

1 Gregory M. Narvaez (SBN 278367)
John M. Peebles (SBN 237582)
2 Tim Hennessy (SBN 233595)
3 PEEBLES KIDDER BERGIN & ROBINSON LLP
2020 L Street, Suite 250
4 Sacramento, CA 95811
Telephone: (916) 441-2700
5 Facsimile: (916) 441-2067
Email: gnarvaez@ndnlaw.com
6

7 *Attorneys for Plaintiff and Judgment Creditor*
JW Gaming Development, LLC

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

11 **JW GAMING DEVELOPMENT, LLC**, a
California limited liability company,

12
13 Plaintiff,

14 v.

15 **ANGELA JAMES; LEONA L. WILLIAMS;**
MICHAEL R. CANALES; MELISSA M.
CANALES; JOHN TANG; PINOLEVILLE
16 **POMO NATION**, a federally-recognized Indian
tribe; **PINOLEVILLE GAMING**
17 **AUTHORITY; PINOLEVILLE GAMING**
COMMISSION; PINOLEVILLE BUSINESS
18 **BOARD; PINOLEVILLE ECONOMIC**
DEVELOPMENT, LLC, a California limited
19 liability company; **LENORA STEELE;**
KATHY STALLWORTH; MICHELLE
20 **CAMPBELL; JULIAN J. MALDONADO;**
DONALD D. WILLIAMS; VERONICA
21 **TIMBERLAKE; CASSANDRA STEELE;**
JASON EDWARD RUNNING BEAR
22 **STEELE; ANDREW STEVENSON;**
CANALES GROUP, LLC, a California limited
23 liability company; **LORI J. CANALES;**
KELLY L. CANALES; and **DOES 1 through**
24 **20,**

25 Defendants.
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Case No. 3:18-cv-02669-WHO (RMI)

PLAINTIFF’S EX PARTE
APPLICATION AND MOTION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION

Date:
Time: p.m.

Courtroom 2, 17th Floor
Judge William H. Orrick

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2 Plaintiff JW Gaming Development, LLC (“JW Gaming”) hereby requests, pursuant to Federal
3 Rule of Civil Procedure 65 and Local Rules 7-10 and 65-1, that this Court issue a temporary
4 restraining order and an order to show cause why a preliminary injunction should not issue. Counsel
5 for JW Gaming provided detailed notice to the Pinoleville Pomo Nation (the “Tribe”) on May 6, 2021
6 and has served its counsel electronically all papers before filing them with this Court. See Declaration
7 of Gregory Michael Narvaez filed concurrently herewith, ¶¶ 3-4.
8

9 **NEED FOR TEMPORARY RESTRAINING ORDER**

10 JW Gaming seeks a TRO to enjoin the Tribe from proceeding with an action it filed against
11 JW Gaming, its attorneys and Westamerica Bank in a purported tribal court of the Tribe. Immediate
12 relief is necessary because the tribal action violates the Tribe’s express waiver in a 2012 promissory
13 note with JW Gaming of any right to have disputes heard in any tribal forum, including associated
14 requirements of exhaustion of remedies. Separately, the tribal action infringes upon this Court’s
15 exercise of its jurisdiction by expressly seeking to void the judgment entered by this Court and hold
16 JW Gaming liable for \$11 million for enforcing such judgment. All of this is exacerbated by the
17 Tribe’s refusal to make available any information that the Tribe’s purported tribal court actually
18 exists. The summons served on JW Gaming and its attorneys states that they “need” to respond to the
19 lawsuit within 20 days of receipt – i.e., by May 6, 2021. However, there is no publicly available
20 information regarding the tribal court or its rules or procedures, and the Tribe has not provided any of
21 the same in response to JW Gaming’s request that it do so. Furthermore, JW Gaming and its
22 attorneys, through counsel, requested an extension of time with respect to the tribal court action,
23 which could have potentially allowed this injunction could be heard on a noticed motion, but the
24 Tribe has not answered that request, either. Thus, there is an immediate threat in that JW Gaming and
25 its attorneys either risk a default judgment, other adverse rulings, or are forced to submit to a forum
26 whose authority the Tribe and JW Gaming expressly disclaimed under their promissory note. Thus,
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1 immediate relief is needed to preserve the status quo, to avoid undue litigation and expense in a
2 forum the Tribe and JW Gaming expressly disclaimed by contract, and to avert the likelihood that the
3 Tribe will obtain a tribal court order that purports to nullify the orders and judgment of this Court and
4 purports to subject JW Gaming to liability for enforcing this Court's orders and judgment.
5

