

1 Little Fawn Boland (CA No. 240181)  
2 Ceiba Legal, LLP  
3 35 Madrone Park Circle  
4 Mill Valley, CA 94941  
5 Phone: (415) 684-7670 ext. 101  
6 Fax: (415) 684-7273  
7 littlefawn@ceibalegal.com

8 In Association With  
9 *Pro Hac Vice* Application to be Filed  
10 Kevin C. Quigley (MN No. 0182771)  
11 Hamilton Quigley & Twait, PLC  
12 W1450 First National Bank Building  
13 332 Minnesota Street  
14 St. Paul, MN 55101  
15 Phone: (651) 602-6262  
16 Fax: (651) 602-9976  
17 kevinquigley@pacemn.com

18 Attorneys for Defendants

19 **UNITED STATES DISTRICT COURT**  
20 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

21 State of California,

Plaintiff,

vs.

Iipay Nation of Santa Ysabel, et. al.

Defendants.

CIVIL FILE NO. 3:14-CV-02724-  
AJB/NLS

**DECLARATION OF DAVID  
VIALPANDO IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
STATE OF CALIFORNIA'S  
APPLICATION FOR A  
TEMPORARY RESTRAINING  
ORDER**

Complaint Filed: November 18, 2014  
Hearing Date: December 4, 2014  
Time: 2:00 pm  
Courtroom: 3B  
Judge: Hon. Anthony J. Battaglia

1 I, David Vialpando, declare as follows:

2 1. I am the Chairman of the Santa Ysabel Gaming Commission, having served  
3 in this capacity since December 2012. If called and sworn, I would testify competently to  
4 the following from my personal knowledge.

5 2. Prior to serving as Chairman of the Tribal regulatory authority, my  
6 professional career included numerous regulatory duties and responsibilities related to the  
7 gaming industry, specifically Indian gaming. From February 2008 to November 2012 I  
8 was the “Special Agent-in-Charge, Southern California” for the California Department of  
9 Justice, Bureau of Gambling Control. Among my responsibilities in my capacity as  
10 Special Agent-in-Charge was to ensure compliance with Tribal-State Gaming compacts  
11 for Class III gaming offered in casinos located throughout southern California. I also  
12 advised the Department of Justice’s executive management on proposed gaming  
13 regulations and issues related to gaming compact compliance. Finally, I served as a  
14 liaison between tribal gaming regulators and state law enforcement agencies. Attached  
15 hereto as **Exhibit No. 1** is a true and correct copy of my LinkedIn profile describing my  
16 experience in Indian gaming regulatory matters and law enforcement.

17 3. The Iipay Nation of Santa Ysabel (“Tribe”), a federally recognized Indian  
18 tribe, adopted the Iipay Nation of Santa Ysabel Gaming Ordinance (“Gaming  
19 Ordinance”), and, effective as of April 30, 2010, the Gaming Ordinance has been  
20 approved by the Chairman of the National Indian Gaming Commission (“NIGC”)  
21 pursuant to the federal Indian Gaming Regulatory Act of 1988 (“IGRA”).

1           4.     The Santa Ysabel Gaming Commission (“Gaming Commission”) was  
2 established under Section XI, Paragraph A of the Gaming Ordinance to exercise  
3 regulatory authority over all gaming activities conducted within the jurisdiction of the  
4 Tribe and, pursuant to Section XI, Paragraph G, is empowered, subject to Executive  
5 Branch and Legislative Branch review and comment, to promulgate regulations to  
6 implement the provisions of the Gaming Ordinance, including those necessary to the  
7 interpretation and application of the Gaming Ordinance by the Gaming Commission in  
8 connection with exercising its regulatory powers. Under the Gaming Ordinance, only  
9 members of the Gaming Commission – not staff employed by the commission – have the  
10 authority and responsibility to take action to enforce regulatory compliance with all  
11 applicable federal and Tribal laws and regulations.

12           5.     In order to describe the regulatory requirements for Class II bingo gaming  
13 systems and equipment used in connection with bingo games conducted within the  
14 boundaries of the Santa Ysabel Indian Reservation, on the Tribe’s Indian Lands, the  
15 Gaming Commission exercised its regulatory powers to promulgate a regulation (SYGC  
16 Regulation 14-I009, a true and correct copy of which is attached as **Exhibit No. 2**)  
17 governing the procedures for approval of Class II bingo gaming systems and equipment.  
18 Unlike the Gaming Commission, the National Indian Gaming Commission (“NIGC”)  
19 does not have any regulations or rules of this type that expressly prescribes the  
20 classification determination process and describes the classification criteria to be  
21

1 considered for such a determination in connection with a bingo game played using a class  
2 II gaming system.

3         6. Pursuant to SYGC Regulation 14-I009, the Gaming Commission conducted  
4 a regulatory review of the “Virtual Private Network Assisted Play System (“VPNAPS”)  
5 Class II Gaming System” to be used by Santa Ysabel Interactive (“SYI”) on the Tribe’s  
6 sovereign Indian lands in order to determine whether the VPNAPS Class II Gaming  
7 System may be used as a technologic aid to the play of a Class II game of bingo  
8 consistent with Tribal gaming regulations and IGRA. As part of this process, an  
9 independent compliance testing lab validated the gaming system’s compliance with,  
10 among other things, the requirements of 25 CFR Part 547.

11         7. On October 24, 2014, the Gaming Commission issued its formal  
12 “Classification Determination” (a true and correct copy is attached as **Exhibit No. 3**) in  
13 connection with the gaming system, finding that:

14             (a) The offered games to be played using the VPNAPS Class II Gaming  
15 System are Class II games of bingo pursuant to the standards  
16 established under IGRA, the Gaming Ordinance and SYGC  
17 Regulation 14-I009;

18             (b) The VPNAPS Class II Gaming System constitutes a “technologic  
19 aid” to Class II games pursuant to the standards established under  
20 IGRA, NIGC regulations, the Gaming Ordinance, and SYGC  
21 Regulation 14-I009; and

1 (c) Conducting gaming activities using the VPNAPS Class II Gaming  
2 System **DOES NOT** violate the Gaming Ordinance, SYGC  
3 Regulation 14-I009 or IGRA.

4 8. In reaching its conclusions, the Gaming Commission stated that it agreed  
5 with and adopted the legal analysis and reasoning contained in the legal opinions  
6 authored by Tom Foley, former Commissioner and former acting Chairman of the NIGC,  
7 which SYI submitted as part of its supporting documentation for the Classification  
8 Determination (hereinafter referred to respectively as the “Foley Game Play Opinion and  
9 Foley Gaming System Opinion”), including Foley Law, LLC Memorandum dated June  
10 24, 2014 Re: “Class II” Classification opinion regarding the bingo games to be offered  
11 for play by Santa Ysabel Interactive using the VPNAPS Class II Gaming System (a true  
12 and correct copy is attached as **Exhibit No. 4**) and Memorandum dated June 26, 2014 Re:  
13 Classifying the VPNAPS Class II Gaming System as a “technologic aid” to Class II  
14 games pursuant to the requirements contained in IGRA (a true and correct copy is  
15 attached as **Exhibit No. 5**).

16 9. In addition, before any VPN Aided Class II Gaming using the VPNAPS  
17 Class II Gaming System was offered for real money play, the Tribe, in its role as the  
18 primary regulator of Class II gaming under IGRA, exercised its sovereign authority by  
19 developing several other legislative and regulatory measures that are applicable to the  
20 VPN Aided Class II Gaming, including:

21 (a) A “tribal transaction or dealings ordinance,” that becomes binding

1 Tribal law upon completion of the legislative process required by the  
2 Tribe's constitution, which will provide that it is the public policy and  
3 substantive law of the Tribe that:

4 (1) Any consumer or commercial transactions or dealings involving  
5 the Tribe, or its instrumentalities, political subdivisions,  
6 agencies and wholly-owned tribally-chartered companies,  
7 including any tribal gaming enterprise conducting Class II  
8 gaming (as defined by IGRA), with any persons wherever  
9 located shall be conclusively deemed to be (i) entered into,  
10 formed and made on the Tribe's Indian lands, (ii) solely  
11 governed by, and to be construed, interpreted and enforced in  
12 accordance with, the substantive laws of the Tribe, without  
13 regard to its conflict of laws rules, and (iii) subject to the  
14 adjudicatory jurisdiction of the Tribe; and

15 (2) The situs and place of performance of any consumer or  
16 commercial transactions or dealings, or any written or oral  
17 contract or agreement, including agreements made by course of  
18 dealings or by any patron's wager placement or game  
19 participation with any tribal gaming enterprise conducting Class  
20 II gaming, reflecting transactions or dealings described in  
21 paragraph (1) above shall be conclusively deemed to be on the

1 Tribe's Indian lands, to be (i) solely governed by, and to be  
2 construed, interpreted and enforced in accordance with, the  
3 substantive laws of the Tribe, without regard to its conflict of  
4 laws rules, and (ii) subject to the adjudicatory jurisdiction of the  
5 Tribe.

6 (b) A Tribal gaming regulatory agency regulation (SYGC Regulation 14-  
7 1010) which (1) requires that any VPN Aided Class II Gaming  
8 operated by the Tribal gaming enterprise shall be conducted using  
9 servers and computer equipment situated within the Tribe's Indian  
10 lands, and (2) specifically declares that such VPN Aided Class II  
11 Gaming shall be deemed to take place where the tribal gaming  
12 enterprise servers are located on the Indian lands, regardless of a  
13 player's physical location.

14 (c) A Tribal gaming regulatory agency regulation (SYGC Regulation 14-  
15 I011) which governs the operation of VPN Aided Class II Gaming  
16 and provides, among other things, that:

17 (1) "Account Holder" under the regulation means an individual at  
18 least eighteen (18) years of age who by proof at the time of  
19 account registration, is a California resident, who has used the  
20 VPNAPS to establish an account to become a properly  
21 registered account holder with the tribal gaming enterprise.

1 (2) “Account” under the regulation means an electronic ledger  
2 operated and maintained by the tribal gaming enterprise  
3 wherein information relative to VPN Aided Class II Gaming is  
4 recorded on behalf of an Account Holder.

5 (3) An individual must register as an Account Holder using the  
6 VPNAPS via its “Patron Registration Site” in order to access  
7 the VPN Aided Class II Gaming either remotely or in person.

8 (4) “Patron Registration Site” under the regulation means the  
9 patron-facing interface of the VPNAPS, which, by virtue of the  
10 design of the VPNAPS, individuals must first access when  
11 using the VPNAPS.

12 (5) An individual’s access to VPN Aided Class II Gaming via the  
13 VPNAPS shall be denied or disabled when the individual is  
14 physically located in a state or foreign jurisdiction from which  
15 access to the Patron Registration Site or VPN Aided Class II  
16 Gaming has been restricted or limited, either as required by the  
17 tribal gaming regulatory agency or determined by the tribal  
18 gaming enterprise.

19 (6) Before registering as an Account Holder, the individual must  
20 affirm that by establishing an account with the tribal gaming  
21 enterprise the individual consents to the exclusive regulatory



1 and adjudicatory jurisdiction of the Tribe, acknowledges that  
2 the individual is authorizing proxy play of Class II bingo games  
3 on their behalf and that the VPN Aided Class II Gaming is  
4 conducted on the Tribe's sovereign Indian lands, and agrees  
5 that any disputes between the individual and the tribal gaming  
6 enterprise concerning VPN Aided Class II Gaming shall be  
7 resolved exclusively pursuant to procedures established by the  
8 tribal gaming enterprise consistent with regulations of the tribal  
9 gaming regulatory agency.

