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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Rincon Band of Luiseno Mission Indians of the Rincon Reservation, a/k/a Rincon San Luiseno Band of Mission Indians a/k/a Rincon Band of Luiseno Indians

Plaintiff,

vs.

Arnold Schwarzenegger, Governor of California; State of California,

Defendants.

No. 04CV1151 W (WMc)

FIRST AMENDED COMPLAINT

For their Complaint Rincon Band of Luiseno Mission Indians of the Rincon Reservation, a/k/a Rincon San Luiseno Band of Mission Indians a/k/a Rincon Band of Luiseno Indians (hereafter interchangeably referred to as "Rincon Band" "Band" "Tribe" or "Plaintiff"), Plaintiff alleges as follows:

INTRODUCTION

1. The Rincon Band is a federally recognized Indian Tribe whose lands are located within the external boundaries of San Diego County. After years of attempted negotiations with the State of California, the Tribe was finally able, in 1999, to sign a Tribal-State Compact authorizing it to conduct gaming on its tribal lands. Rincon has since invested approximately three-hundred fifty million ($ 350,000,000.00) in a destination casino resort.

2. The agreement between the Tribe and the State requires the State to engage in good faith negotiations over existing and proposed provisions to the Compact at the request of the Tribe, timely submitted in March 2003. Over the first four months, the State engaged in a few negotiation sessions with Rincon, but never submitted or otherwise articulated any formal position on any substantive issue, despite repeated requests by the Tribe to do so. From June 2003 to June 2004, the State ignored, avoided, or otherwise failed to address the Rincon Band's repeated requests for the contractually required negotiations. Instead, the State negotiated for and entered into new Compacts with a select group of Tribes that abandoned the policy of limited gaming and that constrained the State's ability to meet its contractual obligation to negotiate with Rincon. The new Compacts permit extraordinary expansion, and in some cases, unlimited tribal gaming in exchange for a larger share of gaming revenues. Thus, leaving the State without a legitimate purpose for adhering to constraints on the number of gaming devices.

3. Even after the State entered into the new Compacts, it continued to fail to negotiate in good faith with Rincon. Three and one-half years have passed since Rincon's initial request and the State maintains a strident negotiation position that is unlawful and neglects to account for what is permissible negotiation under the Indian Gaming Regulatory Act ("IGRA"). Accordingly, the

Rincon Band brings this suit seeking the remedy provisions for lack of good faith negotiation set forth in IGRA, set forth in the Compact, as well as other remedies available under federal law.

JURISDICTION AND VENUE

4. The District Court has jurisdiction over this action pursuant to the Constitution of the United States; 28 U.S.C. §§ 1331, 1343, 1367, 2201, and 2202; 25 U.S.C. § 2710 as an action arising under the laws of the United States; as an action seeking declaratory relief; and as an action seeking relief under state law claims which arise out of the same nucleus of operative fact as the federal question claims.

5. Venue in this District is proper under 28 U.S.C. § 1391 because the Defendant is located in this District, the events giving rise to the claims occurred in this District, and a substantial part of the property that is subject of this action is situated in this District.

6. Defendants have waived Eleventh Amendment Immunity from suit per the Tribal State Compact, per an act of the People in the passage in 1998 of Proposition 5, which provision survived the judicial scrutiny of the California Supreme Court, and per state law.

7. There is actual controversy as to whether Defendants are in breach of the Tribal/State Compact for the regulation of Class III gaming[1], between the Plaintiff Rincon Band and Defendants, currently in effect. There is actual controversy over the interpretation of certain provisions of the Compact currently in effect such that a justiciable case and controversy exists, capable of resolution by declaratory judgment. Plaintiff seeks prospective equitable relief in the context of specific performance, injunctive relief, credit for future fees and declaratory rulings regarding interpretation of key compact provisions.

8. The Federal District Court has previously certified for interlocutory appeal the dismissal of certain claims. The Court certified Plaintiff's claims sounding in impairment of

[1] There are generally four groups of compacts referenced in the instant Complaint: (1) Prop 1A Compacts; (2) Davis Exit Compacts; and (3) Schwarzenegger Compact Amendments and (4) New Schwarzenegger Compacts (for previously non-compacted tribes), although the Schwarzenegger Compacts and Compact Amendments are *not* identical to one another in all material respects. The Compact currently in effect between the Rincon Band and the State of California is a Prop 1A Compact. For purposes of this Complaint, reference to a Compact without designating which of the four types is a reference to the Prop 1A Compact currently in effect.

contract, Count I and Count II of the original Complaint. Plaintiff is not pursuing those claims on appeal and they are not pled in the instant First Amended Complaint, and allegations germane solely to those claims have been deleted. The Court also certified (1) Plaintiff's claim seeking a declaration of the maximum number of machine licenses available in a state-wide pool pursuant to the Compact, Count V in the original Complaint; and (2) Plaintiff's claim seeking damages for detrimental reliance on the State's representations regarding the initial draw of gaming device licenses, Count VII in the original Complaint. Plaintiff is pursuing those claims on appeal. Those two Claims and their supporting allegations are not altered in this First Amended Complaint with the intent to preserve these claims pending resolution at the Ninth Circuit Court of Appeals. Nothing in this First Amended Complaint is intended to seek reconsideration or clarification of the District Court's prior orders or is intended to divest the Appeals Court of its jurisdiction over those two claims.

9. Rincon is no longer asserting claims based on the State's failure to negotiate a codicil to the Compact regarding off-track betting, Count VIII of the original Complaint.

10. Rincon is reasserting its remaining original claims, Counts III, IV, and VI from the original Complaint, and adding one additional claim based on post filing actions on the part of the State. The additional claim is for a declaratory judgment that the gaming devices licenses previously issued to Tribes who have since signed Compact Amendments with the Schwarzenegger Administration must revert back to the Proposition 1A gaming device license pool.

PARTIES

11. Defendant Arnold Schwarzenegger is the Governor of California, and this action is brought against him in his official capacity.

12. Defendant State of California is a dependent sovereign state government, a body politic within the constitutional framework of the United States of America.

13. Plaintiff Rincon Band of Luiseno Mission Indians of the Rincon Reservation, a/k/a Rincon San Luiseno Band of Mission Indians a/k/a Rincon Band of Luiseno Indians is a federally recognized Indian Tribe, possessing governmental authority over its Indian lands and its

membership, with its Indian lands located within the external boundaries of San Diego County, California. Rincon Band's gaming facilities are located within the external boundaries of San Diego County.

GENERAL ALLEGATIONS

I. The Indian Gaming Regulatory Act

14. Congress passed IGRA in the aftermath of the Supreme Court's decision that States lacked jurisdiction to prohibit gaming on Tribal lands. *See California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). IGRA is intended "to create consensual agreement between two sovereign governments," by requiring the participation of the States and the Tribes in the Compacting process. *See Statement of Senator Inouye*, 134 Cong. Rec. 24,024, 24,025. The intent of IGRA is to provide "a statutory basis for the operation of gaming by Indian Tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702.

15. IGRA divides gaming into three classes and allows for increasing regulation as the type of gaming intensifies. Class I is regulated by the Tribes and Class II gaming is regulated by the Tribes in conjunction with the federal government. Class III gaming, however, with very limited exception is allowed only if three conditions are met: (1) the governing body of the Tribe and the National Indian Gaming Commission approve such gaming; (2) the state permits such gaming "for any purpose by any person, organization or entity;" and (3) the Tribe and the State enter into a Compact that is approved by the Secretary of the Interior. 25 U.S.C. § 2710(d) (1).

16. An approved Compact permits the State and the Tribe to jointly develop a regulatory scheme to govern Class III gaming. However, IGRA sets forth the scope of negotiated provisions that may be contained in Compacts between the State and the Tribe.

17. IGRA does not authorize Tribal-State Compacts for Class III gaming to contain provisions outside the restrictions in 25 U.S.C. § 2710(d)(3)(C), which provide:

> (C) Any Tribal-State Compact negotiated under subparagraph (A) may include provisions relating to—

> (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;
> (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
> (iii) the assessment by the State of such activities in such amounts as are *necessary to defray the costs of regulating such activity*;
> (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
> (v) remedies for breach of contract;
> (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
> (vii) any other subjects that are *directly related to the operation of gaming activities*.

18. Consistent with those purposes, IGRA specifically withholds from State and local government the power to impose "a tax, fee, charge or other assessment upon an Indian tribe . . . to engage in Class III activity." 25 U.S.C. § 2710(d)(4) and PL 100-497 Indian Gaming Regulatory Act, Senate Report (Indian Committee), No. 100-446, August 3, 1998, 134 Cong. Rec. (1988) at 18.

19. Moreover, IGRA prohibits any state from refusing to enter into negotiation for Class III gaming "based upon the lack of authority in such state, or its political subdivisions, to impose such a tax, fee, charge or other assessment." 25 U.S.C. § 2710(d)(4).

20. Thus, IGRA requires that with respect to the Tribe paying funds to the State, the amounts must be correlated to the necessary costs of the State in regulating the Class III gaming activity. While the Tribe and the State may negotiate over other subjects that are directly related to the operation of gaming activities, any other subject cannot impose a tax, fee, charge or other assessment upon the Tribe as a requirement for the Tribe to be able conduct Class III gaming activity.

