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UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

UNITE HERE LOCAL 19, Petitioner, v. PICAYUNE RANCHERIA OF CHUKCHANSI INDIANS; CHUKCHANSI ECONOMIC DEVELOPMENT AUTHORITY; DOES 1-100, Respondents.	Case No. 1:14:CV-01136-SAB **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS AND TO STRIKE AFFIRMATIVE DEFENSES** Date: November 13, 2014 Time: 2:00 p.m. Honorable Morrison C. England, Jr.

INTRODUCTION

Set out below is the opposition to Petitioner's Motion for Judgment on the Pleadings and to Strike Affirmative Defenses. This opposition will focus on two primary issues. Respondents are not waiving any of the other affirmative defenses not addressed herein. And Respondents request that the Court not address such other affirmative defenses as such a ruling would be premature in light of the arguments made as to why this matter should not be currently before the Court.

It is the position of Respondents that the Petition is not properly before the Court because (a) there is no federal question of jurisdiction; (b) the parties by choice of law have agreed that state law is controlling in this matter; (c) the arbitration proceedings are not complete; and (d) the Court should take this matter off calendar and hold it in abeyance as the Respondents' operations are currently closed as a result of an order of a federal District Court judge.

FACTUAL BACKGROUND

A. The Court should hold this matter in abeyance.

The operations of Respondents are currently closed as a result of a preliminary injunction issued by the Honorable Lawrence J. O'Neill on October 29, 2014 in the matter of the State of California v. Picayune Rancheria of Chukchansi Indians of California, a federal recognized Indian tribe, Case No. 1:14-cv-01593-LJO-SAB. Respondents requested the Court take judicial notice of the Court's decision.

It is extremely difficult for Respondents to be involved in federal court litigation such as the instant Petition when its operations are closed. (See Declaration of Scott A. Wilson, hereinafter Wilson Declaration, paragraph 2.) Additionally there is no prejudice to Petitioner and the employees it represents as back pay liability cannot accrue when there would not have been ongoing employment for the employees.

It is not clear who is in charge of the Respondents' operations because, as noted in Judge O'Neill's order, the gaming casino where the grievants were employed is closed because of a dispute over tribal leadership.

Consequently the case should be held in abeyance pending resolution of the dispute that is subject to the preliminary injunction.

B. The Labor Management Relations Act does not apply to the Respondents.

28 U.S.C. Section 1331 only allows a federal court to assert jurisdiction arising under the Constitution, laws or treaties of the United States. In this case, Petitioner has brought this action pursuant to Section 301 of the Labor Management Relations Act (LMRA). And, while Respondents admit that Petitioner is a labor organization and represents employees under the LMRA it is not an admission that the statute itself applies to the operations of Respondents. Petitioner claims that the LMRA is applicable generally to Indian tribes. Such cases cited basically apply a tribal government versus tribal commercial operation in determining applicability of a federal employment statute when the statute is silent as to its applicability to a tribal employer. In other words the cases cited state that a tribally operated business that is commercial in nature, i.e., dealing with the general public, will be subject to the statute as cited as opposed to a tribal government entity dealing with

intermural tribal matters.[1]

This test regarding federal statutory jurisdiction as relied upon by the Petitioners is clearly contrary to longstanding U.S. Supreme Court precedent affirming tribal sovereignty unless expressly abrogated by Congress. The Supreme Court recently strongly reaffirmed this principle in *Bay Mills* wherein the State of Michigan argued that Congress implicitly waived tribal immunity from suit in the Indian Gaming Regulatory Act (IGRA) for actions brought by states regarding off-reservation gaming, although the language of IGRA only permits suits by states to "enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact." *Michigan v. Bay Mills Indian Cmty.*, 132 S. Ct. 2024, 2029 (2014) (citing 25 U.S.C. Section 2710(d)(7)(A)(ii)) (emphasis added). In rejecting Michigan's implicated waiver theory, *Bay Mills* holds true to the Indian canons of construction in stating that "unless and 'until Congress acts [and acts explicitly], the tribes retain their historic sovereign authority," *Bay Mills,* 132 S. Ct. at 2030 (citing United States v. Wheeler, 435 U.S. 313, 323 (1978)). In reaching this result, the Court first explained the basic concept of tribal sovereignty:

> Indian tribes are "domestic dependent nations" that exercise "inherent sovereign authority." *** [While] the tribes are subject to plenary control by Congress…they remain "separate sovereigns pre-existing the Constitution." *** Among the core aspects of sovereignty that tribes possess – subject, against, to congressional action – is the "common-law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo v. Martinez,* 437 U.S. 49, 58 (1978). That immunity, we have explained, is "a necessary corollary to Indian sovereignty and self-governance." *Three Affiliated Tribes of Fort Berthold Reservation v. World Engineering, P.C.,* 476 U.S. 877, 890 (1986) cf. The Federalist No. 81, p. 511 (B. Wright ed. 1961) (A. Hamilton) (It is "inherent in the nature of sovereignty not to be amenable" to suit without consent).

Bay Mills, 132 S. Ct. at 2030.

The Court then explained its adherence to the Indian canons of construction in determining whether Congress has repealed the tribes' immunity:

> Our decisions establish as well that such a congressional decision must be clear. The baseline position, we have often held, is tribal immunity; and "[t]o abrogate [such] immunity, Congress must 'unequivocally' express that purpose." *C & L Enterprises,*

[1] Petitioner also cited NLRB v. Chappa day Indian Health Program 316 F.3d 995 (9th Cir. 2003). Chappa day is inapplicable as it involved simply enforcement of a subpoena which is a different standard than other cases referenced by Petitioner. And, its assertion of National Labor Relations Board jurisdiction over Indian tribes was merely dicta in the case.

> *Inc.* v. *Citizen Band Potawatomi Tribe of Okla.*, 532 U. S. 411, 418 (2001) (quoting *Santa Clara Pueblo*, 436 U. S., at 58). That rule of construction reflects an enduring principle of Indian law: Although Congress has plenary authority over tribes, courts will not lightly assume that Congress in fact intends to undermine Indian self-government. *See, e.g.*, *id.*, at 58–60; *Iowa Mut. Ins. Co.* v. *LaPlante*, 480 U. S. 9, 18 (1987); *United States* v. *Dion*, 476 U. S. 734, 738–739 (1986).

Bay Mills, 132 S. Ct. at 2031-32.

