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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

**STATE OF CALIFORNIA,**

Plaintiff,

v.

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

Defendant.

Case No. 2:14-cv-01449-KJM-CMK

**PLAINTIFF'S REQUEST FOR  
PRELIMINARY INJUNCTION AND  
OPPOSITION TO ENJOINING CLASS  
III GAMING ACTIVITY**

**Date:** July 7, 2014  
**Time:** 2:00 p.m.  
**Courtroom:** 3, Fifteenth Floor  
**Judge:** The Honorable Kimberly J. Mueller

The State of California (State) respectfully requests that the Court enter a preliminary injunction that is substantively the same as the present temporary restraining order (TRO). (*See* [Proposed] Preliminary Injunction, filed concurrently.) That preliminary injunction is the least intrusive and most neutral order that maintains the status quo and protects the public health, safety, and welfare.

The State opposes the current request to enjoin all class III gaming activity. The requested relief does not maintain the status quo and is not necessary to protect the public health,

1 safety, and welfare under the presently existing facts. The Court's TRO effectively defused what  
 2 was a volatile situation and has allowed local and state law enforcement to reduce their presence  
 3 at the Rolling Hills Casino (Casino).<sup>1</sup>

#### 4 FACTS

5 The facts underlying the State's request for a preliminary injunction and in support of the  
 6 TRO are not disputed. An intra-tribal dispute exists between two groups of the Paskenta Band of  
 7 Nomlaki Indians (Paskenta or Tribe).<sup>2</sup> Each group claims to be the Tribe, to be its duly  
 8 constituted leadership, and to have the right and power to control the Casino. The State takes no  
 9 position as to the groups' claims. Accordingly, the State defers to Paskenta's sovereign authority  
 10 to resolve intra-tribal disputes in accordance with tribal and federal law. The State's interest in  
 11 this action is to protect the health, safety, and welfare of its residents, the Tribe's members, and  
 12 the Casino's patrons and employees. The State's interest arises from the tribal-state class III  
 13 gaming compact (Compact) between it and Paskenta.

14 On Monday, June 9, 2014, the intra-tribal dispute escalated to a confrontation between  
 15 two armed factions outside the Casino. That confrontation resulted in a standoff in which  
 16 Paskenta Group One's armed security force occupied the Casino, while Paskenta Group Two's  
 17 armed force, designated as "tribal police," occupied the perimeter. The Tehama County Sheriff  
 18 dispatched deputies and officers to the scene. The California Highway Patrol and neighboring  
 19 law enforcement agencies were either onsite, or at the ready, to assist the Tehama County Sheriff.

20 The situation was tense and volatile. The standoff endangered the health, safety, and  
 21 welfare of the State's residents, the Tribe's members, and the Casino's patrons and employees.  
 22 The groups to the intra-tribal dispute made clear their intent to take, or defend, the Casino by any

23 <sup>1</sup> Because of the rapidity with which the situation escalated before, the State recognizes  
 24 that, and reserves its right to seek, different relief as exigent, later facts require. The State bases  
 25 this request and opposition on the presently existing facts and threat to the public health, safety,  
 and welfare.

26 <sup>2</sup> In this request and opposition, the State refers to the groups involved in the intra-tribal  
 27 dispute as "Paskenta Group One" and "Paskenta Group Two." Paskenta Group One presently  
 28 controls the Casino; its leader apparently is Andrew Freeman. Paskenta Group Two filed the  
 request to enjoin all class III gaming activity. That group's leadership apparently consists of  
 David Swearinger, Geraldine Freeman, Leslie Lohse, and Allen Swearinger.

1 means. Even though the Bureau of Indian Affairs (BIA) issued a cease and desist order on June  
2 9, 2014, the two groups' armed forces did not stand down and remained onsite. In the evening on  
3 June 11, 2014, Paskenta Group Two's leaders came to the Casino. Tensions increased, and one  
4 member of the "tribal police" even drew his gun.

5 Even though his deputies were outmanned and outgunned, the Tehama County Sheriff  
6 kept the peace. By Monday, June 16, 2014, the armed standoff appeared to have abated. The  
7 threat of its return, however, remained. Additionally, keeping the peace required the Sheriff's  
8 Department's constant presence onsite – a drain on the county's resources. As the situation  
9 continued on, the Sheriff's resources were strained to the detriment of the county's other  
10 residents. Deputies were exhausted.

