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Iipay Nation of Santa Ysabel,
a federally recognized Indian tribe

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IIPAY NATION OF SANTA YSABEL, a
federally recognized Indian tribe,

Plaintiff,

vs.

CALIFORNIA GAMBLING CONTROL
COMMISSION, an agency of the State of
California,

Defendant.

Case No.: **'12CV1876 BEN RBB**

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
DAMAGES**

COMES NOW, the Iipay Nation of Santa Ysabel ("Plaintiff" or "Tribe") and presents this Complaint seeking declaratory judgment and injunctive relief and damages in the above-captioned action, and hereby allege as follows:

INTRODUCTION

1. Plaintiff, the Iipay Nation of Santa Ysabel (also known as the Santa Ysabel Band of Diegueno Mission Indians), is a federally recognized Indian tribe that shares a government-to-government relationship with the United States and the State of California.

2. Defendant, the California Gambling Control Commission ("Defendant" or

“CGCC”), is a State agency with its office in Sacramento that is tasked with acting as the trustee over the Revenue Sharing Trust Fund, a fund created by the Legislature and administered by the CGCC, for the receipt, deposit, and distribution of monies paid pursuant to tribal-state compacts concerning class III Indian gaming within the State of California.

3. This action is a civil action over which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1331. The Complaint sets forth two causes of action against Defendant seeking relief where entitlement to said relief depends upon the adjudication of questions of federal law, to wit, whether Defendant has, through the above-described actions, violated the Tribal-State Gaming Compact, which arises under the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.) and provides that the United States District Court has jurisdiction, and that the district court of the district in which the Tribe’s Gaming Facility is located is the designated venue for actions arising under the Compact. Claims to enforce this Compact arise under federal law, and accordingly fall within the jurisdiction of the federal courts pursuant to 28 U.S.C. §§ 1331 and 1362. *See Cabazon v. Wilson*, 124 F.3d 1050, 1055 (9th Cir. 1997). Plaintiff’s Gaming Facility is located in Santa Ysabel, California, which is within the Southern District of California.

GENERAL ALLEGATIONS

4. The Tribe is entitled to quarterly monetary distributions from the Revenue Sharing Trust Fund (“RSTF”), a fund that compensates Non-Compact Indian tribes in California, including Plaintiff, pursuant to tribal-state compacts entered into between the State of California and tribes engaged in class III gaming.

5. The RSTF is a fund created by the Legislature, funded by proceeds of Indian gaming in California, and administered by the CGCC, as trustee, for the receipt, deposit, and distribution of monies paid pursuant to tribal-state compacts.

6. The tribal-state compacts provide that Non-Compact Tribes (all tribes operating less than 350 gaming devices) are entitled to quarterly disbursements from the RSTF.

7. Pursuant to tribal-state compacts, including the tribal-state compact between the

1 Tribe and the State of California (“Compact”) approved in November 2003, **the CGCC has no**
 2 **discretion with respect to the use or disbursement of the trust funds. Its sole authority shall**
 3 **be to serve as a depository of the trust funds and to disburse them on a quarterly basis to**
 4 **Non-Compact Tribes.**

5 8. The Tribe is presently involved in litigation with one of its gaming facility lenders,
 6 the Yavapai Apache Nation (“the YAN”), a federally recognized Indian tribe, which is pending in
 7 the Sacramento Superior Court. In addition, the Santa Ysabel Resort and Casino, an entity that is
 8 wholly owned and controlled by the Tribe, recently filed a petition for relief in U.S. Bankruptcy
 9 Court – Southern District of California.

10 9. The Tribe has, at all times since the RSTF was created, remained eligible to
 11 receive funds.

12 10. Defendant held a meeting on Thursday, July 26, 2012. On Defendant’s agenda
 13 was review of the RSTF “Final Report for Distribution to Eligible Recipient Indian Tribes.” At
 14 this meeting, legal counsel for the YAN appeared and argued in support of the YAN’s request
 15 that the CGCC “remit to the Sacramento Superior Court for the foreseeable future those [RSTF]
 16 distributions that would otherwise be paid to the [Tribe].” The Tribe’s counsel also appeared at
 17 this meeting and argued that trustee CGCC lacks the legal authority to do anything other than
 18 distribute the Tribe’s RSTFs directly to the beneficiary Tribe.

