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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

BIG LAGOON RANCHERIA, a Federally Recognized Indian Tribe,

Plaintiff,

v.

STATE OF CALIFORNIA,

Defendant.

CV 09-1471 CW

DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR A PROTECTIVE ORDER AGAINST PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS AND ANY FURTHER DISCOVERY RELATED TO PLAINTIFF'S CLAIM FOR BAD FAITH NEGOTIATION OF A TRIBAL-STATE GAMING COMPACT

Date: February 18, 2010
Time: 2:00 p.m.
Courtroom: 2
Judge The Honorable Claudia Wilken
Trial Date: n/a
Action Filed: April 3, 2009

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INTRODUCTION

Plaintiff Big Lagoon Rancheria's (Big Lagoon) sole claim for relief in this case is that Governor Arnold Schwarzenegger failed to negotiate in good faith for a tribal-state class III gaming compact and Defendant State of California (State) thereby violated 25 U.S.C. § 2710(d)(3)(A) of the Indian Gaming Regulatory Act (IGRA), 18 U.S.C. §§ 1166-1168, 25 U.S.C. §§ 2701-2721.

The allegations in the complaint may be divided into three categories. The first involves negotiations leading up to Governor Schwarzenegger's execution of a compact with Big Lagoon on September 9, 2005, that authorized Big Lagoon to operate a Gaming Facility in Barstow, California (Barstow Compact). The second involves events leading to the termination of the Barstow Compact by its own terms in September 2007 as a result of the California Legislature's failure to ratify it pursuant to the provisions of article IV, section 19(f) of the California Constitution. The third concerns negotiations for another compact that commenced in September 2007 following Big Lagoon's request to Governor Schwarzenegger.

The allegations in the first category are irrelevant with respect to Big Lagoon's bad faith negotiation claim because no such claim for relief can be alleged where the negotiations culminated in an executed compact. Likewise, no bad faith negotiation claim for relief can be stated as a result of the State Legislature's failure to ratify the Barstow Compact because ratification is not negotiation within the meaning of IGRA. Nothing in IGRA compels a state to actually conclude a compact or to ratify what has been executed. Moreover, even if the State's ratification process could be subject to an IGRA bad faith negotiation claim, the State has not waived its Eleventh Amendment immunity to such a claim against the acts of the Legislature.

Further, because Big Lagoon's last official position during compact negotiations is that it will only negotiate for the location of a Gaming Facility on its existing trust lands, there would be no purpose to a judicial finding that the State negotiated in bad faith by the Legislature's failure to ratify a compact authorizing a Gaming Facility in Barstow.

Therefore, the State seeks a protective order against those portions of Big Lagoon's First Set of Requests for the Production of Documents, to the extent it seeks documents related to the first and second categories.

With respect to the third category, there is no dispute that Governor Schwarzenegger has subsequently engaged in negotiations with Big Lagoon for another compact and that Big Lagoon and the Governor have made offers and counteroffers to one another. Those facts are alleged in the complaint. Likewise, there can be no dispute over the substance of those offers or when they were made because the State has provided Big Lagoon with the documents containing those proposals as well as documents supporting those proposals to the extent they are not privileged. Thus, the only question left for adjudication is a legal one: Whether, given the negotiations that have occurred between Big Lagoon and Governor Schwarzenegger from September 1, 2007, through April 2, 2009 (2007-2009 Negotiations), the State has negotiated in "good faith" within the meaning of IGRA.

Where, as here, the State has or will provide Big Lagoon with all documents in its possession memorializing the substance of the negotiations between the parties, no further document production or discovery is appropriate with respect to Big Lagoon's bad faith negotiation allegations.[1]

BIG LAGOON'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

A true and correct copy of Big Lagoon's First Set of Requests for Production of Documents is attached hereto as Exhibit A. The State seeks a protective order with respect to seven of those requests, specifically:

[1] The State has raised affirmative defenses to Big Lagoon's claim and has sought discovery with respect to those defenses. Likewise, Big Lagoon has sought discovery related to those defenses. This motion does not seek to prevent discovery with respect to those affirmative defenses, which necessarily would be part of the evidence the Court considers in ruling upon Big Lagoon's bad faith negotiation claim.