10 (7) Account Holders are permitted to fund deposits into their  
11 Accounts, among other means, via (i) cash deposits made  
12 directly with the tribal gaming enterprise, (ii) personal checks,  
13 cashier's checks, wire transfer and money order deposits made  
14 directly or mailed to the tribal gaming operation; (iii) debits  
15 from an Account Holder's Visa or MasterCard debit card or  
16 credit card; and (iv) transfers through the automated  
17 clearinghouse or from another mechanism designed to facilitate  
18 electronic commerce transactions, or other means approved by  
19 the tribal gaming enterprise.

20 (8) A tribal gaming enterprise employee (or their designee)  
21 monitoring the proxy functions of the VPNAPS shall act as the

1                   legally designated agent of the Account Holder and, assisted by  
2                   the technologic aid of proxy software elements contained in the  
3                   VPNAPS, shall conduct proxy play of Class II bingo games on  
4                   the Account Holder's behalf.

5                   (9)    There is no requirement for the proxy agent playing Class II  
6                   bingo games on the Account Holder's behalf to manually  
7                   declare a "bingo" upon matching the numbers drawn with the  
8                   pre-designated game winning pattern on a purchased bingo card  
9                   in order to collect the game prize; use of technologic aids such  
10                  as an auto-daub feature is expressly permitted to assist the  
11                  proxy agent playing Class II bingo games on the Account  
12                  Holder's behalf in determining whether a card held has a pre-  
13                  designated pattern matching the numbers drawn for the Class II  
14                  bingo game.

15               (10)  "VPN" under the regulation means a virtual private network  
16               which (a) has been assigned a "special use" Internet protocol  
17               address in the range from 10.0.0.0-10.255.255.255,  
18               172.16.0.0 - 172.31.255.255, and 192.168.0.0-192.168.255.255  
19               by the Internet Assigned Numbers Authority, and (b) uses a  
20               form of communication that utilizes secured and restricted  
21               access connections (i.e. via software and a server that

1 authenticates users, encrypts data, and manages sessions with  
2 users) over connectivity infrastructure to create point-to-point  
3 connections segregated and isolated from the publicly  
4 accessible Internet network (also known as the World Wide  
5 Web), such as to constitute a closed, proprietary  
6 communication network.

7 (11) “VPN Aided Class II Gaming” under the regulation means  
8 server-based electronic bingo games offered by the Gaming  
9 Enterprise to be played on the Tribe’s sovereign Indian lands  
10 using a Class II Gaming System, known as the VPNAPS,  
11 containing several proprietary technologic aids, including a  
12 component that facilitates access through a secure virtual  
13 private network connection between Account Holders and their  
14 proxy agents located on the Tribe’s Indian lands which assists  
15 proxy play on behalf of the Account Holder.

16 (12) “VPNAPS” under the regulation means the Class II Gaming  
17 System known as the “Virtual Private Network Assisted Play  
18 System,” a licensed, proprietary technology platform comprised  
19 of multiple software processes and hardware components that  
20 work together to offer Class II server-based electronic bingo  
21 games via a secure and restricted access VPN connection

1 accessed through any web browser enabled device; including  
2 the collective hardware, software, VPN, proprietary hardware  
3 and software specifically designed or modified for, and  
4 intended for use by the tribal gaming enterprise, to conduct  
5 VPN Aided Class II Gaming within the boundaries of the  
6 Tribe's Indian lands.

7 (13) "Class II Gaming System" under the regulation means a "Class  
8 II gaming system" as defined in 25 CFR §547.2; including any  
9 components that facilitate access to the system or  
10 communication between Account Holders, their proxy agents  
11 and the tribal gaming enterprise.

12 (14) Before the VPNAPS is placed into operation, the VPNAPS is  
13 required to be tested and verified by an independent compliance  
14 lab in accordance with such standards as are accepted by the  
15 tribal gaming enterprise.

16 10. All of the tribal laws and regulations applicable to VPN Aided Class II  
17 Gaming are displayed on the Gaming Commission's website, and readily accessible to  
18 the general public.

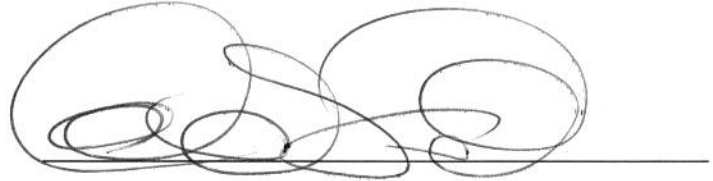
19 11. In sum, the Tribe and its Gaming Commission have exercised their primary  
20 regulatory authority over Class II gaming conducted on Indian lands to ensure that,  
21 before any VPN Aided Class II Gaming using the VPNAPS Class II Gaming System was

1 offered for real money play, both (a) the bingo games to be played using the VPNAPS  
2 Class II Gaming System have been properly Classified as “Class II” games under IGRA,  
3 and (b) the VPNAPS Class II Gaming System is a Class II gaming system that meets the  
4 standards and requirement of the Tribe’s gaming regulations and the technical and other  
5 standards of 25 CFR Parts 543 and 547.

6       12. After the VPN Aided Class II Gaming commenced, the NIGC sent  
7 representatives for an on-site inspection meeting on November 6, 2014 with the Gaming  
8 Commission concerning the class II bingo play and the VPNAPS. At this meeting the  
9 Gaming Commission discussed with the NIGC representatives the nature of and legal  
10 foundation for the VPN Aided Class II Gaming, the specific technical aspects of the  
11 VPNAPS and also provided written documentation concerning the class II bingo gaming,  
12 including the Classification Determination, the Foley Game Play Opinion and the Foley  
13 Gaming System Opinion. After this meeting, being fully apprised of the nature of and  
14 legal foundation for the VPN Aided Class II Gaming, as well as the specific technical  
15 aspects of the VPNAPS, the NIGC did not take any enforcement action in connection  
16 with the VPN Aided Class II Gaming operated by the Tribe. Unlike the NIGC, the State  
17 of California (“State”) has never sent an agent to the Santa Ysabel reservation for an on-  
18 site inspection meeting with the Gaming Commission concerning the nature of or legal  
19 foundation for the VPN Aided Class II Gaming, or the specific technical aspects of the  
20 VPNAPS, or requested such a meeting. Neither has the State ever requested or reviewed  
21 with the Gaming Commission written documentation concerning the class II bingo

1 gaming, including the Classification Determination and the Foley Game Play Opinion  
2 and Foley Gaming System Opinion.

3 **I declare under penalty of perjury that the foregoing is true and correct. This**  
4 **declaration is executed on November 25, 2014.**

5 

6  
7 David Vialpando

8 Date: 11-25-2014

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

EXHIBITS TO DECLARATION OF DAVID VIALPANDO  
TABLE OF CONTENTS

1.	Linkedin Profile of David Vialpando.....	E1-E4
2.	SYGC Regulation 14-I009.....	E5-E18
3.	Classification Determination.....	E19-E22
4.	Foley Opinion of June 24, 2014.....	E23-E52
5.	Foley Opinion of June 26, 2014.....	E53-E95



## David Vialpando

500+ connections

Chairman at Santa Ysabel Tribal Gaming Commission

Temecula, California | Education Management

**Current** Santa Ysabel Tribal Gaming Commission, Picayune Rancheria Tribal Gaming Commission, Institute for Criminal Justice Training

**Previous** California Department of Justice, Bureau of Gambling Control, California Department of Justice, Bureau of Narcotic Enforcement, Richmond California Police Department

**Education** Univeristy of Phoenix

**Websites** Company Website

### Find a different David Vialpando

First Name Last Name

Example: David Vialpando

**David Vialpando**  
Maintenance Superintendent at Colorado Department of Transportation Pueblo, Colorado Area

**David Vialpando**  
Owner at Pacific Coast Plumbing Co. Greater Los Angeles Area

**David Vialpando**  
Fire Fighter at Salt Lake City Greater Salt Lake City Area

**David Vialpando**  
-- United States

**Dave Vialpando**  
-- United States

[More professionals named David Vialpando](#)

## Join LinkedIn & access David's full profile. It's free!

As a LinkedIn member, you'll join 300 million other professionals who are sharing connections, ideas, and opportunities.

- See who you know in common
- Get introduced
- Contact David directly

[View David's Full Profile](#)

### Experience

#### Chairman

Santa Ysabel Tribal Gaming Commission  
December 2012 – Present (2 years) | Santa Ysabel, California

Conduct regulatory oversight and gaming compact compliance of the gaming enterprises of the Iipay Nation of Santa Ysabel. Ensure compliance with IGRA, NIGC regulations, and the Tribal Gaming Ordinance.

[www.sycommission.net](http://www.sycommission.net)

#### Gaming Commissioner

Picayune Rancheria Tribal Gaming Commission  
August 2014 – Present (4 months) | Coarsegold, California

Conduct regulatory oversight and gaming compact compliance of the gaming enterprises of the Picayune Rancheria of Chukchansi Indians. Ensure compliance with IGRA, NIGC regulations, and the Tribal Gaming Ordinance.

#### President & CEO

Institute for Criminal Justice Training  
October 2012 – Present (2 years 2 months) | Southern California

STC certified criminal justice training provider. [www.icjt.us](http://www.icjt.us)

#### President & CEO

### People Also Viewed

**Sherry Rodriguez**  
Gaming Commissioner at La Jolla Gaming Commission

**Brett Barnes**  
Assistant General Manager at Indigo Sky Hotel and Casino

**John Roberts**  
Executive Director Pokagon Band Gaming Commission

**Hedi Bogda**  
Consultant at NCJTC - National Criminal Justice Training Center

**Gerry Nailon**  
President & Chief Executive Officer at PeopleChamps ... Consulting, Executive Search, Training & Beyond...

**John Cirrincione**  
General Manager at Santa Ana Star Casino

**Jaime Barriga**  
Slot Performance Manager at Agua Caliente Casino

**Eddie Lockett**  
Director of Casino Operations at Hon-Dah Resort-Casino & Conference Center

**Lourdes A. Castillo 'Racel'**  
Surveillance

**Michael Hektoen**  
Tribal Convergence Media Corporation



**Institute for Casino Security & Management**

January 2012 – Present (2 years 11 months) | Temecula, California

Licensed private investigator specializing in complex investigations, consulting, and training for corporations and individuals. [www.icsm.us](http://www.icsm.us)

**Facilitator**

University of Phoenix

September 2005 – Present (9 years 3 months) | South Coast Campus



Faculty member in the College of Criminal Justice providing instruction in the following areas:

ORGANIZATIONAL ADMINISTRATION AND BEHAVIOR  
 ETHICS IN JUSTICE AND SECURITY  
 LEGAL ISSUES IN JUSTICE AND SECURITY  
 MANAGEMENT OF INSTITUTIONAL RISK  
 CRIMINAL JUSTICE POLICY ANALYSIS  
 POLICING THEORY AND PRACTICE  
 INTERPERSONAL COMMUNICATION  
 MANAGING CRIMINAL JUSTICE PERSONNEL  
 CRIMINAL JUSTICE MANAGEMENT THEORY AND PRACTICE

**Special Agent-in-Charge**

California Department of Justice, Bureau of Gambling Control

February 2008 – November 2012 (4 years 10 months) | Sothern California

Manage the southern California offices of the DOJ Bureau of Gambling Control. Ensure regulatory compliance of southern California cardrooms and Tribal casinos. Work with gaming professionals to ensure the safety of the public, protection of assets, and the integrity of gaming.

