LEWIS BRISBOIS BISGAARD & SMITH LLP
JOHN S. POULOS, SB# 154689
E-Mail: John.Poulos@lewisbrisbois.com
CHRISTOPHER R. RODRIGUEZ, SB# 212274
E-Mail: Chris.Rodriguez@lewisbrisbois.com
2020 West El Camino Avenue, Suite 700
Sacramento, California 95833
Telephone: 916.564.5400
Facsimile: 916.564.5444

OCOTILLO LAW & POLICY PARTNERS, LLP
PADRAIC I. MCCOY, SB# 223341
E-Mail: mccoy@olp-partners.com
RORY E. DILWEG, SB# 225828
E-Mail: rdilweg@olp-partners.com
6650 Gunpark Drive, Suite 100
Boulder, CO 80301
Telephone: 303.500.7756
Facsimile: 303.558.3893

Attorneys for Plaintiff, THE BUENA VISTA RANCHERIA OF ME-WUK INDIANS, a federally recognized Indian Tribe

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THE BUENA VISTA RANCHERIA OF ME-WUK INDIANS, a federally recognized Indian Tribe,

Plaintiff,

vs.

AMADOR COUNTY, CALIFORNIA; and THE AMADOR COUNTY BOARD OF SUPERVISORS,

Defendants.

Case No. 2:20-CV-01383-MCE-AC

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Judge: Hon. Morrison England, Jr.
Date: April 8, 2021
Time: 2:00 p.m.
Crtrm.: 7 (14th Floor)

Trial Date: None Set

I. INTRODUCTION

This case involves unlawful and exorbitant fees imposed by way of an unsanctioned and unapproved contractual agreement containing provisions prohibited by federal law on the Buena Vista Rancheria of Me-Wuk Indians (the "Tribe"), a federally-recognized Indian Tribe. These unlawful and exorbitant fees, which are effectively a tax, are being imposed on the Tribe by the

County of Amador (the "County") and the County's Board of Supervisors (the "Board") (the County and the Board are collectively referred to herein as the "Defendants").

The Tribe resides on the Buena Vista Rancheria, which is a federally-recognized Indian reservation held in trust for the Tribe on behalf of the United States and is located in Amador County. The Tribe owns and operates a casino (the "Casino") on the Buena Vista Rancheria pursuant to federal law under the Indian Gaming Regulatory Act ("IGRA"), which Congress enacted in 1988 for the benefit of Indian tribes and to regulate such Indian gaming activities. Starting on or about September 10, 1999, the Tribe entered into a compact (the "1999 Compact") with the State of California. In 2004, the parties amended the 1999 Compact (the "2004 Compact"). The 2004 Compact was modified when The State and Tribe executed another amendment on June 28, 2016 (the "2016 Compact"). On September 12, 2016, the California Legislature ratified the 2016 Compact when it added Section 12.012.76 to the California Government Code. Cal. Gov't Code § 12012.76(a). This legislative enactment and express ratification gave the Compact the full force and effect of state law, binding the Tribe (by contract) and all other parties subject to State law, including the County.

The 2004 Compact required both the Tribe and the County to enter into an intergovernmental services agreement to address, *inter alia*, the mitigation of off-reservation impacts, including compensation to the County and the City of Ione. And so, in approximately 2007 and pursuant to the amended compact requirements, the Tribe and the County entered into negotiations concerning a potential intergovernmental services agreement. The parties engaged in lengthy negotiations over the terms of such an agreement, but the Board ultimately did not approve the form or terms of the agreement.

When the County failed to meet its compact obligation to approve the negotiated agreement, the Tribe initiated an arbitration proceeding to finalize the terms of an intergovernmental services agreement as required by the amended compact. To that end, the Tribe submitted a version of the agreement nearly identical in substance to what had previously been presented to the Board. On June 11, 2008, the arbitrator approved the Tribe's version of the agreement (the "ISA"). And while the ISA provides that it will only be effective once signed by

both parties, the County has never executed the ISA, and the Board of Supervisors has never approved or ratified it. Further, neither the County nor the Tribe has ever moved to confirm the arbitration award as a judgment in either federal or state court.

Plaintiff's First Amended Complaint alleges, in relevant part, that the ISA is void because it violates IGRA and that Defendants have breached their obligations under the compacts. As such, because Federal courts have original jurisdiction over civil cases brought by Indian Tribes and actions arising under the laws of the United States, and are empowered by Congress to declare the rights and other legal relations of any interested party, the Tribe brings the instant action seeking, *inter alia*, a judicial determination of its respective rights, duties and interests under IGRA.