The Court also noted the impropriety with disregarding the objective statutory text in favor of subjectively gleaning Congressional intent, particularly when doing so would "expand an abrogation of immunity":

> This Court has no roving license, in even ordinary cases of statutory interpretation, to disregard clear language simply on the view that (in Michigan's words) Congress "must have intended" something broader. [citation omitted] And still less do we have that warrant when the consequence would be to expand an abrogation of immunity, because (as explained earlier) "Congress must 'unequivocally' express [its] purpose" to subject a tribe to litigation. [citation omitted]

Bay Mills, 132 S. Ct. at 2034.

Faced with these enduring principles, the State of Michigan argued that tribal sovereign immunity should nevertheless wane when a tribe is allegedly not operating like a government but like a private market participant by conducting off-reservation commercial activities:

> Because IGRA's plain terms do not abrogate Bay Mill's immunity from this suit, Michigan… must make a more dramatic argument: that this Court should "revisit[ ] *Kiowa's* holding" and rule that tribes "have no immunity for illegal commercial activity outside their sovereign territory… Michigan argues that tribes increasingly participate in off-reservation gaming and other commercial activity, and operate in that capacity less as governments than as private businesses. See Brief for Michigan 38 (noting, among other things, that "tribal gaming revenues have more than tripled" since *Kiowa*).

Bay Mills, 132 S. Ct. at 2036.

Yet, in the end, the Court branded this argument a "retread" of one it has rejected many times before:

> [A]ll the State musters are retreads of assertions we have rejected before. *Kiowa* expressly considered the view, now offered by Michigan, that "when tribes take part in the Nation's commerce," immunity "extends beyond what is needed to safeguard tribal governance." 523 U.S., at 758 (Indeed, as *Kiowa* noted, see *id.*, at 757, *Potawatomi* had less than a decade earlier rejected Oklahoma's identical contention that "because tribal business activities… are now so detached from traditional tribal interests," immunity "no longer makes sense in [the commercial] context," 498 U.S., at 510). * * * Yet the [Kiowa] decision could not have been any clearer: "We decline to draw [any] distinction" that would "confine [immunity] to reservations or to noncommercial activities." [*citing Kiowa Tribe of Okla. v. Mfg. Techs., Inc., 523 U. S. 751, 756 (1998).*]

Bay Mills, 132 S. Ct. 2037.

According to the Court, any change in the law would need to come from Congress (who has plenary power over Indian affairs), and not the courts:

> We ruled that way [in *Kiowa*] for a single, simple reason: because it is fundamentally Congress's job, not ours, to determine whether or how to limit tribal immunity. The special brand of sovereignty the tribes retain – both its nature and its extent – rests in the hands of Congress. * * * As *Kiowa* recognized, a fundamental commitment of Indian law is judicial respect for Congress's primary role in defining the contours of tribal sovereignty.

Bay Mills, 132 S. Ct. at 2037, 2039.

Expounding on the subject of tribal sovereign immunity in her concurrence, Justice Sotomayor went even further in rejecting the State of Michigan's argument that tribal sovereign immunity should not apply in commercial situations, first pointing out that a contrary rule would not comport with the treatment of like dependent sovereigns in the Nation who possess immunity even when acting more like market participants:

> As this Court later observed, relying in part on *Seminole Tribe*, the doctrine of state sovereign immunity is not "any less robust" when the case involves conduct "that is undertaken for profit, that is traditionally performed by private citizens and corporations, and that otherwise resembles the behavior of 'market participants.' " *College Savings Bank of Florida v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U.S. 666, 684 (1999).

Bay Mills, 132 S. Ct. at 2041-42 (Sotomayor, J., concurring).

Justice Sotomayor then concluded that tribal gaming is indeed a governmental function warranting deference:

> For tribal gaming operations cannot be understood as mere profit-making ventures that are wholly separate from the Tribes' core governmental functions. A key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on federal funding. 25 U. S. C. § 2702(1) (explaining that Congress' purpose in enacting IGRA was "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments"); see also Cohen's Handbook of Federal Indian Law 1357–1373 (2012) (Cohen's Handbook) (describing various types of federal financial assistance that Tribes receive). And tribal business operations are critical to the goals of tribal self-sufficiency because such enterprises in some cases "may be the only means by which a tribe can raise revenues," [citation omitted]. This is due in large part to the insuperable (and often state-imposed) barriers Tribes face in raising revenue through more traditional means.

Bay Mills, 132 S. Ct. at 2043 (Sotomayor, J., concurring).

According to Justice Sotomayor, one additional justification for considering commercial activities like gaming a government function is because of the tribes' inability to raise revenue through traditional means due to factors largely of others' making, and beyond their control:

> States have the power to tax certain individuals and companies based on Indian reservations, making it difficult for Tribes to raise revenue from those sources. * * * As commentators have observed, if Tribes were to impose their own taxes on these same sources, the resulting double taxation would discourage economic growth. * * * Moreover, Tribes are largely unable to obtain substantial revenue by taxing tribal members who reside on non-fee land that was not allotted under the Dawes Act. As one scholar recently observed, even if Tribes imposed high taxes on Indian residents, "there is very little income property, or sales they could tax." Fletcher, *supra*, at 774. The poverty and unemployment rates on Indian reservations are significantly greater than the national average. See n. 4, *infra*. As a result, "there is no stable tax base on most reservations." Fletcher, *supra*, at 774; see Williams, Small steps on the Long Road to Self-Sufficiency for Indian Nations: The Indian Tribal Governmental Tax Status Act of 1982, 22 Harv. J. legis. 335, 385 (1985).

Bay Mills, 132 S. Ct. at 2043 (Sotomayor, J., concurring).

Bearing in mind these default sovereignty rules, Congressional policies promoting tribal self-sufficiency, and the realities of reservation life where past federal negligence and continued state intrusion forecloses effective tax systems, Justice Sotomayor concluded that: "[b]oth history and proper respect for tribal sovereignty—or comity—counsel against creating a special "commercial activity" exception to tribal sovereign immunity." *Bay Mills,* 132 S. Ct. at 2045 (Sotomayor, J., concurring).

For the reasons set forth in both the majority and concurring opinions in *Bay Mills,* this Court should not accept the governmental versus commercial test stated in *San Manuel* and the other cases cited by Petitioner. While the Petitioner will no doubt try to distinguish *Bay Mills* on the grounds that the case deals with tribal immunity against claims brought by a state government rather than a private party with the aid of a federal agency, no one can legitimately contest that *Bay Mills* (1) reaffirmed the existence of tribal sovereign immunity absent an "unequivocal" abrogation by Congress in the text of the authorizing statute, and (2) refused to distinguish between traditionally governmental and commercial functions for purposes of deciding what is and is not worthy of immunity.

C. There is no subject matter jurisdiction before the Court because the parties have agreed that California law applies and governs their relationship.

The Respondents and Petitioner have entered into two collective bargaining agreements. See Wilson Declaration, paragraphs 9-11 and Martin Declaration, Exhibit 1. Each of the successive contracts contain certain relevant language which is identical in both agreements. In the opening paragraph of each contract it states in pertinent part as follows "…the Employer and the Union agree that the Tribal Labor Relations Ordinance (TLRO) adopted by the Employer as a requirement of the Tribal/State Compact between the Employer and the State of California is the appropriate law with regard to labor relations within the jurisdiction of the Employer." See Wilson Declaration, paragraphs 9-11. The TLRO as noted within the language was adopted as part of the Tribal State Gaming Compact between the Respondents and the state of California. (See Wilson Declaration, paragraphs 9-11.) A review of the Tribal State Compact makes it clear that it is an agreement solely between the state of California and the Respondents which was approved by the California state legislature. This contract language was inserted as part of the negotiations between the Respondents and Petitioner because Respondents clearly did not want federal labor law to apply to its operations. The Union agreed to this. (See Wilson Declaration, paragraphs 9-11.)

Additionally, both contracts also contain the language within Section 29 of the current agreement (see Wilson Declaration, paragraphs 9-11 and Martin Declaration, Exhibit 1, Section 29) which states as follows:[2]

> 6. For the sole purpose of enabling a suit to compel arbitration or to confirm an arbitration award under this Agreement or the Employer's Tribal Labor Relations Ordinance, the Employer agrees to a limited waiver of sovereign immunity and consents to be sued in federal court, without exhausting tribal remedies. To the extent the federal court declines jurisdiction, for the sole purpose of enabling a suit to compel arbitration or to confirm an arbitration award under this Agreement, the Employer agrees to a limited waiver of sovereign immunity and consents to be sued in the appropriate state superior court, without exhausting tribal remedies. The limited waiver of sovereign immunity defined by this section does not apply to any other form of action, judicial or administrative.

The language included within Section 29 quoted above is directly from the TLRO (see

[2] Petitioner cites this section but does not include all of the pertinent language.

Wilson Declaration). As can be seen from the above there is an understanding that an employer under the TLRO can only be sued in federal court if the court determines that there is federal question jurisdiction, i.e., the Constitution, laws, treaties of the United States. The parties cannot create by agreement federal court jurisdiction that does not otherwise exist. U.S. v. Ceja-Prado, 333 F.3d 1046, 1048-49 (9th Cir. 2003).

It is clear in the present case that the parties agree that the TLRO would apply and that it is the applicable law governing the relationship between the parties. The TLRO is not a statute, treaty or Constitution arising under the laws of the United States. Instead it is strictly a document created by California law as part of the Tribal State Compact negotiated between Respondents and the state of California which was ratified by the California legislature. The parties recognize this by specifically stating that should a federal court decline jurisdiction venue was proper in the state court. Here, the federal court should decline jurisdiction as the governing statute is a state law not a federal law.

D. Confirmation of the arbitration award is premature.

The instant Petition to Confirm the Arbitration Award is premature. It would only be appropriate if (a) the arbitrator had ordered employees reinstated and the Respondents refused to reinstate the employees; yet the arbitrator only held that the Respondents must reinstate the employees and/or provide them "front pay" (a term that is not defined, see discussion below); secondly, the Petition would be timely had the arbitrator completed his review of the case and made a determination as to damages, i.e., the amount owed and at that point Respondents refused to pay what if any back pay the arbitrator determined was owed. To date, there is no liquidated specified amount of money of back pay and/or front pay that has been determined by the arbitrator. There are issues of interim earnings, mitigation of damages, health insurance claims, etc. that need to be determined. In short, there is no award to comply with.

There are numerous issues that must be addressed in the bifurcated damages portion of the case. (See Wilson Declaration, paragraphs 12-14.)

The parties in this case agreed to a bifurcated hearing. That is, there would be a

determination of liability and then a second determination as to what if any damages are owed. No such bifurcated hearing has occurred, and there is no sum certain amount of money that Respondents have been ordered to pay.[3]

These are the types of issues that must be determined by the arbitrator before there is a complete award to be enforced.

Ninth Circuit case law supports Respondents' position in this regard. The Ninth Circuit in Millman Local 550 v. Wells Exterior Trim 828 F.2d 1373, 1374 (9th Cir. 1987) held that when there is a bifurcated proceeding, i.e., liability then damages to be determined, there is no final award subject for review until there is a complete decision as to both. The Court cited 3rd and 7th Circuit authority to further support its decision. The Court noted that only in the "most extreme" cases should such interim review be granted. There is nothing about this case that is extreme. There are a number of issues that need to be addressed by the arbitrator particularly as to the issue of "front pay" and how that is impacted by the expiration of the grievants' licenses. Until that is determined it is not clear as to what if any order Respondents are obligated to comply with. There are numerous issues that must be addressed as it relates to a determination of damages as noted.

CONCLUSION

For the reasons stated the Petitioner's motion for judgment on the pleadings should be denied.

Dated: October 30, 2014

LAW OFFICES OF SCOTT A. WILSON

By: _____

Scott A. Wilson
Attorney for Respondents

[3] There was also an issue of "front pay" that still need to be addresses by the arbitrator. The arbitrator ruled that the employees' gaming licenses were improperly revoked in July of 2011. However, had those licenses not been revoked they are currently expired by their own terms as of this date. See Wilson Declaration, paragraph 15. There is clearly a question as to what extent the arbitrator can order additional pay after the date that the licenses would have expired on their own. Employees are not eligible to work at the Casino without a gaming license pursuant to the Tribal State Compact/Tribal Gaming Ordinance. See Wilson Declaration, paragraph 15.

EXHIBIT A

TRIBAL-STATE GAMING COMPACT
Between the CHUCKCHANSI INDIANS, a federally recognized Indian Tribe,
and the
STATE OF CALIFORNIA

This Tribal-State Gaming Compact is entered into on a government-to-government basis by and between the Chuckchansi Indians, a federally-recognized sovereign Indian tribe (hereafter "Tribe"), and the State of California, a sovereign State of the United States (hereafter "State"), pursuant to the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, codified at 18 U.S.C. Sec. 1166 et seq. and 25 U.S.C. Sec. 2701 et seq.) (hereafter "IGRA"), and any successor statute or amendments.

PREAMBLE

A. In 1988, Congress enacted IGRA as the federal statute governing Indian gaming in the United States. The purposes of IGRA are to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; to provide a statutory basis for regulation of Indian gaming adequate to shield it from organized crime and other corrupting influences; to ensure that the Indian tribe is the primary beneficiary of the gaming operation; to ensure that gaming is conducted fairly and honestly by both the operator and players; and to declare that the establishment of an independent federal regulatory authority for gaming on Indian lands, federal standards for gaming on Indian lands, and a National Indian Gaming Commission are necessary to meet congressional concerns.

B. The system of regulation of Indian gaming fashioned by Congress in IGRA rests on an allocation of regulatory jurisdiction among the three sovereigns involved: the federal government, the state in which a tribe has land, and the tribe itself. IGRA makes Class III gaming activities lawful on the lands of federally-recognized Indian tribes only if such activities are: (1) authorized by a tribal ordinance, (2) located in a state that permits such gaming for any purpose by any person, organization or entity, and (3) conducted in conformity with a gaming compact entered into between the Indian tribe and the state and approved by the Secretary of the Interior.

C. The Tribe does not currently operate a gaming facility that offers Class III gaming activities. However, on or after the effective date of this Compact, the Tribe intends to develop and operate a gaming facility offering Class III gaming activities on its reservation land, which is located in Madera County of California.

D. The State enters into this Compact out of respect for the sovereignty of the Tribe; in recognition of the historical fact that Indian gaming has become the single largest revenue-producing activity for Indian tribes in the United States; out of a desire to terminate pending "bad faith" litigation between the Tribe and the State; to initiate a new era of tribal-state cooperation in areas of mutual concern; out of a respect for the sentiment of the voters of California who, in approving Proposition 5, expressed their belief that the forms of gaming authorized herein should be allowed; and in anticipation of voter approval of SCA 11 as passed by the California legislature.

E. The exclusive rights that Indian tribes in California, including the Tribe, will enjoy under this Compact create a unique opportunity for the Tribe to operate its Gaming Facility in an economic environment free of competition from the Class III gaming referred to in Section 4.0 of this Compact on non-Indian lands in California. The parties are mindful that this unique environment is of great economic value to the Tribe and the fact that income from Gaming Devices represents a substantial portion of the tribes' gaming revenues. In consideration for the exclusive rights enjoyed by the tribes, and in further consideration for the State's willingness to enter into this Compact, the tribes have agreed to provide to the State, on a sovereign-to-sovereign basis, a portion of its revenue from Gaming Devices.

F. The State has a legitimate interest in promoting the purposes of IGRA for all federally-recognized Indian tribes in California, whether gaming or non-gaming. The State contends that it has an equally legitimate sovereign interest in regulating the growth of Class III gaming activities in California. The Tribe and the State share a joint sovereign interest in ensuring that tribal gaming activities are free from criminal and other undesirable elements.

Section 1.0. PURPOSES AND OBJECTIVES.

The terms of this Gaming Compact are designed and intended to:

(a) Evidence the goodwill and cooperation of the Tribe and State in fostering a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.

EXHIBIT B

TRIBAL LABOR RELATIONS ORDINANCE
September 14, 1999

Section 1: Threshold of applicability

(a) Any tribe with 250 or more persons employed in a tribal casino and related facility shall adopt this Tribal Labor Relations Ordinance (TLRO or Ordinance). For purposes of this ordinance, a "tribal casino" is one in which class III gaming is conducted pursuant to a tribal-state compact. A "related facility" is one for which the only significant purpose is to facilitate patronage of the class III gaming operations.

(b) Any tribe which does not operate such a tribal casino as of September 10, 1999, but which subsequently opens a tribal casino, may delay adoption of this ordinance until one year from the date the number of employees in the tribal casino or related facility as defined in 1(a) above exceeds 250.

(c) Upon the request of a labor union, the Tribal Gaming Commission shall certify the number of employees in a tribal casino or other related facility as defined in 1(a) above. Either party may dispute the certification of the Tribal Gaming Commission to the Tribal Labor Panel.

Section 2: Definition of Eligible Employees

(a) The provisions of this ordinance shall apply to any person (hereinafter "Eligible Employee") who is employed within a tribal casino in which Class III gaming is conducted pursuant to a tribal-state compact or other related facility, the only significant purpose of which is to facilitate patronage of the Class III gaming operations, except for any of the following:

(1) any employee who is a supervisor, defined as any individual having authority, in the interest of the tribe and/or employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(2) any employee of the Tribal Gaming Commission;

(3) any employee of the security or surveillance department, other than those who are responsible for the technical repair and maintenance of equipment;

(4) any cash operations employee who is a "cage" employee or money counter; or

(5) any dealer.

Section 3: Non-interference with regulatory or security activities

Operation of this Ordinance shall not interfere in any way with the duty of the Tribal Gaming Commission to regulate the gaming operation in accordance with the Tribe's National Indian Gaming Commission-approved gaming ordinance. Furthermore, the exercise of rights hereunder shall in no way interfere with the tribal casino's surveillance/security systems, or any other internal controls system designed to protect the integrity of the tribe's gaming operations. The Tribal Gaming Commission is specifically excluded from the definition of tribe and its agents.

Section 4: Eligible Employees free to engage in or refrain from concerted activity

Eligible Employees shall have the right to self-organization, to form, to join, or assist employee organizations, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

Section 5: Unfair Labor Practices for the tribe

It shall be an unfair labor practice for the tribe and/or employer or their agents:

(1) to interfere with, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, but this does not restrict the tribe and/or employer and a certified union from agreeing to union security or dues checkoff;

(3) to discharge or otherwise discriminate against an Eligible Employee because s/he has filed charges or given testimony under this Ordinance;

(4) to refuse to bargain collectively with the representatives of Eligible Employees.

