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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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SHINGLE SPRINGS BAND OF MIWOK
INDIANS, a federally recognized
Indian Tribe,

2:10-cv-01396 FCD GGH

Plaintiff,

v.

MEMORANDUM AND ORDER

SHARP IMAGE GAMING, INC., a
California corporation; NATIONAL
INDIAN GAMING COMMISSION; THE
HONORABLE PATRICK J. RILEY,
Judge of the El Dorado County
Superior Court (Retired, Sitting
By Designation),

Defendants.

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This matter is before the court on defendants Sharp Image
Gaming, Inc. ("Sharp Image") and the Honorable Patrick J. Riley's
(the "Superior Court")¹ (collectively, "defendants") motions to

¹ Defendant Honorable Patrick J. Riley asserts (1) that
plaintiff has named an individual judge of the El Dorado Superior
Court as a defendant in order to avoid the Eleventh Amendment's
restriction on federal jurisdiction by individuals against States
or state agencies; and (2) that plaintiff's complaint seeks

(continued...)

1 dismiss plaintiff Shingle Springs Band of Miwok Indians' (the
2 "Tribe" or "plaintiff") complaint on the basis that it is barred
3 by the Anti-Injunction Act, or alternatively, that the court
4 should abstain from exercising jurisdiction over the claims under
5 the principles set forth by Younger v. Harris and its progeny.
6 Plaintiff opposes the motion and moves for partial summary
7 judgment on its claims for declaratory and injunctive relief. On
8 October 8, 2010, the court heard oral argument. For the reasons
9 set forth below, defendants' motions to dismiss are GRANTED, and
10 plaintiff's motion for partial summary judgment is DENIED.

11 **BACKGROUND²**

12 This case arises out of claims made by defendant Sharp Image
13 with respect to contracts the Tribe and Sharp Image entered into
14 in the mid-1990s. Specifically, Sharp Image alleges that (1) on
15 or about May 24, 1996, the Tribe and Sharp Image entered into a
16 contract known as the Gaming Machine Agreement (the "GMA");³ (2)
17 on or about November 15, 1997, the parties entered into an
18

19 ¹(...continued)
20 relief against the entire Superior Court. As such, defendant
21 Honorable Patrick J. Riley refers to himself as "the Superior
22 Court," but expressly notes that this is not a waiver of
23 sovereign immunity. (Def. Honorable Patrick J. Riley's Mot. to
24 Dismiss, filed July 19, 2010, at 1 n.1.)

25 ² The factual background is taken from plaintiff's
26 allegations in the Complaint as well as the parties' requests for
27 judicial notice. While the parties file numerous objections to
28 evidence, the court concludes that the disputed evidence is
irrelevant to the court's determination or otherwise without
merit.

³ On November 5, 1996, the National Indian Gaming
Commission (the "NGIC") issued an opinion finding that the GMA
contemplated illegal Class III gaming, and as a result, the GMA
was "null and void." (Compl. ¶ 23.)

1 agreement known as the Equipment Lease Agreement (the "ELA");⁴
2 and (3) on or about November 15, 1997, the parties entered into a
3 third agreement known as the Promissory Note (collectively, the
4 "Agreements"). (First Am. Compl. filed in Superior Court of
5 California, County of El Dorado ("State Compl."), Ex. C to
6 Compl., filed June 7, 2010, ¶¶ 5, 7.) Sharp Image contends that
7 the Tribe breached the Agreements by, *inter alia*, entering into
8 an agreement with a third-party for purposes of leasing or
9 purchasing gaming equipment for the Tribe's casino in
10 contravention of exclusivity provisions in the Agreements. (Id.
11 ¶ 11.) The Tribe contends that the Agreements are void and
12 unenforceable.

13 **A. State Court Proceedings**

14 On March 12, 2007, Sharp Image filed suit against the Tribe
15 in the Superior Court of California, County of El Dorado,
16 alleging claims for breach of contract based upon the 1996 and
17 1997 agreements. (Compl. ¶ 29.) On May 22, 2007, Sharp Image
18 filed its First Amended Complaint (the "State Complaint"),
19 asserting that the Agreements are all "valid and binding
20 contracts," which it had the right to enforce. (Id. ¶ 30.)

21 Subsequent to the filing of the lawsuit, on April 13, 2007,
22 the Tribe sought review by the National Indian Gaming Commission
23 (the "NGIC") regarding whether the GMA and ELA were unapproved
24 "management contracts" that required but did not receive NIGC
25 approval in violation of the Indian Gaming Regulatory Act (the
26 "IGRA"). (Id. ¶ 31; Ex. G to Pl.'s Request for Judicial Notice

27
28 ⁴ Sharp Image alleges that the ELA superseded the GMA in
its entirety. (Compl. ¶ 25.)

1 ("PRFJN"), filed Sept. 10, 2010.) On June 14, 2007,⁵ the NIGC
2 issued an Advisory Opinion letter from the NIGC's General
3 Counsel, providing that the GMA and ELA were management contracts
4 that violated the IGRA. (Ex. I to PRFJN.)

5 On July 9, 2007, the Tribe moved to quash/dismiss the State
6 Complaint on the grounds of complete preemption and sovereign
7 immunity. (Compl. ¶ 32.) On September 12, 2007, Sharp Image
8 made an evidentiary objection to the June 14 Advisory Opinion,
9 contending that "the advisory opinion of the NIGC's General
10 Counsel . . . has no legal effect because it is not a final
11 decision of the agency." (Id. ¶ 33) (emphasis deleted). On
12 December 12, 2007, the Superior Court issued a ruling, concluding
13 that the June 14 Advisory Opinion had "no legal effect," did not
14 constitute "official agency action," and was, therefore, not
15 entitled to "judicial review . . . until the agency took a final
16 determinative action." (Id. ¶ 34; Ex. J to PRFJN.)

17 Consequently, on January 24, 2008, the Tribe requested the
18 NIGC to undertake a formal review of the GMA and ELA and make a
19 final agency determination. (Id. ¶ 35; Ex. K to PRFJN.) On July
20 18, 2008, the NIGC advised the parties that it would undertake a
21 formal review of the contracts to determine whether the GMA and
22 ELA were "management contracts" that violated the IGRA. The NIGC
23 also advised that it would "give Sharp an opportunity to share
24 its views on the subject" prior to making any decision. (Compl.
25 ¶ 35; Ex. M to PRFJN.) By letter dated August 1, 2008, Sharp

27 ⁵ Plaintiff's Complaint asserts that the letter was
28 issued on June 5, 2007. However, this conflicts with the
exhibits attached to the parties' submissions.

1 Image urged the NIGC to conclude that the GMA and ELA were not
2 management contracts. (Compl. ¶ 37.) On April 23, 2009, the
3 Chairman of the NIGC issued his "formal determination under 25
4 U.S.C. § 2711," finding that "each agreement individually is a
5 management contract," but concluding that they were "void" for
6 failure to comply with IGRA statutory requirements. (Id. ¶ 38;
7 Ex. A to RFJN.) The Chairman noted that the determination was
8 "subject to appeal to the full Commission under 25 C.F.R. § 539"
9 and thereafter to "a federal district court under 25 U.S.C. §
10 2714." (Id.)

11 On May 21, 2009, Sharp Image appealed to the full
12 Commission. (Compl. ¶ 40; Ex. P to PRFJN.) By letter dated June
13 5, 2009, the NIGC asserted that because it did not have the
14 necessary Commissioners available to provide a full Commission
15 review, the NIGC was "functionally unable to review" the appeal,
16 and that the Chairman's final determination would become final
17 action by the NIGC on June 20, 2009. (Compl. ¶ 41; Ex. S to
18 PRFJN.) Sharp Image did not file any subsequent appeals to
19 either the NIGC or in federal court. (Compl. ¶ 41.)