21. At all times relevant to the pending negotiation, the State's offers to Rincon include demands for large fees that are not related to the cost of regulation, the development of related infrastructure or to payments to non-gaming tribes. Rather, the fees demanded by the State are to be used at the unrestricted discretion of the State. The proposals made by the State to Rincon fail to make any meaningful concession to Rincon to justify the demanded fees. Indeed, the State's

proposals to Rincon seek concession by Rincon to surrender the value of its existing Compact and pay the demanded fees on all existing gaming devices.

22. The State's demands exceed even the informal guidelines used by the Department of the Interior in the review of tribal/state compacts. Moreover, and in the alternative, the State's demands exceed the parameters directly set forth in IGRA and constitute a tax, fee or charge. By making such demands upon Rincon, the State fails to meet its obligations of good faith negotiation as set forth in IGRA and as set forth in the Compact.

23. IGRA, together with the Proposition 1A Compact, set forth procedure and protocol intended to facilitate good faith negotiations. The State's actions since Rincon's initial request for renegotiation of certain compact terms in March of 2003 has been to ignore, delay, manipulate and otherwise violate the standards of protocol and procedure. By such actions, the State fails to meet of its obligations of good faith negotiation as set forth in IGRA and as set forth in the Compact.

24. In the alternative, the acts of the State complained of herein, collectively establish the lack of good faith required for the appointment of a Mediator and implementation of the remedies set forth in IGRA.

II. Tribal Gaming In California After The Passage Of IGRA

25. After IGRA went into effect, the State of California and various Indian Tribes began the compacting process. Difficulties swiftly arose. *See Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d 1250 (9th Cir. 1996) (describing the history of California compact negotiations, including disputes between the Tribes, the State of California, and the United States).

26. Prior to 1999, gaming on Indian lands within the geographic boundaries for the United States District Court for Southern District of California was controlled by a policy of then United States Attorney, Alan Bersin.

27. Mr. Bersin's policy permitted only three federally recognized Indian Tribes to engage in gaming, effectively cutting the other thirteen Tribes with lands located in his jurisdiction out of the field.

28. The Rincon Band sought parity for all area Tribes and complied with each of several conditions Mr. Bersin imposed in an attempt to begin gaming operations. Despite the Tribe's efforts, Mr. Bersin refused to change his position.

29. Mr. Bersin's policy remained in effect until the affected Tribes signed the Proposition 1A compacts in 1999.

III. Ballot Measures Enacted By The People Authorize Tribal Gaming

30. In the summer of 1997, California voters approved Proposition 5, a statutory initiative directing the state to enter into a compact with each qualified Tribe that requested one.

31. Shortly after Proposition 5's passage, several commercial card room interests and a labor union brought a lawsuit challenging the constitutionality of the Initiative.

32. Concerned that the Initiative might be deemed unconstitutional, Governor Davis created a negotiation team to reach agreement over a universal tribal/state compact. The State's negotiation team met with three groups of Tribes several times throughout spring and summer of 1999.

33. In late August 1999, several Tribes faced a potential court order shutting down gaming operations unless and until a federally approved compact was in place. Several other Tribes patched together agreements with the United States Department of Justice that would require the Tribes to close existing gaming operations at the discretionary decision of the United States Attorney. Other Tribes, including the Plaintiff Rincon Band, were not operating gaming facilities and were unable to do so without a Tribal/State Compact in effect.

34. On August 23, 1999 the Supreme Court for the State of California ruled that Proposition 5 was unconstitutional, with one exception. *Hotel Employees and Restaurant Employees International Union v. Davis*, 88 Cal. Rptr. 2d 56 (Ca. S. Ct. 1999). The Court upheld the provision in Proposition 5 waiving the State's Eleventh Amendment immunity from lawsuits brought by Tribes under IGRA.

35. Immediately after the State Supreme Court ruling in *Hotel Employees*, Governor Davis summoned several interested gaming Tribes to Sacramento. The next day, Governor Davis

met with the Tribal leaders and committed to negotiate a compact with all interested Tribes in the immediate future. Over the course of the next three weeks, several draft compacts were submitted to the Tribes, but no formal negotiations occurred despite Governor Davis' representations to the contrary.

36. Rincon Band tribal leaders and leaders from many other Tribes remained in Sacramento in reliance on the Governor's representations that there would be actual negotiations.

37. On September 9, 1999, Governor Davis's representatives delivered a form compact to the Tribal representatives present in Sacramento, providing an ultimatum of "take-it-or-leave it" and told them they had until 11:00 p.m. to review and accept the State's offer. Neither the Governor nor his representatives would discuss or negotiate the terms of the draft.

38. The Rincon Band acquiesced and agreed to the form compact. Fifty-six other Tribes accepted the form compact.

39. The form compacts to which the Tribes agreed (the "Proposition 1A Compacts") are materially identical in all respects and are effective until December 31, 2020.

40. All Proposition 1A compacts embrace the same comprehensive statewide regulatory framework, including as a material part, a per-tribe cap on the number of gaming devices, and a state-wide cap on the number of gaming device licenses from an allocation pool that all Tribes are required to use to expand beyond their base allocations of gaming devices. All Proposition 1A compacts embrace stated policies including all Tribes' ability to operate gaming in an environment free from competition for gaming devices on non-Indian lands, growth of which is to occur in a regulated controlled manner, with the stated goal of enabling each compacted Tribe to develop self-sufficiency, promote tribal economic development, and generate jobs and revenue to support the compacted Tribe's government and its governmental services and programs.

41. The Proposition 1A Compacts were conditioned on voter approval of a constitutional measure addressing the concerns expressed by the California Supreme Court in *Hotel Employees*. On March 7, 2000, California voters overwhelmingly approved that measure. The Secretary of the

Interior approved the compacts on May 5, 2000, and they became effective upon their publication in the Federal Register on May 16, 2000.

42. Proposition 1A amended the California Constitution by providing Indian Tribes an exception to the prohibition on Class III gaming as follows:

> Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude Compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those Compacts.

Cal. Const., art IV. 19(f) (2006).

43. The exception, by its terms, applies only to Tribal casino gaming under a Compact. Non-Tribal gaming remains constitutionally prohibited. Indeed, California's Constitution is unique for it is the only constitutional provision in all of the fifty states to provide exclusivity to Indian Tribes.

44. After the first fifty-seven Compacts became effective, an additional five compacts, identical in all material aspects to the Proposition 1A Compacts were executed prior to the Governor's submission of the Compacts to the Department of the Interior for federal approval. None of the five additional Compacts alter the regulatory scheme concerning the limits on the numbers of licenses and the pooling provisions of Section 4.3.2.2.

45. In the final hours of the Davis Administration an additional three compacts were executed by Governor Davis (the "Davis Exit Compacts"). The Davis Exit Compacts are different from the Proposition 1A compacts in some respects but do not alter the state-wide pooling provisions and gaming device limits set forth in Section 4 of the Proposition 1A Compacts.

46. The Proposition 1A compacts contain defined circumstances where payments are to be made by the Tribes to the State.

47. Section 4.2.2.2 sets up flat per-device fees, the proceeds of which are to be used for the Revenue-sharing Trust Fund ("RSTF"). The RSTF is set up for the distribution of monies to

Non-Compact Tribes. The RSTF fee is paid as an annual fee to maintain a device license issued from the state-wide pool.

48. The Proposition 1A Compact also created a Special Distribution Fund ("SDF") and provides for revenue to be paid to the State on a per device operated sliding scale from 0% to 13%, of net win to be used for specific delineated purposes directly related to the operation of gaming activities. This Section's application was limited to the number of gaming devices operated by the Tribe as of September 1, 1999. Unlike the RSTF, SDF fees are not paid to maintain a device issued from the state-wide pool.

49. For Tribes not operating any devices on September 1, 1999, by operation of the Compact's terms, all monies paid to the State are directed through the RSTF. The larger the operation as of September 1, 1999, the greater the portion of the monies to be paid to the State to be directed through the SDF, rather than the RSTF.

50. The Proposition 1A Compacts established a per tribe maximum of 2000 gaming devices. Tribes could obtain licenses, in order to reach the 2000 gaming device limit, through a structured state-wide gaming device licensing pool. The structure for fees and licenses is exactly the same in each and every Proposition 1A Compact.

51. Proposition 1A Compact § 4.3.3 provides for renegotiation of provisions related to the RSTF fees, the numbers of gaming devices, and the allocation of gaming devices. Section 4.3.3 provided a very narrow, twenty-four day time frame in March of 2003 within which a request for renegotiations was to occur. Under this section, upon request, the parties were to promptly commence the negotiations in good faith concerning the matters encompassed by Sections 4.3.1. and 4.3.2 and their subsections. Only a small number of Tribes, including Rincon, made formal and timely requests for renegotiations per Compact Section 4.3.3.

52. The Proposition 1A Compacts incorporated the IGRA good faith procedures for negotiation into the renegotiation process for Section 4.3.3. Indeed, Proposition 1A Compact § 12.3 states:

> Unless expressly provided otherwise herein, all matters involving negotiations or other amendatory processes under Section 4.3.3(b) and this

> Section 12.0 shall be governed, controlled and conducted in conformity with the provisions and requirements of IGRA, including those provisions regarding the obligation of the State to negotiate in good faith and the enforcement of that obligation in federal court.