REQUEST FOR PRODUCTION NO. 1:

ALL DOCUMENTS PERTAINING TO each and every denial, admission, averment, and allegation in YOUR Defendant State of California's Answer to Complaint Pursuant to the Indian Gaming Regulatory Act, dated April 23, 2009, and filed in this action.

REQUEST FOR PRODUCTION NO. 8:

ALL DOCUMENTS PERTAINING TO the State's Affirmative Defense that Big Lagoon's Complaint fails to state a basis upon which relief can be granted, as alleged in YOUR Answer dated April 23, 2009.

REQUEST FOR PRODUCTION NO. 9:

ALL DOCUMENTS PERTAINING TO ANY negotiations between the State of California and Big Lagoon Rancheria to conclude a tribal-state class III gaming compact, including but not limited to ALL negotiations referred to in the Introduction in YOUR Answer dated April 23, 2009.

REQUEST FOR PRODUCTION NO. 10:

ALL DOCUMENTS PERTAINING TO ANY COMMUNICATIONS between the relevant officers within the Executive Branch of the State of California and the State Legislature that PERTAIN TO ratification of the Barstow Compact.

REQUEST FOR PRODUCTION NO. 11:

ALL DOCUMENTS PERTAINING TO attempts to obtain legislative ratification of the Barstow Compact.

REQUEST FOR PRODUCTION NO. 12:

ALL DOCUMENTS PERTAINING TO ANY COMMUNICATIONS between the State and ANY other person or entity that PERTAIN TO any compact authorizing class III gaming by Big Lagoon or negotiations toward such a compact.

REQUEST FOR PRODUCTION NO. 19:

ALL DOCUMENTS PERTAINING TO ANY concessions offered by the State to Big Lagoon, in the course of negotiations toward the formation of a tribal-state compact for class III

gaming, in return for particular concessions requested of Big Lagoon that the State did not require of other tribes with whom it negotiated compacts.

ARGUMENT

I. THE ESSENTIAL FACTS IN UNDERLYING THE BAD FAITH CLAIM IN THIS CASE ARE UNDISPUTED; THEREFORE, THERE ARE NO RELEVANT MATTERS TO DISCOVER

The essential facts regarding Big Lagoon's bad faith negotiation claim are not in dispute. As a result, there are no relevant matters to discover outside of the record of the 2007-2009 Negotiations between the parties.

> Generally, any matter relevant to a claim or defense is discoverable. Fed. R. Civ. P. 26(b).
>
> That principle is subject to limitation. After a showing of good cause, the district court may issue any protective order "which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense," including any order prohibiting the requested discovery altogether, limiting the scope of the discovery, or fixing the terms of disclosure. Fed. R. Civ. P. 26(c).

Rivera v. NIBCO, Inc., 364 F.3d 1057, 1063 (9th Cir. 2004). The Court may deny discovery if the matters sought are irrelevant in the sense that they cannot be reasonably calculated to lead to the discovery of admissible evidence. *See Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351-53 (1978). Although "relevance" is broadly defined in the context of discovery, it is not error to deny discovery when there is no issue of material fact. *Wyatt v. Kaplan*, 686 F.2d 276, 284 (5th Cir. 1982); *Southwest Hide Co. v. Goldston*, 127 F.R.D. 481, 483-84 (N.D. Tex. 1989); c*f. Chavous v. Dist. of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 201 F.R.D. 1 (D. D.C. 2001) (stay of discovery appropriate pending resolution of summary judgment motion).

Big Lagoon's claim that the State has failed to negotiate a compact in good faith pursuant to IGRA raises only legal questions. IGRA requires states to negotiate in good faith with tribes on class III gaming issues. 25 U.S.C. § 2710(d)(3)(A). Under IGRA, if no compact has been entered into 180 days after a tribe's formal request to begin compact negotiations, the tribe may bring suit in federal court. *Id.* at § 2710(d)(7)(A). IGRA contains provisions regarding the procedure that tribes utilize to enforce a state's obligation to negotiate in good faith in federal court. *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1097-98 (9th Cir. 2003). This

procedure does not address discovery and appears based on the premise that no discovery is needed to determine the issue of good faith.