6 This motion is based on this Ex Parte Application, the memorandum of points and authorities,
7 the pleadings, the declarations of Gregory Michael Narvaez and Robert P. Hamilton and exhibits
8 filed herewith, and all other arguments and evidence that may be submitted in this matter.
9

10 INTRODUCTION

11 On April 16, 2021, JW Gaming was served with a summons for a proceeding the Tribe filed
12 against JW Gaming, its representatives (Jack Campbell and Donna Winner), its law firm and
13 attorneys of record in this action—Peebles Kidder Bergin & Robinson LLP (“Peebles Kidder”) and
14 attorneys Gregory Michael Narvaez, John M. Peebles, and Tim Hennessy—and Westamerica Bank.
15 That proceeding is apparently in what the Tribe asserts is a tribal court of the Tribe (the “PPN
16 Court”). Peebles Kidder was served three days later on April 19, and Messrs. Narvaez, Peebles and
17 Hennessy were served on April 21.
18

19 The Tribe's complaint alleges that the abstract of judgment and a writ of execution entered by
20 this Court are “invalid and void.” The complaint seeks, among other things, to hold JW Gaming
21 liable for no less than \$11 million in compensatory and punitive damages for “enforcing [the \$8.5M
22 Judgment] against Tribal Assets other than gaming revenues[.]” The accompanying summons directs
23 JW Gaming and its attorneys “TO RESPOND TO THIS NOTICE WITHIN 20 DAY(S) OF THE
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1 DAY AFTER RECEIPT” – i.e., by May 6 for JW Gaming, by May 7, 9 or 10 for Peebles Kidder,¹
2 and by May 11 for Messrs. Narvaez, Peebles and Hennessy.
3

4 JW Gaming will be irreparably harmed if the tribal action is allowed to proceed. In the Note
5 that forms the basis of the \$8.5 million judgment, the Tribe waived its sovereign immunity and any
6 right to have disputes related to the Note heard in any tribal forum, including associated requirements
7 of exhaustion of remedies. The tribal action violates that express contractual provision. Even if there
8 was no waiver, this Court should enjoin the tribal action because doing so protects the public interest
9 in protecting the integrity of federal judicial proceedings and orders, including the enforcement of
10 judgments.
11

12 BRIEF FACTUAL AND PROCEDURAL BACKGROUND

13 Relevant background of this litigation has recently been recounted in various filings by JW
14 Gaming. *See e.g.*, Pltf. Opp. to Tribe Mtn. Recon., Dkt. 294, at 7-11. As such, only some of that
15 background is set forth here.

16 A. Relevant Provisions of the Note.

17 On July 10, 2012, the Tribe, the Pinoleville Gaming Authority, and JW Gaming agreed to a
18 Promissory Note (the “Note”) that, *inter alia*, governed the terms of JW Gaming's loan and provided
19 a limited waiver of the Tribe’s sovereign immunity. *See e.g.*, Order On Mot. for Sum. Judg., Mot. for
20 Judg. on the Pldgs., Mot. for Joinder, and Mot. to Strike and Dism., Dkt. 178. Of particular relevance
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¹ No information was provided regarding the tribal court’s rules and procedures, and JW Gaming has
25 been unable to locate any information online regarding whether the court even exists, let alone its
26 rules and procedures. Without knowing what rules and procedures have been adopted by the tribal
27 court, it is unknown whether the court operates on Sundays (i.e., May 9, 20 days from service), and if
28 not, whether a responsive deadline is moved forward (May 10, 21 days from service) or back (May 7,
18 days from service).

1 to this motion, the Note unequivocally waives tribal court remedies and the exhaustion of tribal
2 remedies requirement:
3

4 (c) Waiver of Exhaustion of Tribal Remedies. In connection with any Claim, the
5 Tribe expressly waives the application of doctrines of exhaustion of tribal remedies,
6 abstention, or comity and all other rights of any Tribal Party that might otherwise
7 require that a Claim be heard in a tribal court or other dispute resolution forum of the
8 Tribe, whether now existing or hereafter created.

9 Note at 3-4, Dkt. 1-4 at 12-13. Moreover, the Note provides an unequivocal waiver of the Tribe's
10 sovereign immunity, including to the extent that immunity could protect others to whom or which
11 that immunity may extend:

12 With respect to all Claims, the Tribe hereby irrevocably waives the sovereign
13 immunity of all Tribal Parties and their Affiliates (including, without limitation, the
14 Gaming Authority and the Gaming Commission), and all defenses based thereon, for
15 the following purposes only: (i) the adjudication and enforcement of Claims in the
16 United States District Court for the Northern District of California, and all courts to
17 which appeals therefrom may occur; (ii) the adjudication and enforcement of Claims
18 in any State court in which venue is proper, and all courts to which appeals therefrom
19 may occur; and (iii) at the election of any Party, the adjudication of any Claims by
20 binding arbitration under the commercial arbitration rules of the American Arbitration
21 Association, which arbitration will be conducted in Sacramento California.

