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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
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13

14 **PAUMA BAND OF LUISENO**
15 **MISSION INDIANS OF THE**
16 **PAUMA & YUIMA**
17 **RESERVATION, a/k/a PAUMA**
BAND OF MISSION INDIANS, a
federally-recognized Indian Tribe,

18 Plaintiff,

19 v.

20 **STATE OF CALIFORNIA; and**
21 **EDMUND G. BROWN, JR., as**
22 **Governor of the State of California,**

23 Defendants.
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26
27
28

3:16-cv-01713-BAS-JMA

**DEFENDANTS' MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

Date: No Oral Argument Unless
Requested by the Court

Courtroom: 4B
Judge: Hon. Cynthia Bashant
Trial Date: N/A
Action Filed: 7/1/2016

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INTRODUCTION

Defendants State of California (State), Edmund G. Brown Jr., as Governor of the State of California (Governor), the California Gambling Control Commission (Commission), and the State of California Department of Justice, Office of the Attorney General (DOJ) (collectively State Defendants), submit this Memorandum of Points and Authorities in support of their motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). By this motion, the State Defendants challenge the twenty-first claim for relief set forth in the First Amended Complaint (FAC) filed by plaintiff Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, a/k/a Pauma Band of Mission Indians, a federally-recognized Indian Tribe (Pauma or Tribe).

The first twenty claims for relief in Pauma's FAC against the State and the Governor all allege violations of the Indian Gaming Regulatory Act (18 U.S.C. §§ 1166-1168; 25 U.S.C. §§ 2701-2721) based upon claims of bad faith negotiations.¹ In contrast, the twenty-first claim for relief alleges a breach of compact claim against all of the State Defendants. According to this claim, the State Defendants breached Pauma's 1999 Compact and 2004 Amendment by misusing monies from the "Special Distribution Fund" (SDF), a fund available for appropriation by the California Legislature for gaming-related purposes. Cal. Gov't Code § 12012.85.

The State Defendants respectfully request that this Court dismiss Pauma's twenty-first claim for relief for three reasons. First, Pauma has no standing to bring a breach of compact claim because the Tribe has failed to allege for itself that it paid monies into the SDF. As a result, Pauma's allegations regarding the misuse of SDF funds that were paid by other tribes amount to nothing more than generalized grievances. Second, even if Pauma has standing to pursue a dispute over a contractual obligation to which the Tribe is not a party, the applicable four-year

¹ Simultaneous with the filing of this motion to dismiss, the State and the Governor are filing an answer to the first twenty claims for relief in Pauma's FAC.

1 limitations period ran on the Tribe's claim several years ago. And finally, Pauma's
 2 breach of compact claim fails to state a cause of action against the Commission and
 3 DOJ, because these State Defendants are not parties to Pauma's gaming compact
 4 with the State.

5 **FACTUAL ALLEGATIONS IN THE FAC'S TWENTY-FIRST CLAIM FOR RELIEF**

6 In regard to the twenty-first claim for relief against the State Defendants,
 7 Pauma alleges that on May 1, 2000, it executed the 1999 Compact with the State.
 8 FAC ¶ 59. Pauma later entered into a 2004 Amendment to the 1999 Compact with
 9 the State. *Id.* at ¶ 77.² According to Pauma, the State covenanted that "it would use
 10 the SDF funds paid by tribes only in specified manners." *Id.* at ¶ 301. Payments
 11 could be used for "compensation for regulatory costs incurred by the State Gaming
 12 Agency and the state Department of Justice in connection with the implementation
 13 and administration of the Compact." *Id.* Pauma alleges that the State, however,
 14 redirected SDF monies "to fund compact negotiations of dubious legality" and to
 15 defend "suits alleging that the State negotiated in bad faith or committed some
 16 impropriety during" compact negotiations. *Id.*

17 Pauma alleges that this breached the 1999 Compact and resulted in significant
 18 harm, and "the threat of future harm as well." FAC ¶ 302. The State allegedly
 19 defended Pauma's previous IGRA lawsuit "using monies paid by other tribes," and
 20 the State "appears intent on doing so again in this one." *Id.* The State also is
 21 alleged to have used "the funds provided by other tribes" to defend itself in other
 22 bad faith lawsuits brought by other tribes. *Id.* The State's use of SDF funds in this
 23 manner is alleged to have "removed an equivalent amount of funds from the SDF
 24

25 ² Although Pauma's allegation of breach refers to the 1999 Compact and the
 26 2004 Amendment, Pauma attached only the 1999 Compact as an exhibit to its FAC,
 27 and not the 2004 Amendment. This is not surprising, because Pauma's 2004
 28 Amendment was rescinded by the Ninth Circuit Court of Appeals in 2015. See
Pauma Band of Luiseno Mission Indians of Pauma & Yuima Reservation v. California, 813 F.3d 1155, 1167 (9th Cir. 2015). Accordingly, Pauma's alleged
 breach can be based only on its 1999 Compact.

1 that would otherwise go to local communities or other actual regulatory purposes.”
 2 *Id.* This situation allegedly resulted in Pauma “having to execute an MOU with
 3 San Diego County under the 2004 Amendment” that obligated the tribe “to paying
 4 tens of millions of dollars” *Id.*

5 STANDARD FOR RULE 12(B)(6) DISMISSAL

6 A Rule 12(b)(6) dismissal “is proper if there is a ‘lack of a cognizable legal
 7 theory or the absence of sufficient facts alleged under a cognizable legal theory.’”
 8 *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (quoting
 9 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990)). For a
 10 complaint to survive a motion to dismiss, “the non-conclusory ‘factual content,’
 11 and reasonable inferences from that content, must be plausibly suggestive of a
 12 claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969
 13 (9th Cir. 2009) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic*
 14 *Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007)). A court need not accept as true
 15 legal conclusions cast in the form of factual allegations. *Ashcroft*, 556 U.S. at 678.

16 ARGUMENT

17 I. PAUMA’S TWENTY-FIRST CLAIM FOR RELIEF FOR BREACH OF COMPACT FAILS TO 18 ALLEGE STANDING BECAUSE PAUMA ALLEGES NOTHING MORE THAN THE 19 CONTRACT RIGHTS OF OTHER TRIBES

20 Pauma’s twenty-first claim for relief fails to allege standing, either
 21 individually or collectively, against the State Defendants. Without question,
 22 Pauma’s claim alleges that the State Defendants breached the terms of the 1999
 23 IGRA compact by misusing SDF funds. FAC ¶ 301. This alleged misuse consisted
 24 of using these monies to fund compact negotiations of “dubious legality” and to
 25 fund “the defense of suits alleging that the State negotiated in bad faith or
 26 committed some impropriety during the course of compacting” *Id.* However,
 27 while other tribes were required to, and did indeed pay money into the SDF
 28 pursuant to their 1999 compacts, Pauma never alleges that under its gaming
 compact it was either required to, or actually did, pay funds into the SDF.

1 Pauma's failure to plead a breach of its own gaming compact with the State
2 demonstrates that *this* Tribe lacks standing to pursue its limited twenty-first claim
3 for relief in the otherwise broad FAC. Significantly, federal courts employ standing
4 doctrines to examine whether the correct party is litigating a potential claim. As
5 such, standing "focuses on the party seeking to get his complaint before a federal
6 court and not on the issues he wishes to have adjudicated." *Valley Forge Christian*
7 *College v. Americans United for Separation of Church and State*, 454 U.S. 464, 484
8 (1982) (quoting *Flast v. Cohen*, 392 U.S. 83, 99 (1968)). Thus, the central issue in
9 the State Defendants' motion to dismiss is not whether the alleged misuse of SDF
10 monies breached the terms of class III gaming compacts under IGRA. Instead, the
11 narrow question is whether this dispute should be litigated by a tribe, such as
12 Pauma, that was neither required to nor paid any monies into the SDF under its
13 gaming compact.

14 Pauma's attempt to establish standing by relying on the compact requirements
15 of other tribes that actually pay into the SDF raises an obvious threshold question
16 regarding standing. In particular, Pauma's twenty-first claim for relief fails under
17 the standing doctrine's prudential considerations. These prudential limitations have
18 been described as "essentially matters of judicial self-governance." *McMichael v.*
19 *Napa County*, 709 F.2d 1268, 1271 (9th Cir. 1983) (quoting *Warth v. Seldin*, 422
20 U.S. 490, 500 (1975)). In their absence, "the courts would be called upon to decide
21 abstract questions of wide public significance even though other governmental
22 institutions may be more competent to address the questions and even though
23 judicial intervention may be unnecessary to protect individual rights." *Id.* Two
24 prongs in the standing doctrine's prudential limitations are: (1) the plaintiff must
25 assert his or her own rights, rather than relying on the rights or interests of third
26 parties; and (2) the plaintiff must allege an injury that is more than a "generalized
27
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1 grievance.”³ *McMichael*, 709 F.2d at 1270 (citing *Warth*, 422 U.S. at 499; *Valley*
2 *Forge*, 454 U.S. at 464).