20 On September 11, 2009, the Superior Court heard oral
21 argument on the Tribe's Motion to Quash/Dismiss on the basis of
22 complete preemption and sovereign immunity. (Id. ¶ 42.) On
23 November 30, 2009, the Superior Court issued its Order,
24 concluding that the Agreements had been "terminated and/or
25 cancelled" prior to the filing of the State Complaint on March
26 12, 2007 and well before the NIGC undertook review of the GMA and
27 ELA between 2007 and 2008; thus, the Superior Court held that the
28 Tribe's Motion to Quash/Dismiss on the basis of NIGC action must

1 be denied because the NIGC was without jurisdiction "to review,
2 regulate, approve or disapprove" the GMA and ELA. (Ex. E to
3 Compl., at 11-12.) Further, the Superior Court concluded that
4 the decision of the Chairman of the NIGC was not "final action"
5 and "must be disregarded" because (1) the decision violated the
6 due process rights of Sharp due to unreasonable ex parte contacts
7 between the Tribe's Chairman and the Chairman of the NIGC; and
8 (2) the NIGC did not comply with fee requirements and time limits
9 set forth in applicable statutes and regulations.⁶ (Id. at 13-
10 14.) As such, the Superior Court held that preemption did not
11 apply. (Id. at 14.) The Tribe asserts that in reaching these
12 conclusions, the Superior Court acted outside the scope of its
13 authority. (Compl. ¶ 42.)

14 On December 15, 2009, the Tribe petitioned the California
15 Court of Appeal, Third Appellate District, to overturn the
16 Superior Court's decision. (Ex. A to Def. Superior Court's
17 Request for Judicial Notice ("DRFJN"), filed July 19, 2010.) On
18 January 21, 2010, the Court of Appeal denied the petition. (Id.)

19 On January 29, 2010, the Tribe petitioned the California
20 Supreme Court to reverse the decision of the Court of Appeal
21 declining to reverse the Superior Court's decision. (Id.; Ex. B

22
23 ⁶ The Superior Court's order provides:

24 The NIGC did not require compliance with 25 C.F.R.
25 533.3 or 25 U.S.C.A. 2722 regarding items which must
26 accompany a request for approval of a management
27 contract, nor was the fee under subsection (i)
28 required. In addition, the NIGC did not comply with
the time limits for decision set forth in subsection
(d) of the above referenced code section.

(Id. at 14.)

1 to DRFJN.) On March 8, 2010, the California Supreme Court issued
2 an order staying all proceedings in the Superior Court pending
3 final determination of the petition. (Ex. B to DRFJN.) On March
4 30, 2010, the California Supreme Court dissolved the stay and
5 denied the petition. (Id.)

6 Thereafter, the Superior Court set the case for trial on
7 November 1, 2010. At the Tribe's request, however, the trial was
8 continued until February 7, 2011. (Decl. of Steven S. Kimball in
9 Supp. of Def. Sharp Image's Opp'n ("Kimball Decl."), filed Sept.
10 24, 2010, ¶ 8.)

11 **B. Federal Action**

12 On June 7, 2010, after the California Supreme Court denied
13 its petition, the Tribe filed a Complaint for Declaratory and
14 Injunctive Relief in this court. Specifically, the Tribe seeks
15 (1) a declaration that the NIGC's April 23, 2009 decision is
16 binding final agency action that must be appealed to a federal
17 district court; (2) a declaration that the Superior Court may not
18 entertain an appeal of the NIGC's April 23, 2009 decision; (3) an
19 injunction to prevent the Superior Court from hearing an appeal
20 of the NIGC's April 23, 2009 action; and (4) a declaration that
21 the NIGC correctly decided that the Agreements are unapproved
22 management contracts, and thus, void. The Tribe prays for relief
23 in the form of:

- 24 a. a preliminary and permanent injunction directing
25 and compelling Sharp immediately to cease and
26 desist from challenging in the Superior Court the
NIGC's final agency action declaring the
Agreements unapproved management contracts;
- 27 b. a preliminary and permanent injunction directing
28 and compelling the Superior Court to immediately
cease and desist reaching the merits of Sharp's

1 substantive and procedural challenge to the NGIC's
2 final agency action in the State Court Action;

- 3 c. a preliminary and permanent injunction directing
4 and compelling the Superior Court to vacate and
5 reverse any prior order to the extent that it is
6 consistent with federal law holding that final
7 agency action by the NGIC is entitled to binding
8 and preclusive effect unless and until it is
9 successfully challenged in a United States
10 District Court;
- 11 d. a declaration that, notwithstanding any other
12 relief that this Court may order, the Superior
13 Court may not continue to maintain jurisdiction
14 over Sharp's state court action in a manner that
15 defies federal law mandating that the NGIC's April
16 23, 2009 decision that the Agreements are
17 unapproved management contracts that violate IGRA
18 is final agency action entitled to binding and
19 preclusive legal effect unless and until Sharp
20 successfully appeals the decision to a United
21 States District Court;
- 22 e. a declaration that the Superior Court lacks
23 jurisdiction to reach the merits of, and is
24 precluded by federal law from reaching the merits
25 of, a substantive and procedural challenge to a
26 final agency decision of the NIGC, which found the
27 Agreements to be unapproved management contracts
28 that violate IGRA, because only a United States
District Court possesses jurisdiction to hear a
challenge to the procedural or substantive merits
of the NIGC's final agency decision;
- f. in the alternative to the foregoing relief, a
declaration that the NIGC properly determined that
the Agreements constituted unapproved management
contracts that violate IGRA and that are thus
void, and that no grounds exist to set aside the
NIGC's decision under the APA; and
- g. such other relief as the Court deems just and
proper.

(Compl., Prayer for Relief.)

STANDARD

A. Motion to Dismiss

Under Federal Rule of Civil Procedure 8(a), a pleading must
contain "a short and plain statement of the claim showing that

1 the pleader is entitled to relief." See Ashcroft v. Iqbal, 129
2 S. Ct. 1937, 1949 (2009). Under notice pleading in federal
3 court, the complaint must "give the defendant fair notice of what
4 the claim is and the grounds upon which it rests." Bell Atlantic
5 v. Twombly, 550 U.S. 544, 555 (2007) (internal quotations
6 omitted). "This simplified notice pleading standard relies on
7 liberal discovery rules and summary judgment motions to define
8 disputed facts and issues and to dispose of unmeritorious
9 claims." Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002).

10 On a motion to dismiss, the factual allegations of the
11 complaint must be accepted as true. Cruz v. Beto, 405 U.S. 319,
12 322 (1972). The court is bound to give plaintiff the benefit of
13 every reasonable inference to be drawn from the "well-pleaded"
14 allegations of the complaint. Retail Clerks Int'l Ass'n v.
15 Schermerhorn, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not
16 allege "'specific facts' beyond those necessary to state his
17 claim and the grounds showing entitlement to relief." Twombly,
18 550 U.S. at 570. "A claim has facial plausibility when the
19 plaintiff pleads factual content that allows the court to draw
20 the reasonable inference that the defendant is liable for the
21 misconduct alleged." Iqbal, 129 S. Ct. at 1949.

22 Nevertheless, the court "need not assume the truth of legal
23 conclusions cast in the form of factual allegations." United
24 States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th
25 Cir. 1986). While Rule 8(a) does not require detailed factual
26 allegations, "it demands more than an unadorned, the defendant-
27 unlawfully-harmed-me accusation." Iqbal, 129 S. Ct. at 1949. A
28 pleading is insufficient if it offers mere "labels and

1 conclusions" or "a formulaic recitation of the elements of a
2 cause of action." Twombly, 550 U.S. at 555; Iqbal, 129 S. Ct. at
3 1950 ("Threadbare recitals of the elements of a cause of action,
4 supported by mere conclusory statements, do not suffice.").
5 Moreover, it is inappropriate to assume that the plaintiff "can
6 prove facts which it has not alleged or that the defendants have
7 violated the . . . laws in ways that have not been alleged."
8 Associated Gen. Contractors of Cal., Inc. v. Cal. State Council
9 of Carpenters, 459 U.S. 519, 526 (1983).

10 Ultimately, the court may not dismiss a complaint in which
11 the plaintiff has alleged "enough facts to state a claim to
12 relief that is plausible on its face." Iqbal, 129 S. Ct. at 1949
13 (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 570
14 (2007)). Only where a plaintiff has failed to "nudge [his or
15 her] claims across the line from conceivable to plausible," is
16 the complaint properly dismissed. Id. at 1952. While the
17 plausibility requirement is not akin to a probability
18 requirement, it demands more than "a sheer possibility that a
19 defendant has acted unlawfully." Id. at 1949. This plausibility
20 inquiry is "a context-specific task that requires the reviewing
21 court to draw on its judicial experience and common sense." Id.
22 at 1950.