22 Dkt. 178 at 7; see also Note at 3, Dkt. 1-4 at 12.

23 As relevant to that immunity waiver, "Affiliates" is defined as "with respect to any specified
24 Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is
25 controlled by, or under common control with the specified Person." Note at 6, Dkt. 1-4 at 15. For
26 purposes of the "Affiliates" definition, the Note defines "control" as "the ability to directly or
27 indirectly ... direct or cause the direction of policies or management of the specified Person." *Id.*
28 "Person" is broadly defined as including "any entity, whether an individual, trustee, corporation,
general partnership, limited partnership, limited liability company, limited liability partnership, joint
stock company, trust, estate, unincorporated organization, business association, Indian tribe,
commission, instrumentality, firm, joint venture, Governmental Authority, or otherwise." Note at 8;

1 Dkt. 1-4 at 17. The Note defines “Claim” as “any dispute between any Tribal Party or JW Gaming
2 Development that is related to this Promissory Note.” Dkt. 178 at 8; see also Note at 6; Dkt. 1-4 at
3 15.
4

5 **B. Relevant procedural background.**

6 Over one year ago, on January 21, 2020, the Court entered an order granting JW Gaming
7 judgment on its breach of contract claim, without limitation on recourse. Dkt. 178.

8 About one year later, JW Gaming moved for entry of final judgment on its contract claim.
9 Dkt. 253. On January 22, 2021, the Court entered said judgment in the amount of \$8.5 million. Dkt.
10 279.

11 Following Judgment, JW Gaming sought and obtained from the clerk of this court (1) an
12 abstract of judgment (Dkt. 281); and (2) a writ of execution (Dkt. 288).

13 On January 27, 2021—five days after the federal court entered the \$8.5M Judgment—the
14 Tribe’s legal counsel, Eduardo Roy, sent a letter to JW Gaming’s counsel, demanding that JW
15 Gaming: (1) voluntarily vacate the \$8.5M Judgment; (2) voluntarily dismiss this federal action with
16 prejudice; and (3) accept a promissory note from the Tribe in the amount of \$5.325 million, which
17 note would be payable from 20% of the Tribe’s potential share of net revenues of a (non-existent)
18 tribal casino. Dkt. 295-1 at Ex. A. If JW Gaming did not do so, Mr. Roy explained he would
19 immediately take action to thwart and even discharge the \$8.5M Judgment – including filing separate
20 lawsuits. *Id.*

21 In this federal action, the Tribe filed, among other things, a motion to reconsider the Judgment
22 (Dkt. 286), a motion to quash the writ of execution (Dkt. 293), and a second motion to reconsider the
23 judgment (Dkt. 300). The Court denied all those motions. Dkt. 306, 312.
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1 On March 11, 2021, JW Gaming caused a levy to be made upon the Tribe's assets at
2 Westamerica Bank. Dkt. 308-1 at 2. That levy reached approximately \$189,000 from six of the
3 Tribe's accounts, according to the Tribe. Dkt. 310-2 at 4-5.
4

5 Later that day, various former individual defendants in this action who also control and/or are
6 employed by the Tribe filed suit in Sacramento County Superior Court against JW Gaming, two of its
7 representatives, and its law firm and attorneys, seeking money damages under a malicious
8 prosecution theory related to the fraud and RICO claims JW gaming brought in this action. *See Sup.*
9 *Ct. Compl.*, Dkt. 303-1 at 4-16.
10

11 Thereafter, the Tribe filed a claim of exemption with the U.S. Marshal, seeking the return of
12 the funds JW Gaming levied at WestAmerica Bank. *See* Dkt. 308-2. This Court recently referred the
13 dispute over those funds to Magistrate Judge Robert Illman. *See* Order, Dkt. 332.

14 On April 16, this Court denied the Tribe's second motion seeking to vacate the \$8.5M
15 Judgment. Dkt. 312.

16 Later that day, April 16, the Tribe served JW Gaming with two summonses.² Dkt. 314-1 at ¶¶
17 3-4 & Exs. A-B.

18 The summons relevant to this motion is for an action the Tribe has purportedly brought in its
19 own purported tribal court, in an action entitled *Pinoleville Pomo Nation v. JW Gaming Development,*
20 *LLC et al.*, Case No, PPNTC-CIV-21-0001 before the Pinoleville Pomo Nation Tribal Court located
21 at "500 B Pinoleville Drive Ukaih [sic], CA 95482" (the "Tribal Action"). Dkt. 314-1 at Ex. A.³ The
22 Tribal Action purports to name as defendants: (1) JW Gaming; (2) Westamerica Bank; (3) and JW
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25 ² JW Gaming's law firm and attorneys of record in this action were served with the same two
26 summonses on or about April 19 and 21, respectively. Dkt. 314-1 at ¶¶ 3-4.

27 ³ The other summons is for the proceeding filed in Sacramento County Superior Court by former
28 individual defendants in this action. Dkt. 314-1 at Ex. B.

1 Gaming’s attorneys of record in this action – Peebles Kidder and Messrs. Narvaez, Peebles, and
2 Hennessy. Dkt. 314-1 at Ex. A, ¶¶ 2-5. It is premised entirely, or almost entirely, on the premise that
3 “the Abstract of Judgment and Writ of Execution entered by [this federal] district court are invalid
4 and void.” Dkt. 314-1 at Ex. A, ¶ 43. In that respect, the Tribe asks its purported tribal court to
5 declare this Court’s judgment to be void, and to enjoin the named entities and individuals from
6 enforcing the Judgment entered by this Court. Relatedly, the Tribal Action also alleges JW Gaming is
7 liable for breach of contract, fraud, and unfair business practices by virtue of JW Gaming “enforcing
8 [this federal court’s] judgment against Tribal Assets other than gaming revenues[.]” *Id.* at Ex. A, ¶
9 70. As relief, the purported action seeks, *inter alia*, \$11,000,000 in compensatory and punitive
10 damages. *Id.* at Ex. A, ¶ 65; Prayer for Relief, ¶¶ f-g.

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13 On April 22, JW Gaming filed a reply brief in support of its opposition to the Tribe’s claim of
14 exemption in which JW Gaming notified this Court of the state court and tribal court actions and
15 asked this Court to order the Tribe to show cause why it should not be enjoined from proceeding with
16 the Tribal Action. Dkt. 314. On May 4, 2021, this Court entered an order referring the case to
17 Magistrate Judge Illman for enforcement of the judgment and declining to issue the requested order
18 to show cause. Dkt. 332 at 8, 9.

19
20 **C. Other recent developments.**

21 On May 3, attorney Robert Hamilton, whose firm Goodman Neuman Hamilton LLP was
22 retained to represent the interests of JW Gaming, Peebles Kidder, and Messrs. Narvaez, Peebles and
23 Hennessy, contacted the Tribe’s attorney Eduardo Roy and requested a 30-day extension of time from
24 May 6, 2021 while they evaluated how to proceed in light of the Tribal Action. Declaration of
25 Robert P. Hamilton filed concurrently herewith, ¶ 3 & Ex. A. In addition, Mr. Hamilton requested
26 information regarding the tribal court including: (1) a copy of the rules of civil procedure or related
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1 court rules; (2) the identity of and contact information for the court’s clerk and tribal judge; (4) the
2 tribal court’s location and information related to filings; and (5) any requirements for appearance by
3 counsel in tribal court proceedings. *Id.* at Ex. A. There is no publicly available information on the
4 Tribe’s website regarding the tribal court, its rules, its procedures, its judges and/or staff. *Id.* at ¶ 7;
5 Narvaez Decl., ¶ 5. There is no telephone number or email address for the tribal court identified on
6 the summons to the tribal action, nor is there such information provided on the Tribe’s website.
7 Hamilton Decl., ¶ 7. Counsel for JW Gaming has been unable to locate a separate website for the
8 tribal court or any other information online regarding the tribal court. Hamilton Decl., ¶ 7; Narvaez
9 Decl., ¶ 5. Nor is any court of the Tribe listed on the State of California’s Tribal Courts Directory.
10 *See* <https://www.courts.ca.gov/14400.htm#panel14773> (last accessed May 5, 2021). Nor did the
11 Tribe’s Chief Financial Officer, Kathy Redhorse, reference any grant funding for a tribal court in her
12 “summary of the grants received by the Tribe” contained in her declaration filed with this Court
13 weeks ago on April 23, 2021. *See* Declaration, Dkt. 318, at ¶ 5. Nor is a tribal court referenced in
14 the “Pinoleville Pomo Nation Organization Chart” the Tribe submitted under penalty of perjury in a
15 grant application to the U.S. Department of Education in or about 2016.⁴

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19 The Tribe’s counsel, Mr. Roy, did not respond to Mr. Hamilton’s email by the date requested
20 (May 4). Rather, Mr. Roy responded on May 5, informing Mr. Hamilton he would provide the
21 requested information “later today” and he was “checking with [the Tribe] in order to obtain their
22 approval” for the requested extension. Hamilton Decl., ¶¶ 4-5 & Ex. B. As of the filing hereof, the
23 requested extension and information has not been provided. *Id.* at ¶ 6.

