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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALTURAS INDIAN RANCHERIA,
a federally recognized
Indian tribe,

Plaintiff,

v.

CALIFORNIA GAMBLING
CONTROL COMMISSION, an
agency of the State of
California,

Defendant.

NO. CIV. S-11-2070 LKK/EFB

O R D E R

_____/

Plaintiff in this case is the Del Rosa faction of the Alturas Indian Rancheria, a federally recognized Indian Tribe. Plaintiff has filed an ex parte application for a Temporary Restraining Order that would enjoin defendant California Gambling Control Commission from releasing funds held in trust for the Tribe to the Internal Revenue Service. The IRS is attempting to collect the funds pursuant to a "Notice of Levy," which plaintiff became aware of on or about July 20, 2011.

1 **I. BACKGROUND**

2 On August 1, 2011, Plaintiff, the Del Rosa Faction of the
3 Alturas Indian Rancheria filed suit against the California Gambling
4 Control Commission ("CGCC") in Sacramento County Superior Court.
5 See Notice of Removal, ECF No. 1. The complaint, which seeks
6 declaratory and injunctive relief, alleges that plaintiff is
7 entitled to monetary distributions from California's Revenue
8 Sharing Trust Fund ("RSTF"). Pursuant to state law, those funds are
9 distributed quarterly to participating tribes through the CGCC, as
10 trustee. According to plaintiff, "at the beginning of 2010, the
11 CGCC determined that a leadership dispute within the Tribe required
12 the Commission to withhold RSTF distributions pending resolution
13 of the dispute."¹

14 On or about July 20, 2011, plaintiff became aware that the IRS
15 had contacted the CGCC seeking levies against the Tribe's RSTF
16 funds.² At a meeting held on July 28, 2011, the CGCC voted to
17 recognize the levies and to allow the IRS to execute the levies.
18 Plaintiff claims that the Tribe has no knowledge of what the levies
19 correspond to, and requested time from the CGCC for the Tribe
20 investigate the matter directly with the IRS. Plaintiff alleges
21 that the CGCC's conduct constitutes breach of a tribal-state
22

23 ¹ That leadership dispute is also at the center of a related
24 action filed in this court, Alturas v. Salazar, 10-1997.

25 ² In a letter from the CGCC to the IRS, CGCC indicated that
26 it believed that the levies were related to unpaid employment
taxes. See July 19, 2011 Letter from Tina Littleton to Fara Mills,
ECF No. 9-2 at 99.

1 compact, and breach of the covenant of good faith and fair dealing.

2 On August 1, 2011, plaintiff filed an application for a
3 Temporary Restraining order in state court, which was set for
4 hearing on August 4, 2011. On August 3, 2011, defendant CGCC
5 removed this action to federal court.

6 Plaintiff's counsel was informed, by a letter dated August 5,
7 2011, that the CGCC would be processing and releasing a check to
8 the IRS as soon as it became available. St. Germain Decl. ¶ 7, ECF
9 No. 9-1. In a telephone conversation on August 8, 2011, plaintiff's
10 counsel was again informed by Deputy Attorney General Neil Houston
11 that the CGCC would process and release the check. Plaintiff has
12 not stated the date on which the check will be processed, but has
13 indicated that "the release of funds is imminent." TRO Checklist,
14 ECF No. 9-5.

15 Plaintiff informed defense counsel by voicemail on August 9,
16 2011 that plaintiff would be filing for a Temporary Restraining
17 Order in this court. St. Germain Decl. ¶ 12.

18 **II. STANDARD OF REVIEW FOR FED. R. CIV. P. 65 MOTION FOR**
19 **A TEMPORARY RESTRAINING ORDER**

20 Fed. R. Civ. P. 65 provides authority to issue either
21 preliminary injunctions or temporary restraining orders. The
22 requirements for a temporary restraining order are largely the
23 same as for a preliminary injunction. Stuhlbarq Int'l Sales Co.
24 v. John D. Brush & Co., 240 F.3d 832, 839 (9th Cir. 2001); see
25 also Wright and Miller, 11A Fed. Prac. & Proc. Civ. § 2951 (2d
26 ed.). A preliminary injunction is an "extraordinary remedy."

1 Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7,
2 22 (2008) (internal citation omitted). When a court considers
3 whether to grant a motion for a preliminary injunction, it
4 balances "the competing claims of injury, . . . the effect on
5 each party of the granting or withholding of the requested
6 relief, . . . the public consequences in employing the
7 extraordinary remedy of injunction," and plaintiff's likelihood
8 of success. Id. at 20, 24 (quoting Amoco Prod. Co. v. Gambell,
9 480 U.S. 531, 542 (1987); Weinberger v. Romero-Barcelo, 456 U.S.
10 305, 312 (1982). In order to succeed on a motion for a
11 preliminary injunction, the plaintiff must establish that "he is
12 likely to succeed on the merits, that he is likely to suffer
13 irreparable harm in the absence of preliminary relief, that the
14 balance of equities tips in his favor, and that an injunction is
15 in the public interest." Winter, 555 U.S. at 20.