**Special Agent Supervisor**

California Department of Justice, Bureau of Narcotic Enforcement

April 1987 – February 2008 (20 years 11 months) | San Jose Field Office, San Diego Regional Office

Manage teams of special agents in the following areas of narcotic enforcement:

Clandestine Drug Manufacturing  
 Major Trafficker  
 Violence Suppression  
 Asset Forfeiture & Money Laundering  
 Prevention, Education, and Awareness  
 Gang Task Force  
 Southern Alameda County Drug Task Force

**Police Officer**

Richmond California Police Department

January 1980 – April 1987 (7 years 4 months) | Richmond, California

Provide municipal police services to the citizens of Richmond, California. Assigned to the following programs:

Police K-9  
 Hostage Negotiator  
 Field Training Officer  
 Report Writing Instructor  
 Crime Scene Evidence Technician

**Honors & Awards****Criminal Justice Honor Society Memeber**

Eta Theta Chapter of Alpha Phi Sigma

Ads You May Be Interested In Today Sign In

**#1 Rated Call Tracking**

Maximize your Ad Investment.  
 Track Phone Leads & Boost  
 ROI. Free Demo!

**Ryder Natural Gas Fleets**

Reduce Your Ecological  
 Footprint w/ Ryder Vehicles.  
 Request Information.

**MYOS Study on Fortetropin**

A Novel Myostatin Inhibitor  
 Increases Lean Body Mass and  
 Muscle Thickness

July 2012

What is LinkedIn? Join Today Sign In

**Peace Officer Certificates**

California Commission on Peace Officer Standards and Training  
October 2011

- Basic Certificate
- Intermediate Certificate
- Advanced Certificate
- Supervisory Certificate
- Management Certificate

**College of Criminal Justice & Safety Academic Faculty Member of the Year**

University of Phoenix  
November 2012

**Enrique Camarena Law Enforcement Award for Drug Prevention**

Elks Club of California  
December 2001

**Award for Excellence in Supervision**

California Attorney General  
December 1997

**Outstanding Contributions to the Federal Service Award**

U.S. Drug Enforcement Administration  
June 1990

**Police Officer of the Year**

Richmond Police Department  
December 1985

**Eagle Scout**

Boy Scouts of America  
May 1972

Languages

**Spanish**

Skills

What is LinkedIn? Join Today Sign In

- Criminal Justice
- Higher Education
- Coalition Building
- Leadership Development
- Coalitions
- Private Investigations
- Enforcement
- Surveillance
- Executive Coaching
- Policy
- Firearms
- Homeland Security
- Security Management
- Crisis Management
- Background Checks
- [See 24+](#)

### Education

#### Univeristy of Phoenix

Master in Business Administration, Business  
2003 – 2005

#### University of California, Berkeley

1976 – 1980



### Organizations

California Narcotic Officers Association, Hispanic-American Police Command Officers Association, California Gang Investigators Association, University of Phoenix Alumni Association, California Attorney General's School/Law Enforcement Partnership, Past-President San Diego County Drug Prevention Coalition, California Tribal/State Gaming Association, American Federation of Teachers, ASIS International, Californian Association of Licensed Private Investigators, Eta Theta Chapter of Alpha Phi Sigma, National Eagle Scout Association

### Groups



Professionals of Am...



Surveillance Investig...



National Loss Preve...



Casino Suppliers/Ve...



iGaming & Casino G...



Gaming Regulators a...



World Online Gambli...

[See 30 more](#)

## View David's full profile to...

- See who you know in common
- Get introduced
- Contact David directly

[View David's Full Profile](#)

Not the David Vialpando you're looking for? [View more](#)

LinkedIn member directory: [a](#) [b](#) [c](#) [d](#) [e](#) [f](#) [g](#) [h](#) [i](#) [j](#) [k](#) [l](#) [m](#) [n](#) [o](#) [p](#) [q](#) [r](#) [s](#) [t](#) [u](#) [v](#) [w](#) [x](#) [y](#) [z](#) [more](#) | [Browse members by country](#)

# SANTA YSABEL TRIBAL GAMING COMMISSION

---

SYGC 14-I009

## Commission Regulation

### Establishing Procedures and Requirements for Approval of Class II Bingo Gaming Systems and Equipment

Pursuant to SYGC Gaming Ordinance Section XI (F) & (G), regulation of gaming activity, the Santa Ysabel Gaming Commission hereby adopts the following regulation:

#### **1.0 Purpose of Regulation**

- (a) The Iipay Nation of Santa Ysabel (“Nation”) has adopted the Iipay Nation of Santa Ysabel Gaming Ordinance (“Gaming Ordinance”), and, effective as of April 30, 2010, the Gaming Ordinance has been approved by the Chairman of the National Indian Gaming Commission (“NIGC”) pursuant to the federal Indian Gaming Regulatory Act of 1988 (“IGRA”), P.L. 100-497, 25 U.S.C. §2701, *et seq.*, as it may be amended from time to time, and the regulations of the NIGC promulgated thereunder.
- (b) The Santa Ysabel Gaming Commission (“Gaming Commission”) was established under Section XI, Paragraph A of the Gaming Ordinance to exercise regulatory authority over all gaming activities conducted within the jurisdiction of the Nation and, pursuant to Section XI, Paragraph G, is empowered, subject to Executive Branch and Legislative Branch review and comment, to promulgate regulations to implement the provisions of the Gaming Ordinance, including those necessary to the interpretation and application of the Gaming Ordinance by the Gaming Commission in connection with exercising its regulatory powers.
- (c) In order to describe the regulatory requirements for Class II Bingo Gaming Systems and Equipment conducted within the boundaries of the Santa Ysabel Indian Reservation, the Gaming Commission finds it necessary in connection with exercising its regulatory powers to promulgate a regulation governing the procedures for approval of Class II Bingo Gaming Systems and Equipment.

# SANTA YSABEL TRIBAL GAMING COMMISSION

---

## **2.0 Definitions**

The terms used herein shall have the meanings described below (and any others not otherwise described shall have the meaning ascribed to them in the Gaming Ordinance).

- (a) “Account Holder” means an individual at least twenty-one (21) years of age who has used a Class II Gaming System to establish an account to become a properly registered account holder with the Gaming Enterprise.
- (b) “Bingo” means the Class II Gaming activity described and set forth in IGRA at 25 U.S.C. §2703(7)(A)(i)(I-III), (whether or not Electronic, Computer, or other Technologic Aids are used in connection therewith).
- (c) “Classification Determination” means a formal determination made by the Gaming Commission under this Regulation that a Bingo game played using a designated Class II Gaming System is Class II Gaming activity permitted by the Gaming Ordinance and IGRA.
- (d) “Class II Gaming” means those gaming activities defined as “class II gaming” in IGRA, 25 U.S.C. §2703(7).
- (e) “Class II Gaming System” means a “Class II gaming system” as defined in 25 CFR §547.2; including any components that facilitate access to the system or communication between Account Holders, their proxy agents and the Gaming Enterprise.
- (f) “Electronic, Computer or other Technologic Aid” or “Technologic Aid” has the meaning set forth in Section 6(b) of this Regulation.
- (g) “Electronic or Electromechanical Facsimile” has the meaning set forth in Section 6(c) of this Regulation.
- (h) “Gaming Enterprise” means a tribal gaming business, owned and operated by the Nation, that is licensed by the Gaming Commission to conduct Class II Gaming activities, and receives the revenues, issues the prizes, and pays the expenses associated with such Class II Gaming activities

# SANTA YSABEL TRIBAL GAMING COMMISSION

---

- (i) “Gaming Enterprise Manager” means the individual employed by the Nation who serves as the general manager of a Gaming Enterprise conducting Class II Gaming activities.
- (j) “NIGC Technical Standards” means the technical standards described in 25 CFR Part 547.
- (k) “Prize Pool” means the cumulative amount of contributions paid by participants in one or more games of Bingo, which is used to fund prizes specified in the Rules of Play.
- (l) “Progressive Prize” means a designated Prize Pool which accumulates until the conditions set forth in the Rules of Play are met for it to be won.
- (m) “Rules of Play” means the specific rules, as defined and approved by the Gaming Commission from time to time, controlling the play of the subject game of Bingo.
- (n) “Nation” means the Iipay Nation of Santa Ysabel, a federally recognized Indian Nation (federally recognized as the Iipay Nation of Santa Ysabel, California – previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation).
- (o) “Vendor” means a Class II Gaming System supplier who, directly or indirectly, provides, has provided, or is deemed likely to provide in any twelve (12) month period at least twenty-five thousand dollars (\$25,000) in Class II Gaming resources to the Gaming Enterprise, or who has received at least twenty-five thousand dollars (\$25,000) from the Gaming Enterprise in any consecutive twelve (12) month period.

### **3.0 Technological Aids Generally Allowed**

Pursuant to IGRA and the Gaming Ordinance, a Gaming Enterprise is permitted to conduct Class II Gaming activities, including Bingo games, using Electronic, Computer or other Technologic Aids. At the same time, IGRA strictly prohibits the play of Class III Gaming activities, including the use of Electronic or Electromechanical Facsimiles, without a tribal-state compact approved by or Class III Gaming procedures issued by the Secretary of the Interior. Therefore, any Class II Gaming System which the Gaming Commission determines is not

# SANTA YSABEL TRIBAL GAMING COMMISSION

---

a Technologic Aid to the play of Bingo shall not be used or operated by a Gaming Enterprise.

## **4.0 Classification Determination Process**

### (a) Application Process

(1) Either the Gaming Enterprise Manager (including his/her duly authorized representative) or a Vendor may apply to the Gaming Commission for a Classification Determination under this Regulation.

(2) The Gaming Enterprise Manager (including his/her duly authorized representative) or a Vendor may apply to the Gaming Commission for a Classification Determination at any time under the following circumstances, but must do so before any new Class II Gaming System is offered for play:

(i) The Gaming Enterprise wishes to install a new Class II Gaming System that is not the subject of an existing Classification Determination; or

(ii) The Gaming Enterprise wishes to introduce a material modification to a previously approved Class II Gaming System, including a Class II Gaming System approved before the effective date of this Regulation.

(3) Although not required, the Gaming Enterprise Manager (including his/her duly authorized representative) or a Vendor also may apply for a Classification Determination under this Regulation in connection with a Class II Gaming System approved by the Gaming Commission before the effective date of this Regulation to confirm the classification of that Class II Gaming System.