53. Consequently, renegotiations under Proposition 1A Compact § 4.3.3 are governed by IGRA § 2710(d)(7)(B).

IV. Disputes Over The Number Of Gaming Device Licenses Available

54. The language of the Proposition 1A Compacts almost immediately gave rise to arguments concerning issues related to the number of gaming device licenses available from the pool and the appropriate process for allocation of the available licenses.

55. The Compacts permit the Tribes to operate the number of gaming devices operated by the tribe prior to September 1, 1999 or an initial 350 gaming devices. The Tribes may draw additional licenses out of a combined pool, but may not exceed an aggregate total of 2,000 devices per tribe.

56. The number of licenses available in the pool or "the maximum number of machines that all Compact Tribes in the aggregate may license pursuant to this Section" is "a sum equal to 350 multiplied by the number of Non-Compact tribes as of September 1, 1999, plus the difference between 350 and the lesser number authorized under Section 4.3.1." Section 4.3.1 provides that a Tribe may operate no more Gaming Devices than the larger of: (a) a number of terminals equal to the number of Gaming Devices operated by the Tribe on September 1, 1999; or (b) three hundred fifty (350) Gaming Devices.

57. On November 9, 1999 the Office of Legislative Analysts issued an opinion that the gaming device limitations and licensing pool provision allow for as many as 113,000 devices to be operated on Indian lands, 60,000 of which are available through the license pool.

58. In response, the Office of the Governor issued an opinion that the Office of Legislative Analysts was wrong and that the gaming device limitations and licensing pool provision allow for no more than 44,798 gaming devices to be operated on Indian lands, 23,000 of which are available through the license pool.

59. The State, through the California Gambling Control Commission, maintains that the license pool has been exhausted and that the only means by which new licenses may become available is through the termination of a license for non-payment of fees or by a Tribe or Tribes relinquishing licenses to revert back to the pool.

60. The California Gambling Control Commission ("CGCC") maintains that 32,151 licenses have been issued through the license pool and maintains that 32,151 licenses is the maximum number of licenses available through the license pool.

61. The Rincon Band recognizes two reasonable interpretations of the Compact's language regarding the number of available gaming devices. Either (1) the gaming device limitations and the license pool provision allow for no more than 115,393 gaming devices to be operated on Indian lands, 64,293 of which are available through the license pool, or alternatively (2) the gaming device limitations allow for no more than 109,550 gaming devices to be operated on Indian lands, 58,450 of which are available through the license pool. Under either interpretation, the only means by which the 115,393 cap or the 109,550 cap may be reached is in the unlikely scenario where every Tribe operates its base allotment of 350 machines.

62. Due to the State's claims that the licensing pool has been exhausted and its disagreement with Rincon's interpretation of the number of available licenses, Rincon has only been able to obtain 1250 gaming device licenses to date. From time to time since the CGCC's interpretation of the state-wide cap has been reached, the CGCC has conducted additional license draws to reflect licenses that have been surrendered back to the Commission. Rincon has requested the licenses in such draws. The CGCC has denied Rincon's request in every circumstance.

63. Consequently, Rincon currently operates 1600 Class III gaming devices (the first 350 devices do not require a gaming device license) at a total cost of one million and three hundred thousand dollars ($1,335,000) per year, paid to the RSTF. As Rincon was not operating any gaming devices on September 1, 1999, the sliding scale per device fee of 0% to 13% directed to the SDF is not applicable to Rincon.

V. The State Endorses The Initial Draw Of Device Licenses And The Rincon Band Builds A Temporary Facility So It Can Operate The Devices Authorized In The Initial Draw

64. In February 2000, several Tribes announced that they intended to proceed unilaterally with the first draw of gaming device licenses from the pool without waiting for the State to take a position.

65. Those Tribes selected a company named Sides Accountancy to conduct the initial draw of gaming device licenses from the license pool, to occur on the later of May 15, 2000 or immediately after the Department of the Interior published its approval of the compacts.

66. The State of California endorsed Sides Accountancy as the valid administrator of the draw and issuer of the licenses in public statements, official letters from the Offices of the Governor and the Attorney General, and in formal representations to the federal courts in litigation with Tribes.

67. The Governor's position on the limited number of available licenses and the legality of the forthcoming Sides Accountancy draw left the Rincon Band with a difficult choice. Once the Tribe drew licenses, Compact Section 4.3.2.2.(b) required that those licenses be put into operation within one year. The Tribe knew that its facility would not be ready, and that if it participated in the Sides Accountancy draw it would then need to make substantial capital expenditures for a temporary facility in which it could operate the licenses. But if the Tribe did not participate in the initial draw, the statewide pool could be exhausted before the Tribe was ready to put the licenses in operation.

68. In an effort to secure gaming device licenses before the pool was exhausted, the Tribe negotiated an addendum to its contracts with HCAL Corporation for construction of a temporary facility that would allow the gaming device licenses to be in commercial operation within the one year deadline provided for in the compact. To construct the temporary facility, the Band spent approximately forty million dollars ($40,000,000.00) in additional capital investment and incurred significant other costs. Out of the forty million dollars ($40,000,000.00), approximately twelve million, seven hundred and fifty thousand ($12,750,00.00) could not be recovered for use in the permanent facility.

69. Prior to May 15, 2000, the Rincon Band submitted a request to Sides Accountancy for 1,650 device licenses, accompanied by checks in the amount of two million, seventy-one thousand, two hundred and fifty dollars ($2,071.250.00) representing a $1,250 pre-payment to the State of California per compact Section 4.3.2.2(b) and a $5.00 processing fee per device ($8,250.00) to Sides Accountancy, plus a $500.00 engagement fee to Sides Accountancy.

70. The Rincon Band's application for 1,650 gaming device licenses issued by Sides Accountancy, was processed and licenses were issued before the statewide license pool was exhausted. Therefore, even if Governor Davis' asserted cap on licenses is deemed by this court to be correct, Plaintiff's licenses fall within the allowed pool and may not be rescinded.

71. Upon information and belief, the State accepted the money paid by the Tribe to Sides Accountancy and has since distributed such money to Tribes operating fewer than 350 gaming devices.

72. The Tribe constructed the expansion to the temporary facility and had gaming devices authorized by all 1,650 licenses issued by Sides Accountancy in commercial operation on May 11, 2000.

73. But for the State's repeated representations endorsing and validating the Sides Accountancy draw process, the Rincon Band would not have taken those actions necessary to secure 1,650 purported gaming device licenses issued by Sides Accountancy and would not have taken those actions necessary to have gaming devices purportedly authorized by such licenses placed in commercial operation by May 15, 2001.

VI. The State Reverses Its Position On The Initial Draw, Making Rincon's Expenditures Unnecessary

74. On February 23, 2001 the California Attorney General issued a formal position that only the California Gaming Control Commission has authority to administer the draws and issue the licenses in connection with the statewide gaming device license pool. Accordingly, the State of California reversed its position regarding the licenses issued by Sides Accountancy and determined such licenses to be invalid.

75. On March 8, 2001, then Governor Davis issued Executive Order #D-31-01 directing the California Gambling Control Commission to administer the gaming device license draw process under the compacts.

76. On May, 10, 2001 the California Gambling Control Commission communicated that because the licenses issued by Sides Accountancy are invalid, the one-year deadline for placing gaming devices into commercial operation had not yet begun to run.

77. By representing that the Sides Accountancy process was valid, the State caused the Rincon Band to spend in excess of forty million dollars ($40,000,000.00) on construction, operation and other costs for the temporary facility, twelve million, seven hundred and fifty thousand dollars ($12,750,000.00) of which was otherwise unnecessary to the Rincon Band's gaming operations.

78. Even assuming that the State's opinion concerning the invalidity of the Sides Accountancy process was incorrect and the Rincon Band's expenditures were in fact necessary, the State's actions still injured the Rincon Band. Assuming the original Sides Accountancy process was valid, those Tribes which could not attain commercial operability within the one year deadline would have forfeited their Sides Accountancy licenses back to the pool and the pool which is now allegedly exhausted would have been open to additional draws.

VII. The Rincon Band Makes Significant Expenditures To Begin Gaming Operations Under The Existing Compact

79. Subsequent to the execution of the Compact, The Rincon Band invested in a comprehensive feasibility study to be completed based on the opportunity provided for in the Compact and assuming competition from other Tribes which signed onto identical compacts.

80. The Rincon Band entered into a contract with HCAL Corporation, a wholly-owned subsidiary of Harrah's Operating Company, Inc. (hereafter referred to as "Harrah's"). Plaintiff's decision to contract with Harrah's was in part due to Harrah's proven means and ability to capture the revenue potential of the Tribe's gaming opportunity and to overcome the barriers to market entry set forth in Proposition 1A compacts.

81. Harrah's and the Rincon Band, have subsequently entered into a series of agreements enabling the Rincon Band to provide nearly three hundred and fifty million dollars ($350,000,000.00) in capital improvements directed at establishing a gaming and entertainment resort on its existing Indian lands. Those agreements include: (1) approximately forty million dollars ($40,000,000.00) in temporary facilities in order to comply with the Compact's one-year deadline to place licensed devices into commercial operation; (2) approximately one hundred and twenty-five million dollars ($125,000,000.00) to the development and management of a permanent casino; (3) approximately twelve and one-half million dollars ($12,500,000) for an entertainment venue; and (4) approximately one hundred sixty-eight million, three hundred thousand dollars ($168,300,000.00) in a hotel expansion, the timing of construction of which was greatly accelerated to comply with a possible January 1, 2005 cessation date for all project improvements.