16 Courts apply a more stringent standard where an adverse
17 party has not received notice of a motion for a TRO.
18 Specifically, courts may only "issue a temporary restraining
19 order without written or oral notice to the adverse party or its
20 attorney if: [¶] (A) specific facts in an affidavit or a
21 verified complaint clearly show that immediate and irreparable
22 injury, loss, or damage will result to the movant before the
23 adverse party can be heard in opposition; and [¶] (B) the
24 movant's attorney certifies in writing any efforts made to give
25 notice and the reasons why it should not be required." Fed. R.
26 Civ. P. 65(b)(1).

1
2 **III. ANALYSIS**

3 **i. Likelihood of success on the merits**

4 Plaintiff claims that it is likely to succeed on the merits
5 of its breach of contract claim because the defendant has no
6 discretion under the contract "with respect to the use or
7 disbursement of funds. Its sole authority shall be to serve as a
8 depository of the trust funds and to disburse them on a
9 quarterly basis to Non-Compact³ Tribes." Tribal-State Compact
10 between the State of California and the Alturas Rancheria §
11 4.3.2.1(b), Ex. B to Del Rosa Decl., ECF No. 9-2.

12 Upon a plain reading of the Tribal-State Compact, the court
13 concludes that plaintiff has a likelihood of success on the
14 merits, warranting a Temporary Restraining Order on the release
15 of the funds to the IRS.

16 **ii. Irreparable injury**

17 Plaintiff alleges that it will be irreparably injured if
18 the IRS is allowed to execute its levies against the Tribe's
19 RSTF funds without a proper finding regarding the origination of
20 the Tribes alleged tax liability. Plaintiff relies on RSTF
21 revenue, and would be without recourse if it is later found that
22 the tax liabilities underlying the levies are not the result of
23 a tribal enterprise. Plaintiff also alleges that the release of
24 funds held in trust for the Tribe by the CGCC, to the IRS,

25 ³ Plaintiff is considered a "Non-Compact Tribe" because its
26 casino operates fewer than 350 devices. Pl.'s Ex Parte Application
for a TRO 2.

1 interferes with the Tribe's government-to-government
2 relationship with the United States, a hallmark of the Tribe's
3 sovereignty. The release of funds by the CGCC amounts to
4 "unilaterally remov[ing] the Tribe from the decision-making
5 process, causing great harm to the Tribe and its relations with
6 the United States." Pl.'s Ex Parte Application for a TRO 5.

7 Although plaintiff has not told the court the specific date
8 on which the funds will be released, plaintiff has satisfied the
9 court that the release of funds is imminent. On August 5, 2011,
10 plaintiff received a letter from defendant that the check would
11 be processed "as soon as it became available." St. Germain Decl.
12 ¶ 7. Plaintiff's counsel Richard Armstrong was informed by
13 CGCC's general counsel that the funds would be released within
14 "between a few days and a few weeks" of July 28, 2011. Armstrong
15 Decl. ¶ 9.

16 The court finds that plaintiff will suffer an irreparable
17 injury in the absence of a Temporary Restraining Order.

18 **iii. Balance of equities**

19 According to plaintiff, the CGCC voted to allow the IRS to
20 collect the funds without clarifying the nature of the levies,
21 or whether the Tribe was in fact liable for any unpaid taxes.
22 The Tribe requested that the CGCC delay authorization of the
23 release of funds in order to get clarification from the IRS
24 about the tax liability. The court concludes that a delay in the
25 release of funds to the IRS will not cause any undue hardship on
26 the defendant in this case, which is acting as a trustee of the

1 Tribe's RSTF revenue, and the balance of equities tips in favor
2 of plaintiff.

3 **iv. The public interest**

4 There is a public interest in the collection, by the IRS,
5 of unpaid taxes. However, the court finds that the public's
6 interest in respecting tribal sovereignty and in honoring the
7 State-Tribal compact outweighs that interest, given that a
8 temporary restraining order will not deprive the IRS of the
9 opportunity to collect any unpaid taxes owed after the
10 expiration of the temporary restraining order or any injunction
11 issued by this court.

12 **IV. CONCLUSION**

13 For the reasons discussed herein, the court ORDERS as
14 follows:

15 [1] Plaintiff's ex parte application for a temporary
16 restraining order, ECG No. 9 is GRANTED.

17 [2] Defendant, its officers, agents, and employees and
18 attorneys and those persons in active concert with
19 them who receive actual notice of the order by
20 personal service or otherwise are ENJOINED from
21 distributing funds from plaintiff's Revenue Sharing
22 Trust Fund account administered by the CGCC.

23 [3] Defendant may, pursuant to Fed. R. Civ. P.
24 65(b)(4), move to dissolve or modify this Temporary
25 Restraining Order within two (2) days of the issuance
26 of this order.

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[4] A hearing on plaintiff's motion for a preliminary injunction is SET for August 29, 2011 at 1:30 p.m.


[5] Defendant SHALL file an opposition or statement of non-opposition to the preliminary injunction no later than August 15, 2011. Plaintiff's reply, if any, SHALL be filed no later than August 18, 2011.

[6] Good cause exists to extend the TRO to allow adequate time for briefing on the motion in this case. See Fed. R. Civ. P. 65(b)(2). The Temporary Restraining Order SHALL remain in effect through the hearing on August 29, 2011.

[7] Plaintiff SHALL post a bond in the amount of \$140 within fourteen (14) days of the issuance of this order.

IT IS SO ORDERED.

DATED: August 10, 2011.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT