

19-16384

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**YOCHA DEHE WINTUN NATION;  
VIEJAS BAND OF KUMEYAAY  
INDIANS; SYCUAN BAND OF THE  
KUMEYAAY NATION,**

Plaintiffs and Appellants,

v.

**GAVIN NEWSOM, Governor of the State of  
California; STATE OF CALIFORNIA,**

Defendants-Appellees.

On Appeal from the United States District Court  
for the Eastern District of California

No. 2:19-cv-00025-JAM-AC  
Hon. John A. Mendez, Judge

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## INTRODUCTION

This appeal arises from the district court's judgment dismissing a suit alleging a breach of tribal-state class III gaming compacts entered into under the Indian Gaming Regulatory Act (IGRA), 18 U.S.C. §§ 1166-1168 and 25 U.S.C. §§ 2701-2721. Appellants Yocha Dehe Wintun Nation (Yocha Dehe), the Viejas Band of Kumeyaay Indians (Viejas Band), and the Sycuan Band of the Kumeyaay Nations (Sycuan Band) (collectively, Appellants or Tribes) brought this action against Appellees the State of California (State) and Gavin Newsom, Governor of the State of California (collectively, State Defendants) seeking injunctive and declaratory relief, as well as a decree requiring specific performance. The State Defendants successfully moved to dismiss the Tribes' complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the ground that the obligation the State was alleged to have breached did not exist in the tribal-state compacts. The Tribes appealed.

The Tribes each operate casino operations pursuant to class III gaming compacts with the State (collectively, the Compacts) that contain identical relevant provisions. In the district court and on appeal, the Tribes argue that the State is breaching the Compacts by not utilizing its police powers to enforce the Tribes' exclusive right to offer banked card games. The Tribes

allege that non-tribal card rooms are operating banked card games in violation of California law and are therefore infringing on the Tribes' exclusive right under the Compacts to offer those games. The Tribes also allege that this infringement on their exclusive right is negatively impacting the Tribes' casinos' revenues. The Tribes allege that by not enforcing the Tribes' interpretation of California law against card rooms, the State is breaching an alleged implied covenant of good faith and fair dealing in the Compacts to protect the Tribes' exclusivity through the use of the State's police powers. The Tribes seek an injunction directing the State to "enforce its laws" prohibiting the play of banked card games in card rooms, a declaration that the State breached the Compacts by failing to file suit against card rooms allegedly operating banked card games, and a court decree requiring specific performance of the State's alleged obligation under the Compacts to exercise its police powers to ensure the Tribes' exclusive right to operate banked card games.

As this Court stated when determining a compact-interpretation issue, "this case begins and ends with [three] Tribal-State Compacts[.]" *Cabazon v. Wilson*, 124 F.3d 1050, 1053 (9th Cir. 1997); *see also Confederated Tribes of Siletz Indians of Oregon v. Oregon*, 143 F.3d 481, 485 (9th Cir. 1998). And, as the district court properly held, the Compacts, "although

recognizing the right of exclusivity provided by the California Constitution, do not include any express terms regarding Defendants’ obligation to preserve that right.” Order, ER vol. 1, 8.<sup>1</sup>

The Compacts contain no express requirement that the State exercise its police powers to ensure or protect the Tribes’ exclusive right to operate banked card games. This is not surprising, as the State is prohibited from contracting away its police powers, that is, its authority to enact regulations to enable the enforcement of the law and its prosecutorial discretion to decide what charges to bring under the law and how to pursue cases that violate the law. The fact that no such obligation exists is affirmed by the fact the Compacts contain no remedy should the State breach this alleged obligation.

The district court’s judgment should be affirmed. The court interpreted the Compacts by applying contract law and properly found that they do not contain any requirement that the State exercise its police powers to ensure or protect the Tribes’ exclusive right to operate banked card games.

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<sup>1</sup> Citations to “ER vol. \_\_, \_\_” refer to the volume and pages in the Excerpts of Record filed with Appellants’ Opening Brief. Citations to “SER \_\_” refer to pages in the Supplemental Excerpts of Record filed with this brief. Citations to “AOB \_\_” refer to pages in Appellants’ Opening Brief.

## **JURISDICTIONAL STATEMENT**

This action arises under the tribal-state class III gaming compacts entered into between the Tribes and the State. The district court had jurisdiction pursuant to 28 U.S.C. § 1362 because the action was initiated by federally recognized Indian tribes and the matter in controversy arose under federal law. This Court has jurisdiction pursuant to 28 U.S.C. § 1291 because the Appellants seek review of a final decision granting the State Defendants' motion to dismiss. The appeal is timely because the Appellants filed a notice of appeal on July 11, 2019, within thirty days of entry of the June 18, 2019 district court judgment pursuant to Federal Rule of Appellate Procedure 4(a). ER vol. 1, 1-15. The judgment granting the State Defendants' motion to dismiss constitutes a final judgment disposing of all of the claims raised by the Tribes' suit.

## **ISSUES PRESENTED**

1. Do the Compacts contain an express obligation that the State must enforce or protect the Tribes' exclusive right to operate banked card games?
2. If such an obligation exists in the Compacts, is it enforceable as a valid exercise of the State's police power?

## **STATUTORY AUTHORITY**

The complete text of the statutory provisions at issue is reproduced in the Addendum to this brief and the Addendum to the Appellants' Opening Brief.

## **STANDARD OF REVIEW**

The district court granted the State Defendants' motion to dismiss on the basis that the Tribes could not state a claim for relief under the Compacts. Consequently, this Court reviews de novo the Tribes' claim on appeal that the district court erred in dismissing their complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Curry v. Yelp Inc.*, 875 F.3d 1219, 1224 (9th Cir. 2017).

## **BACKGROUND AND STATEMENT OF THE CASE**

### **A. Background of Tribal Gaming in California**

In *California v. Cabazon Band of Mission Indians*, the United States Supreme Court held that California lacked the authority to enforce its civil-regulatory laws against gambling on Indian reservations. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 221-22 (1987). As a result, gambling on Indian lands was subject only to federal regulation or state criminal prohibitions. *Artichoke Joe's v. Norton*, 216 F. Supp. 2d 1084, 1091 (E.D. Cal. 2002). In direct response to the holding in *Cabazon*,

in 1988, Congress passed IGRA, establishing a federal regulatory structure for tribal gaming, and giving the states a certain role in the regulatory scheme. *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 794 (2014). IGRA provides “a statutory basis for the operation of gaming by Indian tribes” and is an example of “‘cooperative federalism’ in that it seeks to balance the competing sovereign interests of the federal government, state governments, and Indian tribes, by giving each a role in the regulatory scheme.” *Artichoke Joe’s v. Norton*, 216 F. Supp. 2d at 1092.

IGRA separates gaming into three categories, and provides for different modes of regulation for each. 25 U.S.C. § 2703. Class III gaming “includes the types of high-stakes games usually associated with Nevada-style gambling.” *Coyote Valley Band of Pomo Indians v. State of California (In re Indian Gaming Related Cases)*, 331 F.3d 1094, 1096 (9th Cir. 2003) (*Coyote Valley II*). Only class III gaming requires state involvement through a compact, negotiated bilaterally by the tribe and the state, subject to federal approval and limited federal oversight. 25 U.S.C. § 2710(d); *Coyote Valley*

*II*, 331 F.3d at 1097. Class III gaming includes banked card games<sup>2</sup> and the operation of slot machines. 25 U.S.C. § 2703(8).

At the time IGRA was enacted in 1988, California’s limitations on gambling were broad. The State’s prohibition of the possession of all non-antique slot machines, and the play of all banked and percentage card games was functionally absolute. Cal. Penal Code §§ 330-330.8. Furthermore, California’s constitution explicitly prohibited all lotteries except for the California State Lottery. Cal. Const. art. IV, § 19(a) & (d). The California Constitution also expressly declared that: “The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey.” Cal. Const. art. IV, § 19(e).