24
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26 ⁴ JW Gaming requests that the Court take judicial notice of this Organizational Chart, which may be
27 found on the U.S. Department of Education’s website, at
28 <https://www2.ed.gov/programs/indiandemo/16awards/2016-299a-0006.pdf>, at p. 219-20 of 256.

1 On May 6, 2021, counsel of record for JW Gaming provided notice to the Tribe’s counsel of
2 this Application and Motion. Narvaez Decl., ¶ 3.
3

4 LEGAL STANDARD

5 I. Temporary Restraining Order and Preliminary Injunction.

6 A plaintiff seeking preliminary relief under Federal Rule of Civil Procedure 65 must establish
7 “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
8 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public
9 interest.” *Winter v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Washington v. Trump*, 847
10 F.3d 1151, 1159 n.3 (9th Cir. 2017) (noting standards for issuing temporary restraining orders and
11 preliminary injunctions are “substantially identical”). Because these elements are balanced against
12 each other, “a stronger showing of one element may offset a weaker showing of another.” *Alliance
13 For The Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Thus, when the likelihood of
14 grave irreparable injury is palpable and the balance of equities tips sharply in plaintiff’s favor, the
15 plaintiff need only “demonstrate a fair chance of success on the merits or questions serious enough to
16 require litigation.” *Arc of Cal. v. Douglas*, 757 F.3d 992, 993-94 (9th Cir. 2014) (internal quotations
17 and citation omitted).
18

19 II. Federal court jurisdiction vis-à-vis tribal proceedings.

20 “Federal law has long recognized a respect for comity and deference to the tribal court as the
21 appropriate court of first impression to determine its jurisdiction.” *Grand Canyon Skywalk Dev., LLC
22 v. ‘Sa’ Nyu Wa Inc.*, 715 F.3d 1196, 1200 (9th Cir. 2013) (citing *Nat’l Farmers Union Ins. Cos v.
23 Crow Tribe of Indians*, 471 U.S. 845, 856-57 (1985); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 15-
24 16 (1987); *Burlington N. R.R. Co. v. Crow Tribal Council*, 940 F.2d 1239, 1244-47 (9th Cir. 1991)).
25

26 The Ninth Circuit “ha[s] interpreted *National Farmers* as determining that tribal court
27 exhaustion is not a jurisdiction bar, but rather a prerequisite to a federal court’s exercise of its
28

1 jurisdiction.” *Grand Canyon*, 715 F.3d at 1200 (citing *Crow Tribal Council*, 940 F.2d at 1245 n. 3.).
2
3 “Therefore, under *National Farmers*, the federal courts should not even make a ruling on tribal court
4 jurisdiction . . . until tribal remedies are exhausted.” *Id.* (quoting *Stock West, Inc. v. Confederated*
5 *Tribes of the Colville Reservation*, 873 F.2d 1221, 1228 (9th Cir. 1989)).

6 “However, there are four recognized exceptions to the requirement for exhaustion of tribal
7 court remedies[.]” *Grand Canyon*, 715 F.3d at 1200. Those exceptions to the exhaustion
8 requirement are where:

- 9
10 (1) an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted
11 in bad faith; (2) the action is patently violative of express jurisdictional prohibitions;
12 (3) exhaustion would be futile because of the lack of adequate opportunity to challenge
the court’s jurisdiction; or (4) it is plain that no federal grant provides for tribal
governance of nonmembers’ conduct on land covered by *Montana*’s main rule.

13 *Id.* (quoting *Burlington N. R.R. Co. v. Red Wolf*, 196 F.3d 1059, 1065 (9th Cir. 1999)) (citations
14 omitted).

15 ARGUMENT

16 I. JW Gaming is likely to succeed on the merits.

17 JW Gaming is likely to succeed on the merits of showing the PPN Court lacks jurisdiction
18 over the Tribal Action and that JW Gaming need not exhaust tribal court remedies before this Court
19 exercises its jurisdiction to shield JW Gaming from that Tribal Action. This is because, among other
20 things, the Tribe expressly waived tribal court jurisdiction and any associated exhaustion
21 requirements in the Note, there is no evidence the PPN Court exists and the Tribe has declined to
22 produce any, and although the PPN Court has apparently issued a summons, that summons contains
23 no basic contact information for the PPN Court aside from the general physical address of the Tribe.
24

25 Furthermore, because the Tribe unequivocally waived immunity, tribal sovereign immunity is
26 not a bar to the relief requested.
27

1 **A. JW Gaming is likely to succeed (or has succeeded) in showing that this**
2 **Court can enjoin the Tribe from proceeding with the Tribal Action**
3 **without first exhausting tribal remedies.**

4 As noted, the Ninth Circuit has recognized four exceptions to the requirement of exhaustion
5 of tribal remedies before a district court can exercise jurisdiction to determine a tribal court's
6 jurisdiction. Those exceptions are triggered in this case.