VIII. The State Violates The Negotiation Provisions Of The Compact

82. In an attempt to alleviate the confusion on a variety of issues and to prevent similar sequences and unnecessary outlays of money in the future, Plaintiff approached the State seeking negotiation on a variety of topics. As outlined fully below, the State has failed to negotiate with respect to issues related to device license issuance, the State's own environmental impact proposals, and finally the gaming device caps and revenue –sharing provisions set forth in Section 4 of the Compact. The State has consistently avoided or ignored the set procedures in the Proposition 1A Compact for addressing and renegotiating provisions in the Proposition 1A Compact.

A. The State Abandons Section 9.1 Meet and Confer

83. On July 31, 2001, the Rincon Band and nine other tribal governments formally asked to meet and confer with the State per Section 9.1 of the Compact concerning general issues related to the proper application and implementation of the gaming device licensing pool, authority to issue licenses, calculation of the licensing fees and timing of the licensing fees and the one-year implementation date.

84. The State requested, in writing, an extension of the ten-day period required of the Compacts for the parties to meet and confer, which request was granted.

85. On September 7, 2001, the State met with representatives of the nine Tribes in a formal meet and confer session in Sacramento, California. The Tribes presented a comprehensive analysis of their concerns.

86. The State indicated that it would get back to the Tribes in the near future after consideration of the information presented.

87. The State never followed up with any formal communication and otherwise the State unilaterally ended the meet and confer process initiated by the Tribes.

88. Subsequent actions by the State mooted some of the issues identified; however, significant issues remained unresolved. The State did not address the confusion over the number of available gaming device licenses in the state-wide pool and left unresolved the possible remedies for Tribes that were injured by relying in good faith on the State's representations concerning the validity of the Sides Accountancy process.

89. The provisions of the Proposition 1A Compact § 9.1 states that the parties shall meet and confer in a good faith attempt to resolve disputes through negotiation. The Compact provides that the meet and confer session is to occur within ten (10) days of the request. Any disputes that are not resolved through the meet and confer process are subject to resolution by binding arbitration if both parties consent to such arbitration, or by resolution in the District Court.

90. Even though Tribes have repeatedly sought resolution of the issues related to the numbers of available gaming device licenses through the meet and confer process and the courts, the State has stopped these matters from being resolved by invoking Rule 19 status and suggesting that all the signatory tribes to the Proposition 1A Compacts must be joined in order for the matter to be heard.

91. The State has used its interpretation that the license pool is exhausted to extract additional value from Rincon. Rather than negotiate clarifying amendments, the State has manufactured a false shortage of licenses in order to force Rincon into an entirely new arrangement allowing the Tribe to be released from the licensing system in exchange for large fees to be paid into the State General Fund.

B. The State Initiates, then Rescinds, Section 10 Negotiations

92. On or about February 28, 2003, Governor Davis formally notified the Rincon Band and all compacted Tribes that the environmental protection provisions of Compact Section 10.8 did not adequately protect State interests and per Compact Section 10.8.2(b) and formally requested that the Tribes negotiate new provisions for Section 10.8.

93. Plaintiff thereafter met formally twice with a negotiation team appointed by Governor Gray Davis and twice informally with one or more of the negotiation team. At these meetings the provisions of Section 10.8 and Section 4 (outlined below) were discussed. However, these negotiations did not culminate in an environmental impact amendment proposal by the State.

94. Pursuant to Section 10.8.2(b) anytime after January 1, 2003, but prior to March 1, 2003, the State may request an amendment to the Section if it has been proven inadequate. Provision 10.8.2(c) provides that the Tribe may bring an action under 25 U.S.C. § 2710(d)(7)(A)(i) if the State has failed to negotiate such amendment in good faith. Section 10.8.2(c) further entails that if there is neither an agreement nor a court order against the State as of January 1, 2005, then the Tribe must cease construction and activities on all projects then in process that potentially could cause adverse off-Reservation impacts, until an agreement to amend is reached.

95. In the final days of the Davis Administration, Governor Davis issued a letter to the Rincon Band and to all Tribes with Proposition 1A Compacts rescinding the request for negotiations under Section 10.8.

96. Plaintiff asserts that the letter of rescission constitutes an agreement that the current provisions of Section 10.8 remain in effect and that the January 1, 2005 date for the cessation of any new projects or project improvements per Compact Section 10.8.3(c) shall have no force and effect.

97. Alternatively, Plaintiff asserts that the letter of rescission and the State's inaction regarding negotiations per Compact Section 10.3 establish that the State has failed to negotiate revisions to Compact Section 10.8 in good faith, thereby entitling the Rincon Band to relief per 25 U.S.C. § 2710(d)(7)(B)(iii).

C. The Davis Administration Refuses the Tribes' Request for Section 4 Negotiations

98. On March 8, 2003, the Plaintiff made a formal request, pursuant to Compact Section 4.3.3, for the State to negotiate provisions related to the authorized number of gaming devices, the allocation of licenses for those devices and revenue sharing payments. The State was required to promptly commence good faith negotiations concerning renegotiation of Section 4. Upon information and belief, fewer than 12 Tribes formally notified the State for negotiations per Section 4.3.3 within the time limits provided for in the compact.

99. Plaintiff thereafter met formally twice with a negotiation team appointed by Governor Gray Davis and twice informally with one or more members of the negotiation team in an attempt to attain a dialogue concerning both the Section 10.8 and the Section 4.3.3 concerns.

100. During these meetings Plaintiff submitted agendas, provided detailed positions and even drafted sample language for Compact amendments. In response, the State negotiators never provided any substantive response to Plaintiff's positions or even set forth the State's positions.

101. After the announcement that a sufficient number of signatures for a recall of Governor Davis had been submitted to the State Secretary of State, the Davis Administration failed to make any effort to move forward with the negotiations in process.

102. At all times material hereto, including the time of the transition from the Davis Administration to the Schwarzenegger Administration, the Rincon Band was ready, willing and able to move forward with government-to-government negotiations with the State per its obligations under the Compact.

D. The Schwarzenegger Administration Continues the Davis Administration's Refusal to Conduct Section 4 Negotiations

103. On November 23, 2003, Plaintiff wrote to the Schwarzenegger Administration's transition team expressing the Rincon Band's desire to move forward with the discussions requested under the Davis Administration. Although the Schwarzenegger Administration made statements to the press acknowledging the Tribe's correspondence, no formal response was ever received by the Tribe.

104. Upon information and belief, the outgoing Davis Administration briefed the incoming Schwarzenegger Administration of the status of negotiations per Compact Section 4 and Section 10, including the status of government-to-government negotiations with the Rincon Band.

105. The State's obligation to negotiate per Compact Section 4 did not end with the recall of Governor Davis. The Compact provides that the discussions are to proceed within the framework of the negotiation/mediation process set forth in IGRA.

106. Both the Davis and Schwarzenegger Administrations have failed to meet their obligations to negotiate government-to-government with the Rincon Band in good faith as required in IGRA and in Section 4 of the Compact.

107. The State failed to negotiate in good faith with Plaintiff according to the time frames and proscribed procedures of the Proposition 1A Compact. Rather, the Schwarzenegger Administration deliberately delayed meeting its obligations with Rincon while securing agreements with a select number of other Tribes that had vastly different agendas. During this delay, the State abandoned the policy of limited gaming in California without input from Rincon or other similarly situated tribes and, thereby, constrained the State's ability to meet its contractual obligations to Rincon to negotiate in good faith concerning provisions of Section 4 of the Proposition 1A Compact.

IX. The Governor Secretly Negotiates New Compacts With Other Tribes Abandoning The Policy Of Limited Gaming In California And Constraining The State's Ability To Meet Its Contractual Obligation To Negotiate In Good Faith With Rincon

108. Upon information and belief, beginning in the fall of 2003, Governor Schwarzenegger, acting on behalf of the State of California, commenced negotiations in secret with a limited number of federally recognized Indian Tribes. These negotiations were intended to fundamentally and materially alter or amend the Proposition 1A Compacts negotiated by Governor Gray Davis.

109. On January 7, 2004, Governor Schwarzenegger publicly announced that Dan Kolkey would be the State's chief negotiator for tribal/state compacts and compact amendments. The Rincon Band was never notified by the State of the appointment or otherwise received the promised communication from the Schwarzenegger Administration of recommencing negotiations.

110. The first five Schwarzenegger Compact Amendments, negotiated by Kolkey, allowed five Tribes to each operate an unlimited number of gaming devices on a graduated license fee schedule, conditioned on greater revenue-sharing with the State.

111. The provisions in the first five Schwarzenegger Compact Amendments were created based on the political policy of the Schwarzenegger Administration to achieve a tax of Tribal gaming revenue and were entered into with a select group of ideally situated Indian Tribes. These Tribes had relative advantage in location for capturing large urban markets that would allow them to successfully implement large numbers of gaming devices, such that the large tax payments to the State would not impede the Tribes' ability to operate or otherwise impede the Tribes' ability to adequately and aggressively fund governmental programs from gaming revenue.

112. By negotiating in secret with a select group of Tribes, the first five Schwarzenegger Compact Amendments set a template for California Compacts where the scheme would not prove beneficial for smaller or less well positioned Tribes. Nevertheless, the State set the mark of its agenda and has subsequently tried to force all Tribes attempting to renegotiate provisions of the Proposition 1A Compact into Compacts that are similar to those it negotiated in secret with the select Tribes in the spring of 2004.