23 In ruling upon a motion to dismiss, the court may consider
24 only the complaint, any exhibits thereto, and matters which may
25 be judicially noticed pursuant to Federal Rule of Evidence 201.
26 See Mir v. Little Co. Of Mary Hospital, 844 F.2d 646, 649 (9th
27 Cir. 1988); Isuzu Motors Ltd. v. Consumers Union of United
28 States, Inc., 12 F. Supp. 2d 1035, 1042 (C.D. Cal. 1998).

1 **B. Motion for Summary Judgment**

2 The Federal Rules of Civil Procedure provide for summary
3 judgment where "the pleadings, the discovery and disclosure
4 materials on file, and any affidavits show that there is no
5 genuine issue as to any material fact and that the movant is
6 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c);
7 see California v. Campbell, 138 F.3d 772, 780 (9th Cir. 1998).
8 The evidence must be viewed in the light most favorable to the
9 nonmoving party. See Lopez v. Smith, 203 F.3d 1122, 1131 (9th
10 Cir. 2000) (en banc).

11 The moving party bears the initial burden of demonstrating
12 the absence of a genuine issue of fact. See Celotex Corp. v.
13 Catrett, 477 U.S. 317, 325 (1986). If the moving party fails to
14 meet this burden, "the nonmoving party has no obligation to
15 produce anything, even if the nonmoving party would have the
16 ultimate burden of persuasion at trial." Nissan Fire & Marine
17 Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102-03 (9th Cir. 2000).
18 However, if the nonmoving party has the burden of proof at trial,
19 the moving party only needs to show "that there is an absence of
20 evidence to support the nonmoving party's case." Celotex Corp.,
21 477 U.S. at 325.

22 Once the moving party has met its burden of proof, the
23 nonmoving party must produce evidence on which a reasonable trier
24 of fact could find in its favor viewing the record as a whole in
25 light of the evidentiary burden the law places on that party.
26 See Triton Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th
27 Cir. 1995). The nonmoving party cannot simply rest on its
28 allegations without any significant probative evidence tending to

1 support the complaint. See Nissan Fire & Marine, 210 F.3d at
2 1107. Instead, through admissible evidence the nonmoving party
3 "must . . . set out specific facts showing a genuine issue for
4 trial." Fed. R. Civ. P. 56(e).

5 ANALYSIS

6 A. Anti-Injunction Act

7 Defendants move to dismiss plaintiff's complaint and oppose
8 plaintiff's motion for partial summary judgment on the basis that
9 this action is barred by the Anti-Injunction Act. Plaintiff
10 opposes the motion, arguing that the Anti-Injunction Act does not
11 bar a federal court order from prohibiting a state court from
12 violating exclusive jurisdiction over matters involving the
13 regulation of gaming on tribal lands.

14 The Anti-Injunction Act provides:

15 A court of the United States may not grant an
16 injunction to stay proceedings in a State court except
17 as expressly authorized by Act of Congress, or where
necessary in aid of its jurisdiction, or to protect or
effectuate its judgments.

18 28 U.S.C. § 2283. Congress adopted this restriction on federal
19 courts based on "the essentially federal nature of our national
20 government." Atl. Coast Line R.R. Co. v. Bhd. of Locomotive
21 Eng'rs, 398 U.S. 281, 285 (1970). "When this Nation was
22 established by the Constitution, each State surrendered only a
23 part of its sovereign power to the national government. . . . One
24 of the reserved powers was the maintenance of state judicial
25 systems for the decision of legal controversies." Id. As such,
26 the Court acknowledged that from its formation, this country has
27 had "two essentially separate legal systems," each of which
28 "proceeds independently of the other with ultimate review" by the

1 Supreme Court of federal questions raised in either system. Id.
2 at 286. Further, the Court observed that "[o]bviously this dual
3 system could not function if state and federal courts were free
4 to fight each other for control of a particular case." Id.

5 In effectuating the fundamental and vital role of comity in
6 the formation of this country's government, the Anti-Injunction
7 Act "is an absolute prohibition against enjoining state court
8 proceedings, unless the injunction falls within one of the three
9 specifically defined exceptions." Id. When it first interpreted
10 the statute in 1955, the Court noted that it "is not a statute
11 conveying a broad general policy for appropriate ad hoc
12 application. Legislative policy is here expressed by a clearcut
13 prohibition qualified only by specifically defined exceptions."
14 Amalgamated Clothing Workers v. Richman Bros., 348 U.S. 511, 515-
15 16 (1955). "Since that time Congress has not seen fit to amend
16 the statute," and as such, the Court has adhered to the position
17 that any injunction to a state court proceeding must be based on
18 one of the specific enumerated statutory exceptions. Atl. Coast
19 Line, 398 U.S. at 287.

20 The three statutory exceptions to the Anti-Injunction Act's
21 bar on federal courts enjoining state court actions apply only
22 when: (1) an injunction is "necessary in aid of [the federal
23 court's] jurisdiction;" (2) Congress has expressly authorized
24 such relief by statute;⁷ or (3) an injunction is necessary "to
25

26 ⁷ While the court notes that most analyses of the Anti-
27 Injunction Act address the "expressly authorized" exception
28 first, because plaintiff advanced the "necessary in aid of
jurisdiction" exception as its first argument, the court

(continued...)

1 protect or effectuate [the federal court's] judgments."⁸ 28
2 U.S.C. § 2283; Alton Box Bd. Co. v. Esprit de Corp., 682 F.2d
3 1267, 1271 (9th Cir. 1982). Moreover, the Court has cautioned
4 that "the exceptions should not be enlarged by loose statutory
5 construction." Atl. Coast Line, 398 U.S. at 287. Rather, it is
6 well established that the "exceptions must be narrowly
7 construed." Alton Box Bd. Co., 682 F.2d at 1271. "Doubts as to
8 the propriety of a federal injunction against state court
9 proceedings should be resolved in favor of permitting the state
10 courts to proceed in an orderly fashion to finally determine the
11 controversy." Id. (quoting Vendo Co. v. Lektro-Vend Corp., 433
12 U.S. 623, 630 (1977)).

13 **1. Applicability of the Anti-Injunction Act**

14 The Anti-Injunction Act applies not only to claims for
15 injunctive relief directed at a state court, but also to claims
16 for declaratory relief that have the same effect as an
17 injunction. California v. Randtron, 284 F.3d 969, 975 (9th Cir.
18 2002); Bank of Am., N.A. v. Miller, No. Civ. S-06-1971, 2007 WL
19 184804, *2 (E.D. Cal. Jan. 19, 2007). "[O]rdinarily a
20 declaratory judgment will result in precisely the same

21 _____
22 ⁷(...continued)
23 discusses the exceptions out of the conventional order.

24 ⁸ Plaintiff does not raise any argument that the third
25 exception to the Anti-Injunction Act applies. However, to the
26 extent plaintiff cites cases discussing it, an essential
27 prerequisite to application of the "relitigation" exception "is
28 that the claims or issues which the federal injunction insulates
from litigation in state proceedings actually have been decided
by the federal court." Sandpiper Village Condominum Ass'n, Inc.
v. Louisiana-Pacific Corp., 428 F.3d 831, 848 (9th Cir. 2005)
(quoting Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 147-48
(1988)). This essential prerequisite is absent in this case.

1 interference with and disruption of state proceedings that the
2 longstanding policy limiting injunctions was designed to avoid.”
3 Samuels v. Mackell, 401 U.S. 66, 72 (1971) (noting that a
4 declaratory judgment may serve as the basis for a subsequent
5 injunction against state proceedings and may, standing alone,
6 have the same practical impact as a formal injunction); H.J.
7 Heinz Co. v. Owens, 189 F.2d 505, 508 (9th Cir. 1951) (“It is
8 equally clear that no power to grant such injunctive relief can
9 be created by casting a law suit as an action seeking both a
10 declaratory judgment and an injunction.”); cf. Amerisource Bergen
11 Corp. v. Roden, 495 F.3d 1143, 1153 (9th Cir. 2007) (noting that
12 “even if the [Anti-Injunction Act] applied to certain requests
13 for injunctive relief - a remedy closely related to a formal
14 injunction - it certainly does not apply to requests for money
15 damages,” which would arguably be the province of the Younger
16 doctrine).⁹ Furthermore, the Anti-Injunction Act applies even
17 though an injunctions would be aimed at a litigant instead of the
18 state court proceeding itself. Randtron, 284 F.3d at 975.