Section 6: Unfair Labor Practices for the union

It shall be an unfair labor practice for a labor organization or its agents:

(1) to interfere, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

(2) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a primary or secondary boycott or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce or other terms and conditions of employment. This section does not apply to section 11;

(3) to force or require the tribe and/or employer to recognize or bargain with a particular labor organization as the representative of Eligible Employees if another labor organization has been certified as the representative of such Eligible Employees under the provisions of this TLRO;

(4) to refuse to bargain collectively with the tribe and/or employer, provided it is the representative of Eligible Employees subject to the provisions herein;

(5) to attempt to influence the outcome of a tribal governmental election, provided, however, that this section does not apply to tribal members.

Section 7: Tribe and union right to free speech

The tribe's and union's expression of any view, argument or opinion or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of interference with, restraint or coercion if such expression contains no threat of reprisal or force or promise of benefit.

Section 8: Access to Eligible Employees

(a) Access shall be granted to the union for the purposes of organizing Eligible Employees, provided that such organizing activity shall not interfere with patronage of the casino or related facility or with the normal work routine of the Eligible Employees and shall be done on non-work time in non-work areas that are designated as employee break rooms or locker rooms that are not open to the public. The tribe may require the union and or union organizers to be subject to the same licensing rules applied to individuals or entities with similar levels of access to the casino or related facility, provided that such licensing shall not be unreasonable, discriminatory, or designed to impede access.

(b) The Tribe, in its discretion, may also designate additional voluntary access to the Union in such areas as employee parking lots and non-Casino facilities located on tribal lands.

(c) In determining whether organizing activities potentially interfere with normal tribal work routines, the union's activities shall not be permitted if the Tribal Labor Panel determines that they compromise the operation of the casino:

(1) security and surveillance systems throughout the casino, and reservation;

(2) access limitations designed to ensure security;

(3) internal controls designed to ensure security;

(4) other systems designed to protect the integrity of the tribe's gaming operations, tribal property and/or safety of casino personnel, patrons, employees or tribal members, residents, guests or invitees.

(d) The tribe shall provide to the union, upon a thirty percent (30%) showing of interest to the Tribal Labor Panel, an election eligibility list containing the full first and last name of the Eligible Employees within the sought after bargaining unit and the Eligible Employees' last known address within ten (10) working days. Nothing herein shall preclude a tribe from voluntarily providing an election eligibility list at an earlier point of a union organizing campaign.

(e) The tribe agrees to facilitate the dissemination of information from the union to Eligible Employees at the tribal casino by allowing posters, leaflets and other written materials to be posted in non-public employee break areas where the tribe already posts announcements

pertaining to Eligible Employees. Actual posting of such posters, notices, and other materials, shall be by employees desiring to post such materials.

Section 9: Indian preference explicitly permitted

Nothing herein shall preclude the tribe from giving Indian preference in employment, promotion, seniority, lay-offs or retention to members of any federally recognized Indian tribe or shall in any way affect the tribe's right to follow tribal law, ordinances, personnel policies or the tribe's customs or traditions regarding Indian preference in employment, promotion, seniority, lay-offs or retention. Moreover, in the event of a conflict between tribal law, tribal ordinance or the tribe's customs and traditions regarding Indian preference and this Ordinance, the tribal law, tribal ordinance or the tribe's customs and traditions shall govern.

Section 10: Secret ballot elections required

(a) Dated and signed authorized cards from thirty percent (30%) or more of the Eligible Employees within the bargaining unit verified by the elections officer will result in a secret ballot election to be held within 30 days from presentation to the elections officer.

(b) The election shall be conducted by the election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning representation of the tribe and/or Employer's Eligible Employees by a labor organization shall be resolved by the election officer. The election officer shall be chosen upon notification by the labor organization to the tribe of its intention to present authorization cards, and the same election officer shall preside thereafter for all proceedings under the request for recognition; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

(c) The election officer shall certify the labor organization as the exclusive collective bargaining representative of a unit of employees if the labor organization has received the majority of votes by employees voting in a secret ballot election that the election officer determines to have been conducted fairly. If the election officer determines that the election was

conducted unfairly due to misconduct by the tribe and/or employer or union, the election officer may order a re-run election. If the election officer determines that there was the commission of serious Unfair Labor Practices by the tribe that interfere with the election process and preclude the holding of a fair election, and the labor organization is able to demonstrate that it had the support of a majority of the employees in the unit at any point before or during the course of the tribe's misconduct, the election officer shall certify the labor organization.

(d) The tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

(e) A union which loses an election and has exhausted all dispute remedies related to the election may not invoke any provisions of this labor ordinance at that particular casino or related facility until one year after the election was lost.

Section 11: Collective bargaining impasse

Upon recognition, the tribe and the union will negotiate in good faith for a collective bargaining agreement covering bargaining unit employees represented by the union. If collective bargaining negotiations result in impasse, and the matter has not been resolved by the tribal forum procedures sets forth in Section 13 (b) governing resolution of impasse within sixty (60) working days or such other time as mutually agreed to by the parties, the union shall have the right to strike. Strike-related picketing shall not be conducted on Indian lands as defined in 25 U.S.C. Sec. 2703 (4).

Section 12: Decertification of bargaining agent

(a) The filing of a petition signed by thirty percent (30%) or more of the Eligible Employees in a bargaining unit seeking the decertification of a certified union, will result in a secret ballot election to be held 30 days from the presentation of the petition.

(b) The election shall be conducted by an election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning the decertification of the labor organization shall be resolved by an election

officer. The election officer shall be chosen upon notification to the tribe and the union of the intent of the employees to present a decertification petition, and the same election officer shall preside thereafter for all proceedings under the request for decertification; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

(c) The election officer shall order the labor organization decertified as the exclusive collective bargaining representative if a majority of the employees voting in a secret ballot election that the election officer determines to have been conducted fairly vote to decertify the labor organization. If the election officer determines that the election was conducted unfairly due to misconduct by the tribe and/or employer or the union the election officer may order a re-run election or dismiss the decertification petition.

(d) A decertification proceeding may not begin until one (1) year after the certification of a labor union if there is no collective bargaining agreement. Where there is a collective bargaining agreement, a decertification petition may only be filed no more than 90 days and no less than 60 days prior to the expiration of a collective bargaining agreement. A decertification petition may be filed anytime after the expiration of a collective bargaining agreement.

(e) The tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

Section 13: Binding dispute resolution mechanism

(a) All issues shall be resolved exclusively through the binding dispute resolution mechanisms herein, with the exception of a collective bargaining negotiation impasse, which shall only go through the first level of binding dispute resolution.