X. The State Refuses To Respond To The Tribe's 2004 Meet And Confer Request, Then Holds Late Negotiations At Which It Fails To Negotiate In Good Faith

113. On February 26, 2004, the Rincon Band provided formal notice to the State per Compact Section 9.1 for the State to meet and confer with the Tribe over a number of issues, including, but not limited to: (1) the State's failure to continue negotiations per Section 4 over per-tribe limits on the number of gaming devices, the state-wide cap on the number of gaming devices and fees associated with the operation of gaming devices; (2) clarification and resolution of issues regarding environmental protections per Compact Section 10.8; (3) clarification and resolution of the number of licenses available in the State-wide pool under the current compact provisions; and (4) equitable accommodation to the Rincon Band for relying in good faith upon the State's representations regarding the administration of the gaming device licensing pool.

114. Compact Section 9.1(b) provides the parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than 10 days after receipt of the notice, unless both parties agree in writing to an extension of time.

115. As with other requests, the State failed to respond in a timely manner. After repeated phone messages to State attorneys inquiring of the status, the Tribe was told that the State's negotiator would not meet with the Tribe unless certain conditions were met and copies of documents already presented to the Davis Administration were resubmitted to the Schwarzenegger Administration. The Tribe objected to the conditions, but complied in order to facilitate the meet and confer process.

116. The Tribe did not receive any communication that its request for a formal meet and confer session would be granted, as required by the Compact, until the second week of May 2004. Even in that late communication, the State refused to meet prior to June 2, 2004.

117. The State finally scheduled sessions for June 2, 2004 and June 4, 2004. The Tribe met with the State on those dates.

118. At the June 2004 sessions, the Tribe expressed its inability to formulate an offer for any gaming devices beyond the existing 2,000 per-tribe cap because of numerous reports that the Governor was soon to announce Compact Amendments allowing for unlimited gaming. Rincon proposed that it receive the additional 400 machines under the rate structure it was scheduled to pay under the Proposition 1A Compact. The Tribe indicated a willingness to have those funds directed to mitigate off-reservation impacts or to improve infrastructure, rather than to the RSTF. But, the State had already developed a new approach to tribal gaming in California that worked for a select group of Tribes, that approach required Tribes to pay a tax to the State in order to attain additional gaming devices.

119. At the June 2004 sessions, Rincon expressed its concern that it would be adversely impacted by the State radically altering the 1999 Compact scheme limiting each Tribe to 2,000 gaming devices. The State informed Rincon that it has no obligation to consider the interests of the

Rincon Band when negotiating with other tribes for fundamental changes to the provisions of the state-wide license pool and per-tribe caps.

120. At the June 2004 sessions, the State informed the Tribe, among other things, that in order for the Tribe to get an amendment to its Compact allowing additional machines, Rincon would have to pay the State fifteen percent (15%) of its net win per gaming device on both all existing and new gaming devices annually to the State. The State suggested that this "revenue-sharing" would be in exchange for an additional exclusivity provision. The State indicated that Rincon would also have to agree to a number of other amendments outside of Compact Section 4, but that Rincon would have to wait until the new Compact Amendments were announced to learn the details of such amendments.

121. The State's proposal would have required the Tribe to pay in excess of twenty million extra dollars just for its already existing machines, not to mention the costs for the new machines. Moreover, Rincon did not and does not seek the illusory exclusivity provision the State purports to offer in exchange for this exorbitant fee. Rincon had an already existing exclusivity provision in the Proposition 1A Compact and had the benefit of the Constitutional Amendment passed by popular vote of the People, which already provided for tribal exclusivity in California.

122. The State and Governor failed to live up to their obligations under the Compact and circumvented the system by ignoring opportunities to negotiate in good faith with Rincon and instead negotiating in secret with a few select Tribes for provisions that abandoned the policy of limited gaming in California and constrained the State's ability to meet its contractual obligations to negotiate in good faith with Rincon. The State then required Rincon to accept the new provisions in order to attain additional gaming devices, ignoring their obligations under the Proposition 1A Compact and IGRA to negotiate in good faith for an amendment to Section 4 of the Proposition 1A Compact.

123. As a result of the actions detailed above, Plaintiff filed its original Complaint on June 9, 2004. Unfortunately, after the State entered into the Compacts discussed above, it's negotiating position with respect to the Proposition 1A Compacts did not change in any material

respect. The delay in meeting with Rincon impacted the functioning of the entire process moving forward, depriving Rincon of the benefit of good faith renegotiation per Compact Section 4.3.3. Nevertheless, Rincon continued attempts to negotiate with the State within the 'good faith' parameters of IGRA.

XI. The State Continued To Fail To Negotiate In Good Faith After Plaintiff Filed The Instant Action

A. The 2004 Schwarzenegger Compacts –The Template for Taxation of Tribal Gaming

124. On June 21, 2004, Governor Schwarzenegger announced the existence of the five new comprehensive Compact Amendments he had been negotiating in secret. Those comprehensive new Compact Amendments were with (1) the United Auburn Indian Community, (2) the Rumsey Indian Rancheria of Wintun Indians, (3) the Pala Band of Luiseno Mission Indians, (4) the Viejas Group of Capitan Grande, and (5) the Pauma Band of Luiseno Misson Indians.

125. The first five Schwarzenegger Compact Amendments called for a significant tax with two primary components. First, the amendment required an annual flat fee, which approximates to more than ten percent (10%) on existing gross gaming revenue. Second, the amendments provided an addition payment on a sliding scale of $11,000-$25,000 for new machines and unlimited gaming with no restriction on the numbers of machines.

126. Just one month later, on August 23, 2004, Governor Schwarzenegger announced five more Compacts. These were entered into with (1) the Lytton Rancheria (for 5,000 machines/25% tax, credit for payments to local governments); (2) the Ewiiaapaayp Band of Kumeyaay (unlimited gaming/15-25% tax, on the lands of the Viejas Group of Capitan Grande); (3) Fort Mojave Indian Tribe (1,500 machines/10-25% tax, and provides for gubernatorial concurrence for off-reservation gaming pursuant to 25 U.S.C. § 2719); (4) Coyote Valley Band of Pomo Indians (2,000 machines/12-25% tax and allows for settlement of federal enforcement action and litigation with the State); and (5) Buena Vista (unlimited gaming/15-25% tax and gaming on "Restored" Indian lands). All five Compacts provide for a tax, based on gross gaming revenue. Only the Compact Coyote

Valley included a component based on a per-device fee and it is only available if gross gaming revenue does not exceed a set amount.

127. The Compact with the Lytton Rancheria has not been ratified by the State Legislature and the Compact with Ewiiaapaayp Band of Kumeyaay has not been approved by the Department of the Interior.

B. The 2005 Schwarzenegger Compacts – The Template to Expand Tribal Gaming off of Indian Lands – for a handsome fee

128. On May 18, 2005, Governor Schwarzenegger issued a Proclamation regarding urban gaming. While touting the proclamation as opposing expansion of gaming in urban areas, the guidelines set forth in the proclamation demonstrate the Administration's support for off-reservation Indian gaming. The definition of non-urban areas contained in the proclamation allows for tribal casinos to be constructed well within the market of Rincon's primary customer base. Several proposals for off-reservation gaming facilities have been announced that comply with the Governor's proclamation. Several more have been announced that do not comply with the Governor's proclamation, but are being pursued in part on the perception that he will consider them if a large fee to the State is included. The Schwarzenegger Administration has executed three Compacts that allow for off-reservation gaming, and has executed three Compact Amendments that allow for potential growth into the largest urban gaming operations in the United States or even the world.

129. On June 16, 2005, Governor Schwarzenegger announced two more on-reservation Compacts, both consistent with the template established in 2004: The Quechan Tribe of the Fort Yuma Reservation' s Compact (provides for 1100 machines with a 10-25% tax and was the only Compact ratified in the 2006 Session of the Legislature) and the Yurok Tribe's Compact (which calls for 99 machines with a 10-25% tax with credit for payment to local governments, but was not ratified by the 2006 Legislature).

130. Two months later, on September 9, 2005, Governor Schwarzenegger announced two more Compacts for twin off-reservation casinos in Barstow, California for Los Coyotes Band of

Cahuilla Mission Indians and for the Big Lagoon Rancheria. Each casino would have 2,250 machines with a 16-25% tax.

C. The 2004 and 2005 Compacts have one compelling theme: No Tax = No Compact

131. Since June of 2004, the State has maintained that its objective regarding amendments to the so-called 1999 Compacts is reflected in the terms of recent Compact amendments and is a matter of public record. The State has made it clear that it expected Rincon to make an offer in keeping with the new policy.

132. In looking at the State's objectives regarding the amendments to the Proposition 1A Compact, it is clear that the policy is to achieve a so-called "fair share" of gaming revenues from the Tribes in the form of a tax.

133. This policy of obtaining a tax on gaming revenues for the State is not based on any of the considerations encompassed by IGRA; rather, the State's negotiating position developed out of a political agenda unrelated to deferring regulatory costs to the State or to mitigation of off-reservation impacts.

134. The State's tax is not based on net profit. Rather, it is based on gross gaming revenue, or net win, which is the total of all wagers made minus prizes paid. Accordingly, the actual tax is greater for Tribes like Rincon which incur higher operating costs to be able to compete against operations that have natural geographic advantage to California's population and better access through infrastructure, namely roads.