II. ARGUMENT

Strictly speaking, subject-matter jurisdiction concerns "the court's statutory or constitutional power to adjudicate the case." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998). Federal question jurisdiction is not satisfied merely because there is a dispute in "some way connected with federal law," *Cox v. International Union of Operating Engineers*, 672 F.2d 421, 422 (5th Cir.1982), but is satisfied when federal law is an essential element of the cause of action, *Superior Oil Co. v. Pioneer Corp*., 706 F.2d 603, 605 (5th Cir. 1983).

Further, dismissal for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper only when the claim is "so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy." *Oneida Indian Nation of N. Y. v. County of Oneida*, 414 U.S. 661, 666 (1974); *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 359 (1959).

This Court has subject matter over the Tribe's causes of action pursuant to 28 U.S.C. §§ 1331 and 1362. Under section 1331, "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Under section 1362, "district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United

States." 28 U.S.C. § 1362. The purpose of section 1362 was to give "jurisdiction to United States District Courts of certain civil cases brought by Indian Tribes in their own name in the said courts where but for the statute the Court would not have had jurisdiction for lack of required amount in controversy, or otherwise." *United States v. Alpine Land & Reservoir Co*., 431 F.2d 763, 767 (9th Cir. 1970).

Lastly, in any civil action over which district courts have original jurisdiction, district courts "shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a).[1]

A. This Court has Subject Matter Jurisdiction Over The Tribe's First Cause of Action

The Tribe's first cause of action seeks a judicial determination of its respective rights, duties and interests under IGRA, and by extension, that the ISA violates IGRA.

1. IGRA preempts the well-pleaded complaint rule

The crux of Defendants' argument against this Court's jurisdiction over the Tribe's first cause of action is that the Tribe has not met the "well-pleaded complaint rule." Motion, at 12.[2] But Defendants' argument falls flat because "IGRA has the requisite extraordinary preemptive force necessary to satisfy the complete preemption exception to the well-pleaded complaint rule." *Gaming Corp. of Am. v. Dorsey & Whitney*, 88 F.3d 536, 547 (8th Cir. 1996).

As explained by the Eighth Circuit, complete preemption "provides an exception to the well-pleaded complaint rule and is different from preemption used only as a defense." *Id.*, at 543. It arises when "Congress intends that a federal statute preempt a field of law so completely that state law claims are considered to be converted into federal causes of action." *Id.* (citing

[1] Defendants do not challenge in their Motion that any of the Tribe's causes of action that Defendants say are "undeniably state law claims" are unrelated to other claims in the action or not part of the same case or controversy. *See* Motion, at 11. And so, if this Court finds that it has subject matter jurisdiction over one of the Tribe's claims, it shall have supplemental jurisdiction over all of the Tribe's other claims and the entire action. 28 U.S.C. § 1367(a)

[2] The Tribe refers to Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction as the Motion.

Metropolitan Life Insurance Co. v. Taylor, 481 U.S. 58, 65 (1987)). Upon its examination of IGRA's textual language, its legislative history, and jurisdictional framework, the Eighth Circuit concluded that "Congress intended it completely preempt state law." *Id.,* at 544. And so, the well-pleaded complaint rule is completely preempted by IGRA and cannot serve as a basis for challenging this Court's jurisdiction over the Tribe's first cause of action, which seeks a judicial determination of its respective rights, duties and interests under IGRA.

But even if this Court decides not to follow the Eighth Circuit's analysis that IGRA completely preempts the well-pleaded complaint rule, the Tribe's cause of action satisfies the rule.

The well-pleaded complaint rule provides that "federal jurisdiction exists only when a federal question is presented on the face of the Tribe's properly pleaded complaint." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under the rule, The Tribe is the master of the claim and "[it] may avoid federal jurisdiction by exclusive reliance on state law." *Id.* Further, the well-pleaded complaint rule requires the Tribe's claim to present a federal question "unaided by anything alleged in anticipation of avoidance of defenses which it is thought the defendant may interpose." *Oklahoma Tax Comm'n v. Graham*, 489 U.S. 838, 840-41 (1989) (citation omitted). Or as Defendants put it, federal jurisdiction exists only if the cause of action anticipated by the Tribe's suit would arise under federal law. Motion, at 12.

The Tribe does not exclusively rely on state law in support of its claims. All throughout the First Amended Complaint the Tribe calls attention to and relies on IGRA, which is federal law. *See, e.g.* First Amended Complaint, at ¶¶ 1, 2, 4, 19, 21, 22, 23, 24, 25, 27, 28, 31, 32, 33. And IGRA is at the very heart of the Tribe's claim for declaratory relief as the Tribe relies on IGRA to support its claim regarding its respective rights, duties and interests under federal law. *Id,* at ¶¶ 69-77.