11 On June 17, 2014, the State filed this action alleging that the situation breaches the  
12 Compact's provisions requiring that Paskenta ensure the physical safety of patrons and employees  
13 and not conduct class III gaming in a manner that endangers the public health, safety, or welfare.  
14 (ECF No. 2, p. 2.) The State's complaint sought injunctive and declaratory relief. (*Id.* at p. 5.)  
15 The injunctive relief specifically requested was to enjoin Paskenta, as well as its officers, agents,  
16 and others acting under its direction and control, from (1) attempting to repossess, or take control  
17 of, the Casino, (2) deploying armed personnel within 100 yards of the Casino and other nearby  
18 properties, and (3) possessing, carrying, displaying, or otherwise having firearms at the Casino  
19 properties. (*Id.*)

20 Concurrently with filing the complaint, the State moved for a temporary restraining order.  
21 (ECF No. 3.) That motion requested an order that mirrored the complaint's prayer. (*Compare*  
22 ECF No. 3, p. 2, *with* ECF No. 2, p. 5.) The State's moving papers included, among other  
23 pleadings, a supporting memorandum (ECF No. 3-2), a proposed order granting a temporary  
24 restraining order (ECF No. 3-8), and a proposed order to show cause regarding a preliminary  
25 injunction (ECF No. 3-9). Each of those pleadings sought only the injunctive relief enumerated  
26 in the complaint. Contrary to Paskenta Group Two's assertion, none of the State's pleadings  
27 requested "injunctive relief closing the Casino." (ECF No. 23, p. 5.)  
28

On June 18, 2014, following a hearing on the State's motion, the Court issued the TRO. (ECF No. 18.) The Court found that an intra-tribal dispute exists that involved armed factions and taxed the Tehama County Sheriff's resources and poses a threat to the public health, safety, and welfare. (*Id.* at p. 2.) The Court's TRO maintained the status quo, created a 100-yard buffer zone around the Casino and related properties, and enjoined firearms there. (*Id.* at p. 3.)

After the parties stipulated to extend, and the Court extended, the briefing schedule and the TRO's effectiveness, Paskenta Group Two filed its request to enjoin class III gaming activity. (ECF No. 23.)

### ARGUMENT

As set forth above, the State defers to Paskenta's sovereign authority to resolve intra-tribal disputes in accordance with tribal and federal law. The State's interest in this action is to protect the health, safety, and welfare of its residents, the Tribe's members, and the Casino's patrons and employees. (Supplemental Declaration of Joginder Dhillon (Dhillon Supp.), p. 2, ¶ 6.) The TRO has accomplished that to date. (Supplemental Declaration of Dave Hencratt (Hencratt Supp.), p. 2, ¶ 3; *see* Dhillon Supp., p. 2, ¶ 5.) The armed forces have not returned, and no incidents have occurred. (Hencratt Supp., p. 2, ¶ 4.) The Tehama County Sheriff has reduced the law enforcement presence at and around the Casino. (*Id.* at p. 2, ¶ 3; *see also* Dhillon Supp., p. 2, ¶ 5.) The groups in the intra-tribal dispute, however, have not retracted earlier threats. (Dhillon Supp., p. 2, ¶ 3.) Therefore, the State believes that a preliminary injunction that is substantively the same as the TRO is appropriate given the facts as they currently exist. (*Id.* at p. 3, ¶ 7; Hencratt Supp., p. 2, ¶ 5.)

The State previously met the requirements for a temporary restraining order, which are the same as the requirements for a preliminary injunction. A party applying for a preliminary injunction "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

Here, the evidence presented in connection with the State's earlier motion and in the declarations filed concurrently with this request and opposition establishes all these factors. Paskenta – through both groups – agrees that the State has met its burden with respect to each requirement.<sup>3</sup> In sum, no dispute exists as to the Court's issuing a preliminary injunction that is substantively the same as the TRO. Therefore, the State will not reargue, or restate, what Paskenta does not oppose.

Consequently, the State will limit its argument to Paskenta Group Two's request to enjoin class III gaming – that is, shut down the Casino. The Court should enter the least intrusive and most neutral order that maintains the status quo and continues to protect the public health, safety, and welfare. Shutting down the Casino goes far beyond that and, therefore, is not proper. Moreover and importantly, the relief provided by the Court in the TRO is working. (*See* Hencratt Supp., p. 2, ¶ 3; *see* Dhillon Supp., p. 2, ¶ 5.) That, in and of itself, shows that a broader order is not required.