### (b) Application Submission Requirements

(1) To obtain a Classification Determination, either the Enterprise Manager (including his/her duly authorized representative) or a Vendor must submit an application to the Gaming Commission, which consists of the following documentation and information:

# SANTA YSABEL TRIBAL GAMING COMMISSION

---

- (i) Request for a Classification Determination;
- (ii) Certification by the Vendor that the Class II Gaming System to be used by the Gaming Enterprise satisfies the following:
  - (a) the game played using the Class II Gaming System is Bingo consistent with the standards of this Regulation;
  - (b) complies in all respects with the specifications and standards set forth in the application; and
  - (c) complies with any applicable regulations concerning such Class II Gaming System.
- (iii) A legal opinion, which may be obtained from the Vendor and/or the Gaming Enterprise's legal counsel or other source, that concludes that the Class II Gaming System is a Technologic Aid to the play of Bingo consistent with the standards of this Regulation;
- (iv) The Gaming Enterprise Manager's statement that the subject Class II Gaming System, to the best of his/her knowledge, meets the standards in this Regulation;
- (v) Designation of a point of contact authorized to provide additional information if required;
- (vi) Designation from the Vendor whether and where the Gaming Class II System is already in play;
- (vii) Complete written description from the Vendor of the Class II Gaming System, including the operational characteristics and Rules of Play;
- (viii) Complete description of the method used for accepting consideration from Account Holders, paying or distributing prizes, determining, retaining or paying any amounts to the Gaming Enterprise or Vendor from the consideration or any other source, and the awarding or funding of Prize Pools;
- (ix) If requested by the Gaming Commission, a copy of any of the Vendor's sales or promotional literature for the Class II Gaming System; and
- (x) Copies of any court or administrative decisions or other materials, supplied by the Vendor, which address the classification of the proposed Class II Gaming System, if any.



# SANTA YSABEL TRIBAL GAMING COMMISSION

---

(c) Submission of Additional Information

Upon request of the Gaming Commission, the Gaming Enterprise Manager or the Vendor may be required to provide any further information or clarification as the Gaming Commission deems necessary to make a Classification Determination.

(d) Report of Laboratory Tests

The Class II Gaming System must be submitted to an independent testing laboratory, which shall provide a report to the Gaming Commission to validate that the Class II Gaming System complies in all respects with the specifications and standards set forth in the application and meets the requirements of 25 CFR Part 547.

(e) Modification of Class II Gaming Systems

(1) Either the Gaming Enterprise Manager (including his/her duly authorized representative) or a Vendor shall submit to the Gaming Commission a request for a review of a Class II Gaming System that is to be modified by providing a detailed description of the modification and how the modification affects the Class II Gaming System. If the Gaming Commission determines that the modification may represent a material change impacting the classification of the Class II Gaming System, either the Gaming Enterprise Manager or a Vendor must submit a new application pursuant to subsection (b) of this Section.

(2) An application for a new Classification Determination shall not be required if the modification does not result in a material change to the classification of the Class II Gaming System. However, even if the Gaming Commission determines that the proposed modification will not impact the classification of the Class II Gaming System, the modification is still subject to the review process set forth in 25 CFR Part 547.

(3) The Gaming Commission shall maintain a list of modifications determined by the Gaming Commission to be non-material, which shall be updated periodically by the Gaming Commission as technology advances.

# SANTA YSABEL TRIBAL GAMING COMMISSION

---

## 5.0 Classification Criteria

- (a) Factors to be considered by the Gaming Commission in making a Classification Determination include:
- (1) Whether the game played using the Class II Gaming System is Bingo consistent with the standards of this Regulation; and
  - (2) Whether the electronic equipment utilized in connection with the game:
    - (i) is an Electronic, Computer or other Technologic Aid, which is permitted with Class II Gaming activities; or
    - (ii) causes the game to be deemed an Electronic or Electromechanical Facsimile of a game of chance.
- (b) Electronic, Computer or other Technologic Aid:
- (1) Is defined as electronic, computer, or other technologic equipment used in connection with a game of Bingo that:
    - (i) assists Account Holders or the playing of a game;
    - (ii) is not an Electronic or Electromechanical Facsimile; and
    - (iii) is operated in accordance with applicable federal communications law.
  - (2) Includes, but is not limited to, electronic, computer, or other technologic equipment used in connection with a Bingo game that:
    - (i) broadens participation in the game;
    - (ii) facilitates communication between and among gaming sites or Account Holders, their proxy agents and the Gaming Enterprise; or
    - (iii) requires Account Holders to play a game with or against other Account Holders rather than with or against a machine.

# SANTA YSABEL TRIBAL GAMING COMMISSION

---

- (3) Examples include, but are not limited to, auto-daub readers or other card cover assist features, proxy play software programs, telephones, cables, televisions, screens, satellites, bingo blowers, electronic player stations and electronic cards.
- (c) An Electronic or Electromechanical Facsimile is a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game, except when, for a Class II game such as Bingo, the electronic or electromechanical format broadens participation by allowing multiple players to play with or against each other rather than with or against a machine.
- (d) Determination that the Class II Gaming System is a Technologic Aid to the play of Bingo
- (1) A game played using the Class II Gaming System will be determined to be Bingo if the game is played consistent with the standards for Bingo required by this Regulation, and the fundamental aspects or characteristics of the game are preserved, unaltered by the game's electronic format.
- (2) The Gaming Commission has determined that Bingo is at its core essentially a peer-to-peer number and card pattern matching game, and that the following are the fundamental aspects or characteristics of Bingo to be played consistent with the standards required by this Regulation:
- (i) The game is played for prizes, including monetary prizes:
- (a) with cards bearing numbers;
- (b) in which card holders match (i.e., cover) the numbers contained on their cards when objects with similar numbers are drawn or electronically determined; and
- (c) the game is won by the first person holding a card containing a match of the previously designated game-ending pattern;

# SANTA YSABEL TRIBAL GAMING COMMISSION

---

- (ii) The Class II Gaming System mechanism for drawing or electronically determining the objects to be used for matching pre-designated patterns on a card must meet applicable standards for ensuring randomness as set forth in the NIGC Technical Standards or as established by the Gaming Commission;
  - (iii) Actual prize values must be defined before a prize can be awarded, but need not be defined before the start of a game; and
  - (iv) A game must require peer-to-peer competition between at least two (2) participants; however, those participants do not need to be physically located at the same location if the game is played using a Class II Gaming System.
- (3) The Gaming Commission has determined that the following aspects or characteristics are consistent with, but not required for Bingo to be played consistent with the standards required by this Regulation:
- (i) The numbers to be drawn or electronically determined in a game is not fixed; it may be varied from game to game, in accordance with the Rules of Play. The “numbers” to be drawn or electronically determined in a game may be displayed as any type of symbol, without limitation, as numbers, letters, icons, any other graphic or other enhancement, or any combination thereof.
  - (ii) A game may include any number of cards. The card may be in physical or electronic/digital form, and may be multi-dimensional.
  - (iii) Each digital card used in a Class II Gaming System may consist of a traditional 5X5 “bingo” matrix with numbers for each card. The five columns of the digital card face are to be labeled “B” “I” “N” “G” and “O” from left to right. The center space on the digital card may be marked “Free Space” and considered automatically filled when contained in a pattern. The range of numbers may be restricted by column, with the “B” column containing numbers between one and fifteen inclusive, the “I” column containing sixteen through

# SANTA YSABEL TRIBAL GAMING COMMISSION

---

thirty, the “N” column containing thirty-one through forty-five, the “G” column containing forty-six through sixty, and the “O” column containing sixty-one through seventy-five. All digital cards to be used for a common game of bingo are to be unique (i.e., each card will contain a uniquely identifying serial number).

- (iv) Prize winning patterns can be of any configuration of matched numbers on a card. Interim and consolation prizes also can be awarded for the absence of matched numbers and based on other aspects of the game.
- (v) When playing Bingo, a fixed number of numbers may be drawn or electronically determined before cards are purchased and distributed for the game; provided that once cards are purchased by a least two (2) participants for a common game and the game commences, the drawn numbers must be released in the same sequence and delivered to all participants at the same time. Subsequent draws of numbers in a game may take place to assure that a game-ending pattern prize is awarded.
- (vi) Multiple prizes may be specified in a game based on, but not necessarily limited to, different patterns or the number of drawn numbers required to achieve a specified pattern. There may be multiple winners, on multiple cards. Prize levels can also vary for the same pattern as a function of the consideration paid for the card and/or how far the number draw row has progressed for the game. Prizes may include interim or consolation prizes. Progressive Prizes may also be awarded based on specified criteria reflecting sequence or specific characteristics of the numbers matched on a card.
- (vii) A game participant may purchase and hold more than one card in a game of Bingo.
- (viii) Account Holders may engage agents located on the Indian lands of the Nation to assist with the play of the Bingo game on behalf of the Account Holders (also known as “proxy play”).
- (ix) Account Holders may engage their proxy play agents using a Class II Gaming System containing a component that facilitates access through a secure

# SANTA YSABEL TRIBAL GAMING COMMISSION

---

virtual private network connection between Account Holders and their proxy agents located on the Nation's Indian lands which assists with proxy play on behalf of the Account Holder.

- (x) Use of technologic aids such as auto-daub features or reader/dauber devices are expressly permitted to assist the proxy agent playing Class II bingo games on the Account Holder's behalf in determining whether a held card has a pre-designated pattern matching the numbers drawn for the Class II bingo game.
  - (xi) There is no requirement for the proxy agent playing the Bingo game on the Account Holder's behalf to manually declare a "bingo" upon matching the numbers drawn with the pre-designated game-ending pattern on a card in order to collect the game-ending prize award;
- (4) In determining whether a game played using a Class II Gaming System is Bingo, the Gaming Commission has determined that it is not necessary to impose any requirements that are intended to:
- (i) Limit the use of Technologic Aids in connection with assisting with the play of Bingo games, displaying cards, assisting with automatically and electronically identifying numbers drawn and determining whether any card contains those numbers as they are drawn, or assisting with identifying game-ending and other prize winning patterns and claiming prizes associated with those patterns;
  - (ii) Limit the speed of play, card configuration, or the total number of number draws in a game;
  - (iii) Limit how or when cards are distributed for a game;
  - (iv) Limit the sequence of a numbers draw for a game;
  - (v) Limit how prizes are to be claimed;
  - (vi) Limit the type of entertaining display contained in a Class II Gaming System;
  - (vii) Limit the maximum number of participants in any game of Bingo; or
  - (viii) Limit the use of proxy play agents to assist with proxy play of Bingo on behalf of Account Holders.

# SANTA YSABEL TRIBAL GAMING COMMISSION

---

## **6.0 Classification Decisions**

### (a) Issuance of a Written Classification Determination

When the Gaming Commission receives an application pursuant to this Regulation and determines that such Class II Gaming System meets the criteria described in Section 6(d) above, such determination shall be memorialized in a written Classification Determination and copies of such Classification Determination will be provided to the executive branch, the Legislature and the Gaming Enterprise Manager. Such determination is final and binding as a matter of tribal law.

### (b) Issuance of an Unfavorable Classification Determination

If the Gaming Commission determines that the Class II Gaming System does not meet one or more of the criteria described in Section 6(d) above, such determination shall be memorialized in a written decision specifically addressing the reasons for its determination and copies of such decision shall be provided to the Executive Branch, the Legislature and the Gaming Enterprise Manager. The decision of the Gaming Commission will be final and binding as matter of tribal law. The Gaming Commission may, however, in its discretion allow a request for reconsideration upon a showing of new factual evidence or legal support.

## **7.0 Installation of Class II Gaming Systems**

### (a) Confirmation of Specifications

The Gaming Commission shall require the Vendor of any Class II Gaming System intended for use in a Gaming Enterprise to certify, in writing, that prior to delivery to the Gaming Enterprise, the Class II Gaming System:

- (1) Conforms precisely to the exact specifications of the system prototype tested and approved by the test laboratory.

# SANTA YSABEL TRIBAL GAMING COMMISSION

---

- (2) Can be tested using one or more unique signatures, checksum values or similar technology for the operating programs used with the Electronic Computer, or other Technologic Aid.
- (3) Operates and plays in accordance with the 25 CFR Part 547 technical standards, this Regulation and all other applicable Gaming Commission regulations.

(b) Integrity of Seals

Upon delivery of a Class II Gaming System to the Gaming Enterprise, no one will break the seal of any delivery container, nor will any system be removed from the shipping container without the physical presence and authorization of a Gaming Commission official.

(c) Modifications

The Gaming Enterprise Manager shall develop policies and procedures to be approved by the Gaming Commission for installing, accessing, maintaining, repairing, and configuring the Class II Gaming System components, in the same manner as set forth in Gaming Commission regulations.

(d) Delivery of Class II Gaming Systems

At least fourteen (14) calendar days prior to shipping and delivery of a Class II Gaming System, each Vendor shall report in writing to the Gaming Commission the following information for the Class II Gaming System:

- (1) the means by which the Class II Gaming System components will be transported into the Nation's Indian lands, and the name and street address of any common carrier or other person transporting the Class II Gaming System components.
- (2) The date of shipping and anticipated delivery date of the Class II Gaming System components.

(e) Notice of New or Upgraded Software



# SANTA YSABEL TRIBAL GAMING COMMISSION

---

The Gaming Commission shall be notified by the Gaming Enterprise Manager, or his/her designated representative, within ten (10) calendar days of the date of purchase or receipt of any new or upgraded software used in connection with the Class II Gaming System that consists of operational program(s) governing the play of the Bingo game, display of results, and/or awarding of prizes for the Bingo game.

## **8.0 Labelling of Approved Class II Gaming Systems**

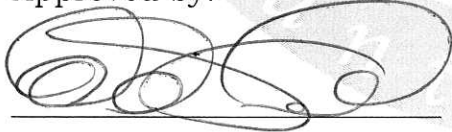
### (a) Serial Numbers

Once a Class II Gaming System has been determined to be a Technologic Aid to Class II Gaming, the Gaming Enterprise Manager will provide a serial number and description of Class II Gaming System components to the Gaming Commission in manner to be established by the Gaming Commission.

### (b) Requirement for Seals or Labels

The Gaming Commission shall affix a seal or a label on each of the internal components of each Class II Gaming System component as to be determined by the Gaming Commission to indicate proper determination. The seal or other label will show the version number(s) or other unique identifier(s), as documented by the testing laboratory. The seal or other label will be promptly removed from each Class II Gaming System component as to be determined by the Gaming Commission when the version number(s) or other unique identifier(s) of the software operated thereon are changed and a new seal or other label is affixed showing the version(s) of the software in use; provided the new version(s) meet the standards established in this Regulation.

Approved by:



July 1, 2014

Dave Vialpando, Chairman

Date

Rev: 9-4-2014

Rev. 10-21-2014

# SANTA YSABEL TRIBAL GAMING COMMISSION

---

## CLASSIFICATION DETERMINATION

---

**Re: Bingo games to be offered for play by Santa Ysabel Interactive using its licensed, proprietary Virtual Private Network Assisted Play System (“VPNAPS”)**

---

Pursuant to the authority and duties granted to the Santa Ysabel Tribal Gaming Commission (“Gaming Commission”) by the Tribal Gaming Ordinance (“Tribal Gaming Ordinance”) of the Iipay Nation of Santa Ysabel (“Tribe”), as amended and approved by the Chairman of the National Indian Gaming Commission (“NIGC”) pursuant to the Indian Gaming Regulatory Act of 1988 (“IGRA”), P.L. 100-497, 25 U.S.C. §2701, *et seq.*, the Gaming Commission makes the following Classification Determination in connection with the above-referenced gaming system.

### **I. Purpose of Review and Determination**

The Gaming Commission understands that the Tribe (d/b/a Santa Ysabel Interactive) intends to offer Class II bingo games (such games to be referred to herein as the “Offered Games”) on the Tribe’s sovereign Indian lands using a Class II gaming system containing several proprietary technologic aids, including a component that facilitates access through a secure virtual private network connection between properly registered account holders with Desert Rose Bingo (“Account Holders”) and their proxy agents located on Iipay Nation of Santa Ysabel Indian lands which assists proxy play on behalf of the Account Holders (such gaming system to be referred to herein as the “VPNAPS Class II Gaming System”).

The purpose of the Gaming Commission’s review in this matter is to determine whether the VPNAPS Class II Gaming System may be used as a technologic aid to the play of a Class II game of bingo consistent with tribal gaming regulations and IGRA.

### **II. Authority**

Pursuant to Section XI (A) of the Tribal Gaming Ordinance, the Gaming Commission has the power and responsibility to enforce the Tribal Gaming Ordinance, IGRA and regulations of the Gaming Commission “over all Gaming within the jurisdiction of the Tribe.”

### III. Applicable Legal Standards

IGRA expressly permits Class II bingo-based games to utilize “electronic, computer or other technologic aids” as part of the players’ participation in the game. See 25 U.S.C. §2703(7)(A); 25 C.F.R. §502.3; 25 C.F.R. §502.7; also, U.S. v. 103 Electronic Gaming Devices, 223 F.3d 1091 (9th Cir. 2000) (“Under IGRA, however, bingo and electronic aids thereto are generally permissible in Indian country”). Such “technologic aids” are distinguished from “slot machines” (i.e. electronic or electromechanical facsimiles of any game of chance) that constitute “class III gaming” under IGRA.

As explained by the National Indian Gaming Commission (“NIGC”):

IGRA permits the play of bingo, lotto, and other games similar to bingo in an electronic or electromechanical format, even a *wholly* electronic format, ***provided that multiple players are playing with or against each other.***

67 Fed. Reg. 41166, 41171 (June 17, 2002) (second emphasis added).

The NIGC has promulgated specific regulations addressing standards for “Class II gaming systems.” See 25 CFR Part 547, 77 Fed. Reg. 58473 (September 21, 2012). These regulations are designed to ensure the integrity of “electronic Class II games and [their technologic] aids.” *Id.* at 58473. The regulations specifically contemplate a “Class II gaming system” comprised of several components, including “technologic aids”, that function together to aid the play of Class II server-based games. *Id.* at 58479 (Part 547.2 definition of “Class II gaming system”).

Under Section II (B) of the Tribal Gaming Ordinance, “Class II Gaming” means those gaming activities defined as Class II gaming in IGRA.

As the primary regulatory authority over Class II Gaming conducted within the jurisdiction of the Tribe, the Gaming Commission has adopted a Regulation re: Establishing Procedures and Requirements for Approval of Class II Gaming Systems and Equipment (approved in accordance with the Tribal Gaming Ordinance on July 1, 2014 by Gaming Commission Regulation SYGC 14-I009, as amended (hereinafter referred to as “Regulation SYGC 14-I009”), to establish a formal process and standards for determining whether a “gaming system” may be used as a technologic aid to the play of a Class II game of bingo consistent with the standards of the regulation.

Under this Regulation, the classification criteria factors considered by the Gaming Commission are whether: (1) the underlying game is a Class II game of bingo; and (2) the equipment used in connection with the game is “an Electronic, Computer or other Technologic Aid.” See Regulation SYGC 14-I009 at Section 6(a). Regulation SYGC 14-I009 defines “Electronic, Computer or other Technologic Aid” essentially the same as 25 CFR 502.7.

The Gaming Commission has declared that the game of “bingo” requires certain attributes, but has declared that “proxy play” is permitted and there is no limitation on the use of agents to perform game play functions on behalf of Account Holders.

#### IV. Analysis

Our review of the documentation and materials submitted by Santa Ysabel Interactive for a Classification Determination for the VPNAPS Class II Gaming System leads us to conclude that: (1) the Offered Games to be played using the VPNAPS Class II Gaming System meet the statutory criteria for a Class II bingo game consistent with the standards of Regulation SYGC 14-I009 and therefore should be deemed Class II games pursuant to the standards established under IGRA and the Tribal Gaming Ordinance, and (2) the VPNAPS Class II Gaming System constitutes a “technologic aid” to Class II games pursuant to the standards established by Regulation SYGC 14-I009 in accord with IGRA, NIGC regulations and the Tribal Gaming Ordinance.

In reaching the foregoing conclusion, the Gaming Commission agrees with the legal analysis and reasoning contained in the legal opinions submitted Santa Ysabel Interactive as part of its supporting documentation for the Classification Determination, and hereby expressly adopts and incorporates the same by reference herein.

In sum, the Gaming Commission finds that:

- (1) The Offered Games satisfy IGRA’s three statutory criteria for bingo and have the attributes for the game of “bingo” required under Regulation SYGC 14-I009; and the Gaming Commission does not consider any Offered Games to be a “house banking game” under IGRA;
- (2) The VPNAPS Class II Gaming System components are technologic aids to Class II gaming consistent with tribal gaming regulations and are permitted under IGRA because the components of the gaming system, neither individually nor collectively, incorporate all the fundamental characteristics of a Class III game. Rather the gaming system components all work together in a method that broadens participation levels by allowing many to play against one another. None of the gaming system components allow for an individual to play the Class II game against the “house” (i.e. gaming unit) alone, rather than compete with others. The gaming system used with any Offered Games is functionally the equivalent of an “Electronic Player Station”. This is evidenced by the fact that the game is always a bingo-based game played across a linked network of participants – who are competing against each other with different bingo cards against a common ball draw. At no time does the VPNAPS Class II Gaming System allow a single participant to play alone against the ball draw for the game;
- (3) The proxy play component of the VPNAPS Class II Gaming System used to conduct the Offered Games is permitted under IGRA, the Tribal Gaming Ordinance and Regulation SYGC 14-I009, and means the gaming is conducted on Indian lands; and
- (4) There is no requirement under tribal gaming regulations or IGRA for Account Holders to be physically present on Indian lands at the time they communicate via a secure VPN connection directly with a proxy agent located on Indian lands regarding

their service relationship.

**V. Final Classification Determination**

Based upon the foregoing, the Gaming Commission hereby issues its formal Classification Determination in connection with the above-referenced gaming system:

- (1) The Offered Games to be played using the VPNAPS Class II Gaming System are Class II games of bingo pursuant to the standards established under IGRA, the Tribal Gaming Ordinance and Regulations SYGC 14-I009;
- (2) The VPNAPS Class II Gaming System constitutes a “technologic aid” to Class II games pursuant to the standards established under IGRA, NIGC regulations, the Tribal Gaming Ordinance, and Regulations SYGC 14-I009; and
- (3) Conducting gaming activities using the VPNAPS Class II Gaming System **DOES NOT** violate the Tribal Gaming Ordinance, and Regulations SYGC 14-I009 or IGRA.

The foregoing Determination was duly adopted by the Gaming Commission pursuant to Section 6(a) of Regulation SYGC 14-1009, in accordance with requirements and standards contained in Regulation SYGC 14-1009.

By: \_\_\_\_\_

Chairman  
Santa Ysabel Gaming Commission

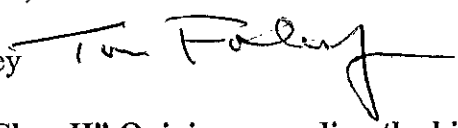
OCTOBER 24, 2014  
Date

**FOLEY LAW, LLC**  
**MEMORANDUM**

Attorney/Client Privileged & Confidential

**TO:** Joseph Valandra  
Managing Member  
Great Luck, LLC

**DATE:** June 24, 2014 Updated

**FROM:** Tom Foley 

**SUBJECT:** IGRA "Class II" Opinion regarding the bingo games to be offered for play by Santa Ysabel Interactive using its licensed, proprietary Virtual Private Network Assisted Play System ("VPNAPS")

---

You have requested that I provide Great Luck, LLC ("Great Luck") with a "Class II" classification opinion regarding the bingo games to be offered for play (referred to herein as the "Offered Games") by Santa Ysabel Interactive, a tribal gaming operation owned and operated by the Iipay Nation of Santa Ysabel ("Tribe"), using its licensed, proprietary Virtual Private Network Assisted Play System ("VPNAPS"). Specifically, you have requested a determination whether the Offered Games constitute Class II games consistent with the requirements of the Indian Gaming Regulatory Act, 25 U.S.C. §§2701 *et seq.* ("IGRA"), its implementing regulations promulgated by the National Indian gaming Commission ("NIGC") and the Tribal Gaming Ordinance adopted by the Tribe, as amended and approved pursuant to IGRA ("Santa Ysabel Gaming Ordinance").

**I. Summary Opinion**

Based upon my professional education and experience, and my review of the written description of the Offered Games provided to me as described herein, it is my opinion that the Offered Games to be played using the VPNAPS meet the statutory criteria for a Class II bingo game pursuant to IGRA and therefore should be deemed Class II games pursuant to the standards established under IGRA and the Santa Ysabel Gaming Ordinance. Accordingly, while the Offered Games will be subject to regulation by the Tribe and oversight by the NIGC, the Offered Games would not require a Tribal-State Compact in order to be put into play by Santa Ysabel Interactive using the VPNAPS.

Although the legal conclusions to which I have opined herein are, in my view, consistent with applicable law, and the best-reasoned and most logically-applied rules of law, there can be no guarantee as to any conclusions to be made, and possible actions taken in furtherance of those conclusions, by the NIGC, the U.S. Department of Justice ("DOJ"), any courts having

jurisdiction over the play of Class II games, or other governmental agencies who may claim regulatory authority over Class II games.

## **II. Legal Opinion Accord Statement**

This opinion memorandum is being rendered solely to Great Luck at your request and may only be relied upon by Great Luck in connection with the contemplated bingo games described herein to be offered for play by Santa Ysabel Interactive using its VPNAPS. This opinion memorandum is governed by and shall be interpreted in accordance with the Legal Opinion Accord of the ABA Section of Business Law (1991). As a consequence, it is subject to a number of qualifications, exceptions, definitions, limitations on coverage and other limitations, as more particularly described in the Accord, and this opinion memorandum should be read in conjunction therewith.

This opinion memorandum is limited to questions of law and legal conclusions. For purposes of this opinion memorandum, I am assuming that the facts as described below in Section III are true and correct. In this opinion memorandum I make certain reasonable conclusions as to possible regulatory agency or judicial outcomes. While I believe this opinion memorandum contains informed judgments as to likely future outcomes, there can be no guarantee as to any conclusions to be made, or possible actions taken in furtherance of those conclusions, by any regulatory agencies or courts having jurisdiction over the matters discussed herein.

## **III. Description of the Offered Games**

The game description for the Offered Games is described in a document entitled "Description of Bingo Games to be Conducted by Santa Ysabel Interactive Using Virtual Private Network Assisted Play System ("VPNAPS")" dated June 24, 2014 ("Game Description") which is attached hereto as Exhibit 1 and incorporate by reference herein. The Game Description provided to me regarding the Offered games characteristics and method-of-play is foundational to my opinion. My opinion does not apply if the Offered Games are played in a manner materially different from that described in the Game Description.

In summary, I understand that the Offered Games will be played as follows.

The Offered Games to be conducted using the VPNAPS will use the traditional bingo game format and be played electronically on a networked system of components, an advanced technology platform version of multi-site bingo systems in operation today in Indian gaming facilities (i.e. players compete against one another either within one Indian gaming facility and/or against all players in linked Indian gaming facilities). The collection of "technologic aids" contained within the VPNAPS will allow the gaming system to function as a series of linked "electronic" Class II gaming devices at the Santa Ysabel Interactive facility located on the Tribe's Indian lands without changing the essential game characteristics or statutory criteria

required under IGRA for the play of a Class II bingo game. In this respect, while there will be a number of game graphical display themes, each game theme will utilize a common bingo pattern set. The winning of prizes is determined under established rules by matching designated numbers on a digital bingo card with corresponding numbers randomly drawn in a predetermined pattern.

Game play is achieved via "proxy play." In this respect, real time live bingo game action is played only by the "proxy" of an individual who has used a web-browser enabled device to access the Santa Ysabel Interactive gaming facility and its servers (each located on the Tribe's Indian lands) via the VPNAPS; no live bingo game action is ever performed by the user of the web-browser enabled device. Once an individual is approved as an "Account Holder" (i.e. an individual at least twenty-one (21) years of age who has used the VPNAPS to establish an account to become a properly registered account holder with Santa Ysabel Interactive), system components of the VPNAPS allow the Account Holder to access a "VPN gateway" connecting them to a virtual "proxy engagement station" – to hire a proxy to conduct the bingo game play on their behalf. On behalf of an Account Holder, their proxy participant commences play of the game on the VPNAPS by requesting from the game action server component of the VPNAPS the purchase of one or more digital bingo cards in a common game of bingo with a set denomination (i.e. penny, \$.05, \$.10, \$.25, \$.50 or \$1.00 game). At all times the games played using the VPNAPS require peer-to-peer competition between at least five (5) proxy participants in the game of bingo which is accomplished through a linked network contained within the VPNAPS. There is a common bingo ball draw for all proxy participants included in each bingo game. Components of the VPNAPS assist the Account Holder's proxy in playing the game of bingo by providing a visual representation of the digital bingo card, displaying the balls drawn, daubing or covering the corresponding numbers on the digital bingo card when matched with ball numbers as they are drawn, and presenting any prizes won through the play of the bingo game for later display to the Account Holder. Game play results are revealed on a time-delayed basis to the Account Holder, and an Account Holder can select the theme for watching the replay display of the game played by their proxy on their behalf.

A proxy participant's digital bingo card will consist of a traditional 5X5 "bingo" matrix with numbers for each card. The five columns of the digital bingo card face are labeled "B" "I" "N" "G" and "O" from left to right. The center space on the card is marked "Free Space" and is considered automatically filled when contained in a pattern. The range of numbers is restricted by column, with the "B" column containing numbers between one and fifteen inclusive, the "I" column containing sixteen through thirty, the "N" column containing thirty-one through forty-five, the "G" column containing forty-six through sixty, and the "O" column containing sixty-one through seventy-five. All digital bingo cards used by proxy participants for a common game of bingo are unique (i.e. each card contains a uniquely identifying serial number).

Each bingo game uses a pool of 75 bingo balls numbered from 1 to 75 inclusive which are randomly selected without replacement. Once five or more proxy participants have purchased cards for a common game within a set period of time, the bingo game will commence. In the event there are not five or more proxy participants initiating game play for a common game



within the maximum allotted period, that bingo game will not be permitted to commence. Failure to attain five or more proxy participants within the allotted period will result in the common game being cancelled and the value of the purchased cards being refunded to the Account Holder's account. Digital bingo cards are first randomly distributed to each proxy participant as requested and then ball numbers are randomly drawn using an electronic random number generator. As they are drawn, the ball numbers are released one at a time in rapid succession in the same sequence and delivered to all proxy participants at the same time (although during the replay display of the game played an Account Holder can set the speed of the actual ball draw to their individual time preference to watch the results of the game unfold). Assisted by components of the VPNAPS, an Account Holder's proxy participant immediately daubs or covers the corresponding numbers on the digital bingo card when the ball numbers are drawn. The ball draw release continues until a "bingo" has been made (i.e. game-ending pattern is achieved) and the game ends. If a card held by the proxy participant meets the standards for an iBonus prize (i.e. achieves the game-ending pattern within a pre-determined limited set of ball numbers drawn), the proxy participant's card will win both the iBonus prize and game-ending prize. Each bingo game will be played to cover a single prize pattern randomly selected prior to commencement of the game from a set of seven (7) designated patterns that each require a minimum of eight (8) numbers to achieve "bingo" (i.e. an "X" pattern, "7" pattern, "T" pattern, etc.).

In each bingo game, the VPNAPS will have an "iBonus" that is ten thousand times the card cost. For each pattern that is being called, game participants have the opportunity to win the iBonus if they achieve "bingo" for the designated pattern in the prescribed number of balls called. For example, in a twenty-five cent game, the proxy participant could win twenty-five hundred dollars for an X pattern bingo (which requires eight (8) numbers with a free space to cover the pattern in order to achieve "bingo") achieved within the first twelve (12) or less numbers drawn; but in a ten-cent game, the proxy participant could only win one thousand dollars for achieving the same X pattern bingo within the first twelve (12) or less numbers drawn, and so on for each game of different denominations. If the iBonus is not won before one million cards are sold cumulatively for that game denomination, then the iBonus activates a "floodgate" feature that permits the iBonus to be won without regard to the limited set of numbers drawn requirement – in other words, after one million cards are sold cumulatively for that specific game denomination and no iBonus has yet been won for that game denomination, the proxy participant whose card achieves the next game-ending prize pattern for that denomination, even if it takes more than twelve (12) numbers to achieve the pattern, will automatically win both the iBonus prize and game-ending prize for that game denomination.

All bingo games will pay out prizes in a pari-mutual format. For example, for every penny paid in by proxy participants on behalf of their Account Holders for a common penny bingo game, the prize amount for that game will be a certain percentage of the pay-in amount of game cards purchased for that common game. In addition, upon the initial opening of Santa Ysabel Interactive, four percent (4%) of the pay-in amount for every common bingo game will be retained for prize pay-out for a "Half Hour Bonus Game," one percent (1%) will be retained

for prize pay-out for an in game bonus ("iBonus"), and a certain percentage will be retained by Santa Ysabel Interactive.

Santa Ysabel Interactive will offer a number of bonus game features as part of the games to be conducted using the VPNAPS. For instance, for every five cards purchased in a single game per denomination by a proxy participant on behalf of the Account Holder during the previous half hour, the proxy participant will receive one free bingo card for that denomination's "Half Hour Bonus Game." Collection of the amount to be used for each denomination's Half Hour Bonus Game prize will cease being collected before the game begins to allow proxy participants to submit requests for game play on behalf of their Account Holders. The proxy participant must have played in the previous half hour to be eligible to purchase extra game cards for that denomination's Half Hour Bonus Game.

Account Holders, through their proxy participants, may receive reminders that they have free cards coming up in the denomination's bonus game and are eligible to purchase additional cards. This allows proxy participants to buy cards on behalf of their Account Holders in games not yet played of the same denomination, and to receive more free cards along with those they can purchase to participate in that denomination's Half Hour Bonus Game, subject to the card purchase request being accepted prior to commencement of the Half Hour Bonus Game.

For the "Monthly Bonus Game," which is a bonus game play feature that may be added following the initial opening of Santa Ysabel Interactive, there will be no free cards in play, but the proxy participant must have played on behalf of the Account Holder during the previous month with a minimum number of cards in play. Proxy participants will be able to purchase cards on behalf of their Account Holder for twenty-five cents per card for the Monthly Bonus Game as soon as they are qualified to be eligible, until one minute prior to the start of the Monthly Bonus Game. This game is played for a bonus prize consisting of all of the monthly bonus money collected plus seventy (70%)(i.e. 17.50 cents) of the value of any cards purchased to play the bonus game (with thirty (30%)(i.e. 7.50 cents) of the bonus game card purchase value retained by Santa Ysabel Interactive), and will use a "coverall" for the prize winning pattern.

For the "Quarterly Bonus Game," which is a bonus game play feature that may be added following the initial opening of Santa Ysabel Interactive, there will be no free cards to play, however, if proxy participants have played on behalf of their Account Holder during the previous quarter with a minimum of five cards in a single game, they will be eligible to participate. Proxy participants will be able to purchase cards on behalf of their Account Holder for twenty-five cents per card for the Quarterly Bonus Game as soon they are qualified to be eligible, until 5 minutes prior to the start of the Quarterly Bonus Game. This game is played for a bonus prize consisting of all of the quarterly bonus money collected plus seventy (70%)(i.e. 17.50 cents) of the value of any cards purchased to play the bonus game (with thirty (30%)(i.e. 7.50 cents) of the bonus game card purchase value retained by Santa Ysabel Interactive), and will use a "coverall" for the prize winning pattern.

In sum, the VPNAPS has been specifically developed, designed and engineered to be (1) in strict compliance with the minimum technical requirements specified in 25 CFR Part 547, and (2) to constitute an electronic linked Class II bingo gaming system that serves as a "technologic

aid” to server-based bingo games classified as “class II gaming” under IGRA. The games to be played using the VPNAPS are specifically designed to meet the statutory criteria for a Class II bingo game pursuant to IGRA. To ensure proper performance of the VPNAPS, all hardware, software, and electronic components of the gaming system are specifically tested and approved by an independent compliance lab competent to conduct such testing and approval.

### III. Applicable Law Under IGRA

#### 1. Statutory Provisions Applicable to Class II Bingo Games.

IGRA governs gaming on Indian lands. IGRA defines “class II gaming” in relevant part to include:

- (i) the game of chance commonly known as bingo (*whether or not electronic, computer, or other technologic aids are used in connection therewith*) –
  - (I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations;
  - (II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and
  - (III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo[.]

See 25 U.S.C. §2703(7)(A) (emphasis added).<sup>1</sup>

#### 2. Regulations Applicable to Class II Bingo Games.

The NIGC’s regulations define Class II gaming very similar to the statutory definition under IGRA:

(a) Bingo or lotto (*whether or not electronic, computer, or other technologic aids are used*) when players:

- (1) Play for prizes with cards bearing numbers or other designations;
- (2) Cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and

<sup>1</sup> Games that are not within the definition of Class I or Class II gaming are Class III games, see 25 U.S.C. §2703(8), including:

- (i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or
- (ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

See 25 U.S.C. §2703(7)(B).

(3) Win the game by being the first person to cover a designated pattern on such cards.

(b) If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo[.]

See 25 C.F.R. §502.3 (emphasis added).

The NIGC regulations also define “other games similar to bingo” for purposes of Class II gaming.

Other games similar to bingo means any game played in the same location as bingo (as defined in 25 USC 2703(7)(A)(i)) constituting a variant on the game of bingo, *provided that such game is not house banked and permits players to compete against each other for a common prize or prizes.*

See 25 C.F.R. §502.9 (emphasis added).

3. Federal Case Law Applicable to Class II Games Played Using Class II Gaming Systems.

Under IGRA, Class II bingo-based games conducted by tribes are not limited to just “traditional” church-hall paper and dauber bingo games. Rather, IGRA expressly permits Class II bingo-based games to utilize “electronic, computer or other technologic aids” as part of the players’ participation in the game. See 25 U.S.C. §2703(7)(A); also, U.S. v. 103 Electronic Gaming Devices, 223 F.3d 1091, 1093 (9th Cir. 2000) (“Under IGRA, however, bingo and electronic aids thereto are generally permissible in Indian country”); U.S. v. 162 MegaMania Gambling Devices, 231 F.3d 713 (10th Cir. 2000)(collectively referred to herein as the “MegaMania Bingo Cases”).<sup>2</sup> Such “technologic aids” are distinguished from “slot machines” (i.e. electronic or electromechanical facsimile of any game of chance) that constitute “class III gaming” under IGRA.

In connection with “bingo” based electronic games, each of the Ninth and Tenth Circuits of the U. S. Court of Appeals’ decisions in the MegaMania Bingo Cases are instructive as to the nature of technologic aids for Class II gaming under IGRA. Each decision concerned a game called “MegaMania”, an electronic bingo game which links players in different locations who compete against one another in a game of bingo. Both of these Circuit Courts found MegaMania to be a Class II game played with a “technologic aid”, and are the only reported appellate court level decisions to date to have undertaken a classification analysis for “bingo” based electronic games. At the same time the MegaMania Bingo Cases were being decided in 2000, the D.C. Circuit also held that the “Lucky Tab II” electronic pull-tabs game was Class II gaming permitted under IGRA. See Diamond Game Enterprises, Inc. v. Reno, 231 F.3d 365 (D.C. Cir.

<sup>2</sup> Each of the MegaMania Bingo Cases is specifically analyzed in Exhibit 2 attached hereto for their implication to my opinion in connection with the Offered Games.

2000). In declaring that the electronic pull-tabs machine at issue was a Class II “technologic aid,” the court rejected the argument that IGRA limited technologic aids to only those devices which operate to broaden player participation in order to qualify as a Class II aid. *Id.* at 370-371.

In 2002 the NIGC revised its original regulations in connection with the definitions associated with Class II gaming and Class III gaming. These amendments were designed to conform the NIGC regulations to the foregoing modern court decisions that have interpreted what “electronic” gaming devices may properly be classified as Class II games. Many commentators and Indian gaming law practitioners believe these amendments helped clarify what constitutes permissible Class II gaming, and have the practical effect of expanding the field of Class II gaming. As explained by the NIGC:

IGRA permits the play of bingo, lotto, and other games similar to bingo in an electronic or electromechanical format, even a *wholly* electronic format, *provided that multiple players are playing with or against each other.*

67 Fed. Reg. 41166, 41171 (June 17, 2002)(second emphasis added).<sup>3</sup>

In the wake of the foregoing prevailing case law relating to Class II games with permitted “technologic aids”, the NIGC issued several letters advising that “linked bingo systems” (i.e. electronic server-based bingo systems) constitute technologic aids to Class II gaming as permitted under IGRA. *See e.g.* September 23, 2003 NIGC Advisory Letter re: Reel Time Bingo, pp. 8-9; September 26, 2003 NIGC Advisory Letter re: Mystery Bingo, pp. 18-19; April 4, 2005 NIGC Advisory Letter re: Nova Gaming Bingo System, pp. 13-14. Recently, given the evolution over the last decade of electronic server-based bingo systems permitted by IGRA, the NIGC promulgated specific regulations addressing standards for “Class II gaming systems.” *See* 25 CFR Part 547, 77 Fed. Reg. 58473 (September 21, 2012). These regulations are designed to ensure the integrity of “electronic Class II games and [their technologic] aids.” *Id.* at 58473. The regulations specifically contemplate a “class II gaming system” comprised of several components, including “technologic aids”, that function together to aid the play of Class II server-based games. *Id.* at 58479 (Part 547.2 definition of “Class II gaming system”).

More recently, the NIGC has issued other guidance relevant to determining the nature of technologic aids permitted with Class II gaming under IGRA. In June 2013 the NIGC announced its intention to apply a “reinterpretation” of a prior agency decision regarding the classification of server-based electronic bingo system games that can be played utilizing only one touch of a button (so-called “One Touch Bingo”). *See* 78 Fed. Reg. 37998 (June 25, 2013). In 2008 the NIGC had declared that an electronically linked bingo system which assists the player by

---

<sup>3</sup> Two federal court appellate decisions, involving electronic “pull-tab” devices, have applied the amended version of the NIGC’s regulations, and are consistent with the holdings in the MegaMania Bingo Cases; each finding that the electronic pull-tab devices constituted a permissible Class II game played with a technologic aid. *See United States v. Santee Sioux Tribe*, 324 F.3d 607, 613-15 (8<sup>th</sup> Cir. 2003); *Seneca Cayuga Tribe v. NIGC*, 327 F.3d 1019, 1025 (10<sup>th</sup> Cir. 2003).

“covering,” without further action by the player, digital bingo cards when numbers are electronically determined and displayed to the player could not be classified as a Class II game with technologic aids. In finding that such One Touch Bingo is more properly to be considered Class II gaming, the NIGC now states that permitting a device to assist the player to “cover” when the numbers are drawn is consistent with the second and third elements of IGRA’s three statutory requirements for a game of bingo. *Id.* at 37999. This is consistent with the district court’s holding in U.S. v. 103 Electronic Gambling Devices that “there is nothing in IGRA or its implementing regulations . . . that requires a player to independently locate each called number on each of the player’s cards and manually ‘cover’ each number independently and separately. The statute and the implementing regulations merely require that a player cover the numbers without specifying how they must be covered.” See U.S. v. 103 Electronic Gambling Devices, No. 98-1984, 1998 WL 827586 at \*6 (N.D. Cal. Nov. 23,1998).

In determining that One Touch Bingo systems do not change the “fundamental aspect of bingo” since in a linked electronic system a “player is still competing with other bingo players for a prize,” the NIGC gave special “*consideration to an interpretation of bingo that embraces rather than stifles technological advancements in gaming.*” 78 Fed. Reg. at 38000 (emphasis added). In doing so, the NIGC relied on the “flexible” policy toward technology for Class II gaming announced by Congress in enacting IGRA, and the “key distinction” that “technological aids are ‘readily distinguishable from the use of electronic facsimiles in which a *single* participant plays a game with or against a machine [i.e. “house-banked” games] rather than with or against other players.” *Id.*, quoting S. Rep. 100-446 (1988) at 3079 (emphasis added). In sum, even in linked electronic bingo systems with “auto-daub” features, the fundamental characteristics of a Class II bingo game are preserved, unaltered by the game’s electronic format.

#### 4. Class II Games Under the Santa Ysabel Gaming Ordinance.

Section XI, Paragraph A of the Santa Ysabel Gaming Ordinance defines “Class II Gaming” as meaning:

[S]uch gaming as defined in the Indian Gaming Regulatory Act, 25 U.S.C. § 2703(7)(“IGRA”) and by regulations lawfully promulgated by the National Indian Gaming Commission (“NIGC”) that are now or hereafter may be in effect . . .

