

1 KAMALA D. HARRIS  
Attorney General of California  
2 SARA J. DRAKE, State Bar No. 102565  
Senior Assistant Attorney General  
3 TIMOTHY M. MUSCAT, State Bar No. 148944  
Deputy Attorney General  
4 WILLIAM P. TORNGREN, State Bar No. 58493  
Deputy Attorney General  
5 1300 I Street, Suite 125  
P.O. Box 944255  
6 Sacramento, CA 94244-2550  
Telephone: (916) 323-3033  
7 Fax: (916) 323-2319  
E-mail: William.Torngren@doj.ca.gov  
8 *Attorneys for Plaintiff*

9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF CALIFORNIA  
12

13  
14 **STATE OF CALIFORNIA,**

15 Plaintiff,

16 v.

17 **PASKENTA BAND OF NOMLAKI**  
18 **INDIANS, A FEDERALLY RECOGNIZED**  
**INDIAN TRIBE,**

19 Defendant.  
20  
21

**Case No. 14-at-783**

**REVISED PLAINTIFF'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
TEMPORARY RESTRAINING ORDER**

**Date:**  
**Time:**  
**Courtroom:**  
**Judge:**  
**Trial Date:**  
**Action Filed:**

22 The State of California (State) seeks immediate injunctive relief to prevent an imminent  
23 threat to the public health and safety. Opposing tribal factions of the Paskenta Band of Nomlaki  
24 Indians (Paskenta) claim the right to control the Rolling Hills Casino (Casino). One faction  
25 advises that "by and through its Tribal Police, [it] intends to very soon physically repossess and  
26 close" the Casino. This is an imminent threat to the public health and safety of Paskenta's  
27 members, the State's residents, patrons, and visitors at and around the Casino. Therefore, this  
28 Court should issue orders to protect the public, including a temporary restraining order

1 prohibiting Paskenta from operating the Casino until the Court is satisfied that the Casino will be  
 2 operated in a manner that does not endanger, or otherwise threaten, the public health, safety, or  
 3 welfare of employees, patrons, and the general public.

#### 4 THE FACTS JUSTIFYING EMERGENCY RELIEF

5 The State and Paskenta entered into the Compact on September 10, 1999.<sup>1</sup> (Dhillon Dec.,  
 6 p. 1, ¶ 2.) Pursuant to the Compact, Paskenta owns and operates the Casino in Corning, Tehama  
 7 County, California. (*Id.* at pp. 1-2, ¶ 2.) The Compact makes provisions to protect the public  
 8 health and safety. (*Id.* at p. 3, ¶ 9.) Under section 8.1.2 of the Compact, Paskenta agrees to  
 9 ensure “the physical safety of Gaming Operation patrons and employees, and any other person  
 10 while in the Gaming Facility.” (Compact, p. 24, § 8.1.2.) Section 10.1 of the Compact provides:  
 11 “The Tribe will not conduct Class III gaming in a manner that endangers the public health, safety,  
 12 or welfare . . . .” (*Id.* at p. 30, § 10.1.)

13 The Compact also allows the State to seek a court’s aid in protecting the public health or  
 14 safety. Specifically, section 9.1 provides that, in the case of an imminent threat to the public  
 15 health or safety, the parties may resort to immediate judicial process. (Compact, p. 28, § 9.1.)  
 16 Here, the State must do so to protect Paskenta’s members, the state’s residents, and visitors and  
 17 patrons at and around the Casino. (Dhillon Dec., p. 3, ¶ 8.)

18 An intra-tribal dispute exists among Paskenta’s members. (Dhillon Dec., p. 2, ¶ 3.) As a  
 19 result of this dispute, two factions claim tribal leadership rights and the right to the Casino’s  
 20 possession and control. (*Ibid.*) The intra-tribal dispute involves armed factions and thus poses a  
 21 threat to the public health, safety, and welfare. (*Id.* at p. 2, ¶ 4; Declaration of Eric Linch in  
 22 Support of Motion for Temporary Restraining Order (Linch Dec.), p. 2, ¶ 4, pp. 4-5, ¶¶ 12-17.)  
 23 On June 9, 2014, the United States Department of the Interior, Bureau of Indian Affairs (BIA),  
 24 issued an administrative cease and desist order (Cease and Desist Order).<sup>2</sup> (Dhillon Dec., p. 2, ¶

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25 <sup>1</sup> A true copy of the Compact is Exhibit A to the Declaration of Joginder Dhillon in  
 26 Support of Motion for Temporary Restraining Order (Dhillon Dec.)