3 In applying these two prudential limitations to Pauma’s twenty-first claim for
4 relief, Pauma lacks standing. Under the first prudential limitation, Pauma’s
5 allegations regarding misuse of SDF monies show that rather than asserting its own
6 compact rights, Pauma is improperly attempting to rely upon the interests of third-
7 party tribes that are parties to compacts that require them to make SDF payments.
8 Respectfully, Pauma lacks standing to bring a breach of compact claim on a
9 contractual obligation completely lacking in its gaming compact.

10 Analyzing Pauma’s breach of compact claim requires the application of
11 “[g]eneral principles of federal contract law” *Cachil Dehe Band of Wintun*
12 *Indians of the Colusa Indian Community v. California*, 618 F.3d 1066, 1073 (9th
13 Cir. 2010) (citing *Kennewick Irrigation Dist. v. United States*, 880 F.2d 1018, 1032
14 (9th Cir. 1989). In determining federal contract law, courts rely upon both
15 “California contract law and Ninth Circuit decisions interpreting California”
16 contract law. *Id.* And under California contract law, someone who is not a party to
17 a contract has no standing to enforce the contract. *See Hatchwell v. Blue Shield of*
18 *California*, 198 Cal.App.3d 1027, 1034 (1988).

19 Like the plaintiff in *Hatchwell*, Pauma lacks standing for its twenty-first claim
20 for relief because this Tribe does not allege that it is a party to a compact requiring
21 SDF payments. Simply put, by failing to allege that it is a party to a compact that
22 requires the Tribe to make SDF payments to the State, Pauma has failed to assert its
23 own rights. Rather, Pauma attempts to rely on the rights or interests of other tribes.

24 ³ In a recent decision, the Supreme Court has questioned, in a footnote,
25 whether the second prong of the standing doctrine’s prudential limitations on
26 generalized grievances, is perhaps more appropriately considered a constitutional
27 limitation on standing. *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 134
28 S. Ct. 1377, 1387 n.3 (2014). However, whether it is labeled a prudential or
constitutional concern, this limitation on generalized grievances remains, and a
plaintiff must allege an injury that is more than a generalized grievance in order to
have standing.

1 This is insufficient for Pauma to establish standing because, as the court in
 2 *Hatchwell* explained, “[s]omeone who is not a party to a contract has no standing to
 3 enforce the contract or to recover extra-contract damages for wrongful withholding
 4 of benefits to the contracting party.” *Hatchwell*, 198 Cal.App.3d at 1034.

5 Without question, other tribes in California negotiated class III gaming
 6 compacts that required that those tribes make SDF payments. Pauma, however, did
 7 not. Accordingly, because Pauma must assert its own compact rights in a breach-
 8 of-compact claim, rather than relying on the compact rights or interests of other
 9 tribes, Pauma lacks standing to make its twenty-first claim.⁴

10 Pauma’s twenty-first claim for relief also fails the prudential doctrine’s second
 11 prong, which requires the Tribe to allege an injury that is more than a generalized
 12 grievance. *McMichael*, 709 F.2d at 1270 (citing *Warth*, 422 U.S. at 499; *Valley*
 13 *Forge*, 454 U.S. at 464). Federal courts impose this prudential limitation because
 14 “it ensures that courts exercise power that is judicial in nature.” *Lance v. Coffman*,
 15 549 U.S. 437, 441 (2007). As previously discussed, Pauma has not alleged a
 16 breach of any compact term requiring it to make payments into the SDF. Instead,
 17 Pauma’s allegations allege, at most, a generalized disagreement over how the State
 18 spends SDF funds. And such allegations that raise nothing more than a generalized
 19 grievance about government fail to establish standing because they seek “relief that
 20 no more directly and tangibly benefits [the plaintiff] than it does the public at large .
 21 . . .” *Baldwin v. Sebelius*, 654 F.3d 877, 879 (9th Cir. 2011) (quoting *Lujan v.*
 22 *Defenders of Wildlife*, 504 U.S. 555, 573-74 (1992)).