135. The State has neglected to consider that federal law prohibits the State or any of its political subdivisions from imposing any "tax, fee, charge, or other assessment upon an Indian tribe." IGRA, 25 U.S.C. § 2710(d)(4).

136. The State's negotiating position remains firm in its commitment to tax Tribes, including Rincon, in order for Tribes to get additional machines. Rincon has been and continues to be uninterested in negotiating for a Compact that constitutes an unlawful tax and the State has been rigid in its adherence to the "fair share" taxation stance.

D. In 2005, the State Continues to Ignore it obligations to meet and confer.

137. On June 15, 2005, Rincon submitted a formal request to meet and confer with the State. This time the issue was concerning whether a game offered by the Tribe was an illegal form of craps. On June 24, 2005, Rincon received a letter from Margo Reid Brown denying the Tribe's request due to the Governor's busy schedule. On July 5, 2005, the Tribe received a letter from Peter Siggins acknowledging receipt of the meet and confer request and stating that the Tribe would hear from Bob Mukai. On July 15, 2005, Rincon submitted another formal request to meet and confer on the issue of whether a game offered by Rincon was an illegal form of roulette. After phone conversations between Scott Crowell and Bob Mukai on July 22, 2005, the State met with Rincon on August 5, 2005 in a formal meet and confer session on the two issues. On September 13, 2005 Rincon received a letter rejecting the Tribe's offer of binding arbitration. As with other attempts by Rincon to follow the procedures outlined in the Proposition 1A Compact to resolve issues, the Tribe was met with delay and eventually no actual resolution of the issue.

138. Upon information and belief, during 2005, the State disputed whether certain Tribes were operating VLT's or Video Lottery Terminals in violation of the 2,000 machine cap per Tribe. The State submitted 'meet and confer' requests to those Tribes and insisted on strict compliance with the timeliness requirements of Compact Section 9.1.

E. The State's Offer to Rincon of November 4, 2005

139. On November 4, 2005, Rincon met with Dan Kolkey. During this meeting, the State made an offer to Rincon that would allow Rincon to operate an additional 900 devices above the 1,600 it currently operates, in exchange Rincon would have to pay a fee in two components. First, Rincon would be required to pay a flat fee per year in an amount equal to fifteen percent (15%) of gross gaming revenue as of calendar year 2004 on all gaming devices. Second, Rincon would be required to pay an additional fee for devices over 1,600, in an amount which is fifteen percent (15%) of the average net win for those devices.

140. As with the prior offers from the State, the November 4, 2005 offer required Rincon to pay a tax to the State without any meaningful exchange of value to Rincon.

141. Under the State's November 2005 offer, for Rincon to obtain additional machines, Rincon would have to readjust the fees it paid not only for additional gaming devices, but for its existing 1,600 gaming devices. In the best case scenario, the Tribe would be required to pay an additional twenty-three million dollars per year just for the devices it already had in operation. This exorbitant fee constituted an unlawful tax.

142. The Tribe was aware of the State's negotiating stance with other Tribes and the State's policy of a "fair share," but remained unwilling to enter into a Compact that would violate IGRA or that would be such a bad business move as to pay millions of extra dollars for what it already had the right to operate pursuant to the Proposition 1A Compact.

143. Moreover, the State's offer of November 4, 2005 was expressly conditioned on Rincon accepting all of the amendments outside of Compact Section 4 that the State had included in its Compact Amendment with the Pala Band.

F. Rincon's Offers to the State of January 25, 2006 and May 5, 2006

144. On January 25, 2006, Rincon responded to the State's offer with a proposal of its own. Rincon's offer, in part, was to pay $4,350 per gaming device for additional devices from 1,600 to 2,500; and to pay a higher fee for gaming devices above 2,500, if the State certified in writing that $4,350 per gaming device was inadequate to cover regulatory costs, mitigation and infrastructure development, in which case the parties would negotiate in good faith for a higher fee for subsequent machines. Rincon made its offer in keeping with the policy and dictates of IGRA.

145. The State did not approve of Rincon's offer and would not back down from the position and provisions it had negotiated with other California Tribes and embraced in the State's offer of November 4, 2005.

146. On May 5, 2006, Rincon responded to the State's comments about Rincon's prior offers and made a new offer to the State. Additionally Rincon attached information for the State to review that supported its position of a viable offer, including economic information about Rincon's casino, economic projections concerning the effect of the State's persistent position, and expert analysis of the State's offers.

147. In the May 5, 2006 offer, Rincon proposed that it would maintain its existing gaming device licenses under the Proposition 1A Compact, would operate up to an additional 400 machines at a fee of $4,350 to be used for regulatory costs, mitigation and infrastructure development; would pay to operate up to an additional 500 machines for a fee of $6,000 per device to be used for regulatory costs, mitigation and infrastructure development; and would pay to operate additional machines above 2,500 through a fee which may be in excess of $6,000 if the State certified that additional fees were necessary to cover regulatory costs and mitigation.

G. "New" Exclusivity is Illusory and Offers No Meaningful Value to Rincon.

148. In Rincon's May 5, 2006 offer it again made clear to the State that Rincon did not want the exclusivity provision the State was offering in exchange for revenue-sharing. Indeed, the Constitutional Amendment in the passage of Proposition 1A enacted by popular vote of the People already provided the legal framework for tribal exclusivity. Additionally, Rincon's Reservation is located in the most saturated Indian Gaming market, not only in California, but in the entire United States, with several tribal casinos within only a few miles of Rincon. Additionally, the State's entry into new Compacts with other tribes provides for yet even more competition to Rincon and, accordingly, less value in exclusivity. Additionally, the State's proclamation on urban gaming has resulted in more proposals for off- reservation tribal gaming facilities and, accordingly, less value to exclusivity. Whatever value, if any, the State's offer of further tribal exclusivity had, was not a meaningful concession on the part of the State that could justify the large taxes the State's offer imposed on Rincon.

149. Moreover, the exclusivity provision that was offered to the other Tribes was unenforceable as it was based on the offer of an injunction to prevent any non-tribal gaming and the State cannot force a court to grant a Tribe an injunction in the event that the voters of California amend the constitution, in a state-wide election, to permit non-Tribal Class III gaming. The State's offer of additional exclusivity was illusory for multiple reasons.

150. Rincon had no interest in paying a tax for a valueless exclusivity provision. Rather, Rincon consistently sought only to negotiate within the framework of IGRA for costs related to

regulatory costs, mitigation and infrastructure development. But the State, even with the additional economic analysis, financial information, and detailed legal analysis of the flawed exclusivity offer, refused to move off of its taxation stance.

151. On July 28, 2006, Rincon submitted clarification of its offer to the State that referenced the May 5 offer and additionally discussed various non-economic Compact terms. Rincon made clear at all times that renegotiations pursuant to Section 4.3.3 were limited to the scope of permitted gaming set forth in Section 4, including number of machines and fees to be paid. The State, at all times and all offers, required Rincon to agree to the 'non-economic terms' of the Pala Compact. Rincon only offered to discuss language changes of provisions outside of Section 4 in an effort to reach agreement with the State. The State's insistence of amendments to the non-economic terms in order for Rincon to achieve an amendment of Section 4.3.3. further demonstrates the State's disregard of the proscribed procedures in the Proposition 1A Compact and displays the State's lack of good faith negotiation.

H. In 2006, the State Continues to Ignore Its Obligations to Meet and Confer

152. On July 28, 2006, Rincon formally requested that the State meet and confer with the Rincon Band pursuant to Section 9.1 of the Tribal-State Compact disputing State positions on (1) Compact requirement § 4.3.2.2(b), that gaming devices must be placed into commercial operation within one year and on (2) the State's failure to determine that licenses previously issued to Tribes that have since executed Compact Amendments with the Schwarzenegger Administration should revert to the state-wide pool.

153. The July 28 letter also asked for clarification of the State's response to the meet and confer session regarding craps and roulette. The State denied the Tribe's request for binding arbitration and states it sought an "authoritative decision" on the subject. Rincon sought an explanation as to how such an authoritative determination could occur since the State was refusing consent to binding arbitration.

154. The State never responded to the Tribe's July 28, 2006 request. No meet and confer session took place. Not only did the State far surpass the ten day deadline required, the State rolled

this issue into its response to Rincon's renegotiated Compact offer on October 23, 2006 months after Rincon raised the issue and provided a detailed analysis of its concerns. As throughout this entire negotiating process, the State failed to follow the procedural deadlines and requirements set forth in the Proposition 1A Compact and used the delay to its advantage. Such has been the State's pattern and practice through years of negotiations

155. The CGCC's position on 'commercial operation' eliminates the possibility that gaming device licenses will revert to the pool in the event that a Tribe fails to place a machine operating pursuant to a license on a public gaming floor within one year of the issuance of the license. Moreover, the CGCC has no consistent reliable process which guarantees this will occur. The action by CGCC is in furtherance of the State's agenda to manufacture an artificial shortage of gaming device licenses in order to force tribes into Compact amendments that require large fees.

156. The issue of whether device licenses previously issued to Tribes that have since signed compacts with the Schwarzenegger Administration should revert to the pool was raised by Rincon in the context of the September 12, 2006 Compact negotiation session and the State responded at the October 5, 2006 Compact negotiation session rejecting the Tribe's analysis, but in doing so, the State never acknowledged that the issue had been submitted in a request to meet and confer on the issue.