19 Through this case, plaintiff seeks a preliminary and
20 permanent injunction directing and compelling both defendant
21 Sharp Image and the Superior Court to cease and desist from
22 determining the merits of the pending state litigation to the
23 extent it challenges the NIGC’s determination regarding the

24
25 ⁹ Contrary to plaintiff’s representation in its reply,
26 the Ninth Circuit’s decision in AmerisourceBergen Corp. does not
27 restrict application of the Anti-Injunction Act solely to “an
28 injunction to stay proceedings.” (Pl.’s Reply in Support of Mot.
for Partial Summ. J. (“Pl.’s Reply”), filed Oct. 10, 2010, at 9-
10.) Indeed, the Ninth Circuit expressly declined to express an
opinion on this issue. AmerisourceBergen Corp., 495 F.3d at 1153
n.16.

1 Agreements between the Tribe and Sharp Image. Plaintiff also
2 seeks a preliminary and permanent injunction directing the
3 Superior Court to vacate and reverse any prior order relating to
4 the dispute. This requested injunctive relief directed at the
5 power of the Superior Court to adjudicate a pending action filed
6 over three years ago falls squarely within the ambit of the Anti-
7 Injunction Act.

8 Moreover, the declaratory relief sought by plaintiff in this
9 case would have the same practical effect as the issuance of an
10 injunction. Specifically, plaintiff seeks a declaration that the
11 Superior Court may not continue to maintain jurisdiction over the
12 pending state action as it relates to the validity of the
13 Agreements and that the Superior Court lacks jurisdiction to
14 reach the merits of that litigation. Alternatively, plaintiff
15 asks the court to make its own determination with respect to the
16 effect of the GMA and ELA contracts between the Tribe and Sharp
17 Image, which the Superior Court has already done.¹⁰ If issued,
18 these declarations would impede the state court actions in the
19 same manner as the requested injunctive relief.

20 Plaintiff argues that it is not seeking a stay of the state
21 court action, but rather "an order that, in the course of
22 litigating its state court claims, Sharp may not collaterally

23
24 ¹⁰ The claim before this court, which seeks a
25 determination of the validity of the NIGC decision under an APA
26 analysis, is framed differently than the claim before the
27 Superior Court, which determined whether federal preemption
28 applied because of the NIGC decision. However, both of these
claims necessitate a *judicial determination* of the effect of the
NIGC's decision on the GMA and ELA. To the extent that
principles of federalism and comity allow for a "race to
judgment" in parallel state and federal proceedings, that race is
over. (The state court clearly crossed the finish line first.)

1 attack the NIGC's final action." (Pl.'s Reply at 9.) However,
2 plaintiff's argument proffers a distinction without a difference.
3 Plaintiff's position in the underlying state litigation is that
4 defendant Sharp Image's breach of contract claims must fail
5 because the NIGC concluded that the Agreements were void, and the
6 Superior Court does not have jurisdiction to review this
7 determination. In this action, plaintiff seeks injunctive and
8 declaratory relief precluding any litigation relating to the
9 effect of the GMA and ELA and reversing certain prior Superior
10 Court orders regarding such agreements. Such relief necessarily
11 has the effect of enjoining the Superior Court.¹¹ The court
12 concludes that, absent an applicable statutory exception, the
13 relief requested by plaintiff is barred by the Anti-Injunction
14 Act.

15 2. Necessary In Aid of Jurisdiction

16 Generally, application of the "necessary in aid of
17 jurisdiction" exception to the Anti-Injunction Act is limited to
18 parallel state in rem, rather than in personam, actions. See

19
20 ¹¹ Plaintiff contends that its requested relief does not
21 apply to all Agreements and that Sharp Image's claims with
22 respect to the Promissory Note are unaffected. This contention
23 is irrelevant to the application of the Anti-Injunction Act,
24 which does not require that a requested federal injunction bring
25 a state suit to a complete halt. See Winkler v. Eli Lilly & Co.,
26 101 F.3d 1196, 1201 (7th Cir. 1996). Rather, the Supreme Court
27 has explained that the term "proceeding" is a comprehensive term,
28 which includes all parties to the state court action as well as
the court itself and all supplemental or ancillary actions. Id.
(quoting Hill v. Martin, 296 U.S. 393, 403 (1935)). As such, "a
federal injunction which falls short of bringing a state suit to
a complete halt may nonetheless violate the Anti-Injunction Act."
Id.; see also Dubinka v. Judges of the Superior Court of the
County of Los Angeles, 23 F.3d 218, 223 (9th Cir. 1994) (holding
that Younger abstention has not been limited to injunctions that
apply to entire proceedings).

1 Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623, 641-42 (1977) ("The
2 traditional notion is that in personam actions in federal and
3 state court may proceed concurrently, without interference from
4 either court, and there is no evidence that the exception to §
5 2283 was meant to alter this balance."). The Supreme Court has
6 noted that the language of this exception implies that "some
7 federal injunctive relief may be necessary to prevent a state
8 court from so interfering with a federal court's consideration or
9 disposition of a case as to seriously impair the federal court's
10 flexibility and authority to decide that case." Atl. Coast Line,
11 398 U.S. at 295. As such, circuit courts have applied this
12 exception where conflicting orders from different courts would
13 only serve to make ongoing federal oversight unmanageable, see
14 Garcia v. Bauza-Salas, 862 F.2d 905, 909 (1st Cir. 1988), or
15 where a parallel state court action threatens to frustrate
16 proceedings and disrupt the orderly resolution of consolidated,
17 multidistrict federal litigation. Id.; Carlough v. Amchem
18 Products, Inc., 10 F.3d 189, 197 (3d Cir. 1993); In re.
19 Baldwin-United Corp., 770 F.2d 328, 336 (2d Cir. 1985); In re.
20 Corrugated Container Antitrust Litigation, 659 F.2d 1332, 1334-35
21 (5th Cir. 1981). However, "[t]he mere existence of a parallel
22 action in state court does not rise to the level of interference
23 with federal jurisdiction necessary to permit injunctive relief
24 under the "necessary in aid of" exception." Alton Box, 682 F.2d
25 at 1272-73.

26 Indeed, the Supreme Court has expressly excluded from the
27 "necessary in aid of jurisdiction" exception cases that merely
28 implicate preemption issues or exclusively federal rights. Chick

1 Kam Choo v. Exxon Corp., 486 U.S. 140, 149 (1988). “[A] federal
2 court does not have inherent power to ignore the limitations of §
3 2283 and to enjoin state court proceedings merely because those
4 proceedings interfere with a protected federal right or invade an
5 area pre-empted by federal law, *even when the interference is*
6 *unmistakably clear.*” Id. (quoting Atl. Coast Line, 398 U.S. at
7 294)) (emphasis added); see NLRB v. Nash-Finch Co., 404 U.S. 138,
8 142 (1971) (“There is in the Act no express authority for the
9 Board to seek injunctive relief against pre-empted state
10 action.”); Alton Box, 682 F.2d at 1273 (“The possibility that [a]
11 state claim may be preempted by federal law is not sufficient of
12 itself to invoke the second exception of the Act.”). “This rule
13 applies regardless of whether the federal court itself has
14 jurisdiction over the controversy.” Atl. Coast Line, 398 U.S. at
15 294.