In 1998, proponents of tribal gaming sought and received voter approval of Proposition 5, which required the State to enter into specified tribal-state compacts. *See* Cal. Gov’t Code §§ 98000-98012. However, because Proposition 5 amended only state statutory law, and not the state constitution, the California Supreme Court ruled that Proposition 5 was

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<sup>2</sup> “A card game is ‘banked’ if a gaming operator participates in the game with the players and acts as a house bank, paying all winners and retaining all other players’ losses.” *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d 1250, 1255 n.2 (9th Cir. 1994), *opinion amended on denial of reh’g*, 99 F.3d 321 (9th Cir. 1996) (quoting *Sullivan v. Fox*, 189 Cal. App. 3d 673, 679 (1987)).

unconstitutional because it was inconsistent with the constitutional ban on casino-type gambling. *Hotel Employees & Rest. Employees Int’l Union v. Davis*, 21 Cal. 4th 585, 611-12 (1999) (*HERE*). At the time of the *HERE* ruling, Governor Gray Davis was in compact negotiations with a group of California Indian tribes. *Coyote Valley II*, 331 F.3d at 1102.

In response to the California Supreme Court’s *HERE* ruling, Governor Davis “proposed an amendment to Section 19 of Article IV of the California Constitution that would exempt tribal gaming from the prohibition on Nevada-style casinos, effectively granting tribes a constitutionally protected monopoly on most types of class III games in California.” *Coyote Valley II*, 331 F.3d at 1103. During the course of the compact negotiations, Governor Davis offered the participating tribes the “major concession” of the right “to operate real Las Vegas-style slot machines as well as house-banked blackjack” plus the exclusive right to conduct those forms of class III gaming in the state, in exchange for revenue sharing provisions directed to specified funds. *Id.* at 1104-06, *citing* K. Alexa Koenig, *Gambling on Proposition 1A: The California Indian Self-Reliance Amendment*, 36 U.S.F. L. Rev. 1033, 1043-44 (2002).

In September 1999, the State executed tribal-state class III gaming compacts—the 1999 Compacts—with 57 California tribes. Cal. Gov’t Code



§ 12012.25(a). The 1999 Compacts were conditioned upon the occurrence of several events, including legislative ratification of the compacts and the passage of the Proposition 1A ballot initiative. The California Legislature ratified the 1999 Compacts (Cal. Gov't Code § 12012.25), and on March 7, 2000, California voters approved Proposition 1A, which created an exception for tribal gaming to the constitutional ban on casino-type gambling (Cal. Const. art. IV, § 19(f)).

The new constitutional provision also authorized the Governor of California “to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law.” Cal. Const. art. IV, § 19(f). After the passage of Proposition 1A, the Secretary of the United States Department of the Interior approved the 1999 Compacts, which became effective upon publication in the Federal Register. 65 Fed. Reg. 31,189 (May 16, 2000).

The Appellants all originally had 1999 Compacts, but executed their current Compacts in 2015 and 2016.<sup>3</sup> See ER vol. 2, 175, 200, 224. The Tribes' Compacts are individual agreements between each sovereign tribal government and the State. However, the relevant compact provisions at issue here, the Preamble, Purposes and Objectives, Exclusivity, and the Limited Waiver of Sovereign Immunity, contain virtually the same language and therefore it is possible to discuss those Compacts' terms collectively.

## **B. Procedural History of This Case**

Appellants filed their Complaint for: (1) Breach of Compact [and] (2) Breach of Implied Covenant of Good Faith and Fair Dealing on January 3, 2019 (Complaint). ER vol. 2, 16-53. On March 18, 2019, the State filed its motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), with a supporting memorandum and request for judicial notice. SER 1-3; ER vol. 2, 54-130. That same day, the California Gaming Association (CGA), the industry trade group for the non-tribal California card room industry, filed a motion to intervene along with a proposed memorandum of points and

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<sup>3</sup> “The 1999 Compact contains a termination provision . . . that sets December 31, 2020 as the Compact’s end date.” *Chemehuevi Indian Tribe v. Newsom*, 919 F.3d 1148, 1150 (9th Cir. 2019). All past and present tribal-state gaming compacts between the State and California tribes are publicly available at the California Gambling Control Commission’s website: <http://www.cgcc.ca.gov/?pageID=compacts>.

authority in support of the motion to dismiss and a proposed answer to Appellants' Complaint. SER 4-23. Both the State Defendants and the Tribes opposed the CGA's motion to intervene.

On June 18, 2019, the district court granted the State Defendants' Motion to Dismiss and denied the CGA's motion to intervene on mootness grounds.<sup>4</sup> ER vol. 1, 3-14. Judgment was entered the same day. ER vol. 1, 15. On July 11, 2019, Appellants filed their notice of appeal. ER vol. 1, 1-2.

### **SUMMARY OF ARGUMENT**

The Compacts recognize that the Tribes have the constitutionally based exclusive right in California to conduct banked card games and operate slot machines. But they do not include a requirement that the State exercise its police powers to ensure or protect the Tribes' exclusive right to operate

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<sup>4</sup> The CGA appealed the district court's order, but the appeal was held in abeyance pending the resolution of the CGA's motion for reconsideration. D.C. No. 2:19-cv-00025 ECF Doc. 39. The State did not oppose the motion for reconsideration, only noting that should the motion be granted, the State would reaffirm its opposition to the CGA's intervention into the case. D.C. No. 2:19-cv-00025 ECF Doc. 42. The district court denied the CGA's motion for reconsideration and the CGA filed an amended notice of appeal. D.C. No. 2:19-cv-00025 ECF Docs. 45, 46. The Tribes, the State and the CGA filed a joint motion in this Court asking that the CGA appeal, Case No. 19-16422, be held in abeyance pending the outcome of this appeal. ECF Doc. 12.

banked card games. The Compacts could not include any such requirement because the State cannot contract away its police power, including the authority to enact regulations to enable the enforcement of the law or the prosecutorial discretion to decide whether and when to prosecute an action. Additionally, the State cannot put itself in the position of being in breach of the Compacts if the law were to change.

The language in the Compacts' Preamble that recognizes the exclusive rights of the Tribes does not operate to create a binding obligation. Where the Compacts do include a remedy related to loss of exclusivity, it is in the event only where the Tribes lose the exclusive right to operate slot machines due to a change of law—not due to the actions of other parties. Even in this narrow instance, the Compacts still impose no affirmative obligation on the State to protect that right. Thus, the dismissal of the Complaint for failure to state a claim upon which relief can be granted should be affirmed.

## **ARGUMENT**

### **A. The Compacts Do Not Contain Terms Guaranteeing Protection of Tribal Exclusivity for Banked Card Games**

This Court has held that tribal-state gaming compacts are subject to general principles of contract law. *See State of Idaho v. Shoshone-Bannock Tribes*, 465 F.3d 1095, 1098 (9th Cir. 2006). “General principles of federal

contract law govern the Compacts, which were entered pursuant to IGRA.”

*Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v.*

*California*, 618 F.3d 1066, 1073 (9th Cir. 2010) (*Colusa*). A compact is a

contract that must “be construed and applied in accordance with its terms.”

*Texas v. New Mexico*, 482 U.S. 124, 128 (1987). While tribal-state gaming

compacts are governed by federal law, California contract law does not

differ from federal contract law. *Colusa*, 618 F.3d at 1073. Therefore, this

Court has relied on “California contract law and Ninth Circuit decisions

interpreting California law.” *Id.* Under California law, the contract must be

“‘interpreted as to give effect to the mutual intention of the parties as it

existed at the time of contracting, so far as the same is ascertainable and

lawful.’ (Civ. Code, § 1636.)” *The Ratcliff Architects v. Vanir Constr.*

*Mgmt., Inc.*, 88 Cal. App. 4th 595, 602 (2001). Courts ascertain the

contracting parties’ intent from the language of the contract alone, “‘if the

language is clear and explicit, and does not involve an absurdity.’ (Civ.

Code, § 1638.)” *DVD Copy Control Ass’n, Inc. v. Kaleidescape, Inc.*, 176

Cal. App. 4th 697, 712 (2009) (citation omitted). A court must explain the

contract “‘by reference to the circumstances under which it was made, and

the matter to which it relates.’ (Civ. Code, § 1647.)” *Id.*

The Tribes do not and cannot cite to any language in the Compacts that requires the State to enforce or to protect the Tribes' exclusive right to offer banked card games. The only language in the Compacts referencing exclusivity is found in the two sections entitled "Preamble" and "Exclusivity." ER vol. 2, 82-83, 85-86, 94, 97-98, 105, 108. The section entitled "Purposes and Objectives" states that the terms of the Compacts are "designed and intended to: . . . [a]chieve the objectives set forth in the preamble." ER vol. 2, 84, 95-96, 106-107. None of this language, however, describes any affirmative action or duty required of the State in relation to exclusivity. While, the Preamble<sup>5</sup> contains language that acknowledges the value of exclusivity to the Tribes, it in no way imposes any duty on the State's part to take affirmative steps to enforce or retain that exclusivity. "Recitals or preambles prefixed to an agreement may or may not have binding force." *Hunt v. United Bank & Tr. Co.*, 210 Cal. 108, 115 (1930). Courts distinguish between contract language that "creates legal rights and obligations" and declaratory language that does not create contractual obligations. *Emeryville Redevelopment v. Harcros Pigments, Inc.*, 101 Cal. App. 4th 1083, 1101 n.6 (2002) (discussing cases evaluating recitals in

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<sup>5</sup> The differences in the operative paragraphs in the Preamble are limited to the Tribes' names.

contract interpretation). As is readily apparent from the text of the Preamble, quoted in full below, the Preamble is merely a set of statements where the parties recognize the value of exclusivity to the Tribes:

WHEREAS, the State and the Tribe recognize that the exclusive rights that the Tribe will enjoy under this Tribal-State Compact Between the State of California and the [Tribe] (Compact) create a unique opportunity for the Tribe to operate a Gaming Facility in an economic environment free of competition from the operation of slot machines and banked card games on non-Indian lands in California and that this unique economic environment is of great value to the Tribe; and

WHEREAS, in consideration of the exclusive rights enjoyed by the Tribe to engage in the Gaming Activities and to operate the number of Gaming Devices specified herein, and the other meaningful concessions offered by the State in good faith negotiations, and pursuant to IGRA, the Tribe reaffirms its commitment to provide to the State, on a sovereign-to-sovereign basis, and to local jurisdictions, fair cost reimbursement and mitigation from revenues from the Gaming Devices operated pursuant to this Compact on a payment schedule[.]

ER vol. 2, 82-83, 94, 105. These recitals do not create an express obligation. See *O'Neill v. United States*, 50 F.3d 677, 686 (9th Cir. 1995) (contract preamble recital that water “will be available” did not amount to a warranty of availability).

Although the Tribes correctly point out that the 1999 Compacts allowed tribes to take advantage of the constitutional amendment created by Proposition 1A, they are incorrect in contending that the compacts

themselves were the source of the exclusive rights they enjoy. AOB 6. The constitutional amendment was the source of the rights; the compacts, by contrast, merely *recognized* the exclusivity provided by the amendment. The constitutional amendment was required before tribes could conduct class III gaming in California because, under IGRA, class III gaming can be conducted only if “located in a State that permits such gaming for any purpose by any person, organization, or entity.” 25 U.S.C. § 2710(d)(1)(B). If a state’s laws do not “permit” the gaming activities sought by a tribe, the tribe has no right to engage in these activities. *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d 1250, 1256 (9th Cir. 1994) (*Rumsey*), *opinion amended on denial of reh’g*, 99 F.3d 321 (9th Cir. 1996). Nor is the state obligated to negotiate a compact if the state’s laws do not permit the gaming activities. *Id.* “Until Proposition 1A was ratified in March of 2000, the State had no obligation to negotiate with Coyote Valley over the types of class III games covered in the Davis Compact.” *Coyote Valley II*, 331 F.3d at 1110. Thus, as the district court correctly held (at ER vol. 1, 8), the source of exclusivity is the constitutional amendment that gave Indian tribes the exclusive right to conduct banked card games and operate slot machines. *Rincon Band of Luiseno Mission Indians of Rincon Reservation v. Schwarzenegger*, 602 F.3d 1019, 1023 (9th Cir. 2010) (constitutional



amendment “effectively gave tribes a state constitutional monopoly over casino gaming in California”). Indeed, the text of the 1999 Compacts’ preamble makes clear that the parties merely recognized the “exclusive rights that Indian tribes, including the Tribe[s] will enjoy” and “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.”<sup>6</sup> Nothing about that language suggests the compact itself created a right to exclusivity.

Once the Constitution was amended to meet the condition under IGRA that California was a state that “permits such gaming,” the Tribes were able

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<sup>6</sup> In full, the relevant portion of the Preamble provides:

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 the State, on a sovereign-to-sovereign basis, a portion of its revenue from Gaming Devices.

AOB Addendum, 9.

to lawfully enter into compacts that included the right to conduct banked card games and operate slot machines and conduct those forms of gaming. The exclusive right to game is not required by IGRA. What IGRA does require is that the class III gaming that a tribe will conduct is permitted in the state. 25 U.S.C. § 2710(d)(1)(B); *Rumsey*, 64 F. 3d at 1260. The Tribes are thus correct in stating that the exclusivity under the 1999 Compacts and their current Compacts is the same (AOB 13), and that is because the Constitution has not been amended regarding class III gaming since it was amended in 2000.

The Tribes point to the statements in the 1999 Compacts and their current Compacts' Preamble that refer to California tribes benefitting from their exclusive right to operate forms of gambling prohibited to others as a source of the State's alleged duty to take action to enforce and protect the Tribes' exclusivity. ER vol. 2, 21-22, 33-34, 50, 51. But that language does not impose any such duty.<sup>7</sup> At most, the language in the Preamble identifies

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<sup>7</sup> The district court opined that "[t]here is no doubt that the 1999 exclusivity provisions imposed an affirmative obligation on the State." Order, ER vol. 1, 8. However, the State Defendants respectfully disagree with that statement because for the same reasons that the Tribes' current Compacts do not and could not obligate the State to affirmatively exercise its police power to "enforce" exclusivity, the 1999 Compacts do not impose an affirmative obligation on the State.

exclusivity as a source of consideration provided by the State in exchange for the payments made by the Tribes pursuant to the Compacts. The additional language in the Preamble that the State and the Tribe “agree that all terms of this Compact are intended to be binding and enforceable” does not turn the Preamble statements regarding the value of exclusivity into express obligations for either party. A high-level agreement to make the “terms of this Compact . . . binding and enforceable” cannot transform terms into binding, enforceable obligations unless the terms at issue are susceptible to being read that way. And as explained above, the Preamble is not susceptible to being read that way—its language merely recognizes the value of exclusivity; it does not create any obligations to take affirmative steps to ensure such exclusivity continues. Even less helpful to the Tribes is the final provision they point to, one stating that the parties intend to “achieve the objectives set forth in the Preamble.” AOB 7, AOB Addendum, 142. This sort of aspirational language is precisely the opposite of the kind of express commitments that would indicate agreement to take affirmative steps to ensure exclusivity.