(b) The first level of binding dispute resolution for all matters related to organizing, election procedures, alleged unfair labor practices, and discharge of Eligible Employees shall be an appeal to a designated tribal forum such as a Tribal Council, Business Committee, or Grievance Board.

The parties agree to pursue in good faith the expeditious resolution of these matters within strict time limits. The time limits may not be extended without the agreement of both parties. In the absence of a mutually satisfactory resolution, either party may proceed to the independent binding dispute resolution set forth below. The agreed upon time limits are set forth as follows:

(1) All matters related to organizing, election procedures and alleged unfair labor practices prior to the union becoming certified as the collective bargaining representative of bargaining unit employees, shall be resolved by the designated tribal forum within thirty (30) working days.

(2) All matters after the union has become certified as the collective bargaining representative and relate specifically to impasse during negotiations, shall be resolved by the designated tribal forum within sixty (60) working days;

(c) The second level of binding dispute resolution shall be a resolution by the Tribal Labor Panel, consisting of ten (10) arbitrators appointed by mutual selection of the parties which panel shall serve all tribes that have adopted this ordinance. The Tribal Labor Panel shall have authority to hire staff and take other actions necessary to conduct elections, determine units, determine scope of negotiations, hold hearings, subpoena witnesses, take testimony, and conduct all other activities needed to fulfill its obligations under this Tribal Labor Relations Ordinance.

(1) Each member of the Tribal Labor Panel shall have relevant experience in federal labor law and/or federal Indian law with preference given to those with experience in both. Names of individuals may be provided by such sources as, but not limited to, Indian Dispute Services, Federal Mediation and Conciliation Service, and the American Academy of Arbitrators.

(2) Unless either party objects, one arbitrator from the Tribal Labor Panel will render a binding decision on the dispute under the Ordinance. If either party objects, the dispute will be decided by a three-member panel of the Tribal Labor Panel, which will render a binding decision. In the event there is one arbitrator, five (5) Tribal Labor Panel names shall be submitted to the parties and each party may strike no more that two (2) names. In the event there is a three (3) member panel, seven (7) TLP names shall be submitted to the parties and each party may strike no more than two (2) names. A coin toss shall determine which party may

strike the first name. The arbitrator will generally follow the American Arbitration Association's procedural rules relating to labor dispute resolution. The arbitrator or panel must render a written, binding decision that complies in all respects with the provisions of this Ordinance.

(d) Under the third level of binding dispute resolution, either party may seek a motion to compel arbitration or a motion to confirm an arbitration award in Tribal Court, which may be appealed to federal court. If the Tribal Court does not render its decision within 90 days, or in the event there is no Tribal Court, the matter may proceed directly to federal court. In the event the federal court declines jurisdiction, the tribe agrees to a limited waiver of its sovereign immunity for the sole purpose of compelling arbitration or confirming an arbitration award issued pursuant to the Ordinance in the appropriate state superior court. The parties are free to put at issue whether or not the arbitration award exceeds the authority of the Tribal Labor Panel.

EXHIBIT C

COLLECTIVE BARGAINING AGREEMENT

by and between

THE PICAYUNE RANCHERIA OF CHUKCHANSI INDIANS OF CALIFORNIA

and

UNITE HERE! INTERNATIONAL UNION

Collective Bargaining Agreement

This Agreement is made and entered into by and between Picayune Rancheria of Chukchansi Indians, hereinafter referred to as the "Employer" and the UNITE HERE International Union, hereinafter referred to as "Union." The Employer and the Union agree that the Tribal Labor Relations Ordinance (TLRO) adopted by the Employer as a requirement of the Tribal/State Compact between the Employer and the State of California is the applicable law with regard to labor relations within the jurisdiction of the Employer.

Section 1. Term

This Agreement shall be in effect the period commencing October 1, 2005 and continuing through and including January 5, 2009. At least ninety (90) days, but not more that one hundred fifty (150) days before January 5, 2009, either party may serve notice upon the other by Certified Mail, of a desire to terminate, change or modify this Agreement, or any part thereof. In the event no such notice is given, this Agreement shall be renewed from year to year after the expiration date herein, subject to written notice of termination or modification at least ninety (90) days, but not more than one hundred fifty (150) days, prior to any subsequent anniversary date of this Agreement. If, prior to the expiration date, following submission of such notice, unless time is mutually extended, the parties fail to reach an agreement, then either party shall be free to strike or lockout, upon or after such expiration date.

Section 2. Recognition

The Union shall be recognized as the sole Collective Bargaining Agent for all employees employed by the Employer, in the bargaining unit described in Appendix A, performing work at Chukchansi Gold Resort and Casino, 711 Lucky Lane, Coarsegold, California, consisting of the employee job classifications in use by the Employer on November 19, 2004.

It is agreed between the parties that upon the effective date of this Agreement, the "Memorandum of Understanding" executed between the Union and the Employer on February 10, 2001, shall become null and void and have no binding effect on either party. It is further agreed that such Memorandum of Agreement cannot be used as precedent in any dispute between the Employer and the Union relating to the recognition of the Union by the Employer and/or the application of this Agreement to the Employer and/or any of its employees.

Section 3. Management Rights

Subject only to limitations as may be imposed by this agreement, the Union recognizes that the management of the business and the direction of the working force is vested exclusively in the Employer, including but not limited to the right reasonably: to schedule work; to determine whether a position is to be filled by a full time or part time employee; to assign work and working hours to employees; to decide the work amount and location; to determine the type of services performed; to establish reasonable quality and performance standards; to require from every employee compliance with normal operating procedures; to formulate and enforce employer rules and regulations now in effect or hereinafter enacted; to hire, suspend, promote, demote, transfer, discharge, discipline for cause, or relieve employees from duty because of lack of work or for other legitimate reasons; to maintain discipline and efficiency of employees; to judge skill, ability, and physical fitness; to create, eliminate or consolidate job classifications; to control and regulate the

food/meals for employees in the employee cafeteria that are similar in quality to the meals provided to the customers of the Employer's restaurant operations. Effective January 1, 2007, a limited selection of balanced and nutritious food/meals shall be provided free of charge to employees. No wage deductions shall be made for such food/meals that are free of charge.

Section 26. Union Buttons and Bulletin Boards

1. The Union shall have the use of and access to a designated Bulletin Board for the posting of official Union notices in an area frequented by employees. The Union shall not post material that is considered defamatory, disparaging, and/or ridiculing of the Employer and/or other team members.

