully submitted,

DATED: September 14, 2026

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