7 First, in the Note, the Tribe expressly and unequivocally waived tribal court jurisdiction and
8 any associated requirement to exhaust tribal remedies:

9 (c) Waiver of Exhaustion of Tribal Remedies. In connection with any Claim, the
10 Tribe expressly waives the application of doctrines of exhaustion of tribal remedies,
11 abstention, or comity and all other rights of any Tribal Party that might otherwise
12 require that a Claim be heard in a tribal court or other dispute resolution forum of the
13 Tribe, whether now existing or hereafter created.

14 Note at 3-4, Dkt. 1-4 at 12-13. Thus, while this Court has already entered judgment on the Note in
15 this federal action, the Tribal Action violates the Tribe's waiver of tribal remedies and exhaustion in
16 the Note because the Tribal Action seeks to interfere with the enforcement of this court's judgment
17 and order by invoking the jurisdiction of a tribal court forum. That much can be gleaned from the
18 complaint in the PPN Court. As noted, that complaint alleges "the Abstract of Judgment and Writ of
19 Execution entered by [this federal] district court are invalid and void." Dkt. 314-1 at Ex. A, ¶ 43.
20 Furthermore, the Tribe asks its purported tribal court to: declare this Court's judgment to be void;
21 enjoin the named entities and individuals from enforcing the Judgment entered by this Court; and
22 hold JW Gaming liable for not less than \$11 million for breach of contract, fraud, and unfair business
23 practices by virtue of JW Gaming "enforcing [this federal court's] judgment against Tribal Assets
24 other than gaming revenues[.]" *Id.* at Ex. A, ¶ 70.

25 Under these facts, the PPN Court "plainly lack[s] jurisdiction over" the Tribal Action, and
26 "the action is patently violative of express jurisdictional prohibitions." *Grand Canyon*, 715 F.3d at
27

1 1203. As the Ninth Circuit in *Grand Canyon* noted, “unless expressly waived in ‘unmistakable
2 terms’ within the contract, a tribe retains its inherent sovereignty, and as such, the tribe may have
3 jurisdiction.” 715 F.3d at 1205 (quoting *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 148
4 (1982)). The corollary is that a tribe may waive its inherent sovereignty through unmistakable terms
5 in a contract. Because the Tribe here expressly waived any right it had to have a dispute related to
6 the Note heard in any tribal forum, the PPN Court plainly lacks jurisdiction and the Tribe’s mere
7 filing patently violates the Note’s express jurisdictional prohibitions. On this basis, JW Gaming has
8 succeeded, or is likely to succeed, in showing it is entitled to an immediate injunction against the
9 Tribe vis-à-vis the Tribal Action.
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11
12 This Court’s jurisdiction to decide the exhaustion issue is especially evident in this case,
13 where the contract containing the waiver, as well as the enforcement of the judgment on that contract
14 – the subjects of the tribal court action – are already subject to this Court’s jurisdiction. And
15 furthermore, it would be illogical, especially under these circumstances, to require exhaustion on the
16 very question of whether exhaustion is required or waived.
17

18 Second, even if the Tribe had not expressly disclaimed tribal court jurisdiction and any
19 associated exhaustion requirements, the federal court would be correct to grant the injunctive relief
20 requested herein without requiring exhaustion of tribal remedies. That is because “exhaustion would
21 be futile because of the lack of adequate opportunity to challenge the court’s jurisdiction,” and “an
22 assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith.”
23

24 Here, both the Tribe and the PPN Court have failed to provide any information regarding the
25 rules and procedures of the purported tribal court. This includes failing to provide any information
26 on how to file a response by the close of business the day before JW Gaming’s response is
27 purportedly due. Nor is this information publicly available—the Tribe’s website does not even
28

1 mention a tribal court, let alone provide copies of its rules and procedures. Furthermore, the Tribe's
2 organizational chart it submitted under penalty of perjury to the US Dept. of Education of 2016 does
3 not contain any reference to a tribal court. The Tribe as the litigant, despite having purportedly
4 initiated the Tribal Action in the PPN Court, has failed to provide JW Gaming any rules or
5 procedures as to how to proceed in light of the Tribal Action, or even how to request additional time
6 to respond. For its part, the Tribe as the PPN Court, if it truly exists, has apparently, through an
7 unidentified clerk, issued a summons, but has failed to include usable contact information on that
8 summons or to direct litigants to where the court rules may be requested or found.