16 Moreover, the Supreme Court has expressly rejected the
17 argument that § 2283 “does not apply whenever the moving party in
18 the District Court alleges that the state court is ‘*wholly*
19 *without jurisdiction over the subject matter,*’ having invaded a
20 field pre-empted by Congress.” Amalgamated Clothing Workers, 348
21 U.S. 511, 515 (1955); Vendo, 433 U.S. at 637 n.8 (discussing
22 Amalgamated Clothing Workers and the Court’s holding that
23 “exclusive federal jurisdiction was not sufficient to render §
24 2283 inapplicable”). In Amalgamated Clothing Workers, the Court
25 noted that in enacting the Anti-Injunction Act, Congress left no
26 justification for the recognition of such an exception. 348 U.S.
27 at 516. The court further reasoned that such an exception would
28 not be easily applied as areas of law that are “withdrawn from

1 state power are not susceptible of delimitation by fixed meets
2 and bounds. What is within *exclusive federal authority* may first
3 have to be determined by this Court to be so." Id. (internal
4 quotations and citations omitted). Moreover, "[t]o permit the
5 federal courts to interfere, as a matter of judicial notions of
6 policy, may add to the number of courts which pass on a
7 controversy before the rightful forum for its settlement is
8 established," including appellate review of the "collateral
9 issue." Id. at 519. After underscoring its confidence in state
10 courts to recognize the "demarcation between exclusive federal
11 and allowable state jurisdiction," the Court held that exclusive
12 federal jurisdiction does not provide an exception to the Anti-
13 Injunction Act. Id. at 519, 521; see Vendo, 433 U.S. at 632,
14 635-39 (holding that even though § 16 of the Clayton Act provided
15 a "uniquely federal right or remedy" that could only be brought
16 in federal court, an exception to the Anti-Injunction Act was not
17 warranted); see also Texas Emp'rs Ass'n v. Jackson, 862 F.2d 491,
18 498-99, 504 (5th Cir. 1988) (holding that a "complete lack of
19 subject matter jurisdiction, due to federal preemption, comes
20 within none of the exceptions to section 2283 and provides no
21 basis for avoiding the prohibition of 2283").

22 "Rather, when a state proceeding presents a federal issue,
23 even a pre-emption issue, the proper course is to seek resolution
24 of that issue by the state court." Chick Kam Choo, 486 U.S. at
25 149; see Tunica-Biloxi Tribe of La. v. Warbutron/Buttner, No.
26 Civ. A. 04-1516, 2005 WL 1902889, at *3 (D.D.C. July 20, 2005)
27 ("California state courts are well within their authority to make
28 such preemption determinations"). "[S]tate litigation must, in

1 view of § 2283, be allowed to run its course, including the
2 ultimate reviewing power in" the United States Supreme Court.
3 Amalgamated Clothing Workers, 348 U.S. at 521. Further, if a
4 plaintiff believes a claim brought in state court is completely
5 preempted by federal law, "the appropriate course of action is to
6 seek removal of the action to the appropriate federal district
7 court in California." Tunica-Biloxi, 2005 WL 1902889, at *3.

8 In this case, plaintiff contends that the "necessary in aid
9 of jurisdiction" exception applies because of the exclusive
10 federal jurisdiction over Indian gaming under the IGRA.
11 Moreover, plaintiff contends that Sharp Image cannot challenge
12 the NIGC's action in state court, but rather must file an action
13 in federal court under the Administrative Procedures Act ("APA").
14 Both of these contentions amount to a complete preemption
15 argument that was raised and rejected by the Superior Court and
16 appealed to both the Court of Appeal and the California Supreme
17 Court.¹²

18 However, under Supreme Court precedent, the existence of
19 exclusive federal rights guaranteed by the IGRA is an
20 insufficient basis to invoke the necessary in aid of jurisdiction
21 exception, "*even when the interference is unmistakably clear.*"
22 Chick Kam Choo, 486 U.S. at 149; see Vendo, 433 U.S. at 639
23 ("Given the clear prohibition of § 2283, the courts will not sit
24 to balance and weigh the importance of various federal policies
25 in seeking to determine which are sufficiently important to
26 override historical concepts of federalism underlying § 2283.").

27 ¹² Despite these vigorous protestations, plaintiff never
28 sought timely removal to federal court.

1 Rather, the appropriate avenue for relief is appeal through the
2 state court system and, potentially, to the United States Supreme
3 Court. See Atl. Coast Line, 398 U.S. at 296 ("Unlike the Federal
4 District Court, this Court does have potential appellate
5 jurisdiction over federal questions raise in state court
6 proceedings, and that broader jurisdiction allows this Court
7 correspondingly broader authority to issue injunctions 'necessary
8 in aid of its jurisdiction.'"). Plaintiff sought such relief,
9 appealing the Superior Court's decision regarding preemption to
10 the Court of Appeal and California Supreme Court. It was only
11 *after* such appeals proved unsuccessful that the Tribe sought to
12 collaterally attack the Superior Court orders by review in a
13 federal district court. This court finds that such a review
14 would undermine the fundamental and vital role of comity the
15 Supreme Court asserts is inherent in our federalism. See Atl.
16 Coast Line, 398 U.S. at 286.

17 Plaintiff's reliance on the Ninth Circuit's decision in
18 Sycuan Band of Mission Indians v. Roach, 54 F.3d 535 (9th Cir.
19 1995), is misplaced. In Sycuan Band, Indian tribes that operated
20 gaming centers on their reservations sought a federal injunction
21 and declaratory relief against California's criminal prosecution
22 of individuals employed in the tribes' gaming centers. Id. at
23 537. The court held that because the IGRA, 18 U.S.C. § 1166(d),
24 mandated exclusive federal jurisdiction over criminal enforcement
25 of Class III state gaming laws in Indian country, the state
26 proceedings were in derogation of federal jurisdiction. Id. at
27 540. However, the application of the "necessary in aid of
28 jurisdiction" exception to exclusive federal jurisdiction over a

1 criminal prosecution as in Sycuan Band is clearly distinguishable
2 from application of the same exception to a civil matter. Unlike
3 a civil litigant, a criminal defendant simply does not have the
4 option to remove a state criminal prosecution that he asserts is
5 preempted by federal law. Unlike a civil litigant, a criminal
6 defendant may be subject to punitive sanctions as a result of a
7 state criminal prosecution, including imprisonment, during the
8 pendency of any appeal relating to a preemption defense. As
9 such, the application of a narrow exception to the Anti-
10 Injunction Act may be warranted in the context of a criminal
11 prosecution exclusively entrusted to federal jurisdiction but
12 certainly alien to civil litigation.

13 Moreover, the particular criminal statute before the court
14 in Sycuan Band presented a unique issue with respect to the
15 federal court's ability to enforce the exclusive criminal
16 prosecution provision set forth in 18 U.S.C. § 1166. See Morongo
17 Band of Mission Indians v. Stach, 951 F. Supp. 1455, 1466 (C.D.
18 Cal. 1997), judgment vacated and remanded for dismissal as moot,
19 156 F.3d 1344 (9th Cir. 1998).¹³ Under § 1166(a), Congress
20 provided that for purposes of the IGRA, all state law pertaining
21 to the licensing, regulation, or prohibition of gambling,
22 including state criminal prosecution for violations of such laws,
23 would apply in Indian country in the same manner and to the same
24 extent as they applied in the state. However, § 1166(c) provided
25 that the United States has exclusive jurisdiction over criminal

26
27 ¹³ Even though the decision was vacated as moot, the court
28 finds the analysis instructive. See In re. SNTL Corp., 571 F.3d
826, 844 n.19 (quoting with approval a district court's decision
that was vacated as moot).

1 prosecution of violations of such state laws that were made
2 applicable to Indian tribes under § 1166(a). Because the federal
3 law expressly incorporated state law, and because a defendant
4 cannot be prosecuted twice for the same offense, a federal
5 court's power to enforce § 1166(c) would be "effectively
6 crippled" unless a state court prosecution for violations of the
7 incorporated state gambling law was enjoined. Id. (citing Schiro
8 v. Farley, 510 U.S. 222, 229 (1994)). Such a unique situation,
9 implicating the constitutional infirmity of double jeopardy, is
10 not present in this case.

11 During oral argument, plaintiff emphasized that this case
12 raises unique issues of exclusive federal jurisdiction, *not*
13 simply preemption. Counsel pointed to language in Sycuan Band,
14 54 F.3d at 540, which noted that an injunction "was necessary to
15 preserve exclusive jurisdiction." Plaintiff further relied on
16 the holding in AT&T Corp. v. Coeur d'Alene Tribe, 295 F.3d 899
17 (9th Cir. 2002), which concluded that the state acted without
18 jurisdiction in issuing warning letters because the federal
19 district court had exclusive jurisdiction over any challenge to
20 the validity of the NIGC's approval of management contracts.
21 Presumably, based on plaintiff's argument, unlike concurrent
22 federal/state jurisdiction, the apparently unique quality of
23 exclusive federal jurisdiction conferred by Congress over Indian
24 gaming law justifies application of the "necessary in aid of
25 jurisdiction" exception; where the federal court has exclusive
26 jurisdiction, the state court is *wholly without jurisdiction* and
27 powerless to proceed. However, the court concludes that

1 plaintiff offers no applicable legal authority in support of this
2 conclusion.