19 11. Despite the fact that the evidence before Defendant is that the Tribe is eligible to
 20 receive RSTF moneys for the quarter ending June 30, 2012, and despite the fact that Defendant
 21 lacks authority to take any action other than timely distribution of the Tribe’s RSTFs directly to
 22 the Tribe, CGCC staff recommended that the CGCC “approve the allocation to the [Tribe], but
 23 withhold distribution of RSTF monies until the Commission has clarity regarding our obligations
 24 arising from the bankruptcy and state court litigation.” Defendant thereafter adopted this
 25 recommendation and, on July 26, 2012, unanimously voted to allocate but withhold the Tribe’s
 26 RSTF distribution pending a further meeting on this matter on August 8, 2012.

27 12. Plaintiff has no reason to believe that Defendant will do anything other than
 28

1 continue to withhold distribution of the Tribe's RSTF moneys following the August 8, 2012
 2 meeting and until the litigation unrelated to the CGCC is resolved. Specifically, Defendant failed
 3 to provide adequate notice of its intended course of action before the July 26, 2012 meeting and
 4 first informed Plaintiff of the same during this meeting. In setting the August 8, 2012 meeting,
 5 Defendant has failed to ask additional questions or request additional briefing. Following the July
 6 26, 2012 meeting, Defendant agreed to participate in meeting between its staff and Tribal
 7 Chairman Virgil Perez. However, Defendant's staff refused to permit a chairperson to
 8 chairperson meeting between Chairman Perez and CGCC Chairperson Stephanie Shimazu before
 9 the upcoming August 8 meeting. In rejecting the Tribe's requests for such a meeting, Defendant
 10 has effectively refused to engage in direct, government to government, discussions regarding this
 11 issue. In light of its actions, it appears that Defendant has scheduled the August 8, 2012 meeting
 12 so that it may claim it *technically* and *procedurally* provided all due process owed to the Tribe.
 13 However, there is no *substantive* due process afforded. Most significantly, there are no facts or
 14 other indication that Defendant will change its course of action and release the Tribe's RSTF
 15 moneys upon completion of this August 8, 2012 meeting.

16 13. Timely distribution of the Tribe's RSTF distribution for the quarter ending June
 17 30, 2012 is required by law: it must be made to the Tribe, as an "eligible recipient Indian tribe,"
 18 within 45 days of the end of this quarter, or by August 14, 2012. *See* Cal. Govt. Code §
 19 12012.90(e)(2). This statutory provision was codified in 2005, by Assembly Bill 1750, in large
 20 part for the purpose of addressing and correcting Defendant's past practice of issuing untimely
 21 payments.

22 14. Defendant's present decision to withhold actual distribution of the Tribe's RSTF
 23 distribution for the quarter ending June 30, 2012 and "until [Defendant] has clarity regarding [its]
 24 obligations arising from the bankruptcy and state court litigation" directly threatens timely
 25 distribution to the Tribe, as required by law.

26 15. The Tribe is dependent upon timely distribution of its quarterly RSTF distributions
 27 to fund its government, provide essential services, and ensure continued day-to-day operations.
 28

NECESSITY OF DECLARATORY JUDGMENT

16. An actual controversy has arisen and now exists between Plaintiff and Defendant concerning their respective rights and obligations, in that the Tribe contends that they are the sole beneficiary of the RSTF funds the CGCC holds as a trustee on behalf of the Tribe, and that because the CGCC has absolutely no discretion in the use or disbursement of the RSTF funds, the CGCC is in violation of the terms of the Compact and applicable statutory provisions, and is not fulfilling its duties as trustee. The CGCC believes it has the right, power, and duty to withhold the Tribe's RSTF disbursement for the benefit of other third parties, including, but not limited to the Yavapai Apache Nation.

17. Plaintiff desires a judicial determination of the Tribe's rights and the CGCC's duties as trustee to prevent the CGCC from withholding the Tribe's RSTF quarterly allocation (to which it is legally entitled), and a declaration as to whether the CGCC is in breach of the terms of the Compact by unilaterally deciding to withhold its required disbursement to the Tribe.