**B. The State Could Not Agree in the Compacts to Contract Away Its Right to Exercise Its Police Power**

It is unsurprising that the Compacts lack any express requirement that the State exercise its police powers to ensure or protect the Tribes' exclusive right to operate banked card games. Under federal and state constitutional law, Compacts *could not* include any such requirement because the State is prohibited from contracting away its police power, which encompasses both the State's ability to make laws as it deems needed in the future and its prerogative to enforce its prosecutorial discretion to decide whether and when to prosecute the law. A requirement in the Compacts obligating the State to "enforce its laws" would interfere with the State's police power in terms of its prosecutorial discretion. Nor could the State agree in the Compacts that the Tribes would maintain in the future the exclusive right to offer banked card games because that would be impermissible as bargaining away the State's police power to make law. *Stone v. State of Mississippi*, 101 U.S. 814, 817 (1879).

In *Stone v. State of Mississippi*, the state had granted a twenty-five year charter to a private lottery. 101 U.S. at 816. The next year, the state amended its constitution to ban lotteries, but the private lottery argued that the state was still obligated to allow it to operate pursuant to the charter. *Id.*

at 817. The Supreme Court held that the state could not “impair the supreme authority to make laws for the right government of the State” by binding the state to the charter that was in conflict with the state’s amended law. *Id.* at 819.

California courts have consistently held that the government’s contractual promises to enforce or not enforce laws or regulations in a particular way are impermissible. *Cotta v. City & Cty. of San Francisco*, 157 Cal. App. 4th 1550, 1557-59 (2007) (*Cotta*) (detailed discussion of the legal principle of police power and relevant case law). The government “may not contract away its right to exercise the police power in the future.” *Summit Media LLC v. City of Los Angeles*, 211 Cal. App. 4th 921, 934 (2012) (quoting *Avco Community Developers, Inc. v. South Coast Regional Com.*, 17 Cal. 3d 785, 800 (1976)); *see also Cotta*, 157 Cal. App. at 1557-59. In *Cotta*, for example, San Francisco was sued by taxi cab operators for breach of contract over a clean-air taxi incentive program the city implemented at the San Francisco Airport. 157 Cal. App. at 1553. The taxi cab operators claimed the city had contractually promised to keep incentives at a particular fixed rate. *Id.* at 1556-57. While the city disputed the existence of a contract, the court of appeal stated that “*assuming* the formation of a contract,” the implementing resolution would have bound the

city to the terms of the particular incentive program for a set numbers of years and “could be characterized as an effort by the City to surrender its police power.” *Id.* at 1563. If the city were to enact “a different resolution in response to changed circumstances,” it would be exposed to “breach of contract damages.” *Id.* at 1564. The court explained that the city could not “be put to the choice between” the power to regulate as it sees fit on one hand and “exposure to contract damages on the other.” *Id.*

Appellants here would put the State in the same position as the city in *Cotta*: forced to choose between enforcing the contract version of the law—regardless of subsequent developments or changes in the law—or else face breach-of-compact claims. That is no abstract hypothetical. The gambling-related laws and regulations are likely to develop over the twenty-five-year term of the Compacts. For instance, a 2018 proposed constitutional initiative would have amended the California Constitution to allow banking and percentage card games and sports wagering in card rooms.<sup>8</sup> A current proposed constitutional initiative for the November 2020 ballot would allow sports wagering, craps, and roulette at tribal casinos.<sup>9</sup> While the 2018

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<sup>8</sup> <https://lao.ca.gov/ballot/2018/180344.pdf>.

<sup>9</sup> <https://lao.ca.gov/BallotAnalysis/Initiative/2019-029>.

proposal did not gain enough support to be put to voters on the ballot, and the current proposal could suffer the same fate, similar measures could result in changing the California Constitution in the coming years.

Similar cases to *Cotta* abound. In *County Mobilehome Positive Action Committee, Inc. v. County of San Diego*, 62 Cal. App. 4th 727, 731 (1998) (*County Mobilehome*), an accord between the county and mobilehome park owners included the county's agreement to refrain from enacting rent control legislation that would affect owners that signed the accord. The court of appeal held that the accord was invalid as an impermissible restriction on the power of future county boards of supervisors to respond to "then-extant circumstances in the pertinent area of exercise of police power, mobilehome rent regulation." *Id.* at 731.<sup>10</sup> Similarly, whether consideration was provided or the value of any consideration provided in exchange for the promise of the exercise of police power does not affect the unlawfulness of such a promise.

In *Trancas Property Owners Association v. City of Malibu*, 138 Cal. App. 4th 172, 180 (2006) (*Trancas*), in consideration for a property

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<sup>10</sup> The *County Mobilehome* court appended the actual accord to its opinion, which contained the county's express promise "not to regulate rents of park owners executing the accord." *County Mobilehome*, 62 Cal. App. 4th at 744. There is no comparable language in the Compacts.

developer donating land and settling a lawsuit against the city, the city guaranteed in the settlement agreement that the developer's project "would not be blocked by future zoning, or be required to comply with zoning restrictions of whatever age." The court of appeal held that the settlement agreement was "intrinsically invalid because it includes commitments to take or refrain from regulatory actions regarding the zoning of Trancas's development project, which may not be lawfully undertaken by contract." *Id.* at 180-81.

It makes no difference that the State may receive consideration in exchange for the promise to use or refrain from using the police power in certain ways. The promise is still invalid. The *Trancas* court acknowledged that the city received consideration in the form of land and dismissal of the lawsuit, but it still held that the agreement, "however well-intended, was invalid because it attempted to abrogate the city's zoning authority and provisions." *Trancas*, 138 Cal. App. 4th at 175.

The Appellants argue that the Compacts contain an exchange of valuable consideration, and that consideration created an obligation for the State to enforce the law regarding banked card games. AOB 13. However, under *Trancas* and *Avco*, the value of the consideration in an agreement does



not alter the invalidity of the contract.<sup>11</sup> The State could not lawfully agree in the Compacts to take or refrain from taking regulatory actions regarding the operation of the play of banked card games by those other than tribes. *See also Stone v. State of Mississippi*, 101 U.S. 814 at 817 (fact that the private lottery had paid consideration to the state was not dispositive on the issue of the validity of the contract in terms of police power).

Under California law, the California Gambling Control Commission (Commission) has jurisdiction “over gambling establishments in this state and over all persons or things having to do with the operations of gambling establishments.” Cal. Bus. & Prof. Code § 19811(b). The Commission’s responsibilities include the licensing of persons and operations involved in the conduct of gambling. Cal. Bus. & Prof. Code § 19823(a). The California Department of Justice, Bureau of Gambling Control (Bureau) is tasked with, inter alia, investigating violations of the “laws of this state relating to gambling” and the initiation of disciplinary actions. Cal. Bus. &

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<sup>11</sup> The Amici Tribes’ discussion of the value of exclusivity and consideration under the Compacts also does not address the issue of how the purported obligation of the State to protect exclusivity conflicts with the clear prohibition on contracting away the State’s police power. Brief of Amici Curiae Rincon Band of Luiseno Indians and Santa Ynez Band of Chumash Indians In Support of Plaintiffs-Appellants, ECF Doc. 15 (Amici Brief) at 3-5.

Prof. Code § 19826(c) & (e). The Bureau, through the Department of Justice, and local jurisdictions are authorized to bring actions to prosecute violations of the California Penal Code involving gambling. *See, e.g., People ex rel. Green v. Grewal*, 61 Cal. 4th 544, 555 (2015) (Kern County District Attorney’s Office filed action seeking to stop operation of unlawful lotteries and illegal slot machines).

The Appellants argue without factual support in the record,<sup>12</sup> that the “State has refused to act against the cardrooms, and in fact has abetted the illegal conduct.” AOB 2. To the extent that the Court would consider Appellants’ argument in this regard, the State has requested judicial notice of the roster of the Commission’s administrative decisions in actions taken against card rooms and their owners. State Defendants’ Request for Judicial Notice (RJN), Ex. 1 & 2.

Since January 1, 2011, the Department of Justice has undertaken or pursued administrative proceedings against thirty-two card rooms and their owners. There are currently approximately sixty-six card rooms operating in

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<sup>12</sup> The Complaint included exhibits that were not included in the Excerpts of Record, these are submitted in the SER. Among these exhibits were letters from the Tribe to the State alleging card rooms and others were violating gambling laws. SER 64-76, 80-91, 97-115, 118-121, 126-129, 133-137, Ex. D-F, H-J, L-N, P, R, & T.

California. Since 2011, even though the vast majority of the cases have been resolved by settlement, some cases have been resolved after administrative hearings conducted pursuant to the California Gambling Control Act. Cal. Bus. & Prof. Code § 19824. The resolutions of the administrative actions include findings, or admissions, of unlawful or unsuitable acts or omissions. The Bureau has obtained findings or admissions of unlawful or unsuitable acts or omissions with respect to twenty-five card rooms.<sup>13</sup> Presently, administrative proceedings are pending for eight card rooms.<sup>14</sup>

In addition to the enforcement actions, the Commission and the Bureau promulgate regulations pursuant to their statutory authority. For example, the Bureau is currently developing regulations regarding the rotation of the player-dealer position during the play of certain card games, dictating when the player-dealer position must be rotated to another player. As part of the Bureau's regulatory process, the Appellant Tribes (along with the Agua

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<sup>13</sup> The State has requested that the Court take judicial notice of the Commission's website. The listing of the Commission's decisions are publicly available on the Commission's website ([www.cgcc.ca.gov](http://www.cgcc.ca.gov)) under "Completed Administrative Hearings." RJN, Ex. 2.

<sup>14</sup> The State has requested that the Court take judicial notice of the Commission's website. The pleadings relevant to the pending administrative proceedings are available on the Commission's website under "Pending Administrative Hearings." RJN, Ex. 1.

Caliente Band of Cahuilla Indians) submitted a comment letter on January 29, 2020. RJN 24, Ex. 3.<sup>15</sup> The comment letter appears to recognize the Bureau’s police power, containing the statement, “[W]e trust the Bureau does not question its authority to enforce gaming laws, including the promulgations of regulations to that end.” *Id.*

The Complaint sought injunctive relief in the form of a court decree “requiring specific performance of the State’s obligation with respect to the gaming exclusivity promised” in the Compacts. ER vol. 2, 52. The Compacts acknowledge that the Tribes have the constitutionally based exclusive right to conduct banked card games and operate slot machines. ER vol. 2, 65. But the Compacts do not contain any requirement that the State exercise its police power to ensure or protect the Tribes’ continued exclusive right to operate banked card games. The Compacts could not contain any such requirement because that would expose the State to liability if it exercised its police power to change the law, in addition to impermissibly contracting away its prosecutorial discretion to decide what

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<sup>15</sup> Other materials, including public meeting notices and comment letters related to the Bureau’s current regulation activities, are available to the public at <https://www.oag.ca.gov/gambling/regulations>.

charges to bring and how to pursue cases. The Compacts do not obligate the State to affirmatively protect or to guarantee that exclusivity in the future.

**C. The Compacts Contain No Express Remedy for the Loss of Banked Card Game Exclusivity**

Even if the Compacts guaranteed a right to banked card game exclusivity, they provide no remedy to enforce such guarantee. Only a compact's express provisions are enforceable. *See Arizona v. Tohono O'odham Nation*, 818 F.3d 549, 560-62 (9th Cir. 2016) (rejecting claim that compact language "implicitly" barred tribe's actions as a breach of the compact); *Confederated Tribes of Siletz Indians of Oregon v. Oregon*, 143 F.3d at 485; *Cabazon v. Wilson*, 124 F.3d at 1058 (state's regulatory authority limited to that "expressly agreed upon in a compact"). Moreover, even if an implied remedy were permissible, that remedy could not compel an act contrary to public policy, such as compelling an exercise of a state's police powers in the form of its prosecutorial discretion or future legislative action. *See discussion supra* Section II.B.

Any remedy for the State's alleged failure to protect banked card game exclusivity must be explicit in the Compacts' provisions. The parties are bound by the explicit terms of the Compacts, and "one cannot specifically perform something that is not a term in the contract." *Pauma Band of*

*Luiseno Mission Indians of Pauma & Yuima Reservation v. California*, 813 F.3d 1155, 1167 (9th Cir. 2015); *see also Cabazon v. Wilson*, 124 F.3d at 1058.

There is nothing in the Compacts that provides a remedy for the loss of the exclusive right to conduct banked card games. That stands in marked contrast to the Compacts' treatment of *slot machine* exclusivity. The Compacts expressly provide that, in the event tribal exclusivity to operate slot machines is eliminated by a change in the law authorizing anyone other than tribes to operate slot machines, the Tribes can either: 1) terminate their respective Compacts and cease class III gaming (which would include both banked card games and slot machines); or 2) continue gaming under their Compacts after renegotiations with the State over the appropriate regulatory payment rate<sup>16</sup> under the Compacts. ER vol. 2, 85-86, 97-98, 108. This express Compact provision is limited to remedies that would be available for loss of slot machine exclusivity. Thus, the absence of any similar remedy for banked card game exclusivity shows that the drafters intentionally omitted any such remedy, which cannot be impliedly read into the contract.

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<sup>16</sup> IGRA provides for the reimbursement of state regulatory costs pursuant to a tribal-state class III gaming compact, irrespective of exclusivity. 25 U.S.C. § 2710(d)(3)(C)(iii).

The Tribes claim that the existence of an express remedy regarding the loss of slot machine exclusivity is “irrelevant.” AOB 3. But they fail to explain why. Where a contract provides an express remedy for one event, but fails to provide a remedy for another similar event, it is entirely logical to conclude—both as a matter of common sense and longstanding contract-law principles—that the remedy not explicitly provided for does not exist.

*Murphy v. DirecTV, Inc.*, 724 F.3d 1218, 1234 (9th Cir. 2013).

In the absence of an express remedy for the loss of banked card game exclusivity, the Tribes seek to add an “implied” remedy. Compacts, however, must be interpreted by their express language. *See Arizona v. Tohono O’odham Nation*, 818 F.3d at 562; *Cabazon v. Wilson*, 124 F.3d at 1060; *Confederated Tribes of Siletz Indians of Oregon v. Oregon*, 143 F.3d at 485 (“In our view, the Compact itself controls.”).

Moreover, even were an implied provision permissible, it cannot rest upon a general provision that differs from a specific provision. Here, the Tribes allege that the origin of the State’s obligation and the existence of a general injunctive and declaratory relief remedy is based on language in the Preamble mentioning exclusivity. However, when specifically discussing a remedy for the loss of exclusivity, the Compacts provide a remedy only for the loss of slot machine exclusivity. When evaluating “two, somewhat

differing” compact provisions addressing the same topic, the “specific terms of a contract govern inconsistent, more general terms.” *State of Idaho v. Shoshone-Bannock Tribes*, 465 F.3d at 1098-99. Moreover, the Compacts’ remedy for the loss of exclusivity is limited not only to slot machines, but also to instances when such a loss results from the enactment of legislation or a judicial interpretation of the law—not the State’s failure to prosecute under existing laws. The Tribes, of course, raise only the latter as an issue here. They do not contend—nor could they—that California has enacted any legislation legalizing banked card gaming.

Thus, if the remedy provision for the loss of slot machine exclusivity is triggered only by a *change* in state law, the State’s alleged failure to enforce the current law regarding banked card games cannot be a trigger for any remedy for the loss of banked card game exclusivity.<sup>17</sup> Importantly, even if the Compacts’ remedy provision for loss of slot machine exclusivity applied to banked card games, it would still not authorize the remedy sought by the Tribes here (i.e., an injunction directing the State to exercise its police

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<sup>17</sup> The only other provision addressing remedies in the Compacts is section 14.2(b). ER vol. 2, 89-90, 101, 111. Section 14.2(b) allows for termination of the Compacts in the event a federal court determines that there has been a material breach of the Compacts and the breach has not been cured within a specified time limit. *Id.* The Complaint does not seek a determination of a material breach. *Id.* at 52.



powers in a particular way). If the law were to change such that the tribes did not have the exclusive right to operate slot machines, the State would not be in breach of the Compacts. Rather, under the remedy provision for slot machine exclusivity, the State would be required to negotiate new payment provisions. Revenue sharing under the Compacts is calculated based on slot machine revenue only, not banked card game revenue. Appellants' Addendum 256-57, 366 (§ 2.18 (Viejas Compact), § 2.17 (Sycuan Compact) (Gross Gaming Revenue defined as "win from the Gaming Devices"))).

Further, the Complaint sought injunctive relief in the form of a court decree "requiring specific performance of the State's obligation with respect to the gaming exclusivity promised" in the Compacts. ER vol. 2, 52. Not only would an order mandating that the State "enforce its laws" interfere with the State's police power and its prosecutorial discretion to decide under California law whether and when to prosecute an action, there would first need to be a determination which interpretation of state law is correct.<sup>18</sup> The

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<sup>18</sup> A San Diego County Superior Court civil action brought by Amici Tribes the Rincon Band of Luiseno Mission Indians and the Santa Ynez Band of Chumash Mission Indians, involves a determination of state law regarding the play of banked card games, and that action is pending. *Rincon Band of Luiseno Mission Indians, et al. v. Larry Flynt, et al.*, San Diego County Superior Court, Case No. 37-2018-00058170, filed Nov. 16, 2018.

remedy provided in the Compacts for the loss of the exclusive right to operate slot machines does not impose an affirmative duty on the State, but instead provides what steps are available to the Tribes: stop class III gaming, or continue after sitting down with the State to renegotiate regulatory costs. ER vol. 2, 85-86, 97-98, 108. The remedy takes into account a possible future change in the law in California affecting tribes' exclusive right to operate slot machines.

The Tribes' displeasure regarding the purported illegality of the card games operated by card rooms dates back, by their own account, to as early as 2011. ER vol. 2, 33; AOB 7; see also SER 64-69 (Ex. D). Yet there is nothing in the current Compacts—negotiated and executed years later—providing a remedy for the loss of the exclusive right of the Tribes to offer banked card games.

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The San Diego County Superior Court will hear the defendants' joint demurrer to the Second Amended Complaint on March 6, 2020.

The CGA's Memorandum in Support of its Motion to Intervene in the district court provided an interpretation of state law at odds with that advanced by the Tribes in this action. *See* SER 14-16.

**D. Because There is No Compact Obligation for the State to Enforce or Protect the Tribes' Exclusive Right to Offer Banked Card Games, There Can Be No Breach of an Implied Covenant of Good Faith and Fair Dealing**

The Tribes allege that the State's failure to prevent card rooms from operating banked card games constitutes a breach of the Compacts' implied covenant of good faith and fair dealing. ER vol. 2, 51-52. However, absent a showing of what express Compact obligation or agreed-upon common purpose of the Compacts that the State has failed to fulfill, there is no breach of the implied covenant of good faith and fair dealing. *Guz v. Bechtel National, Inc.*, 24 Cal. 4th 317, 349-50 (2000) ("The covenant of good faith and fair dealing . . . exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the *benefits of the agreement actually made*. The covenant thus cannot 'be endowed with an existence independent of its contractual underpinnings.' It cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement." (citations omitted)); *see also Avidity Partners, LLC v. State of California*, 221 Cal. App. 4th 1180, 1206 (2013) ("The implied covenant of good faith and fair dealing cannot be extended to create an obligation not intended by both parties." (citation omitted)).

In *Arizona v. Tohono O'odham Nation*, 818 F.3d at 562, Arizona argued that the tribal-state gaming compact “implicitly prohibited” the tribe from gaming on a certain parcel of land and that the tribe’s plan to game on that land violated the compact’s implied covenant of good faith and fair dealing. This Court rejected that argument and held that because the compact’s express terms allowed the tribe to game on the land, the tribe’s actions did not breach the implied covenant of good faith and fair dealing. *Id.* at 561-62. This Court went on to discuss that while the covenant of good faith and fair dealing means each party has a duty to “do everything that the contract presupposes will be done” to accomplish the contract’s purpose, the “implied obligation must arise from the language used or it must be indispensable to effectuate the intention of the parties.” *Id.* at 562 (internal quotation marks omitted). To the extent the Tribes claim the breach of an implied duty under the Compacts, they fail to show any express obligation in the Compacts that the State has failed to fulfill or intention that the Tribes would retain their exclusivity. The Tribes have also failed to state what Compact terms are specifically enforceable. Therefore, there can be no claim for no breach of the implied covenant of good faith and fair dealing.

## CONCLUSION

For the reasons stated above, the State respectfully requests that this Court affirm the district court's order granting the State's Motion to Dismiss.

Dated: February 28, 2020

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19-16384

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**YOCHA DEHE WINTUN NATION;  
VIEJAS BAND OF KUMEYAAY  
INDIANS; SYCUAN BAND OF THE  
KUMEYAAY NATION,**

Plaintiffs and Appellants,

**v.**

**GAVIN NEWSOM, Governor of the State  
of California; STATE OF CALIFORNIA,**

Defendants-Appellees.

**STATEMENT OF RELATED CASES**

The following related case is pending: *Yocha Dehe Wintun Nation, et al. v. Gavin Newsom, et al.*, Case No. 19-16422 (9th Cir. 2019).

Dated: February 28, 2020

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19-16384

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**Yocha Dehe Wintun Nation;  
Viejas Band of Kumeyaay  
Indians; Syquan Band of the  
Kumeyaay Nation,**

Plaintiffs and Appellants,

v.

**Gavin Newsom, Governor of the State of  
California; State of California,**

Defendants-Appellees.

On Appeal from the United States District Court  
for the Eastern District of California

No. 2:19-cv-00025-JAM-AC  
Hon. John A. Mendez, Judge

**APPELLEES' ADDENDUM**

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**Cal. Bus. & Prof. Code § 19811.  
CALIFORNIA GAMBLING CONTROL COMMISSION;  
MEMBERS; POWERS; JURISDICTION**

(a) There is in state government the California Gambling Control Commission, consisting of five members appointed by the Governor, subject to confirmation by the Senate. The California Gambling Control Commission shall succeed to all of the powers of the former California Gambling Control Board.

(b) Jurisdiction, including jurisdiction over operation and concentration, and supervision over gambling establishments in this state and over all persons or things having to do with the operations of gambling establishments is vested in the commission.