27 <sup>2</sup> A true copy of the Cease and Desist Order is Exhibit B to the Declaration of Joginder  
 28 Dhillon in Support of Motion for Temporary Restraining Order.

1 5.) In the Cease and Desist Order, the BIA recited that the security force for one faction had  
2 barricaded the entrance to the Casino and that armed agents of the other faction covered the  
3 perimeter of the Casino property. (Dhillon Dec., Exh. B, p. 1.) The BIA further recited that local  
4 law enforcement reported the situation as “very volatile” and that “tensions are high.” (*Id.* at p.  
5 2.) The BIA issued the Cease and Desist Order based upon its conclusion that a danger to the  
6 public safety exists. (*Id.* at p. 2.)

7 On June 10, 2014, an attorney representing one of the factions to the intra-tribal dispute  
8 sent an email to, among others, the State’s agents. That email forwarded the Cease and Desist  
9 Order. (Dhillon Dec., p. 2, ¶ 6.) The June 10, 2014 email stated, among other things:

10 a. “[A]ll actions taken by the Tribal Council, including the  
11 deputization of Tribal Police and formation of a Tribal Court, are in  
12 full force and effect. Please act, or react, accordingly.”

13 b. “As the Tehama County Sheriff has been fully apprised,  
14 the Tribal Council, by and through its Tribal Police, intends to very  
15 soon physically repossess and close Rolling Hills Casino.”

16 c. “Requests for mutual aid are forthcoming, to each and  
17 every one of your and to your sister agencies in local, state and  
18 federal government.”

19 (*Id.* at pp. 2-3, ¶ 7.)

20 On June 9, 2014, the same attorney representing one of the factions to the intra-tribal  
21 dispute sent another email to, among others, the State’s agents. The June 9, 2014 email stated,  
22 among other things:

23 a. “Please be advised as to an unfolding situation at Rolling  
24 Hills Casino that we fear could erupt in violence.”

25 b. The situation is “what we understand to be an as of yet  
26 peaceful, but volatile, standoff.”

1 c. "Others from Zak Security [the other faction's agents] are  
2 bearing masks with rifles, and possess extended magazines and a  
3 canine."

4 (Dhillon Dec., p. 3, ¶ 8.)

5 Eric Linch, a Special Agent Supervisor for the California Department of Justice, Bureau of  
6 Gambling Control, has monitored the escalation of the intra-tribal dispute. (Linch Dec., p. 2, ¶ 4.)  
7 He initially was told that the factions were looking to achieve a non-violent resolution. (*Id.* at p.  
8 3, ¶ 7.) Later, Mr. Linch heard of plans to use helicopters to take over the Casino (*id.* at pp. 3-4, ¶  
9 8) and the rejection of non-violent resolutions (*id.* at p. 4, ¶ 9). That was followed by a  
10 confrontation and an eventual standoff involving approximately 100 – 50 per side – armed  
11 persons. (*Id.* at pp. 4-5, ¶¶ 12-16.) Special Agent Linch has concluded that the continuing  
12 standoff presents an imminent threat to the public health and safety, and that a violent  
13 confrontation likely will occur. (*Id.* at p. 5, ¶ 17.) He further concludes that the local Sheriff's  
14 Department is "outnumbered and outgunned." (*Ibid.*)

15 Phillip Johnston, the Assistant Sheriff in the Tehama County Sheriff's Office, has been told  
16 by both factions to the intra-tribal dispute that each is willing to resort to any measure to defend,  
17 or to take over, the Casino. (Declaration of Phillip Johnston in Support of Motion for Temporary  
18 Restraining Order (Johnston Dec.), p. 2, ¶ 5.) He has observed persons with assault type weapons  
19 and multi-round magazines. (*Id.* at p. 2, ¶ 7.) They also were carrying a variety of sidearms. (*Id.*  
20 at p. 3, ¶ 8.) Both factions have remained in a standoff around the Casino; that has required  
21 Tehama County to keep deputies on site to monitor the situation. (*Id.* at p. 3, ¶¶ 10, 12.) The  
22 threat to the public safety has required staging local and state law enforcement officers. (*Id.* at p.  
23 3, ¶ 13.) On June 11, 2014, an approximately three-hour confrontation occurred that included the  
24 threat of a "rescue effort" by so-called tribal police. (*Id.* at pp. 3-5, ¶¶ 14-24.) During that  
25 confrontation, one tribal police officer texted Assistant Sheriff Johnston of an intent "to deploy  
26 our tactical team into the casino." (*Id.* at p. 4, ¶¶ 18, 19, Exh. A.)

27 As late as June 12, 2014, the Casino remains surrounded by the two intra-tribal factions,  
28 one of which is armed. (Johnston Dec., p. 5, ¶ 25.) Assistant Sheriff Johnston concludes that the

1 continuing standoff presents an imminent threat to the public health and safety, and is a volatile  
2 situation that compromises public safety. (*Id.* at p. 5, ¶ 26.)

3 Dave Hencrett is Tehama County's Sheriff-Coroner. (Declaration of Dave Hencrett in  
4 Support of Motion for Temporary Restraining Order (Hencret Decl.), p. 1, ¶ 1.) Since June 9,  
5 2014, he has deployed deputies and officers at and around the Casino. (*Id.* at p. 2-3, ¶¶ 3-4, 6.)  
6 This is a significant drain on the his department's resources. (See *id.* at p. 3-4, ¶¶ 7, 9.) It has  
7 affected the department's ability to respond to calls and otherwise perform its duties. (*Id.* at p. 3,  
8 ¶ 8.) Sheriff Hencrett's deputies are exhausted. (*Ibid.*) The activities at the Casino and the intra-  
9 tribal dispute remain a threat to the public health and safety and deny other Tehama County  
10 residents the attention of the Sheriff's Department. (*Id.* at pp. 2-3, ¶ 6, pp. 3-4, ¶ 9.)

11 As recently as June 16, 2014, Paskenta described the situation as constantly evolving but  
12 extremely unstable. (Dhillon Dec., p. 3, ¶ 9.) The relations between the factions continue to  
13 deteriorate, and the presence of firearms creates an intolerable risk of violence. (*Ibid.*) Two  
14 factions, deteriorating relations, and unstable environment threaten the public health and safety  
15 and create a dangerous situation. (See *ibid.*)

## 16 ARGUMENT

17 The June 9 and 10, 2014 emails, as well as the declarations of Special Agent Lynch,  
18 Assistant Sheriff Johnston, and Sheriff-Coroner Hencrett demonstrate the existence of a volatile  
19 situation involving armed factions that threaten the public health and safety and endanger  
20 Paskenta's members, the Casino's employees and patrons, and the State's residents and visitors,  
21 including law enforcement agents. This situation breaches Paskenta's duties under the Compact,  
22 and requires immediate action to protect the public safety until the intra-tribal dispute over the  
23 ownership and control of the Casino has been resolved.

### 24 A. The Court Has Original Jurisdiction Over the State's Action

25 The State's Complaint invokes the Court's jurisdiction under section 1331 of title 28 of the  
26 United States Code because the State's claim arises under federal statutes and the federal  
27 common law. This Court also has jurisdiction pursuant to section 2710(d)(7)(A)(ii) of title 25 of  
28



1 the United States Code because this action is initiated by the State to enjoin conduct related to  
2 Paskenta's class III gaming activity that violates the Compact.

3 The parties have waived sovereign immunity with respect to the claim for relief made in the  
4 State's Complaint. Specifically, section 9.3 of the Compact provides for a limited waiver of  
5 sovereign immunity as follows:

6 (a) In the event that a dispute is to be resolved in federal  
7 court . . . as provided in this Section 9, the State and the Tribe  
8 expressly consent to be sued therein and waive any immunity  
therefrom that they may have provided that:

9 (1) The dispute is limited solely to issues arising under this  
10 Gaming Compact;

11 (2) Neither side makes any claim for monetary damages (that  
12 is, only injunctive, specific performance, . . . or declaratory relief is  
sought); and

13 (3) No person or entity other than the Tribe and the State is  
14 party to the action . . . .

15 (Compact, p. 29, § 9.4.)

16 **B. The State Is Entitled to Issuance of a Temporary Restraining Order**

17 The requirements for a temporary restraining order are the same as those for a preliminary  
18 injunction. A party applying for a preliminary injunction "must establish that he is likely to  
19 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
20 relief, that the balance of equities tips in his favor, and that an injunction is in the public interest."  
21 *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). Here, the evidence  
22 establishes all of these factors.