2. Members at all times while on duty may wear one Union working button (not to exceed two inches (2") in diameter) in a conspicuous place on their uniforms. The design of the button will be in good taste reflecting the spirit of the hospitality/casino industry.

Section 27. Mandatory Meetings

The Employer may schedule mandatory employee group meetings as needed. Dates for mandatory meetings will be posted at least seven days (7) in advance of the scheduled mandatory meeting. Such meetings will be compensated for at the employee's regular rate of pay. The employee will be guaranteed two (2) hours pay, if it is the employee's regularly scheduled day off or non-work time. Employees with prior legitimate commitments will be excused.

Section 28. Uniforms

When uniforms are required by the Employer as a condition of employment, such uniforms shall be provided and maintained by the Employer to the extent dry cleaning is required.

Section 29. Grievance Procedure

1. Definition: For purposes of this Agreement, a grievance is a dispute between the Employer and the Union, involving the meaning, or application of this Agreement, or the alleged violation of any provision of this Agreement by the Employer or the Union.

2. General Principles:
   a. The Employer and the Union, upon request, shall make available to each other relevant information necessary to resolve the subject grievance. This subsection may be waived by mutual written agreement of the Employer and the Union.
   b. It is the intention, through the Grievance Procedure, to reach an expeditious resolution of any disputes between the Employer and the Union. To that end failure to meet the time limits by the grieving party at any step of the grievance procedure as outlined in this section shall be deemed to be an abandonment of the grievance. Failure to meet the time limits by the party against whom the grievance is filed at any step shall be deemed to be a waiver of the requirement of that step of the grievance procedure by both parties and the moving party may move on to the next step. Time limits may be waived by mutual agreement of the Employer and the Union.
   c. Employees may request the presence of a Union representative or Union Committee Person at any or all steps of the Grievance Procedure.

3. Five -Step Grievance Procedure: Grievances shall be processed in the following manner:
   a. Step 1. Within five (5) calendar days of the incident or circumstances giving rise to the dispute, or knowledge thereof, the employee or the Union may discuss the matter with his most immediate supervisor authorized to resolve disputes. In the case of discipline, the meeting where the discipline is issued may be considered the step one grievance meeting.
   b. Step 2. If the dispute is not resolved at Step 1, the employee or the Union may discuss the matter with the director or manager of his department. This meeting shall take place within ten (10) calendar days of the Step 1 meeting. The manager or director shall issue a decision within five (5) calendar days of the Step 2 meeting.
   c. Step 3. If the dispute is not resolved in Step 2, the Union may file a written request for a meeting with the Employer's Human Resources Department within ten (10) calendar days of Step 2.
   d. Step 4. If the dispute is not resolved in Step 3, the Union and/or the Employer may file a written request for an Adjustment Board Hearing within ten (10) days of Step 2. The written grievance shall set forth the facts giving rise to the dispute and designate the grievance as well as the remedy sought. The Adjustment Board Hearing shall be heard within thirty (30) calendar days of the written request. The Adjustment Board shall consist of two (2) representatives of the Employer and two (2) representatives of the Union. The grievant shall have a right to be present at the Adjustment Board hearing. The Employer representative involved in the incident or circumstances giving rise to the dispute should be present at the Adjustment Board. The Employer and the Union shall be as forthcoming in their presentations and deliberations as possible with respect to the facts surrounding the issue. A simple majority of the Adjustment Board Members can vote on a resolution of the dispute which shall be binding on the parties.
   e. Step 5. Arbitration. If the grievance is not resolved at Step 4, the grieving party may proceed to arbitration. The parties shall attempt to mutually agree upon an Arbitrator. If the parties are unable to agree upon an Arbitrator within ten (10) calendar days of the demand for Arbitration, they shall choose an Arbitrator from a panel provided by the Federal Mediation and Conciliation Service by ultimately striking names on the list. Such panel shall have no fewer than seven names. A coin toss will decide which party will have the first strike. The arbitrator shall not have the power to add to or modify any of the terms, conditions, sections or articles of this Agreement. Any award of back pay by the Arbitrator shall be reduced by the amount of employee interim earnings and/or the receipt of unemployment insurance benefits. His decision shall not go beyond what is necessary for the interpretation and application of the Agreement in the case of the specific grievance at issue. The fees and expenses of the Arbitrator shall be borne equally by the parties except where one of the parties to the Agreement requests a postponement of a previously scheduled Arbitration hearing which results in a postponement charge. The postponing party shall pay such charge unless such postponement results in a settlement of the grievance, in which case the postponement charge shall be borne equally by the parties. A joint postponement request shall be borne equally by the parties.

4. Expedited Arbitration: Any individual discharge case, by mutual agreement of the Union and the Employer, shall be submitted to expedited arbitration whereby both parties shall waive their rights to the submission of any briefs or stenographic recordings. The arbitrator shall issue a decision within twenty-four (24) hours following the close of the hearing, followed by a written decision within seven (7) calendar days of the close of the hearing. The parties hereby adopt and incorporate by reference the then current Expedited Labor Arbitration

Rules of the American Arbitration Association for arbitrations held under this paragraph 4.

5. If the Employer files a grievance against the Union, the first step shall be a meeting between the HR Department of the Employer and the designated Union representative. If the grievance is not settled at this step, the procedures followed in Steps 4 and 5 as stated herein shall be followed.

6. For the sole purpose of enabling a suit to compel arbitration or to confirm an arbitration award under this Agreement or the Employer's Tribal Labor Relations Ordinance, the Employer agrees to a limited waiver of sovereign immunity and consents to be sued in federal court, without exhausting tribal remedies. To the extent the federal court declines jurisdiction, for the sole purpose of enabling a suit to compel arbitration or to confirm an arbitration award under this Agreement, the Employer agrees to a limited waiver of sovereign immunity and consents to be sued in the appropriate state superior court, without exhausting tribal remedies. The limited waiver of sovereign immunity defined by this section does not apply to any other form of action, judicial or administrative.

Section 30. Labor-Management Partnership/Problem Solving

The parties agree to set up a joint Problem Solving Team consisting of a mutually agreed upon number of employees and managers. Both the Employer and the Union shall have the sole authority to determine who shall be their respective representatives on the Problem Solving Team. Participation and service of employees on the Problem Solving Team shall be on paid time. The appropriate compensation rate shall be agreed upon by the parties. All such compensation for Union representatives shall be paid for by the Union. Meetings shall occur as needed and be mutually agreed upon.