And yet, notwithstanding the Tribe's reliance on federal law in support of its claims, Defendants still posit that the Tribe has not met the well-pleaded complaint rule. According to Defendants, the Tribe is seeking declaratory relief in anticipation of a state law claim for breach of contract that Defendants could bring against it. Motion, at 12. But this is not true. The Tribe does not raise its declaratory relief cause of action in avoidance or anticipation of any suit, let

alone one for breach of contract, that it thinks Defendants may raise. Nor does the Tribe allege any allegations in anticipation of avoidance of defenses, for it has nothing to defend against because it has performed all of its obligations under the compacts and ISA.[3] *See* First Amended Complaint, at ¶ 95. And perhaps most telling, Defendants cannot point to any language in the Tribe's First Amended Complaint or under its first cause of action suggesting otherwise or in support of why it could bring a coercive action against the Tribe for breach of contract.

Defendants' arguments against this Court's jurisdiction under the well-pleaded complaint rule thus fail because the Tribe's cause of action relies on IGRA in support of its claims, which preempts the rule, or in the alternative, because the Tribe's action was not raised in anticipation of any action it thought Defendants may interpose.

2. Defendants could bring coercive actions in federal court

But even if all the well-pleaded complaint rule applies and all declaratory relief actions are treated as if a plaintiff is raising preemptive defenses against some anticipated claim a declaratory judgment defendant could bring against it, this Court still possesses subject matter jurisdiction over the Tribe's first cause of action.

Defendants take it as a foregone conclusion that if it were to bring a coercive action, it would have to be a state law claim for breach of contract, thus removing this Court's jurisdiction over the Tribe's declaratory relief cause of action. *See Guar. Nat. Ins. Co. v. Gates*, 916 F.2d 508, 511 (9th Cir. 1990) (a declaratory relief claim can be heard in federal court "only if the coercive action that would have been necessary . . . could have been heard in federal court.")

But Defendants offer nothing in support of a possible claim for breach of contract against the Tribe or why that it is the only claim they could bring. Nor do Defendants offer anything to foreclose, or even call into question, any possibility that they could not bring any other coercive

[3] That the Tribe has performed any and all obligations required under the ISA is in no way an admission by the Tribe that the ISA is proper and enforceable. The Tribe fully disputes the enforceability of the ISA. But should the Court decide that it is enforceable, the Tribe has met its obligations under the ISA.

(footnote continued)

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action that could be heard in federal court.[4] This is fatal to Defendants' argument because even if a "declaratory judgment defendant *could have brought* a coercive action in federal court to enforce its rights, then a federal court will have jurisdiction notwithstanding declaratory judgment plaintiff's assertion of a federal defense." *Janakes v. United States Postal Serv.*, 768 F.2d 1091, 1093 (9th Cir. 1985) (citation omitted) (emphasis added); *see Standard Ins. Co. v. Saklad*, 127 F.3d 1179, 1181 (9th Cir. 1997) ("A person may seek declaratory relief in federal court if the one against whom he brings his action could have asserted his own rights there."). Defendants offer nothing evincing they could only bring a breach of contract claim in state court to enforce their rights against the Tribe. And so, Defendants have not shown that the Tribe's first cause of action is "so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy." *Oneida Indian Nation*, 414 U.S. at 666 (1974).

3. The ISA and compacts are subject to federal law

But even if Defendants could only have brought a coercive action for breach of contract, the nature of those contracts still makes this a question for federal courts.

Federal courts may entertain claims for declaratory relief under 28 U.S.C. section 2201, so long as they raise a federal question. *See Illinois v. General Electric Co.*, 683 F.2d 206 (7th Cir.1982). And although it is true that federal courts generally do not have jurisdiction over run-of-the-mill contract claims brought by Indian tribes, *see Gila River Indian Community v. Henningson, Durham & Richardson*, 626 F.2d 708 (9th Cir. 1980), the Tribe's claims are not based on run-of-the-mill contracts, *see Gaming World International v. White Earth Band of Chippewa Indians*, 317 F.3d 840, 848 (8th Cir.2003) (issued raised under "the extensive regulatory framework of IGRA" are not "a routine contract dispute."). The claims and contracts at issue here are intertwined with, dependent upon, and conceived by both IGRA and the compacts.

[4] For example, Defendants could have brought a separate federal declaratory judgment action under 28 U.S.C. § 2201 seeking similar equitable claims under IGRA to establish their interests and rights in this case. *See Las Vegas Dev. Grp., LLC v. 2014-IH Borrower, LP,* 2017 U.S. Dist. LEXIS 207113, at *11 (D. Nev. Dec. 15, 2017) (declaratory judgment action could be a coercive action that create federal jurisdiction.)