23 **1. The State Is Likely To Succeed on the Merits**

24 The State's lone claim for relief is breach of the Compact. A compact is a contract. *Pueblo*  
25 *of Santa Ana v. Kelly*, 104 F.3d 1546, 1556 (10th Cir. 1997). The general principles of federal  
26 contract law apply to compacts. *Cachil Dehe Band of Wintun Indians of the Colusa Indian*  
27 *Comm. v. California Gambling Control Com'n*, 618 F.3d 1066, 1073 (9th Cir. 2010). In  
28 determining federal contract law, courts rely upon both "California contract law and Ninth Circuit

1 decisions interpreting California” contract law. *Id.* The elements for a breach of contract claim  
 2 are the contract, plaintiff’s performance or excuse for nonperformance, defendant’s breach, and  
 3 resulting damages to plaintiff. *Reichert v. General Ins. Co. of America*, 68 Cal.2d 822, 830  
 4 (1968).

5 In this case, the elements of Paskenta’s breach of the Compact are clear. In the Compact,  
 6 Paskenta agreed to ensure the physical safety of employees and patrons at the Casino (Compact,  
 7 p. 24, § 8.1.2), and to not conduct gaming in a manner that endangers the public health, safety, or  
 8 welfare (*id.* at p. 30, § 10.1). The standoff between armed factions and the treats of physically  
 9 repossessing the Casino, described in the declarations submitted to this Court, constitutes a breach  
 10 of the Compact. Pursuant to the cited Compact provisions, Paskenta violates the Compact when  
 11 it, as the result of intra-tribal disputes or otherwise, forms armed factions that threaten to either  
 12 commit or attempt to commit physical assaults, repossessions, or attacks at or near the Casino.  
 13 Consequently, the situation and threats show that the State is likely to succeed on the merits.

## 14 **2. The State Is Likely To Suffer Irreparable Harm in the Absence of Relief**

15 The facts show that the State is likely to suffer imminent irreparable injury. *See Caribbean*  
 16 *Marine Services Co., Inc. v. Baldridge*, 844 F.2d 668, 674 (9th Cir. 1988). The attorney for one  
 17 faction in the intra-tribal dispute warns that “the Tribal Council, by and through its Tribal Police,  
 18 intends to very soon physically repossess and close Rolling Hills Casino.” (Dhillon Dec., pp. 2-3,  
 19 ¶ 7.) That intention creates the risk of imminent physical injury to the State’s residents and  
 20 visitors to the Casino, particularly where both factions are armed and part of a volatile situation.  
 21 Moreover, in the opinion of Special Agent Linch, local law enforcement is unable to cope with  
 22 this situation. Further, as demonstrated by Assistant Sheriff Johnston’s declaration, the threat  
 23 continues. Absent injunctive relief disarming the factions and prohibiting any assaults or  
 24 attempts to repossess the Casino, physical injury to the State’s residents is likely to occur.

## 25 **3. The Balance of the Equities Tips in the State’s Favor**

26 The equities clearly favor the State and its interests to protect the public health, safety, and  
 27 welfare. The State seeks to prevent the potential for violence and physical harm to people.  
 28

1 Balanced against this is Paskenta's right to exercise self-help. The Court should determine that  
2 public safety outweighs self-help.

3 **4. An Injunction Is in the Public Interest**

4 The State is respectful of Paskenta's right to resolve its intra-tribal disputes on its own. In  
5 fact, the State takes no position with respect to the intra-tribal dispute. Nonetheless, the State and  
6 the general public have an interest in safety and not being endangered physically by an intra-tribal  
7 dispute. Clearly, an injunction here is in the public interest.

8 **CONCLUSION**

9 In view of the foregoing, the State respectfully requests that the Court issue a temporary  
10 restraining order to protect the public. This order should include an order enjoining attempts to  
11 repossess, or take control of, the Casino, deploying armed personnel, and having firearms on the  
12 properties in the Casino's vicinity.

13 Dated: June 17, 2014

Respectfully submitted,

14 KAMALA D. HARRIS  
15 Attorney General of California  
16 Sara J. Drake  
17 Senior Assistant Attorney General  
18 Timothy M. Muscat  
19 Deputy Attorney General

20 /s/ WILLIAM P. TORNGREN

21 WILLIAM P. TORNGREN  
22 Deputy Attorney General  
23 *Attorneys for Plaintiff*

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