Both the Employer and the Union may raise whatever issues or problems they deem appropriate. However, the Problem Solving Team cannot be used to supplant or to replace the Grievance Procedure and the parties retain all of their rights and at their sole discretion to file grievances over alleged violations of the Agreement. Contractual provisions shall not be modified or replaced with new language without the mutual agreement of the parties.

It is understood by both parties that neither party is waiving any rights it may have under this Agreement or under law and a willingness to discuss any issue does not constitute a waiver of any rights afforded the respective parties under this Agreement or the law. Oral statements made at meetings occurring subject to this section will not be admissible in any subsequent arbitration hearing conducted under the terms of this Agreement.

Section 31. Job Duties

Except in emergencies and or as is incidental to their work, all employees shall perform only such duties as are customarily performed by employees in their classifications.

Section 32. Policy Communications

It is understood between the parties that all existing personnel policies and procedures of the Employer existing at the time of this Agreement shall remain in effect unless they expressly conflict with this Agreement. New policies or policy changes will not conflict with this Agreement.

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satisfactory to the State. If the Tribe accepts the difference or does not provide a reconciliation satisfactory to the State, the Tribe must immediately pay the amount of the resulting deficiencies in the quarterly contribution plus interest on such amounts from the date they were due at the rate of 1.0% per month or the maximum rate permitted by applicable law, whichever is less.

(e) The Tribe shall not conduct Class III gaming if more than two quarterly contributions to the Special Distribution Fund are overdue.

Sec. 6.0. LICENSING.

Sec. 6.1. Gaming Ordinance and Regulations. All Gaming Activities conducted under this Gaming Compact shall, at a minimum, comply with a Gaming Ordinance duly adopted by the Tribe and approved in accordance with IGRA, and with all rules, regulations, procedures, specifications, and standards duly adopted by the Tribal Gaming Agency.

Sec. 6.2. Tribal Ownership, Management, and Control of Gaming Operation. The Gaming Operations authorized under this Gaming Compact shall be owned solely by the Tribe.

Sec. 6.3. Prohibition Regarding Minors. (a) Except as provided in subdivision (b), the Tribe shall not permit persons under the age of 18 years to be present in any room in which Class III Gaming Activities are being conducted unless the person is en-route to a non-gaming area of the Gaming Facility.

(b) If the Tribe permits the consumption of alcoholic beverages in the Gaming Facility, the Tribe shall prohibit persons under the age of 21 years from being present in any area in which Class III gaming activities are being conducted and in which alcoholic beverages may be consumed, to the extent required by the state Department of Alcoholic Beverage Control.

Sec. 6.4. Licensing Requirements and Procedures.

Sec. 6.4.1. Summary of Licensing Principles. All persons in any way connected with the Gaming Operation or Facility who are required to be licensed or to submit to a background investigation under IGRA, and any others required to be licensed under this Gaming Compact, including, but not limited to, all Gaming Employees and Gaming Resource Suppliers, and any other person having a significant influence over the Gaming Operation must be licensed by the Tribal Gaming Agency. The parties intend that the licensing process provided for in this Gaming Compact shall involve joint cooperation between the Tribal Gaming Agency and the State Gaming Agency, as more particularly described herein.

Sec. 6.4.2. Gaming Facility. (a) The Gaming Facility authorized by this Gaming Compact shall be licensed by the Tribal Gaming Agency in conformity with the

EXHIBIT E

investigation report, provide a written notice to the affected party(ies) setting forth, with specificity, the issue(s) to be resolved.

4.24.3 Hearing The Board of Commissioners shall, within 14 business days after the notice of hearing pursuant to 4.24.2, provide the affected parties the right to present oral or written testimony from all people interested therein as determined by the Board of Commissioners.

4.24.4 Examiner The Board of Commissioners shall act as Examiner for the purpose of holding any hearing, or the Board of Commissioners may appoint a Person qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to act as Examiner for the purpose of holding any hearing. Any such appointment shall constitute a delegation to such examiner of the powers of the Board of Commissioners under this Ordinance with respect to any such hearing.

4.24.5 Decision The Examiner shall render a written opinion within 10 business days following the completion of the hearing.

4.24.6 A decision of the Examiner shall be final.

4.25 Monthly Report of Tribal Gaming Commission: The Tribal Gaming Commission shall provide a monthly report to the Tribal Council summarizing Tribal Gaming Commission official actions, activities, investigative reports and reports received from the Tribe's Gaming Facility(ies) as it deems necessary to keep the Tribal Council fully informed as to the status of the Tribal Gaming Commission's activities.

4.26 Executive Director

4.26.1 Hiring. The Executive Director shall be selected by the Board of Commissioners and employed by the Tribal Gaming Commission.

4.26.2 Removal. The Executive Director may only be terminated by the Board of Commissioners with the approval of the Tribal Council.

SECTION 5. GAMING LICENSES

5.1 Applicability:

5.1.1 Every Employee, Key Employee, Primary Management Official, Gaming Enterprise, and Gaming Facility that aids, participates in or is related to Gaming is required to have a current and valid License as issued by the Tribal Gaming Commission.

5.1.2 The Tribe will perform background investigations and issue licenses to Key Employees and Primary Management Officials according to requirements at least as stringent as those in 25 C.F.R. Parts 556 and 558.

CERTIFICATE OF SERVICE BY MAIL

I, Dawn M. Eastman, declare and state as follows.

I am an employee of the Law Offices of Scott Wilson, which represents Respondents in the above-entitled action. My business address is 711 Eighth Avenue, Suite C, San Diego, CA 92101.

I am a citizen of the United States and reside in San Diego County, California. I am over the age of eighteen (18) years and not a party to the within case or proceeding.

On October 30, 2014, I served a copy of the following documents:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS AND TO STRIKE AFFIRMATIVE DEFENSES

on the parties to the action and/or their attorney of record by placing said document in a sealed envelope, postage prepaid, and depositing same in a box or office of the United States Postal Service in San Diego, California addressed as follows:

Kristin L. Martin, Attorney at Law
Davis, Cowell & Bowe, LLP
595 Market Street, Suite 1400
San Francisco, CA 94105-2821

I declare the above to be true under penalty of perjury. This Declaration is signed on October 30, 2014 in San Diego, California.

LAW OFFICES OF SCOTT A. WILSON

By: Dawn Eastman
Dawn M. Eastman