23 While Pauma can raise its SDF-spending complaints in the California
 24 Legislature, prudential limitations foreclose Pauma’s attempt to use federal judicial
 25 power to impose changes in SDF spending on the State’s legislative branch of

26 ⁴ While Pauma also alleges that the “dearth of SDF funding” resulted in the
 27 Tribe executing a memorandum of understanding (MOU) with San Diego County,
 28 Pauma similarly fails to allege that it has ever paid any funds under this MOU
 resulting from the alleged inadequacies in SDF funding. FAC ¶ 302.

1 government. Accordingly, in the absence of any pleadings beyond Pauma's
 2 generalized grievances regarding SDF spending of funds paid by other tribes,
 3 Pauma has also failed to meet the standing requirements in the prudential doctrine's
 4 second prong.

5 **II. THE TWENTY-FIRST CLAIM FOR RELIEF IS TIME BARRED BY THE APPLICABLE**
 6 **FOUR YEAR STATUTE OF LIMITATIONS FOR BREACH OF CONTRACT CLAIMS**

7 Pauma cannot pursue a breach of compact claim that runs afoul of the
 8 applicable statute of limitations. While IGRA contains no statute of limitations,
 9 federal courts addressing claims under federal statutes assume that Congress
 10 intended by its silence that the appropriate state law applies. *See Agency Holding*
 11 *Corp. v. Malley-Duff & Assoc., Inc.*, 483 U.S. 143, 147 (1987). And here, the
 12 appropriate state law is California's four-year statute of limitations period on
 13 lawsuits for breach of a written contract. Cal. Code Civ. Proc. § 337. In applying
 14 this statute of limitations, under the general rule a claim for breach of contract
 15 "accrues at the time of the breach" and the limitations period "begins to run at that
 16 time regardless of whether any damage is apparent or whether the injured party is
 17 aware of his right to sue." *Perez-Encinas v. AmerUs Life Ins. Co.*, 468 F. Supp. 2d
 18 1127, 1134 (N.D. Cal. 2006) (citing *Niles v. Louis H. Rapoport & Sons*, 53
 19 Cal.App.2d 644, 651 (1942)).

20 In applying the above four-year statute of limitations to Pauma's twenty-first
 21 claim for relief, the claim is clearly time barred. Pauma alleges that the State
 22 Defendants improperly used SDF "funds provided by other tribes to fight the cases
 23 with Colusa, Rincon, and Big Lagoon tribes for between *six and fifteen years*."
 24 FAC ¶ 302 (emphasis added).⁵ Accordingly, all of the alleged misuse of SDF
 25 monies to either negotiate gaming compacts or defend IGRA lawsuits related to

26 ⁵ The Ninth Circuit decision in *Rincon* was filed on April 20, 2010. *See*
 27 *Rincon Band of Luiseno Mission Indians of Rincon Reservation v. Schwarzenegger*,
 28 602 F.3d 1019 (9th Cir. 2010). *Colusa* was filed on August 20, 2010. *See Colusa*,
 618 F.3d 1066 (9th Cir. 2010).

those compacts occurred more than four years before Pauma filed its breach of contract claim. Cal. Code Civ. Proc. § 337. And because these alleged breaches accrued “at the time of the breach” under California law, *Perez-Encinas*, 468 F. Supp. 2d at 1134, the State Defendants’ motion to dismiss this time-barred claim should be granted without leave to amend.

III. THE TWENTY-FIRST CLAIM FOR RELIEF FAILS TO STATE A CLAIM AGAINST THE COMMISSION AND DOJ BECAUSE THEY WERE NOT PARTIES TO THE COMPACT

Pauma’s 1999 Compact is attached to the FAC as Exhibit 1. This compact’s opening paragraph specifically documents that it is an agreement under IGRA between Pauma and the State. FAC , Ex. 1 at 6. Pauma has not, and cannot, allege that the Commission and the DOJ are parties to this contract. For that reason alone, because these State Defendants are only named in the twenty-first cause of action, they must be dismissed from this case.

CONCLUSION

For all the forgoing reasons, the State Defendants request this Court grant their motion to dismiss the twenty-first claim for relief in Pauma’s FAC.

Dated: September 19, 2016

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2016, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANTS' MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF MOTION
TO DISMISS PLAINTIFF'S FIRST AMENDED
COMPLAINT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 19, 2016, at Sacramento, California.

TIMOTHY M. MUSCAT

Declarant

/s/ TIMOTHY M. MUSCAT

Signature