**Cal. Bus. & Prof. Code § 19823.  
COMMISSION; RESPONSIBILITIES; LICENSES,  
APPROVALS, AND PERMITS; UNQUALIFIED OR DISQUALIFIED  
PERSONS**

(a) The responsibilities of the commission include, without limitation, all of the following:

(1) Assuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

(2) Assuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

(b) For the purposes of this section, "unqualified person" means a person who is found to be unqualified pursuant to the criteria set forth in Section 19857, and "disqualified person" means a person who is found to be disqualified pursuant to the criteria set forth in Section 19859.

**Cal. Bus. & Prof. Code § 19824.  
COMMISSION; POWERS**

The commission shall have all powers necessary and proper to enable it fully and effectually to carry out the policies and purposes of this chapter, including, without limitation, the power to do all of the following:

(a) Require any person to apply for a license, permit, registration, or approval as specified in this chapter, or regulations adopted pursuant to this chapter.

(b) For any cause deemed reasonable by the commission, deny any application for a license, permit, or approval provided for in this chapter or regulations adopted pursuant to this chapter, limit, condition, or restrict any

license, permit, or approval, or impose any fine upon any person licensed or approved. The commission may condition, restrict, discipline, or take action against the license of an individual owner endorsed on the license certificate of the gambling enterprise whether or not the commission takes action against the license of the gambling enterprise.

(c) Approve or disapprove transactions, events, and processes as provided in this chapter.

(d) Take actions deemed to be reasonable to ensure that no ineligible, unqualified, disqualified, or unsuitable persons are associated with controlled gambling activities.

(e) Take actions deemed to be reasonable to ensure that gambling activities take place only in suitable locations.

(f) Grant temporary licenses, permits, or approvals on appropriate terms and conditions.

(g) Institute a civil action in any superior court against any person subject to this chapter to restrain a violation of this chapter. An action brought against a person pursuant to this section does not preclude a criminal action or administrative proceeding against that person by the Attorney General or any district attorney or city attorney.

(h) Issue subpoenas to compel attendance of witnesses and production of documents and other material things at a meeting or hearing of the commission or its committees, including advisory committees.

**Cal. Bus. & Prof. Code § 19826**  
**DEPARTMENT RESPONSIBILITIES**

The department shall perform all investigatory functions required by this chapter, as well as auditing functions under tribal gaming compacts, and shall have all of the following responsibilities:

(a) To receive and process applications for any license, permit, or other approval, and to collect all related fees. The department shall investigate the qualifications of applicants before any license, permit, or other approval is issued, and investigate any request to the commission for any approval that may be required pursuant to this chapter. The department may recommend the denial or the limitation, conditioning, or restriction of any license, permit, or other approval.

(b) To monitor the conduct of all licensees and other persons having a material involvement, directly or indirectly, with a gambling operation or its holding company, for the purpose of ensuring that licenses are not issued or held by, and that there is no direct or indirect material involvement with, a gambling operation or holding company by ineligible, unqualified,

disqualified, or unsuitable persons, or persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

(c) To investigate suspected violations of this chapter or laws of this state relating to gambling, including any activity prohibited by Chapter 9 (commencing with Section 319) or Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(d) To investigate complaints that are lodged against licensees, or other persons associated with a gambling operation, by members of the public.

(e) To initiate, where appropriate, disciplinary actions as provided in this chapter. In connection with any disciplinary action, the department may seek restriction, limitation, suspension, or revocation of any license or approval, or the imposition of any fine upon any person licensed or approved.

(f) To adopt regulations reasonably related to its functions and duties as specified in this chapter.

(g) Approve the play of any controlled game, including placing restrictions and limitations on how a controlled game may be played. The department shall make available to the public the rules of play and the

collection rates of each gaming activity approved for play at each gambling establishment on the Attorney General's Web site. Actual costs incurred by the department to review and approve game rules shall be reimbursed to the department by the licensee making the request.

19-16384

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**Yocha Dehe Wintun Nation;  
Viejas Band of Kumeyaay  
Indians; Syquan Band of the  
Kumeyaay Nation,**

Plaintiffs and Appellants,

v.

**Gavin Newsom, Governor of the State of  
California; State of California,**

Defendants-Appellees.

On Appeal from the United States District Court  
for the District of California

No. 2:19-cv-00025-JAM-AC  
Hon. John A. Mendez, Judge

**APPELLEES' REQUEST FOR JUDICIAL  
NOTICE**

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*Attorneys for Defendants-Appellees*

Pursuant to Federal Rule of Evidence 201, Appellees the State of California (State) and Gavin Newsom, Governor of the State of California (collectively, State Defendants) respectfully ask the Court to take judicial notice of information contained in the documents attached hereto as Exhibits 1-3. The documents are materials that are publicly available on the websites of the California Gambling Control Commission (the Commission) and the California Department of Justice, Bureau of Gambling Control (the Bureau), respectively. *See* Declaration of Jennifer T. Henderson (Henderson Decl.) ¶¶ 2-4.

1. The document contained in Exhibit 1 is a list of the Commission's Pending Administrative Hearings, available at [http://www.cgcc.ca.gov/?pageID=pending\\_accusations&pageName=adminactions](http://www.cgcc.ca.gov/?pageID=pending_accusations&pageName=adminactions) (accessed February 28, 2020). Henderson Decl. ¶ 2.

2. The document contained in Exhibit 2 is a list of the Commission's Completed Administrative Hearings, available at [http://www.cgcc.ca.gov/?pageID=admin\\_actions\\_new&pageName=adminactions](http://www.cgcc.ca.gov/?pageID=admin_actions_new&pageName=adminactions) (accessed February 28, 2020). Henderson Decl. ¶ 3.

3. The document contained in Exhibit 3 is a letter submitted to the Bureau by of Appellants Yocha Dehe Wintun Nation, Viejas Band of Kumeyaay Indians, Sycuan Band of the Kumeyaay Nation, and non-party



Agua Caliente Band of Cahuilla Indians to the Bureau, dated January 29, 2020, available at

<https://www.oag.ca.gov/sites/all/files/agweb/pdfs/gambling/comments-jeffry-yocha-dehe-012920.pdf> (accessed February 28, 2020). Henderson Decl. ¶ 4.

Under Federal Rule of Evidence 201(d), a court may take judicial notice at any state of the proceeding, including during the pendency of an appeal. Fed. R. Evid. 201(d); *see Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003); Advisory Committee Note Seven to Ninth Circuit Rule 27-1. The Court may take judicial notice of any matter “not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

Exhibits 1-3 contain information that the government has made publicly available on the Commission and Bureau websites. *See* Henderson Decl. ¶¶ 2-4. That information is therefore the proper subject of judicial notice. *See, e.g. Kater v. Churchill Downs Inc.*, 886 F3d 784, 788, fn. 3 (9th Cir. 2018) (judicial notice of information on the Washington State Gambling Commission website); *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998

(9th Cir. 2010) (taking judicial notice of a list of approved vendors displayed on school districts’ websites); *In re Amgen Inc. Sec. Litig.*, 544 F.Supp.2d 1009, 1023-24 (C.D. Cal. 2008) (citing FRE 201(b) and stating that information about drug labels available on FDA website were “capable of accurate determination” and “not subject to reasonable dispute”).

The State Defendants respectfully asks the Court to take judicial notice of the information contained in Exhibits 1-3. That information comes from a source “whose accuracy cannot reasonably be questioned”: the websites of the Commission and the Bureau, which have addresses that ends in “.gov.” See Henderson Decl. ¶¶ 2-4; Fed. R. Evid. 201(b)(2); *Daniels-Hall*, 629 F.3d at 998.