1 In fact, there instant claims and issues bear a striking similarity to those discussed and
2 analyzed in *Wells Fargo Bank, N.A. v. Sokaogon Chippewa Cmty.*, 787 F. Supp. 2d 867, 874 - 75
3 (E.D. Wis. 2011). There, Wells Fargo sought a declaration that a certain trust indenture between it
4 and a tribe was not a management contract within the meaning of 25 U.S.C. section 2711, and
5 also, that the tribe had waived its sovereign immunity. *Id.*, at 874. The district court found that
6 the issue regarding the management contract "underlies Wells Fargo's claim that the Tribe
7 breached the Indenture." *Id.* Thus, the court continued that Well Fargo had to prove the indenture
8 was a valid contract in order to prevail on its claims. *Id.* And to do so required the application of
9 federal law. Relying on Eighth Circuit authority from *Gaming World* (which involved a casino
10 operating company seeking a determination that its contract with an Indian tribe was valid), the
11 district court stated that the "validity of the contract depended on application of the IGRA." *Id.*, at
12 875 (citing *Gaming World*, 317 F.3d at 840). Before turning to the substantive issues raised by the
13 parties, the district court pointed out that the Eighth Circuit in *Gaming World* addressed the issue
14 of subject matter jurisdiction. *Id.*, at 875. The Eighth Circuit noted that while "jurisdiction cannot
15 be founded on anticipated defenses or responsive pleadings . . . there is a significant distinction
16 between ordinary contract disputes involving Indian tribes .... and those raising issues in an area of
17 extensive federal regulation." *Id.* at 875 (citing *Gaming World*, 317 F.3d at 847.) The district
18 court agreed with the Eight Circuit that the regulatory scope of IGRA is "far reaching in its
19 supervisory power over Indian gaming contracts" and that it "completely preempts state law with
20 respect to Indian gaming." *Id.*, at 875 (citing *Gaming World*, 317 F.3d at 848).
21 The district court held that Wells Fargo's claim for breach of the indenture did not present
22 a routine contract, but rather, "a specific issue under a highly regulated area of federal law." *Id.*
23 Likewise, the Tribe's claim for declaratory relief regarding the ISA does not present a routine
24 contract, but rather, specific issues highly regulated by IGRA. Federal law is unquestionably at
25 the heart of this action and the Tribe's first cause of action because of the broad scope of IGRA,
26 which confers "jurisdiction onto federal courts to enforce Tribal-State compacts *and the*
27
28

agreements contained therein." *Id.*[5] (emphasis added). As the Tribe clearly points out in its First Amended Complaint, the ISA is contained within the compact because the compact amendments required the Tribe and the County to enter into an intergovernmental services agreement. First Amended Complaint, at ¶¶ 35,57.

Thus, IGRA has conferred this Court with jurisdiction over claims pertaining to the ISA and the compacts given the broad reach of IGRA and the contracts conceived by it

B. This Court has Subject Matter Jurisdiction Over the Tribe's Eighth Cause of Action

The Tribe's Eighth Cause of Action alleges a breach of the compacts. First Amended Complaint, at ¶¶ 104-107. Specifically, it is alleged that by attempting to enforce the ISA, Defendants are in violation of the compacts and in violation of IGRA - including without limitation IGRA's requirement that tribes retain the sole proprietary interest in their casino revenues and that casino management agreements obtain federal approval. *Id.*, at ¶¶105-106.

As stated above, it cannot be disputed that the compact at issue in this action are instruments subject federal law. *See Cabazon Band of Mission Indians v. Wilson,* 124 F.3d 1050, 1056 (9th Cir. 1997) ("The Compacts quite clearly are a creation of federal law; moreover, IGRA prescribes the permissible scope of the Compacts."); *see also PETTY v. Tenn.-MISSOURI BRIDGE Comm'n,* 359 U.S. 275, 278 (1959) ("The construction of a compact sanctioned by Congress under Art. I, § 10, cl. 3, of the Constitution presents a federal question."); *Muhammad v. Comanche Nation Casino*, 742 F. Supp. 2d 1268, 1276 n.7 (W.D. Okla. 2010) ("A tribal-state