3 As set forth above, Sycuan Band is distinguishable, and AT&T
4 never addressed the effect of "exclusive jurisdiction" on the
5 Anti-Injunction Act.¹⁴ Rather, in Amalgamated Clothing Workers,
6 the Supreme Court expressly found that a party's assertion that
7 "a state court is *wholly without jurisdiction* over the subject
8 matter" is an *insufficient basis* for applying an exception to the
9 Anti-Injunction Act. 348 U.S. at 515 (emphasis added); Jackson,
10 862 F.2d at 498 ("Nor is the result any different because the
11 federal preemption is such as to deprive the state court of
12 *jurisdiction*") (emphasis in original). Indeed, even if the state
13 court mistakenly interprets that it has jurisdiction, state court
14 litigation "must be allowed to run its course." Amalgamated
15 Clothing Workers, 348 U.S. at 520-21 ("Misapplication of this
16 Court's opinions is not confined to the state courts, nor are
17 delays in litigation peculiar to them."). Despite plaintiff's
18 protestations that the Superior Court did not have jurisdiction
19 to make any finding regarding the efficacy of the NIGC's
20 determination, this court possesses no counter-vailing authority
21 to collaterally enjoin the Superior Court's rulings with respect
22 to the exercise of its jurisdiction, right or wrong. Therefore,
23 the court finds plaintiff's arguments unpersuasive.

24 The court does find the court's decision in Jena Band of
25 Choctaw Indians v. Tri-Millennium Corp., Inc., 387 F. Supp. 2d

26
27 ¹⁴ Moreover, like Sycuan Band, AT&T also involved the
28 application of § 1166(d), which the Ninth Circuit concluded
Id. at 909-10. preempted actions by states and their various Attorneys General.

1 671 (W.D. La. 2005), persuasive. In Jena Band, the defendants
2 sued a federally recognized Indian tribe in state court for
3 breach of contract arising out of agreements between the parties
4 to develop a casino. Id. at 673. The tribe did not seek to
5 remove the action, but brought suit in federal court seeking a
6 declaration that the contracts were void as unapproved management
7 contracts under the IGRA and that the state court lacked subject
8 matter jurisdiction to hear the breach of contract claims. Id.
9 The federal court stayed its proceedings pursuant to the Anti-
10 Injunction Act, and the state court subsequently ruled that it
11 had subject matter jurisdiction over the parties' dispute. The
12 tribe then resubmitted its request that the federal district
13 court issue a declaratory judgment that the state court was
14 without jurisdiction to hear the defendant's breach of contract
15 claim. Id. at 674. The district court held that the tribe had
16 fully litigated the issue of subject matter jurisdiction before
17 the state court, which had been appealed and upheld by the state
18 appellate court. Therefore, under principles of res judicata,
19 the district court was bound by the state court's determination.
20 Id. at 674-75 ("When the jurisdiction of a tribunal is actually
21 brought into question in the proceeding before it, such tribunal
22 has the power to determine its own jurisdiction, and once
23 determined, whether right or wrong, that decision cannot
24 ordinarily be attacked collaterally.") (internal quotations
25 omitted).

26 The facts before the court in Jena Band are strikingly
27 similar to the facts before the court in this case. In both
28 cases, defendants brought claims for breach of contract. In both

1 cases, despite later raising the spectre of exclusive federal
2 jurisdiction under the IGRA, *plaintiffs failed to seek removal*.
3 In both cases, the tribes challenged the subject matter
4 jurisdiction of the state court and unsuccessfully appealed
5 adverse determinations to the state appellate court. Just as the
6 Jena Band court determined that it was precluded from reviewing
7 the state court's conclusions regarding jurisdiction, this court
8 similarly finds that principles of equity, comity, federalism,
9 and res judicata preclude what is, at its core, a review of a
10 state court's determination of its jurisdiction over litigation.
11 See Alt. Coast Line, 398 U.S. at 296 ("[L]ower federal courts
12 possess no power whatever to sit in direct review of state court
13 decisions.").

14 Accordingly, the court concludes that the "necessary in aid
15 of jurisdiction" exception does not apply to plaintiff's claims.

16 **3. Expressly Authorized**

17 "[I]n order to qualify as an 'expressly authorized'
18 exception to the anti-injunction statute, an Act of Congress must
19 have created a specific and uniquely federal right or remedy,
20 enforceable in a federal court of equity, that could be
21 frustrated if the federal court were not empowered to enjoin a
22 state court proceeding." Mitchum v. Foster, 407 U.S. 225, 237
23 (1972). The federal statute need not expressly reference the
24 Anti-Injunction Act nor expressly authorize an injunction of a
25 state court proceeding. Id. "The test, rather, is whether an
26 Act of Congress, clearly creating a federal right or remedy
27 enforceable in a federal court of equity, could be given its
28

1 intended scope *only* by the stay of a state court proceeding."

2 Id. at 238 (emphasis added).

3 Plaintiff contends that the unique relationship between
4 Indian tribes and the United States and the preservation of
5 exclusive federal jurisdiction over Indian gaming supports a
6 federal injunction against the state court proceedings.

7 Specifically, plaintiff asserts that the Anti-Injunction Act does
8 not bar an Indian tribe from seeking an injunction authorized by
9 28 U.S.C. § 1362 because the United States, pursuant to its trust
10 relationship with the Tribe, could sue to invalidate unapproved
11 management contracts and obtain such an injunction. (Pl.'s Reply
12 at 7.)

13 Section 1362 provides, "The district courts shall have
14 original jurisdiction of all civil actions, brought by any Indian
15 tribe or band with a governing body duly recognized by the
16 Secretary of the Interior, wherein the matter in controversy
17 arises under the Constitution, laws, or treaties of the United
18 States." The Supreme Court has interpreted this section as
19 allowing an Indian tribe to bring claims that the United States
20 could have brought as trustee for a tribe, such as challenges to
21 state taxation of Indian tribes or actions to determine real
22 property rights. Moe v. Confederated Salish and Kootenai Tribes
23 of Flathead Reservation, 425 U.S. 463, 473-74 (1976) (state
24 taxation); Arizona v. San Carlos Apache Tribe of Arizona, 463
25 U.S. 545, 566-67 (1983) (water rights); see Aqua Caliente Band of
26 Cahuilla Indians v. Hardin, 223 F.3d 1041 (9th Cir. 2000) (state
27 taxation); Fort Mojave Tribe v. Lafollette, 478 F.2d 1016, 1018
28 (9th Cir. 1983) (quiet title). As such, there is federal

1 jurisdiction under § 1362 "whenever a covered Indian tribe is
2 suing to protect federally derived property rights and the United
3 States has declined to sue on behalf of the [Indian tribe]." 13D
4 Wright, Miller, Kane, Amar, Federal Practice & Procedure:
5 Jurisdiction & Related Matters § 3579 (3d ed. 2010). If an
6 Indian tribe is standing in the shoes of the United States under
7 § 1362, it is not barred from seeking an injunction to the extent
8 the United States would not be barred from seeking an injunction.
9 Moe, 425 U.S. at 474-75. The Supreme Court has held that the
10 Anti-Injunction Act does not apply where the United States is the
11 party seeking injunctive relief. Leiter Minerals, Inc. v. United
12 States, 352 U.S. 220, 226 (1957).

13 However, § 1362 "does not grant jurisdiction to every suit
14 by a tribe where the United States could bring an action on
15 behalf of the tribe under 28 U.S.C. § 175. Thus a simple
16 contract dispute, raising no federal question is not within the
17 statute." 13D Wright, Federal Practice & Procedure: Jurisdiction
18 & Related Matters § 3579; see Gila River Indian Community v.
19 Henningson, Durham & Richardson, 626 F.2d 708, 714 (9th Cir.
20 1980) (holding that § 1362 did not apply because "[t]here is
21 nothing in the present case which suggests that the action is
22 anything more than a simple breach of contract case").