#### IV. Legal Analysis

The NIGC has issued a number of advisory letters concerning numerous manners and methods of play for bingo style games submitted to its office seeking guidance as to the proper classification of the game under IGRA. Most often these advisory letters have focused on what “electronic” gaming devices may properly be classified as Class II games. These advisory letters provide a useful framework for a legal analysis in determining whether the Offered Games are Class II gaming consistent with the requirements of IGRA, NIGC regulations and the Santa Ysabel Gaming Ordinance. When issuing its game classification advisory letters the NIGC first

evaluates the elements of the game, and has stated that “if a game contains the fundamental characteristics of a class II game” and is played using devices or system components comprising technologic aids to the play of the game, then the game constitutes Class II gaming. See e. g. September 23, 2003 NIGC Advisory Letter re: Reel Time Bingo, p. 5.

The definition of bingo contained in IGRA consists of three specific criteria. The Offered Games meet each of these criteria and therefore constitute “Class II” gaming. The three specific criteria necessary to meet the definition of bingo contained in IGRA are: (1) cards bearing numbers, (2) holder of the card covers when objects are drawn, and (3) game won by first person covering previously designated pattern. See, November 14, 2000 NIGC Advisory Letter re National Indian Bingo, pp. 5-7; September 23, 2003 NIGC Advisory Letter re: Reel Time Bingo, pp. 5-9; September 26, 2003 NIGC Advisory Letter re: Mystery Bingo, pp. 11-18; October 18, 2004 NIGC Advisory Letter re Rocket FastPlay Bingo, pp. 11-16; December 18, 2004 NIGC Advisory Letter re Cadillac Jack “Triple Threat Bingo”, pp.11-13; April 4, 2005 NIGC Advisory Letter re: Nova Gaming Bingo System, pp. 9-13; September 3, 2009 NIGC Advisory Letter re: Fast Track Bingo, p. 3; September 3, 2009 NIGC Advisory Letter re: Quarterback Draw Football, pp. 6-11; also 25 U.S.C. § 2703(7)(A); 25 C.F.R. § 502.3. Likewise, the decisions in the MegaMania Bingo Cases are important in that both decisions rejected a number of assertions by the DOJ for a narrow reading of what constitutes a Class II game. A key contention of the DOJ specifically rejected by these circuit court decisions was that the courts must look beyond the statutory criteria for bingo to determine whether a game constitutes “bingo” under IGRA. See U.S. v. 103 Electronic Gambling Devices, 223 F.3d at 1096 (holding “IGRA’s three explicit criteria . . . constitute the *sole* legal requirements for the game to count as class II bingo)(emphasis in original).

In my view, as explained in more detail below, the Offered Games satisfy IGRA’s three statutory criteria for bingo. My conclusion that the Offered Games played using the VPNAPS satisfies the three statutory criteria for bingo is consistent with the description of the game play described herein and the fact that the MegaMania Bingo Cases were not persuaded to reject the games at issue as “non-bingo” under IGRA when, like the bingo game here, the game involved (a) the availability of progressive and bonus prizes in the game, and (b) certain elements of the game that may be viewed as non-traditional.

1. Game Played For Prizes With Cards Bearing Numbers.

The characteristics of the Offered Games played using the VPNAPS meet the first statutory criteria because it is a game played for prizes (finite predetermined amounts of money) on cards bearing numbers or other designations. The Offered Games meet this statutory criterion even though the cards used with the games are not paper cards nor exist in a tangible medium. The Offered Games are played using an electronic display of digital cards depicting typical “bingo cards” containing a 5X5 matrix/grid to be filled with numbers from 1 through 75. Nothing in IGRA requires that bingo be played with paper cards. To the contrary, NIGC regulations specifically identify electronic bingo cards as a type of technologic aid permitted

under IGRA, see 25 C.F.R. §502.7(c), and both the Ninth and Tenth Circuits found MegaMania, a bingo game played with electronic cards, to meet this requirement. See U.S. v. 103 Electronic Gaming Devices, 223 F.3d at 1095; U.S. v. 162 MegaMania Gambling Devices, 231 F3d at 719.

The Offered Games are played on digital cards issued to each proxy participant playing on behalf of an Account Holder before any numbers are drawn for the game. Each proxy participant's digital card is unique from other cards (i.e. each contains a uniquely identifying serial number) being used for each game played. The results of the games are apparent on the cards as the game is played in that proxy participants are able to discern what prize, if any, has been won by seeing the "covered" number pattern on their digital bingo cards. In other words, the bingo format of the games drives the results of the prizes won. Accordingly, the first requirement for Class II games under IGRA is satisfied.

## 2. Holder of the Cards Covers When Objects are Drawn.

The characteristics of the Offered Games meet the second statutory criteria – that a card holder cover when objects are drawn – because in order to "win" [i.e. an increase in game credits convertible to cash] a proxy participant must cover prize-winning patterns after the bingo numbers are electronically determined and the complete ball draw is displayed to the proxy participant in order to match the numbers determined. Digital balls with numbers are electronically determined in real time by a random number generator in the game server from a pool of numbers, 1 through 75, for each game and released sequentially so that each card holder (i.e. proxy participant on behalf of the Account Holder) can cover the letter and number combinations on the bingo cards as the digital balls are drawn. The numbers are instantly conveyed to the card holder upon being drawn.<sup>4</sup> The ball numbers are not pre-drawn and stored for each game, rather a "fresh" draw is made for each game played. Assisted by components of the VPNAPS, an Account Holder's proxy participant immediately daubs or covers the corresponding numbers on the digital bingo card when the ball numbers are drawn. These components essentially work like reader/dauber machines commonly known as a "bingo minder" in that they automatically and electronically assists card holders in identifying numbers drawn and determining whether any of their digital cards contain those numbers as they are drawn. This is consistent with applicable tribal regulations that state that: (1) use of technologic aids such as auto-daub features or reader/dauber devices are expressly permitted to assist the proxy agent playing Class II bingo games on the Account Holder's behalf in determining whether a held card

---

<sup>4</sup> I recognize that (1) some "advisory" only opinions issued by the NIGC's former acting general counsel state that "central" to the game of bingo is the "tension" built up over the course of successive ball draws, and, accordingly, the former acting general counsel was of the view there must be at least two ball draws or releases of electronically determined numbers before a player can win the game or any consolation or interim prize; and (2) that the ball draw and reveal to players described for the Offered Games may not be considered consistent with this statement. Nevertheless, in my view, since the ball draw is only electronically determined once the bingo game is actually commenced and then revealed to all players at the same time, this feature is sufficient to meet any statutory criteria for Class II bingo under IGRA, even if this electronic version of the ball draw is not the same "temporal" experience bingo players in the past have had at traditional church-bingo halls. See U.S. v. 103 Electronic Gambling Devices, 223 F3d at 1097 ("Class II bingo under IGRA is not limited to the game we played as children").



has a pre-designated pattern matching the numbers drawn for the Class II bingo game; and (2) there is no requirement for the proxy agent playing the Class II bingo game on the Account Holder's behalf to manually declare a "bingo" upon matching the numbers drawn with the pre-designated game-ending pattern on a card in order to collect the game-ending prize award.

This manner of a card holder covering when numbers are drawn is consistent with IGRA's statutory language concerning whether a game constitutes "bingo" under IGRA (including the use of technologic aids therewith) as well as the NIGC's pronouncements recognizing that there is no statutory prohibition against the use of agents for the conduct of bingo. See July 1995 NIGC Opinion re: Mega Bingo; November 14, 2000 NIGC Advisory Letter re: National Indian Bingo. As the NIGC has noted, the courts have found it unnecessary for the player to push a button corresponding to each relevant position on the bingo card since:

There is nothing in IGRA or its implementing regulations [t]hat require a player to independently locate each called number on each of the player's card and manually "cover" each number independently and separately. The statute and the implementing regulations merely require that a player cover the numbers without specifying how they must be covered.

See November 14, 2000 NIGC Advisory Letter re: National Indian Bingo at p. 6.

This manner of "covering" is also consistent with applicable tribal regulations, and with the NIGC's recent One Touch Bingo pronouncement that an "auto-daub" feature in linked electronic bingo systems (i.e. a device or component that assists the player to "cover" when numbers are drawn) is permitted because it is consistent with the second requirement for Class II games under IGRA.

### 3. Game Won by First Person Covering Previously Designated Pattern.

The characteristics of the Offered Games meet the third statutory criteria because it requires a minimum of five (5) or more proxy participants to be competing before any game is commenced and a proxy participant only "wins" when the proxy participant covers a previously designated pattern. For instance, the first proxy participant who covers the designated game-ending pattern wins the prize for ending the game.

The manner in which the card holders (i.e. Account Holders via their proxy agent) cover the previously designated pattern is again performed by proxy participants using a technologic aid (the auto-daub feature components contained in the VPNAPS). This technologic aid informs the proxy participant whether a digital card has obtained a prize winning pattern. This manner of covering the previously designated pattern is consistent with IGRA's legislative history stating Congress' intent that tribes be able to use modern technology to conduct Class II games, including computers.

The Committee intends ...that tribes have maximum flexibility to utilize games such as bingo and lotto for tribal economic development. The Committee specifically rejects any inference that tribes should restrict Class II games to existing game sizes, levels of participation, or current technology. The Committee intends that tribes be given the opportunity to take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility.

See, S. Rep. No. 100-446 (1988), reprinted in 1988 U.S.C.C.A.N.

This manner of “covering” is also consistent with applicable tribal regulations, and with the NIGC’s recent One Touch Bingo pronouncement that an “auto-daub” feature in linked electronic bingo systems (i.e. a device or component that “assists the player in being the first person to cover the designated pattern”) is permitted because it is consistent with the third requirement for Class II games under IGRA.

The requirement that the game is “won” by the first proxy participant to cover the pre-designated winning pattern is also satisfied even though more than one proxy participant may “win” the game by covering the designated game-ending pattern. As the NIGC noted:

[T]he possibility that more than one player can simultaneously get “bingo” does not conflict with IGRA’s requirement that the game be won by “the first person to cover.”

See 78 Fed. Reg. at 37999; also U.S. v. 162 MegaMania Gambling Devices, 231 F.3d 722 (traditional variations of bingo allow interim prizes and simultaneous winners); U.S. v. 103 Electronic Gaming Devices, 223 F.3d 1091, 1098-99 (“winning” does not necessarily mean “vanquishing” all other opponents).

Moreover, I do not consider the Offered Games played using the VPNAPS to be a “house banking game” under IGRA. This is so even though the Offered Games have “bonus” features and bingo game payouts do not hinge on the success of other proxy participants but are instead based on a mathematical formula that ensures that over time the house (i.e. tribal operator) will net a certain percentage of the proxy participants’ game pay-in. A “house banking game” under IGRA requires “the house as a participant in the game, where the house takes on all players, collects from all losers, and pays all winners, and the house can win.” See 25 CFR §502.11. First, unlike blackjack, the house is not a participant in the bingo game in that the house does not play a bingo card nor is it ever a “winner” in the bingo game. See 103 Electronic Gaming Devices, 223 F.3d at 1099. Second, as the Tenth Circuit specifically stated, “[nothing in IGRA or its regulations] prohibits a game where the house may on occasion pay out more than it takes in, or forbids the house from earning a profit.” See U.S. v. 162 MegaMania Gambling Devices, 231 F.3d at 713. Unlike keno, someone other than the house must win because eventually some proxy participant must win the game-ending pattern prize. Id. at 1101.