9
10 Adding to this, not only did the Tribe's counsel Mr. Roy threaten to bring multiple lawsuits
11 against JW Gaming, its representatives, and its legal counsel if JW Gaming did not acquiesce to the
12 Tribe's demand that JW Gaming walk away from its judgment and the underlying lawsuit altogether,
13 but the entire premise of the Tribal Action is to evade this Court's judgment by declaring it illegal
14 and void.

15
16 Under these circumstances, exhaustion would be futile because of the lack of adequate
17 opportunity to challenge the court's jurisdiction, and also because the PPN Court's assertion of
18 jurisdiction through its summons to JW Gaming is motivated by a desire to harass or is conducted in
19 bad faith.

20
21 **B. JW Gaming has shown that sovereign immunity is not a bar to the**
22 **requested injunctive relief.**

23 Immunity is not a bar to JW Gaming's request for injunctive relief. As a matter of law, a tribe
24 is subject to suit where Congress has authorized the suit or the tribe has waived its immunity. *Kiowa*
25 *Tribe of Oklahoma v. Manufacturing Technologies*, 523 U.S. 751, 754 (1998). When ascertaining the
26 scope of a sovereign immunity waiver, the court "begin[s] by analyzing the language of the contract
27 itself." *Pauma Band of Luiseno Mission Indians of Pauma & Yuima Reservation v. California*, 813

1 F.3d 1155, 1170 (9th Cir. 2015). “A written contract must be read as a whole and every part
2 interpreted with reference to the whole, with preference given to reasonable interpretations.” *Id.*
3 (quoting *Wapato Heritage, L.L.C. v. United States*, 637 F.3d 1033, 1039 (9th Cir. 2011)).
4

5 Here, as this court already correctly determined, the Tribe unequivocally waived its sovereign
6 immunity:

7 There is no question that the provision at issue here is unequivocal: the Tribe
8 “irrevocably waive[d] the sovereign immunity of all Tribal Parties and their
9 Affiliates” and “all defenses based thereon.” Promissory Note 3. The Tribe’s
10 argument that the waiver was *not* unequivocal relies on the distinct Limitation of
11 Recourse provision. But as the cases above state, that provision need not provide a
12 second waiver, nor must it meet the strict rules of interpretation that are applied to
13 waiver provisions themselves. The Tribe clearly and unequivocally waived its
14 sovereign immunity with respect to the instant action.

15 Dkt. 178 at 12 (citing Note at 3). The waiver applies not only to “adjudication” of claims in this
16 court, but also the “enforcement” of such claims. Note at 3. Similarly, the waiver’s language does not
17 limit the type of relief this Court may award in adjudication of that dispute (i.e., damages and
18 equitable relief such as an injunction).

19 Here, the waiver applies not only to enjoin the Tribe’s acts in filing suit in tribal court with
20 respect to the enforcement of a judgment based on the Note, but also any related action by the tribal
21 court and its officials. The waiver clearly and unequivocally applies to all “Affiliates” of the Tribe.
22 “Affiliate” is broadly defined in the Note to include *any* person or entity (regardless of form) that
23 directly or indirectly (through one or more intermediaries), controls, is controlled by, or is under
24 common control with the Tribe. The tribal court clearly falls within the definition of “Affiliates.” To
25 the extent it exists, it was created and is controlled by the Tribe.

26 **II. JW Gaming will be irreparably harmed.**

27 JW Gaming (and its attorneys) will be harmed if the Tribal Action were to proceed.
28 According to the summons to the Tribal Action, JW Gaming’s response is due May 6, 2021, yet JW

1 has no information regarding the tribal court’s rules and procedures, including but not limited to how
2 to file a responsive pleading, the permissible form of such response, the admission rules for its
3 attorneys, and the effect of not filing a responsive pleading.
4

5 Absent a TRO and subsequent injunction, JW Gaming would be forced to choose between
6 default or litigating in a forum expressly disclaimed under its contract with the Tribe. Moreover, JW
7 Gaming would be forced to make that choice with no information regarding the forum’s authority,
8 rules or procedures from which JW Gaming could even begin to evaluate the respective risks of each
9 course of action. And regardless of which choice it makes, JW Gaming will be subjected to further
10 litigation (and the attendant expense and burden): it will either be forced to take action to unwind the
11 orders entered by the tribal court, or to litigate in a forum that the Tribe expressly disclaimed under
12 the Note.
13