23 Courts have noted that not every contract between a tribe
24 and non-Indian contractor is subject to the IGRA. Am. Vantage
25 Co. v. Table Mountain Rancheria, 103 Cal. App. 4th 590, 597
26 (2002) (citing Iowa Mgmt. & Consultants v. Sac & Fox Tribe, 207
27 F.3d 488, 489 (8th Cir. 2000); Calumet Gaming Group-Kansas v.
28 Kickapoo Tribe, 987 F. Supp. 1321, 1325 (D. Kan. 1997)).

1 "Rather, IGRA regulation of contracts is limited to management
2 contracts and collateral agreements to management contracts."
3 Id. (citing 25 U.S.C. § 2711). If a contract is not construed by
4 the NIGC to be a management contract, the contract falls outside
5 of the preemptive effect of the IGRA. Id.

6 Further, if a contract is *void* because it is a management
7 contract that has not been authorized pursuant to the statutory
8 requirements of the IGRA, the breach of such an unauthorized
9 contract does not implicate the IGRA. Rumsey Indian Rancheria of
10 Wintun Indians of Cal. v. Dickstein, No. 2:07-cv-2412, 2008 WL
11 648451, at *4 (E.D. Cal. Mar. 5, 2008). Specifically, if
12 agreements "are ultimately construed as *void* management
13 contracts, they would be found to have never been valid
14 contracts, and 'only an *attempt* at forming . . . management
15 contracts. If that is the case, then [the] suit in no way
16 interferes with the regulation of a management contract because
17 none ever existed.'" Id. (quoting Gallegos v. San Juan Pueblo
18 Bus. Dev. Bd., Inc., 955 F. Supp. 1348, 1350 (D.N.M. 1997))
19 (emphasis added). "It is a stretch to say that Congress intended
20 to preempt state law when there is no management contract for a
21 federal court to interpret" Casino Res. Corp. v.
22 Harrah's Entm't, Inc., 243 F.3d 435, 439 (8th Cir. 2001).

23 In this case, § 1362 does not apply because, under either
24 party's interpretation of the validity of the Agreements, the
25 litigation is based on a contract dispute that fails to raise a
26 federal question. To the extent defendant Sharp Image asserts
27 that the Agreements are not management contracts or that the time
28

1 to challenge the contracts as management contracts has passed,¹⁵
2 the IGRA is not implicated. See Am. Vantage Co., 103 Cal. App.
3 4th at 597. Alternatively, to the extent plaintiff Shingle
4 Springs asserts that the GMA and ELA are *void* as unapproved
5 management contracts, the IGRA is also not implicated. Rumsey
6 Indian Rancheria, 2008 WL 648451, at *4. As such, neither
7 plaintiff's nor defendant's theory of the case raises a federal
8 question.

9 Plaintiff contends that § 1362 nevertheless applies because
10 the Tribe raises a federal question arising out of its request
11 for review of the NIGC determination under the APA.¹⁶ Plaintiff,
12 however, fails to cite any case where § 1362 has been applied to
13 a Tribe seeking review of a *favorable* agency decision (which
14 effectively divests a federal court of jurisdiction over the
15 underlying matter).¹⁷ Cf. Mescatlero Apach Tribe v. Rhoades, 775
16 F. Supp. 1484, 1493 (D.N.M. 1990) ("[Section] 1362 specifically
17 will not bar a claim for equitable relief from adverse agency or
18 government action.") (emphasis added). Indeed, the APA mandates

20 ¹⁵ The Superior Court concluded that the NIGC did not have
21 jurisdiction to review the GMA and ELA because those contracts
22 had been terminated or cancelled prior to review. The Superior
23 Court also concluded that the NIGC did not comport with time
24 limitations for review set forth in federal statutes and
25 regulations.

24 ¹⁶ At oral argument, plaintiff's counsel asserted that its
25 claims were based upon the exclusive jurisdiction provided by the
26 APA, not § 3162. However, the APA, alone, does not constitute an
27 exception to the Anti-Injunction Act.

26 ¹⁷ AT&T, relied upon by plaintiff, is distinguishable.
27 AT&T involved management contracts *approved* by the NIGC and thus,
28 regulated by the IGRA. Conversely, in this case, the NIGC
concluded that the GMA and ELA were *unapproved* management
contracts, and thus, outside the purview of the IGRA.

1 that a court "compel agency action unlawfully withheld or
2 unreasonably delayed" and "set aside agency action" that the
3 court concludes is unlawful. 5 U.S.C. § 706. In the instant
4 action, plaintiff does not seek a determination that the NIGC's
5 action was unlawful, but rather an *affirmance* from this court
6 that the NIGC action was lawful. The only basis for a live
7 controversy lies in the Superior Court's refusal to give
8 deference to the NIGC's determination and plaintiff's request
9 that this court reverse that refusal. As such, plaintiff's
10 unique APA claim is wholly enveloped by the state breach of
11 contract claim, which simply fails to raise a federal question.

12 At its core, plaintiff's APA argument repackages the
13 preemption argument the Tribe advanced under the "necessary in
14 aid of jurisdiction" exception. Specifically, plaintiff asserts
15 that federal courts have exclusive jurisdiction to review
16 decisions of the NIGC under the APA, and thus, the Superior
17 Court's decision denying the Tribe's Motion to Dismiss/Quash on
18 preemption grounds was in error. In the absence of timely
19 removal to federal court, the appropriate procedure for review is
20 through the state court appellate system and potentially to the
21 United States Supreme Court; a federal district court has no
22 authority to review. The court declines to strain
23 interpretations of § 1362 and the APA to allow the Tribe to do
24 under one exception that which it could not under the other. See
25 Atl. Coast Line, 398 U.S. at 287 ("[T]he exceptions should not be
26 enlarged by loose statutory construction.").

27 Accordingly, the court concludes that the "expressly
28 authorized" exception does not apply to plaintiff's claims.

1 **B. Younger Abstention**

2 Alternatively, defendant Sharp Image opposes plaintiff's
3 motion for partial summary judgment on the basis that it should
4 be dismissed pursuant to the prudential abstention doctrine set
5 forth in Younger v. Harris, 401 U.S. 37, 43 (1971).¹⁸ Plaintiff
6 asserts that Younger abstention does not apply because the
7 Superior Court has acted beyond its authority.¹⁹

8 "Since the beginning of this country's history Congress has,
9 subject to few exceptions, manifested a desire to permit state
10 courts to try state cases free from interference by federal
11 courts." Younger v. Harris, 401 U.S. 37, 43 (1971). This desire
12 is premised upon the fundamental and vital role of comity in the
13 formation of this country's government and "perhaps for lack of a
14 better and clearer way to describe it, is referred to by many as
15 'Our Federalism.'" Id. at 44. Our Federalism demonstrates "a
16 proper respect for state functions, a recognition of the fact
17 that the entire country is made up of a Union of separate state
18 governments, and a continuance of the belief that the National
19 Government will fare best if the States and their institutions
20 are left free to perform their separate functions in separate

21
22 ¹⁸ While, as set forth *supra*, the court concludes that the
23 Anti-Injunction Act precludes plaintiff's claims, for the sake of
24 completeness, the court also addresses defendant's arguments
25 under Younger.

26 ¹⁹ Plaintiff also argues that Younger abstention does not
27 apply because it is not seeking to enjoin all state court
28 proceedings. However, as set forth *supra*, in the court's
discussion of the applicability of the Anti-Injunction Act,
plaintiff's requested injunctive and declaratory relief would
have the practical effect of enjoining most, if not all, of Sharp
Image's claims in the Superior Court. See Dubinka, 23 F.3d at
223 (holding that Younger abstention has not been limited to
injunctions that apply to entire proceedings).

1 ways." Id. It represents "a system in which there is
2 sensitivity to the legitimate interests of both State and
3 National Governments, and in which the National Government,
4 anxious though it may be to vindicate and protect federal rights
5 and federal interests, always endeavors to do so in ways that
6 will not unduly interfere with the legitimate activities of the
7 States." Id.