157. Upon information and belief, during 2006, the State disputed whether certain Tribes were operating gaming devices that allowed for multiple player stations, while treating such machines as a single device for purposes of complying with the 2,000 machine per-tribe cap in violation of the 1999 Proposition 1A Compacts. The State submitted 'meet and confer' requests to those Tribes and insisted on strict compliance with the timeliness requirements of Compact Section 9.1.

I. The 2006 Schwarzenegger Compacts – Even Higher Taxes

158. In July of 2006, the Schwarzenegger Administration announced that Dan Kolkey was no longer the State's chief negotiator and that his responsibilities had been brought 'in-house" to be headed by his Legal Affairs advisor, Andrea Hoch.

159. Between August 8th and 30th, 2006, Governor Schwarzenegger completed 5 new Compacts Amendments authorizing 22,550 new slot machines for five Southern California tribes: (1) the Agua Caliente Band of Cahuilla Indians (5000 machines, 3 locations, a flat fee of $24.5 million plus 15% of new revenue); (2) the Pechanga Band of Luiseno Mission Indians (7,500 machines for a flat fee of $42.5 million plus 15% on machines 2001-5000 and 25% on machines 5,001-7,500); (3) the San Manuel Band of Serrano Mission Indians (flat fee of $45 million plus 15% on machines 2,001-5,000 and 25% on machines 5,001-7,500); (4) the Morongo Band of Cahuilla Mission Indians (flat fee of $36.7 million plus 15% on machines 2,001-5,000 and 25% on machines 5,001-7,500); and (5) Sycuan Band of Diegueno Mission Indians (Flat fee of $20 million plus 15% of new revenue).

160. The 2006 State Legislature failed to ratify any of the new and amended Compacts except for the Quechan Compact. Upon information and belief, the Schwarzenegger Administration intends to seek legislative ratification when the State Legislature convenes in January 2007.

J. The State's Offer of October 23, 2006

161. Rincon met again with the State's new chief negotiator, Andrea Hoch and her team on August 9, 2006, September 12, 2006 and October 5, 2006. Because Ms. Hoch was new to the negotiations, Rincon made informational presentations, including generally Class III gaming in California, Rincon's competitive disadvantages due to location, the impact of the Schwarzenegger amendments to the Proposition 1A Compacts, and the continuing issue with the State's interpretation of the number of licenses available.

162. On October 23, 2006, the State made a new offer to Rincon. The new proposal allowed Rincon to operate no more than 2,500 gaming devices; Rincon would pay a tax with two components. First, Rincon would pay a flat fee annually based on ten percent (10%) of gross gaming revenue from calendar year 2005. Second, Rincon would pay an additional amount equal to fifteen percent (15%) of the average net win for each gaming device above 1,600. Further, the State's offer was subject to the Tribe's agreement on the amendments to provisions other than

Section 4. However, the State was no longer insisting that such amendments be the precise terms agreed upon in the Pala Compact.

163. Again the State's offer was for a tax to the State and the State offered no meaningful value to Rincon. The State premised the revenue-sharing as an exchange for additional exclusivity even though Rincon had repeatedly made clear it was not interested in the illusory additional exclusivity provision the State had given to other Tribes. The State's offer does not propose improvements to the terms of exclusivity that currently create value for Rincon. Rather, in violation of IGRA, the State demanded additional revenue sharing in exchange for compact terms that are routinely negotiated between the parties as part of the regulation of gaming activities. The State's offer constituted an unlawful tax and would require Rincon to pay millions of additional dollars for the machines it is already operating under the Proposition 1A Compact.

164. Rincon and the State met again on October 26, 2006. During that meeting the State clarified that the fees it would receive from the Rincon Compact would be paid into the State General Fund to be used at the discretionary pleasure of the State Legislature.

165. On October 31, 2006, just a four calendar days prior to the close of the administrative record, the State sent a last-minute offer to Rincon. The offer came too late in the process in order for Rincon to submit any meaningful reply prior to the close of the Administrative Record. Such offer still included an illegal large tax provision without any meaningful concession in exchange for such tax. The State's offer does not propose improvements to the terms of exclusivity that currently create value for Rincon. Rather, in violation of IGRA, the State demanded additional revenue sharing in exchange for compact terms that are routinely negotiated between the parties as part of the regulation of gaming activities. Additionally, the State's offer constituted bad faith negotiations in that the existing Proposition 1A Compact already entitles Rincon to an additional four hundred (400) gaming devices and the State is in breach of its Compact for failing to issue those four hundred (400) licenses to Rincon.

166. On November 3, 2006, Rincon substantively responded to the State's October 23, 2006 offer and informed the State that it could not offer a substantive response to the October 31, 2006 proposal given the shortened time frame.

167. In its November 3, 2006 response, Rincon pointed out why the State's offer remained an unlawful tax under IGRA, discussed the Tribe's remaining dispute concerning the calculation of the number of gaming device Licenses available under the Proposition 1A Compacts and other matters relevant to the past several years of negotiations.

K. State Refuses to Negotiate Clarifying Amendments to the Language Regarding the Maximum Number of Licenses Available in the State-Wide License Pool

168. During the negotiation sessions with Ms. Hoch and her team, she agreed to revisit the State's position on the number of devices in the State-wide pool. The State provided a formal response stating that it would not change its prior position and that the State would not negotiate clarifying amendments to the existing language in compact Section 4. The State indicated that, instead of negotiating clarifying amendments, Rincon should simply accept the State's offer for new devices without regard to the licensing pool.

169. In the State's October 23, 2006 counter offer, the State addressed Rincon's concerns over the gaming device license pool by acknowledging that multiple interpretations of Section 4.3.2.2(a)(1) are possible, but conclude that it would not be useful to negotiate a clarifying amendment to the language of that Session. Rather, the State asserted that a fair process would be to provide tribes that wish to operate more gaming devices the opportunity to do so through negotiated amended Compacts. But in so doing, the State requires exorbitant additional fees for the licenses the Tribe was entitled to operate under the Proposition 1A Compact, but prevented from obtaining by the State's constrained interpretation of the Compact language. This extortionate position can only be maintained because of the State's failure to deal with the actual issues concerning the number of gaming devices available in the Proposition 1A license pool.

L. Schwarzenegger Compact Amendments Do Not Maintain Proposition 1A Gaming Device Licenses

170. During the negotiation sessions with Ms. Hoch and her team, she agreed to review the issue of whether licenses previously issued to Tribes who have since signed compacts with the Schwarzenegger Administration revert back to the State-wide pool. The State informed the Tribe that the device licenses in question will not revert to the state-wide pool in part because that would require amending the new Compact Amendments.

171. The Schwarzenegger Compacts alter the functioning of the integrated scheme that governed the allocation of gaming device licenses under the Proposition 1A Compacts. Indeed, the Schwarzenegger Compacts substantially alter the language and operation of Section 4.0. These amendments do not maintain the system for the calculation of the number of available licenses, the license draw process, or the distribution of licenses from the Proposition 1A Compact. The Schwarzenegger Compacts language functionally requires the removal of those Tribes from the integrated license pool system created by the Proposition 1A Compact. Moreover, in order to maintain the gaming device draw process in a fair and non-discriminatory manner for the Proposition 1A Compact Tribes, the Schwarzenegger Tribes must not be considered a part of the regulated license process.

172. Each of the Compact Amendments set a flat fee of two million dollars into the RSTF to "maintain" existing licenses. For at least two Tribes, that amount is less than each Tribe paid into the RSTF under the terms of the Proposition 1A Compacts. The Proposition 1A Compacts provide that licenses issued to Tribes who are more than two quarters in arrears on the payment of device license fees are surrendered back to the pool. Accordingly, the licenses issued to Tribes which now pay less into the RSTF pursuant to Compact Amendments should revert to the State-wide pool.

173. No amendments to the new Compacts are necessary. The Tribes that have Amended Compacts will pay two million dollars into the RSTF regardless of whether the licenses revert to the state-wide pool. Their ability to operate gaming devices is not dependant upon a validly issued device license from the state-wide pool.

XII. Patterns of State's Bad Faith Continue from Pre-Filing Acts Through Post-Filing Acts to Close of Administrative Record.

174. Over the course of the thirty-one month period, from March 2003 to November 2006 the State consistently failed to negotiate in good faith with Rincon for a Compact amendment that is lawful under IGRA.

175. The State failed to meet its obligations to negotiate promptly during a time frame when such negotiations could have made a difference. Instead, the State negotiated with several larger Tribes for provisions that would materially benefit those Tribes and altered the system in California in such a way that later negotiations with Rincon were not meaningful.

176. The State then embarked on a path of obtaining it political agenda in taxing Indian Tribes, irrespective of the prohibition against doing so set forth in IGRA. The State attempted to mask this behavior by tossing out a valueless additional exclusivity provision.

177. Meanwhile, Rincon was straight forward with the State that it wanted to negotiate within the parameters of IGRA and the Proposition 1A Compact for an amendment that would be related to the regulatory and mitigation costs to the state associated with any additional Class III gaming.

178. Rather than negotiate with Rincon for an amendment to the Proposition 1A Compact that would be in keeping with IGRA, the State has consistently offered and stuck to a negotiating position that is a tax and in the process of doing so, repeatedly disregarded the procedural mechanisms in the Proposition 1A Compact, for the meet and confer protocol, and for the good-faith renegotiation process. In so doing, the State has failed to negotiate in keeping with its obligations under its contract with Rincon and has violated the provisions of good faith negotiation found in IGRA.