Injunctions are equitable remedies that require a court to carefully balance “the conveniences of the parties and possible injuries to them . . . as they may be affected by the granting or withholding of the injunction.” *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). By its nature, “[t]he essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case.” *Id.* In molding such equitable orders, a federal court acts with “flexibility” and not “rigidity.” *Id.* Consistent with this, the Ninth Circuit has observed, a “district court has broad powers and wide discretion to frame the scope of appropriate equitable relief.” *Securities & Exchange Com'n v. United Financial Group, Inc.*, 474 F.2d 354, 358-59 (9th Cir. 1973).

For a starting point in tailoring an injunction that the State does not seek, the Court should look to the Compact itself. Paskenta Group Two agrees that the State is likely to succeed on the merits and concedes that the activities at the Casino breach the Compact. (ECF No. 23, p. 18 n.11.) Importantly, the breach, standing alone, does not terminate the Compact. Moreover, a

<sup>3</sup> Paskenta Group Two seeks separate relief “beyond that requested by the State” – i.e., enjoining class III gaming in its entirety. (ECF No. 23, p. 18, n.11.)



1 breach may not establish an immediate right of the State to seek judicial intervention.

2 Here, protecting the public health, safety, and welfare required the State to seek  
 3 immediate relief. Otherwise, the Compact provides remedies for a breach, as well as dispute  
 4 resolution. First, unless the public health, safety, and welfare are endangered and without  
 5 prejudice to seeking immediate relief when required,<sup>4</sup> the parties are to engage in efforts to  
 6 resolve issues relating to a breach voluntarily through a meet and confer process. (ECF No. 3-3,  
 7 p. 37 (Compact, § 9.1).) Second, if the meet and confer process fails, the parties waive their  
 8 sovereign immunity to allow for an injunctive and/or declaratory relief action in federal court.  
 9 (*Id.* at pp. 38-39 (Compact, § 9.4, subd. (a)); see also *id.* at pp. 37-38 (Compact, § 9.1, subd. (d)).)  
 10 Third, a party may seek a declaration of breach. (*Id.* at pp. 44-45 (Compact, § 11.2.1, subd. (c)).)  
 11 But the parties have a right to cure. (*Id.*)

12 Outside the Compact, the Indian Gaming Regulatory Act (IGRA) provides that the parties  
 13 may seek to enjoin a class III gaming activity that violates the Compact. 25 U.S.C. §  
 14 2710(d)(7)(A)(ii). As Paskenta Group Two points out, gaming activity is not limited to the actual  
 15 playing or providing the games. (ECF No. 23, at 18.) Gaming activity includes “the necessary  
 16 conduct associated with playing or providing” the games. *County of Madera v. Picayune*  
 17 *Rancheria of Chukchansi Indians*, 467 F. Supp. 2d 993, 1002 (E.D. Cal. 2006). Moreover,  
 18 IGRA’s statutory language speaks of enjoining “a” class III gaming activity, not “all” or “the”  
 19 gaming activity located on Indian lands. 25 U.S.C. § 2710(d)(7)(A)(ii).

20 Thus, even though the State’s likelihood of success on the merits is high,<sup>5</sup> the remedies  
 21 available for breach of Compact are not limited to the Casino’s immediate shutdown or the  
 22 Compact’s immediate termination. The State’s high likelihood of success supports a preliminary  
 23 injunction that protects the public health, safety, and welfare – that is, one substantively same as  
 24 the TRO.

25  
 26 <sup>4</sup> This is precisely the undisputed situation before the Court.

27 <sup>5</sup> Paskenta Group Two appears to agree that a material breach has occurred. (ECF No.  
 28 23, pp. 18-19.)

Additionally, Paskenta Group Two has not made a sufficient showing that the balance of the equities tips in its favor or that the preliminary injunction it requests – a Casino shutdown – is in the public interest. The State’s proposed preliminary injunction protects the public health, safety, and welfare, which clearly is in the public interest. Shutting down the Casino, however, potentially adversely affects the public health, safety, and welfare. Paskenta Group One has argued that a shutdown will put hundreds of Casino employees out of work and “devastate the local economy.” (ECF No. 14, p. 2.) Moreover, a gas station-food mart and two hotels will be affected adversely. (*See* Declaration of Martha Sanchez; Declaration of Nichole Torsey.)

In sum, shutting down the Casino is unnecessary and potentially harmful particularly when the TRO has defused, and quelled, a volatile situation.

## CONCLUSION

Consistent with its equitable powers, the Court should issue a preliminary injunction tailored to the existing facts and the potential injury to the public health, safety, and welfare. The State has proposed that preliminary injunction, which is substantively the same as the TRO. Therefore, the State respectfully requests that the Court enter the preliminary injunction proposed by the State.

Dated: June 30, 2014

Respectfully submitted,

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