14 **III. The requested TRO and injunction serve the public interest.**

15 There is a clear public interest in the integrity of judicial orders and proceedings, including
16 the enforcement of judgments. *See, e.g., Wood v. Ryan*, 759 F.3d 1117, 1121 (9th Cir. 2014), *cert.*
17 *denied*, 135 S. Ct. 21 (2014) (the public has an interest in the enforcement of judgments); *Shuting*
18 *Kang v. Harrison*, No. 3:18-CV-05399-JD, 2019 WL 4645723, at *1 (N.D. Cal. Aug. 13, 2019)
19 (preliminary injunction “serves the public interest of enforcing settlement agreements and
20 the integrity of judicial orders and proceedings”); *Armstrong v. Newsom*, 475 F. Supp. 3d 1038, 1061
21 (N.D. Cal. 2020) (preliminary injunction serves public interest by protecting integrity of
22 proceedings); see also *Mullis v. U.S. Bankr. Court for Dist. of Nevada*, 828 F.2d 1385, 1393 (9th Cir.
23 1987) (“collateral attacks on the judgments, orders, decrees or decisions of federal courts are
24 improper” and would result in a “great” “threat of damage to the orderly administration of justice in
25 the federal court system”).
26
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1 Here, just as in *Shuting*, the Tribe is seeking to evade this Court’s judgment and undermine
2 the integrity of this Court’s orders and proceedings. As clearly demonstrated by the relief sought in
3 the Tribal Action, the purpose of the Tribal Action is to collaterally attack this Court’s orders and the
4 judgment by seeking to hold JW Gaming liable for enforcing them. The Tribal Action is also a
5 collateral attack in that it seeks to relitigate issues regarding recourse and the Tribe’s waiver of
6 sovereign immunity and a declaration that the judgment is “invalid and void,” and enjoining its
7 execution. By contrast, there are little if any competing public interests in favor of the Tribe. As
8 discussed above, the Tribe has unequivocally waived any right to have these disputes heard in any
9 tribal forum, including associated requirements of exhaustion of remedies.
10

11
12 In addition, the TRO and injunction “benefit the public interest in maintaining the integrity of
13 contractual agreements.” *DIRECTV, LLC v. E&E Enterprises Glob., Inc.*, No. 17-06110 DDP
14 (PLAX), 2017 WL 3610503, at *1 (C.D. Cal. Aug. 22, 2017). The Tribe contractually waived any
15 right to have disputes heard in any tribal forum. Holding the Tribe to its contractual obligations thus
16 provides a separate benefit to the public interest.
17

18 **IV. The balance of equities favors JW Gaming.**

19 The balance of equities tips sharply in JW Gaming’s favor. There is no likelihood of harm to
20 the Tribe by holding the Tribe to its contractual agreement and protecting the integrity of this Court’s
21 orders and judgment by enjoining the Tribe from what is an improper collateral attack on the
22 judgments, orders, and decisions of this Court. Nothing in the requested TRO or injunction will
23 preclude the Tribe from all proper avenues of recourse, including further proceedings in this Court
24 and/or any appeals to the Ninth Circuit. Moreover, the Tribe appears to have brought the Tribal
25 Action in bad faith to thwart JW Gaming’s enforcement of the orders and judgment of this Court.
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1 By contrast, granting the TRO and an order to show cause regarding a preliminary injunction
2 would preserve the status quo and prevent JW Gaming from choosing between default or litigating in
3 a forum expressly disclaimed under its contract with the Tribe. Such choice is nothing more than a
4 Morton’s fork; regardless of what choice it makes, JW Gaming will be harmed and subjected to
5 further litigation and the attendant expense.
6

7 **RELIEF SOUGHT**

8 JW Gaming respectfully requests that the Court grant this ex parte motion as follows:

- 9
- 10 1. First, JW Gaming requests this Court issue an immediate temporary restraining order, pending
11 a hearing on the request for preliminary injunction, that enjoins the Tribe and its officers,
12 agents, attorneys, servants, employees, and those persons in active concert or participation
13 therewith, from taking any further actions, including but not limited to filing or service of
14 pleadings, noticing or holding hearings, engaging in discovery, issuing orders, or any other
15 acts in furtherance of the litigation to the tribal action, *Pinoleville Pomo Nation v. JW Gaming*
16 *Development, LLC et al.*, Case No, PPNTC-CIV-21-0001 before the Pinoleville Pomo Nation
17 Tribal Court.
18
 - 19 2. Second, JW Gaming asks this Court to issue an order to show cause why a preliminary
20 injunction should not issue to enjoin the Tribe and its officers, agents, attorneys, servants,
21 employees, and those persons in active concert or participation therewith, from taking any
22 further acts in furtherance of the tribal action, and set a hearing on the motion for a
23 preliminary injunction.
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Dated: May 6, 2021

PEEBLES KIDDER BERGIN & ROBINSON LLP

By /s/ Gregory M. Narvaez

Gregory M. Narvaez
Attorneys for Plaintiff
JW Gaming Development LLC