18. A judicial determination is necessary and appropriate at this time and under the present circumstances to allow Plaintiff to ascertain its right to protect its RSTF moneys from being withheld by the CGCC and whether the CGCC is acting outside the scope of its authority by facilitating such a withholding based on related litigation to which CGCC is not a party.

19. Defendant's withholding threatens the Tribe, and if permitted to continue, will cause irreparable harm to the Tribe's ability to govern itself, as well as irreparable harm to its government-to-government relationships with the United States and the State of California.

20. Plaintiff has no equally plain, speedy or adequate remedy to prevent the CGCC's withholding of its RSTF moneys other than seeking declaratory relief.

FIRST CAUSE OF ACTION Breach of Compact

21. Plaintiff incorporates by reference paragraphs 1 through 20 above as if fully rewritten herein.

22. Because the Tribe is a signatory to a Tribal-State Compact entered between the

1 Tribe and the State of California, it has an existing contractual relationship with the State.

2 23. In the Compact, the CGCC is clearly identified as the trustee of the RSTF, and
3 because it has no discretion regarding the use or disbursement of the RSTF funds, it lacks the
4 authority to authorize any disbursement to any party besides the Tribe.

5 24. The Compact expressly provides that the CGCC's sole authority is to serve as a
6 depository of the RSTF and to disburse them to eligible tribes on a quarterly basis.

7 25. There is no dispute regarding the fact that the Tribe is, and at all relevant times
8 hereto has always been, eligible to receive RSTF funds.

9 26. Defendant CGCC is bound by the power granted to it pursuant to the Compact,
10 and lacks the authority to disburse funds in a manner inconsistent with the terms of the Compact.

11 27. As a result of the CGCC's intent to act outside the scope of its authority and
12 indefinitely withhold the Tribe's RSTF monies, the CGCC's conduct and intent is a substantial
13 factor in causing Plaintiff's harm.

14
15 **SECOND CAUSE OF ACTION**
16 **Breach of the Covenant of Good Faith and Fair Dealing**

17 28. Plaintiff incorporates by reference paragraphs 1 through 27 as if fully rewritten
18 herein.

19 29. In every contract entered into or to be performed in this State there is an implied
20 covenant of good faith and fair dealing that neither party will do anything to injure the right of the
21 other party to receive the benefit of the contract.

22 30. Plaintiff Tribe and the State of California entered into a Tribal-State compact in
23 2003, which entitles the Tribe to quarterly distributions of funds from the RSTF.

24 31. The CGCC is unfairly interfering with the Tribe's right to receive benefits
25 pursuant to the Compact and is acting outside the scope of its duties and obligations as trustee by
26 unilaterally voting to withhold the Tribe's RSTF allocation based on litigation to which it is not a
27 party.

28 32. As a result of the CGCC's intent to act outside the scope of its authority and

1 withhold the Tribe's RSTF moneys held exclusively for the benefit of the Tribe, the CGCC's
2 conduct and intent is a substantial factor in causing Plaintiff's harm.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff Iipay Nation of Santa Ysabel requests that this Court enter judgment
6 against Defendant California Gambling Control Commission as follows:

7 1. An injunction against Defendant California Gambling Control Commission
8 prohibiting it from withholding the RSTF moneys to which the Tribe is entitled for the quarter
9 ending June 30, 2012;

10 2. For declaratory judgment that Plaintiff is the sole beneficiary of RSTF monies held
11 for the benefit of the Tribe;

12 3. For declaratory judgment that Defendant California Gambling Control
13 Commission's withholding of the Tribe's RSTF moneys constitutes a breach of Compact, and a
14 breach of the implied covenant of good faith and fair dealing;

15 4. Money damages for Defendant CGCC's breach of compact and implied covenant
16 of good faith and fair dealing, along with damage done to the Tribe's government-to-government
17 relationship with the State of California according to proof;

18 5. Awarding Plaintiff its costs of suit and reasonable attorneys' fees; and

19 6. For all other relief that this Court deems just and proper.

20 Respectfully submitted,

21
22 ROSETTE, LLP
23 ATTORNEYS AT LAW

24
25 Dated: July 30, 2012

26 By: s/Geoffrey M. Hash
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28 Attorney for Plaintiff
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