8 Generally, the Supreme Court's decision in Younger and its
9 progeny direct federal courts to abstain from granting injunctive
10 or declaratory relief that would interfere with pending state
11 judicial proceedings. Younger v. Harris, 401 U.S. 37, 40-41
12 (1971); Samuels v. Mackell, 401 U.S. 66, 73 (1971) (holding that
13 "where an injunction would be impermissible under these
14 principles, declaratory relief should ordinarily be denied as
15 well"). The Younger doctrine "reflects a strong policy against
16 federal intervention in state judicial processes in the absence
17 of great and immediate injury to the federal plaintiff." Moore
18 v. Sims, 442 U.S. 415, 423 (1979). When federal courts disrupt a
19 state court's opportunity to "intelligently mediate federal
20 constitutional concerns and state interests" and interject
21 themselves into such disputes, "they prevent the informed
22 evolution of state policy by state tribunals." Moore, 442 U.S.
23 at 429-30.

24 While the doctrine was first articulated in the context of
25 pending state criminal proceedings, the Supreme Court has applied
26 it to civil proceedings in which important state interests are
27 involved. Id.; see Huffman v. Pursue, Ltd., 420 U.S. 592 (1975).
28 "The seriousness of federal judicial interference with state

1 civil functions has long been recognized by the Court. [It has]
2 consistently required that when federal courts are confronted
3 with requests for such relief, they should abide by standards of
4 restraint that go well beyond those of private equity
5 jurisprudence." Huffman, 420 U.S. at 603.

6 Therefore, in the absence of "extraordinary circumstances,"
7 abstention in favor of state judicial proceedings is required if
8 the state proceedings (1) are ongoing, (2) implicate important
9 state interests, and (3) provide the plaintiff an adequate
10 opportunity to litigate federal claims. See Middlesex County
11 Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982);
12 see San Jose Silicon Valley Chamber of Commerce Political Action
13 Comm. v. City of San Jose, 546 F.3d 1087, 1092 (9th Cir. 2008)
14 (noting that where these standards are met, a district court "may
15 not exercise jurisdiction" and that "there is no discretion in
16 the district courts to do otherwise"). "Where Younger abstention
17 is appropriate, a district court cannot refuse to abstain, retain
18 jurisdiction over the action, and render a decision on the merits
19 after the state proceedings have ended. To the contrary, Younger
20 abstention requires *dismissal* of the federal action." Beltran v.
21 State of Cal, 871 F.2d 777, 782 (9th Cir. 1988) (emphasis in
22 original).

23 1. Interference with Ongoing State Proceedings

24 Younger abstention is only implicated "when the relief
25 sought in federal court would in some manner directly 'interfere'
26 with ongoing state judicial proceedings." Green v. City of
27 Tucson, 255 F.3d 1086, 1097 (9th Cir. 2001) (en banc) *receded*
28 *from on other grounds by* Gilbertson v. Albright, 381 F.3d 965

1 (9th Cir. 2004). "The mere potential for conflict in the results
2 of adjudications is not the kind of interference that merits
3 federal court abstention." Id. (internal quotations and citation
4 omitted). Rather, the system of dual sovereigns inherently
5 contemplates the possibility of a "race to judgment." Id.
6 Rather, the relevant question is whether the relief requested in
7 federal court would "enjoin or 'have the practical effect of'
8 enjoining the ongoing state court proceedings."
9 AmerisourceBergen, 495 F.3d at 1152.

10 In this case, as set forth in Section A.1 in the court's
11 discussion of the Applicability of the Anti-Injunction Act, all
12 of plaintiff's claims and requested declaratory and injunctive
13 relief, if granted, would have the effect of enjoining pending
14 state court proceedings or reviewing issues already reached by
15 the state court. The state court proceedings were initiated in
16 March 2007, over three years before the complaint was filed in
17 this case. Further, the requested injunctive relief would be
18 impossible to enforce without violation of established principles
19 of federalism and comity. Accordingly, the first element of
20 Younger abstention is present in this case.

21 **2. Important State Interests**

22 The interpretation and application of state common law
23 implicates important state interests. See R.R. Comm'n of Texas
24 v. Pullman Co., 312 U.S. 496, 499-500 (1941) (noting that the
25 "last word" on the interpretation of state law issues from that
26 state's highest court); see also Tunica-Biloxi Tribe, 2005 WL
27 1902889, at *3. Moreover, state courts are better qualified to
28 interpret the state's own common law. Id.

1 In this case, the pending state actions involve, *inter alia*,
2 common law breach of contract claims governed by California law.
3 As such, California courts are best suited to determining the
4 merits of these claims. See Tunica-Biloxi Tribe, 2005 WL
5 1902889, at *3 (holding that the second prong of Younger was
6 satisfied where the defendants had filed a breach of contract
7 claim in California state court, but the plaintiff filed a case
8 in federal court to enjoin such proceedings on the basis that the
9 issues raised in state court were completely preempted under the
10 IGRA).

11 Plaintiff's contention that important state interests are
12 not implicated because it is "readily apparent" that the state
13 court is exceeding its authority is without merit. See Sycuan
14 Band, 54 F.3d at 541 (holding that the second Younger element was
15 not satisfied because the state "can have no legitimate interest
16 in intruding on the federal government's exclusive jurisdiction
17 to prosecute"); Gartrell Const. Inc. v. Aubry, 940 F.2d 437, 441
18 (9th Cir. 1991) ("No significant state interest is served where
19 the state law is preempted by federal law and that preemption is
20 readily apparent."). Specifically, plaintiff's argument is
21 unpersuasive because its assertion that defendant's state law
22 claims are completely preempted is not "readily apparent." As
23 set forth above, the IGRA is not implicated to the extent that a
24 contract is not a "management contract" or to the extent that a
25 contract is void as an unapproved management contract. See supra
26 Part A.3. Further, despite plaintiff's assertion that preemption
27 is clear, the Superior Court denied the Tribe's motion on this
28

1 ground, and both the Court of Appeals and the California Supreme
2 Court declined to reverse that decision.

3 Accordingly, the second element of Younger abstention is
4 present in this case.

5 **3. Adequate Opportunity to Present Federal Claims**

6 "Minimal respect for state processes, of course, precludes
7 any *presumption* that the state court will not safeguard federal
8 constitutional rights." Middlesex County Ethics Comm., 457 U.S.
9 at 431. Rather, a federal court "should assume that state
10 procedures will afford an adequate remedy, in the absence of
11 unambiguous authority to the contrary." Pennzoil Co. v. Texaco,
12 Inc., 481 U.S. 1, 15 (1987).

13 In this case, plaintiff can, and did, raise preemption as a
14 defense in the state court action. If plaintiff is dissatisfied
15 with the Superior Court's action, it can, and did, appeal to the
16 California Court of Appeals and the California Supreme Court.
17 Ultimately, plaintiff can file a petition for review in the
18 United States Supreme Court. See Tunica-Biloxi Tribe, 2005 WL
19 1902889, at *3 (holding that the third Younger element was
20 satisfied where the plaintiff Indian tribe could raise preemption
21 as a defense in the state court, appeal through the state system,
22 and ultimately file a petition for review with the United States
23 Supreme Court).²⁰

24 Accordingly, the third element of Younger abstention is met
25 in this case.

26
27 ²⁰ If plaintiff believed defendant Sharp Image's claims
28 were completely preempted, it could have sought removal to the
appropriate federal district court. See id.

1 **CONCLUSION**

2 Therefore, for the foregoing reasons, defendants' motions to
3 dismiss are GRANTED, and plaintiff's partial motion for summary
4 judgment is DENIED. Specifically:

5 (1) Because the court concludes that the claims alleged and
6 relief sought by plaintiff in this case falls within the
7 purview of the Anti-Injunction Act, and because none of the
8 narrow exceptions to the Anti-Injunction Act apply,
9 defendants' motions to dismiss on the grounds that the
10 complaint is barred by the Anti-Injunction Act is GRANTED,
11 and plaintiff's motion for partial summary judgment is
12 DENIED; and

13 (2) Because plaintiff's claims would interfere with ongoing
14 state court proceedings that implicate important state
15 interests and plaintiff has an adequate opportunity to
16 pursue their federal claims in those proceedings, the court
17 must abstain from adjudicating these claims pursuant to
18 Younger v. Harris.

19 The Clerk of Court is directed to close this case.

20 IT IS SO ORDERED.

21 DATED: October 15, 2010



22 _____
23 FRANK C. DAMRELL, JR.
24 UNITED STATES DISTRICT JUDGE
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