The Ninth Circuit recognized that there is "scant authority interpreting or applying IGRA's good faith requirement," and the reported cases on this issue have typically been decided on motions for summary judgment or motions to dismiss. *Id.* at 1108; *see also Wisconsin Winnebago Nation v. Thompson,* 22 F.3d 719 (7th Cir. 1994); *Cheyenne River Sioux Tribe v. South Dakota,* 830 F. Supp. 523 (D.S.D. 1993) (issue of good faith negotiation should be decided on negotiation transcripts), *aff'd,* 3 F.3d 273. The reason for such treatment has been that the state of the negotiations between the parties is not a subject matter that lends itself to much dispute. The proposals, counterproposals, letters, and other documents that are part of the negotiations or support a party's position constitute the evidence the Court will consider to determine the issue of good faith.

Two other district courts have ruled that litigation of a bad faith negotiation claim is limited to the record of negotiations. In *Rincon Band of Luiseno Mission Indians v. Schwarzenegger, et al.*, United States District Court, Southern District of California, No. 04CV1151 (WMc), the court granted the Governor's motion for a protective order against discovery and held that it would only consider the record of negotiations between the parties in considering the tribe's bad faith negotiation claim.[2] The court held that "[t]he recordings, offers, counter-offers and other documents that are part of the negotiations constitute the evidence the Court will consider to determine the issue of good faith." (Ex. B at 16.) Likewise, in *Fort Independence Indian Community.v. California, et al.*, United States District Court, Eastern District of California, No. S-08-432 LKK/KJM, the court held that the decision in *Rincon* comported with Ninth Circuit cases involving the issue of good faith negotiation.[3] It ruled that a magistrate order limiting the scope of discovery to the record of negotiations was "a permissible exercise of the magistrate's discretion." (Ex. C at 9.) Both decision are consistent with the district court decision in

[2] A true and correct copy of the court's order is attached hereto as Exhibit B.

[3] A true and correct copy of the court's order is attached hereto as Exhibit C.

Cheyenne River Sioux Tribe v. South Dakota, 830 F. Supp. 523, where the district court limited the evidence on a bad faith negotiation claim for relief to the negotiation transcripts.

Thus, because the State has already provided Big Lagoon with all documents in its possession regarding the 2007-2009 Negotiations, no further discovery or document production is necessary or appropriate with respect to the 2007-2009 Negotiations themselves. In answering the question of whether the State negotiated in good faith, the Court needs nothing more than the parties' proposals, judicially noticeable information and evidence related to the State's affirmative defenses.

As a result, because there are no questions of material fact regarding the 2007-2009 Negotiations, there are no relevant matters to discover in that regard. *See Wyatt v. Kaplan*, 686 F.2d at 284.

II. NO IGRA CLAIM FOR BAD FAITH NEGOTIATION MAY BE ASSERTED AFTER A COMPACT HAS BEEN EXECUTED; THEREFORE, DISCOVERY RELATED TO EVENTS PRECEDING THE EXECUTION OF BIG LAGOON'S BARSTOW COMPACT CANNOT LEAD TO ADMISSIBLE EVIDENCE

This Court's jurisdiction to award relief under IGRA is limited. Relative to this action, IGRA grants this Court jurisdiction over "any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith." 25 U.S.C. § 2710(d)(7)(A)(i). IGRA further provides that:

> In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that—
>
> (I) a Tribal-State compact has not been entered into under paragraph (3), and
>
> (II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith, the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.

Id. at § 2710(d)(7)(B)(ii). Finally, IGRA states that:

> If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State

> compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe to conclude such a compact within a 60-day period. . . .

Id. at § 2710(d)(7)(B)(iii).

Thus, in IGRA, Congress granted federal courts jurisdiction to rule upon a tribe's bad faith negotiation claim under 25 U.S.C. § 2710(d)(7)(A)(i) only where a "Tribal-State compact has not been entered into." 25 U.S.C. § 2710(d)(7)(B)(ii)(I); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 50 (1996) ("A tribe that brings an action under § 2710(d)(7)(A)(i) must show that no Tribal-State compact has been entered"). Moreover, even where a compact has not been entered into, the relief a district court may issue is limited to an order requiring the parties to conclude a compact within sixty days, 25 U.S.C. § 2710(d)(7)(B)(iii)), or, should the parties fail to conclude a compact, to require them to submit their last best offers for a compact to a court-appointed mediator, 25 U.S.C. § 2710(d)(7)(B)(iv). *See Seminole Tribe*, 517 U.S. at 50. As a result, there is no basis in IGRA for this Court to award the relief Big Lagoon seeks on the basis of negotiations that led to the executed Barstow Compact.

III. THE LEGISLATURE'S FAILURE TO RATIFY THE EXECUTED BARSTOW COMPACT DOES NOT SUPPORT AN IGRA BAD FAITH NEGOTIATION CLAIM; THUS, DISCOVERY WITH RESPECT TO THE COMPACT RATIFICATION PROCESS CANNOT LEAD TO ADMISSIBLE EVIDENCE

Even if the Barstow Compact were at issue here, IGRA's good faith requirement is limited to the negotiation process, and does not extend to legislative ratification. Therefore, this Court lacks jurisdiction over allegations that the State has negotiated in bad faith because of the Legislature's failure to ratify a negotiated compact executed by Governor Schwarzenegger. Further, even if the Legislature's actions could be subject to a bad faith negotiation claim, the State did not waive its immunity to such a suit with the enactment of California Government Code section 98005. As a result, discovery directed at the events surrounding the Legislature's consideration of the Barstow Compact cannot lead to admissible evidence.

A. IGRA

In 1988, Congress enacted IGRA as a means of granting states some role in the regulation of Indian gaming. *Artichoke Joe's Cal. Grand Casino v. Norton*, 353 F.3d 715, 715 (9th Cir.

2003). IGRA provides that certain forms of gaming can be conducted on Indian lands only if the gaming complies with a compact entered into by the Indian tribe and the state. 25 U.S.C. § 2710(d)(1). The rationale for the compact system is that "there is no adequate Federal regulatory system in place for Class III gaming, nor do tribes have such systems for the regulation of Class III gaming currently in place," and thus "a logical choice is to make use of existing State regulatory systems" through a negotiated compact. S. Rep. No. 100-446, at 13-14 (1988), *reprinted in* 1988 U.S.C.C.A.N. 3071, 3083-84.

Upon receiving a request from an Indian tribe to enter into a compact, "the State shall negotiate with the Indian tribe in good faith to enter into such a compact." 25 U.S.C. § 2710(d)(3)(A). The Secretary is authorized to approve, disapprove, or allow a compact to be deemed approved to the extent it is consistent with IGRA. *Id.* at § 2710(d)(8)(A)-(C). A compact is not effective until the Secretary publishes a notice of approval in the Federal Register. *Id.* at § 2710(d)(3)(B), (d)(8)(D). IGRA authorizes the tribe to sue the state in federal district court if the state refuses to negotiate or does not negotiate in good faith, but the district court's remedial authority is severely limited. *Id.* at § 2710(d)(7)(A)(i), (B)(i). If the court determines the state failed to negotiate in good faith, it can only "order the State and Indian Tribe to conclude such a compact within a 60-day period." *Id.* at § 2710(d)(7)(B)(iii). If the state still fails to negotiate, the district court can only order the appointment of a mediator, who is to choose the compact that best fits federal law. *Id.* at § 2710(d)(7)(B)(iv). Finally, if the mediator cannot bring the sides to an agreement, IGRA requires the mediator to inform the Secretary of the Department of the Interior (Secretary), who is empowered to authorize gaming procedures even in the absence of a compact. *Id.* at § 2710(d)(7)(B)(vii).

B. IGRA's Good Faith Requirement is Inapplicable to the State's Legislative Process for Ratifying a Compact

State law specifies the Governor is the "designated state officer responsible for negotiating and executing, on behalf of the state, tribal-state gaming compacts with federally recognized Indian tribes in the State of California" pursuant to IGRA, and that such compacts are subject to ratification by the Legislature. Cal. Gov't Code § 12012.25(d). The California Constitution also

provides that "the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature," for the operation of certain machines and games by California's Indian tribes. Cal. Const. art. IV, § 19(f). Thus, in California, an Indian gaming compact, duly negotiated and executed by the Governor, requires ratification by the Legislature before it can become effective. The Legislature does not negotiate compact terms with tribes—it simply accepts or rejects the terms negotiated by the Governor and tribes.

IGRA requires the State to enter into compact negotiations and conduct such negotiations in good faith. 25 U.S.C. § 2710(d(3)(A). It does not, however, extend the good faith standard for negotiation to the ratification process, which, under California law, is distinctly different from negotiation. *See* Cal. Const. art. IV, § 19(f); Cal. Gov't Code § 12012.25. Indeed, nowhere in IGRA did Congress impose a requirement that states and tribes *must* conclude or ratify terms of a tribal-state gaming compact, subject to approval by the Secretary. Nor does IGRA's plain language suggest a state's failure or refusal to ratify a duly negotiated compact is actionable in federal court.

The Ninth Circuit undertook an exhaustive analysis of IGRA's good faith negotiation requirement in *In re Indian Gaming Related Cases*, 331 F.3d 1094, and there is no indication by the court that IGRA's bad faith sanctions apply to ratification. Indeed, it is fair to posit that Congress considered ratification to be excluded from application of IGRA's bad faith sanctions because imposing standards on the ratification process would implicate the Tenth Amendment. Whatever Congress' reasons, however, the fact that Congress did not choose to penalize a state for its legislature's failure to ratify a negotiated compact is entirely consonant with the reality that tribes are not in fact entitled to a completed compact—they are, at most, entitled to a fair negotiation process.

The Ninth Circuit also held that the "good-faith inquiry IGRA generally requires" is "fact-specific." *In re Indian Gaming Related Cases*, 331 F.3d at 1112. A good-faith inquiry is not fact-specific if, as Big Lagoon's complaint suggests, it requires only a simple determination whether the Legislature has ratified a compact.

Based upon the Ninth Circuit's analysis, IGRA's good faith negotiation requirement is limited in scope to substantive compact issues identified in 25 U.S.C. § 2710(d)(3)(C). To the State's knowledge, no court has extended the requirement to include the ratification process. *See Wisconsin Winnebago Nation v. Thompson*, 22 F.3d at 724 (IGRA's remedial measures are "meant to give Indian tribes a mechanism through which to force a reluctant state government to the bargaining table and require it to negotiate a compact in good faith").

In addition, that IGRA does not require the Secretary to act in good faith in his review of compacts submitted for his approval supports the argument that the good faith requirement is equally inapplicable to the Legislature's review of compacts submitted to it for ratification. IGRA authorizes the Secretary to approve, disapprove or allow a compact submitted for his approval to be deemed approved, but it does not require that he conduct such a review in good faith. *See* 25 U.S.C. § 2710(d)(8)(A)-(C). The Legislature's review of a concluded compact is similar to the Secretary's review of a ratified compact. Neither is authorized to change or renegotiate the compact's terms—they may only review the product of compact negotiations and deem it acceptable or unacceptable. Congress did not impose a good faith requirement on the process for reviewing a concluded compact, whether it is undertaken by the Secretary or the Legislature.

Therefore, IGRA's good faith negotiation requirement does not apply to the State's compact ratification process,and any discovery directed at the process is irrelevant because it cannot lead to admissible evidence on Big Lagoon's bad faith negotiation claim.

C. Even if IGRA's Good Faith Requirement Applies to the State's Legislative Ratification Process, the State is Immune From Suit Under the Eleventh Amendment Because the Limited Sovereign Immunity Waiver in California Government Code Section 98005 Does Not Extend the Governor's Obligation to Negotiate in Good Faith to the Legislature's Consideration of the Governor's Actions

Even if IGRA's good faith negotiation process were construed to apply to the State's legislative ratification process, nothing in the limited waiver of sovereign immunity set forth in California Government Code section 98005 waives the State's Eleventh Amendment immunity

against federal court review of the Legislature's consideration of a compact negotiated by the Governor.

The Supreme Court has held that Congress did not abrogate a state's Eleventh Amendment immunity from suit in federal court when it enacted IGRA. *Seminole Tribe of Florida v. Florida*, 517 U.S. at 47, 57-73. Thus, unless the State unequivocally waives that immunity, no suit under IGRA may be pursued against California in federal court. *See Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 238 & n.1 (1974). A state's consent to suit in federal court must be construed narrowly. *Great Northern Life Ins. Co. v. Read*, 322 U.S. 47, 53-54 (1944). "The history of sovereign immunity and the practical necessity of unfettered freedom for government from crippling interferences require a restriction of suability to the terms of the consent, as to persons, courts and procedure." *Id.* at 54. Thus, a state may make a limited waiver of its Eleventh Amendment immunity by agreeing to a waiver for a limited purpose or for limited types of actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1288 (9th Cir. 1992).

By initiative measure, the people of California enacted California Government Code section 98005. That initiative was intended to grant federally recognized Indian tribes in California the ability to conduct class III gaming pursuant to certain compacts approved by the measure. In *Hotel Employees and Restaurant Employees International Union v. Davis*, 21 Cal. 4th 585, 615 (Cal. 1999), the California Supreme Court struck down as unconstitutional all the provisions of that initiative except the last sentence of section 98005. In so doing, the court found that the purpose of the last sentence of section 98005 was "obviously intended to restore to California tribes the remedy provided in IGRA." *Id.*

California Government Code section 98005 establishes the following limited waiver of the State's Eleventh Amendment immunity against suits in federal court:

> The State of California also submits to the jurisdiction of the courts of the United States in any action brought against the state by any federally recognized California Indian tribe asserting any cause of action arising from the *state's refusal to enter into negotiations with that tribe for the purpose of entering into a different Tribal-State compact pursuant to IGRA or to conduct those negotiations in good faith*, the state's refusal to enter into negotiations concerning the amendment of a Tribal-State compact to which the state is a party, or to negotiate in good faith concerning the amendment,

> or the state's violation of the terms of any Tribal-State compact to which the state is or may become a party.

(Emphasis added.)

On its face, this waiver applies solely to suits arising from refusal to enter into negotiations for a compact, or to conduct those negotiations in good faith, and for violation of the terms of an existing compact. Under California law, only the Governor has the authority to negotiate compacts or amendments to compacts. Cal. Const. art. IV, § 19(f);[4] Cal. Gov't Code § 12012.25(d).[5] As a result, the waiver in California Government Code section 98005 applies solely to suits against the Governor for a failure to enter into negotiations or for a failure to conduct those negotiations in good faith, or for the State's breach of a compact that is in effect. It does not contain any language extending that waiver to suits based on the Legislature's action or inaction on a compact or a compact amendment. Therefore, because the State has not expressly and unequivocally waived its Eleventh Amendment immunity from suits against the Legislature on compacts negotiated by the Governor, this Court lacks jurisdiction to review such action. Consequently, discovery aimed at the State's legislative ratification process with respect to Big Lagoon's Barstow Compact cannot lead to admissible evidence.

CONCLUSION

For the foregoing reasons, the State respectfully requests this Court to grant a protective order against those portions of Big Lagoon's First Set of Requests for the Production of Documents, Request Nos. 1, 8, 9, 10, 11, 12 and 19, to the extent they seek documents related to

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[4] California Constitution, article IV, section 19(f) provides in part:

> 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.

[5] California Government Code section 12012.25(d) provides in part:

> The Governor is the designated state officer responsible for negotiating and executing, on behalf of the state, tribal-state gaming compacts with federally recognized Indian tribes located with the State of California pursuant to [IGRA] for the purpose of authorizing class III gaming, as defined in that act, on Indian lands within this state.

the events leading up to execution of the Barstow Compact, or to the State's process for the ratification of that compact.

Dated: December 16, 2009

Respectfully submitted,

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