FIRST CLAIM FOR RELIEF

(Breach of Contract – Procedural Lack of Good Faith Negotiation)

179. Plaintiff incorporates into this claim all the foregoing allegations.

180. Defendants unjustifiably failed to perform their duty to negotiate in good faith under the contract. The Defendants failed to commence negotiations in a timely manner, or to respond at all. When they finally did respond, Defendants deliberately delayed their meet and confer obligations to enable Governor Schwarzenegger to consummate the Schwarzenegger Compacts. In so doing, Defendants abandoned the policy of limited gaming in California and constrained their ability to negotiate outside of the new structure they negotiated in secret with a select group of tribes with diverging interests, such that meaningful negotiations with Rincon could not occur.

181. Defendants unjustifiably failed to meet and confer with Rincon within the ten day period allotted pursuant to the procedures outlined in Section 9.1 of the Proposition 1A Compact. Indeed, as detailed fully in the preceding paragraphs, the State repeatedly failed to meet timely regarding issues such as the numbers of gaming devices available in the license pool, the commercial operation deadline, the reversion of the Schwarzenegger Compact gaming device licenses, and other matters related to the operation of the Proposition 1A Compact. The State consistently used these delays to its advantage in on-going negotiations.

182. The State unjustifiably and unreasonably used the transition of Gubernatorial Administrations to avoid its obligations to Rincon. The Davis Administration had an obligation to the Schwarzenegger Administration's Transition team to fully apprise it of the status of negotiations with Rincon. The Davis Administration's failure to do so constitutes a failure to negotiate in good faith. Similarly, the Schwarzenegger Administration had an obligation to consult with the Davis Administration in order to fully apprise itself of the status of negotiations with Rincon. The Schwarzenegger Administration's failure to do so constitutes a failure to negotiate in good faith.

183. Many of the Tribes with which the Schwarzenegger Administration negotiated Compacts and Compact amendments had not triggered their right to renegotiate under Section 4.3.3. Section 4.3.3 by its express terms limits the scope of those negotiations to the provisions of Section 4. The actions of the Schwarzenegger Administration with Rincon, at all times, have reflected a total disregard of its obligations under Section 4.3.3, such that it rendered the State's obligations under Section 4.3.3 meaningless. The State has consistently failed to follow delineated

procedures. At all times, Rincon has expressed a willingness to discuss amendments outside of Section 4, but not as part of negotiations pursuant to Section 4.3.3. On May 5, 2006, Rincon provided a conceptual paper to the State on the manner in which those issues may be addressed in the form of Compact amendments.

184. The State refused to negotiate clarifying amendments to language regarding the maximum number of gaming device licenses available is the state-wide pool. The ability to avoid jurisdiction for an adjudication of the meaning of the Compact's existing language does not excuse the State from its obligation to negotiate clarifying amendments with Rincon pursuant to Section 4.3.3. The State's refusal to negotiate for such clarifying amendments is a breach of its duty to negotiate with Rincon in good faith.

185. Plaintiff had the ability to perform its obligations under the contract. In fact, Plaintiff made numerous proposals for resolutions, made itself available and communicated with Defendants.

186. Well more than 180 days have passed since Plaintiff requested that Defendants enter into good faith negotiations and no compact has been concluded.

187. Plaintiff has suffered irreparable harm as a result of the breach and is entitled to the resolution provisions from IGRA that were incorporated into its contract with the State under Compact Section 12.3.

SECOND CLAIM FOR RELIEF

(Breach of Contract – Substantive Lack of Good Faith Negotiation)

188. Plaintiff incorporates into this claim all the foregoing allegations.

189. When Defendants finally met to negotiate with Rincon, Defendants took an unreasonable and unlawful negotiating position. Defendants conditioned Plaintiff's ability to get an amendment on the acceptance of illusory exclusivity provisions in exchange for an unlawful tax.

190. The State's negotiating position throughout negotiations leading up to and after the filing of the original complaint constitute a tax, which is a per se violation of IGRA. The contract incorporated IGRA's good faith negotiation provisions into its renegotiation requirements. Consequently, a violation of IGRA's good faith provisions constitutes a breech of the contract.

191. Moreover, the State failed to enter into discussions with an open and fair mind and a sincere purpose to find a basis for agreement. Rather, the state stuck to its political agenda to tax the Indian Tribes to gain a "fair share" and refused to negotiate for an amended Compact based on the regulatory costs to the state of additional machines. In so doing, it violated its duty to negotiate with Plaintiff in good faith.

192. Plaintiff had the ability to perform its obligations under the contract. In fact, Plaintiff made numerous proposals for resolutions, made itself available and communicated with Defendants.

193. Plaintiff has suffered irreparable harm as a result of the breach and is entitled to the resolution provisions from IGRA that were incorporated into its contract with the State under Compact Section 12.3.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment - Reversion of Licenses)

194. Plaintiff incorporates into this claim all the foregoing allegations.

195. The Defendants have taken the position that the gaming device licenses previously issued to Tribes that have since entered into Compact Amendments with the Schwarzenegger Administration do not revert back to the Proposition 1A gaming device license pool.

196. The correct interpretation of the Rincon Compact is that device licenses not maintained by the State in a manner consistent with the terms and conditions set forth in the Rincon Compact are not to be counted towards the state-wide cap. Accordingly, those licenses should be declared to be available issuance to Proposition 1A Tribes, including Rincon.

FOURTH CLAIM FOR RELIEF[2]

(Declaratory Judgment – Cap of Gaming Device License)

197. Plaintiff incorporates into this claim all the foregoing allegations.

198. The Defendants have taken the position that the number of licenses available in the pool is 32,151.

[2] This claim is on Appeal with the Ninth Circuit Court of Appeals

199. The correct number of available licenses is either 64,293 or 58,240 which allows for a total number of gaming devices on California tribal lands in the aggregate in excess of 115,393 or 109,550 gaming devices, no more than 2,000 of which may be operated on the lands of any one federally recognized Indian Tribe.

FIFTH CLAIM FOR RELIEF

(Breach of Contract; Declaratory Judgment)

200. Plaintiff incorporates into this claim all the foregoing allegations.

201. Defendants formally noticed the provision in Compact Section 10 initiating compact negotiations regarding provisions protecting state interests in off-reservation environmental impacts.

202. Defendants failed to negotiate changes in Compact Section 10.

203. Defendants failed to negotiate in good faith changes in Compact Section 10.

204. Defendants notified Plaintiff that it rescinded its notice regarding Section 10.

205. Defendants failed to provide closure of the Compact Section 10 renegotiation process by failing to reach an agreement regarding changes in Compact Section 10 and/or failing to secure a court order that the State did not conclude such negotiations in good faith.

206. Plaintiff is irreparably harmed without a court order declaring that the January 1, 2005 date to cease and desist all new projects and expansion projects related to gaming is ineffective.

SIXTH CLAIM FOR RELIEF[3]

(Detrimental reliance – Equitable relief to remedy damages from misrepresentations that caused Tribe to establish a temporary facility)

207. Plaintiff incorporates into this claim all the foregoing allegations.

208. Defendant acted in a manner to unjustly cause the Rincon Band to expend more than twelve million seven hundred and fifty thousand dollars ($12,750,000.00) in development of the Tribe's temporary gaming facility that was unnecessary; OR alternatively Defendant acted in manner to unjustly enrich other Tribes to the detriment of the Rincon Band by failing to enforce a one-year

[3] This claim is on Appeal with the Ninth Circuit Court of Appeals.

limitation on the time within which a Tribe must place a gaming device authorized by the State-wide licensing pool into commercial operation..

209. Plaintiff has been irreparably harmed by Defendants' actions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff petitions this court for an order:

1. Granting equitable relief ordering the State to work with the Rincon Band with the goal of reaching a consensus on amendments to Section 4 of the Proposition 1A Compacts, including possible new revenue sources consistent with the goals and policies of the Proposition 1A Compact.

2. Granting equitable relief in the form of declaring that the State has failed to negotiate in good faith, appointing a Mediator which shall work with the parties for a period of no more than sixty days, and if no agreement is reached, the selection by the Mediator between the last best offers submitted by the parties as compacts to govern the gaming activities on Rincon tribal lands and to govern the activities of the State which may impact gaming on Rincon Tribal lands.

3. Granting equitable relief in the form of a Declaration that the January 1, 2005 cease and desists date for expansion or improvements set forth in Compact Section 10.8.3(c) shall have no force and effect, and issuing an injunction precluding defendants from taking any action enforcing such dates.

4. Granting equitable relief in the form of a credit against future fees otherwise to be paid to the State under the provisions of the Tribal State Compact in an amount sufficient to allow the Tribe to recover the losses sustained in detrimental reliance of the State's representations regarding the role of Sides Accountancy and/or the State's failure to timely enforce the provision requiring state-wide gaming pooled licenses to be in commercial operation within one year of the issuance of the license.

5. Granting such other relief as may be just and equitable, including ancillary relief.

DATED this 4th day of December, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2006, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Peter H. Kaufman peter.kaufman@doj.ca.gov

I hereby certify that on December 4, 2006, I served the attached document by First Class mail on the following, who are not registered participants of the CM/ECF System:

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