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[5] The Tribe's declaratory relief action raises several issues that fall squarely within the ambit of federal law, including the County's alleged taxation of the Tribe. The Tribe seeks a judicial declaration as to whether Defendants are imposing taxes on the Tribe. First Amended Complaint, at ¶¶ 72,76. Taxation of Indian tribes is without question a matter of federal question jurisdiction. *See Rincon Band of Luiseno Mission Indians of the Rincon Reservation v. Schwarzenegger*, 602 F.3d 1019, 1036 (9th Cir. 2010) (IGRA precludes states from imposing taxes on Indian gaming); *Agua Caliente Band of Mission Indians v. County of Riverside*, 442 F.2d 1184 (9th Cir. 1971), cert. denied, 405 U.S. 933 (1972) (Court had jurisdiction under 28 USCS § 1362 over action brought by band of Indians together with individual members of band against county seeking to enjoin imposition of tax on lessees of Indian land); *see also Southern Ute Indian Tribe v. Board of County Comm'rs*, 855 F. Supp. 1194 (D. Colo. 1994) (County and state may not directly tax real property interests held by tribe); *Pueblo of Isleta v. Grisham*, 2019 U.S. Dist. LEXIS 55049, at *58 (D.N.M. Mar. 30, 2019).

gaming compact is similar to a "congressionally sanctioned interstate compact the interpretation of which presents a question of federal law.") (citing *Cuyler v. Adams*, 449 U.S. 433, 442 (1981)). *Cabazon* also held that claims to enforce compacts arise under federal law. *Cabazon*, 124 F.3d at 1056.

And yet, despite the clear language in *Cabazon* and the other cases cited above, the County disclaims the Court's jurisdiction over this cause of action because it was not a signatory to the Compact. Motion, at 12. In support, Defendants cite *Harris v. Sycuan Band of Diegueno Mission Indians*, which states, in relevant part, that federal question jurisdiction exists for signatories to enforce gaming compacts under IGRA. *Harris v. Sycuan Band of Diegueno Mission Indians* 2009 U.S. Dist. LEXIS 119226, at *16 (S.D. Cal. Dec. 18, 2009). But the Tribe is a signatory seeking to enforce the gaming act under IGRA. And *Harris* says nothing about signatories, like the Tribe, who are seeking to enforce compact obligations against non-signatories, like Defendants, who are contemplated within the 2004 and 2016 Compacts. In fact, Defendants offer no conclusive or foreclosing prior authority in support of their claim that a compact that requires a tribe to negotiate and enter into an agreement with a particular county cannot be enforced against that county if it fails to perform as outlined. Further, pursuant to California Government Code section 12012.76(a), the County is bound to the terms of the 2016 Compact, whether or not they were signatories to the compact itself.

The 2016 Compact Amendment requires the County to enter into the ISA, even if only by arbitral award. It would be extraordinary to think that the 2016 Compact required the Tribe to enter into an intergovernmental agreement with Amador County, yet simultaneously provided no avenue of relief should the County refuse or repudiate its obligations. *See Cabazon,* 124 F.3d at 1056.

Defendants contend that because California Government Code section 12012.76(a) bound the County to the 2016, that state law governs its interpretation. Motion, at 12. But Defendants are incorrect. While section 12012.76(a) binds the County to the 2016 Compact's terms, the 2016 Compact remains a creation of federal law, the scope of which is prescribed by IGRA. A tribal-state gaming compact under IGRA is "a form of contract" that *must be interpreted according to*

federal common law. *Pueblo of Isleta v. Grisham*, 2019 U.S. Dist. LEXIS 55049, at *34 (D.N.M. Mar. 30, 2019) (citing *Citizen Potawatomi Nation v. Oklahoma*, 881 F.3d 1226, 1238-39 (10th Cir. 2018) (emphasis added)[6]. And so, the Tribe's claim to enforce the compacts against Defendants thus arises under federal law whether or not Defendants are signatories to the compacts, because it is within this Court's exclusive authority and purview to interpret and enforce the compacts, as well as determine whether a County required to perform under the express language of a compact can be liable for its failure to perform as mandated.

III. CONCLUSION

For each of the reasons set forth herein, Defendants' Motion should be denied in its entirety.

DATED: March 25, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: */s/ Christopher R. Rodriguez*
CHRISTOPHER R. RODRIGUEZ
Attorneys for Plaintiff, THE BUENA VISTA RANCHERIA OF ME-WUK INDIANS, a federally recognized Indian Tribe

[6] In fact, the New Mexico District Court interpreted the compacts at issue according to federal law even though the compacts also touched on elements of state law. *Pueblo of Isleta*, 2019 U.S. Dist. LEXIS 55049, at *6 ("State executed the 2007 Compacts pursuant to the New Mexico Compact Negotiation Act, N.M. Stat. Ann. §§ 11-13A-*1 et seq*.")