Dated: February 28, 2020

Respectfully submitted,

XAVIER BECERRA

Attorney General of California

SARA J. DRAKE

Senior Assistant Attorney General

T. MICHELLE LAIRD

Supervising Deputy Attorney General

COLIN A. WOOD

Deputy Attorney General

S/ JENNIFER T. HENDERSON

JENNIFER T. HENDERSON

Deputy Attorney General

*Attorneys for Defendants-Appellees*

**DECLARATION OF JENNIFER T. HENDERSON**

I, Jennifer T. Henderson, declare as follows:

1. I am a Deputy Attorney General employed by the California Department of Justice (DOJ), Office of the Attorney General (Office). I am the attorney of record in this case for Defendants-Appellees the State of California (State) and Gavin Newsom, Governor of the State of California (collectively, State Defendants). If called to testify to the matters contained in this declaration, I could and would competently testify thereto.

2. The document contained in Exhibit 1 is a list of the Commission's Pending Administrative Hearings, available at [http://www.cgcc.ca.gov/?pageID=pending\\_accusations&pageName=adminactions](http://www.cgcc.ca.gov/?pageID=pending_accusations&pageName=adminactions) (accessed February 28, 2020).

3. The document contained in Exhibit 2 is a list of the Commission's Completed Administrative Hearings, available at [http://www.cgcc.ca.gov/?pageID=admin\\_actions\\_new&pageName=adminactions](http://www.cgcc.ca.gov/?pageID=admin_actions_new&pageName=adminactions) (accessed February 28, 2020).

4. The document continued in Exhibit 3 is a letter submitted to the Bureau by of Appellants Yocha Dehe Wintun Nation, Viejas Band of Kumeyaay Indians, Sycuan Band of the Kumeyaay Nation, and non-party Agua Caliente Band of Cahuilla Indians to the Bureau, dated January 29,

2020, available at

<https://www.oag.ca.gov/sites/all/files/agweb/pdfs/gambling/comments-jeffry-yocha-dehe-012920.pdf> (accessed February 28, 2020).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on February 28, 2020, at Sacramento, California.

S/ JENNIFER T. HENDERSON

JENNIFER T. HENDERSON  
Deputy Attorney General

# **EXHIBIT 1**

## Pending Administrative Hearings

[Click Here for Completed Administrative Hearings](#)

The Commission is providing a copy of this disciplinary pleading (Accusation, or Statement of Reasons, Statement of Particulars, or Statement of Issues) so the public is as informed as possible of pending administrative proceedings regarding the allegations contained in the pleading. An Accusation or Statement of Issues is simply an allegation of facts that, if true, may rise to the level of disciplinary action against or denial of a license, registration, work permit or finding of suitability. The facts contained in the pleadings should not be taken as established or proven. The licensee/applicant will have an opportunity to dispute the allegations in a formal administrative proceeding.

Show  entries

Search:

License Type	License Number	Name	Pleading
Third Party-Registrant Player	TPPL-018728	Andrew Arellano	Statement of Reasons
Tribal Key Employee	TRKE-016857	Angela Ruiz	Statement of Particulars
Third Party Primary Provider	TPPP-000067	Arise, LLC	Accusation
Gambling Establishment	GEGE-001007	Artichoke Joe's	Accusation
Gambling Establishment	GEGE-001280	Casino Marysville	Statement of Reasons
GE- Owner-Person	GEOW-000538	Darold M. Shirwo	Accusation
Third Party Owner Person	TPOW-000362	Darrell Stuart Miers	Accusation
GE - Key Employee	GEKE-002488	David Jocis	Statement of Reasons
GE- Owner-Person	GEOW-003369	Dennis J. Sammut	Accusation
GE- Owner-Entity	GEOW-003368	Dennis J. Sammut AJ Stock Trust	Accusation
Gambling Establishment	GEGE-000236	Diamond Jim's Casino	Accusation
Third Party-Registrant Player	TPPL-016256	Dianne Nga Tran	Statement of Reasons
GE- Owner-Person	GEOW-003361	Donald G. Ezzell	Second Amended Accusation and Statement of Issues
GE- Work Permit	GEWP-002354	Duangmanee Charoensuk	Statement of Reasons
GE - Key Employee	GEKE-001462	Dusten Sean Perry	Accusation
Third Party-Registrant Primary Provider	TPPP-000090	Fortune Players Group, Inc.	Statement of Issues
GE- Owner-Entity	GEOW-003716	Four Leaf Clover Investments LLC	Accusation
Tribal Key Employee	TRKE-016725	Gary Steve Kirby	Statement of Reasons
GE- Owner-Person	GEOW-003452	George G. Hardie Jr.	Accusation
GE- Owner-Person	GEOW-000544	George T. Deitch	Accusation
GE- Owner-Person	GEOW-002370	Helen M. Sammut	Accusation
GE- Owner-Entity	GEOW-002390	Helen Sammut Living Trust	Accusation
Third Party-Registrant Supervisor	TPSU-001149	Jeffrey Stubblebine	Statement of Reasons
GE- Owner-Person	GEOW-003365	Joseph Etienne	Accusation

License Type	License Number	Name	Pleading
GE- Owner-Person	GEOW-002464	Joseph Kingston	4th Amended Statement of Issues
GE- Owner-Person	GEOW-002874	Joseph Kingston	4th Amended Statement of Issues
GE- Owner-Person	GEOW-003370 GEOW-002371	Karen A. Sammutt	Accusation
Gambling Establishment	GEGE-000421	Kelly's	Accusation
Gambling Establishment	GEGE-001149	Lake Elsinore Hotel and Casino	4th Amended Statement of Issues
Gambling Establishment	GEGE-000950	Lucky Lady Card Room	Accusation
GE- Owner-Person	GEOW-000543	Margarita Revuelta	Accusation
GE- Owner-Person	GEOW-003262	Mark E. Williamson	Accusation
GE- Owner-Person	GEOW-003225	Marylee H. Sakas	Accusation
GE- Owner-Entity	GEOW-002388	Michael J. Sammut AJ Stock Trust	Accusation
Third Party-Registrant Player	TPPL-020266	Monica Serpa	Statement of Reasons
Gambling Establishment	GEGE-001304	Mortimer's Card Room	Accusation
GE- Owner-Entity	GEOW-003261	Mortimer's Inc.	Accusation
GE- Owner-Person	GEOW-003212	Pamela Leslie Neu	Accusation
Gambling Establishment	GEGE-001329	Paso Robles Central Coast Casino	Second Amended Accusation and Statement of Issues
Third Party-Registrant Owner Person	TPOW-000492	Phyllis Reyes Cuison	Statement of Issues
GE- Owner-Entity	GEOW-003362	PRCCC, Inc	Second Amended Accusation and Statement of Issues
GE- Owner-Entity	GEOW-003233	Ranchos Club Casino, Inc. dba Magnolia House Casino	Accusation
Third Party-Registrant Owner Person	TPOW-000381	Remil Reyes Medina	Statement of Issues
GE- Owner-Entity	GEOW-002466	Sahara Dunes Casino, LP dba Lake Elsinore Hotel and Casino	4th Amended Statement of Issues
GE- Owner-Entity	GEOW-002470	Sahara Dunes Management, Inc.	4th Amended Statement of Issues
GE- Owner-Entity	GEOW-003112	Sally Ann Johnson Family Trust	Accusation
GE- Owner-Person	GEOW-002368	Sally Johnson	Accusation
GE- Owner-Person	GEOW-003322	Sau Chung Phong, President, Sole Shareholder	Statement of Reasons
GE- Owner-Entity	GEOW-003301	Sau Cung Phong, Inc. Owner	Statement of Reasons
GE - Key Employee	GEKE-001313	Scott A. Hayden	Accusation
GE- Owner-Person	GEOW-000542	Sigifredo S. Revuelta	Accusation
GE- Owner-Person	GEOW-002251	Stanley S. Penn	Accusation
GE- Owner-Person	GEOW-002465	Ted Kingston	4th Amended Statement of Issues
GE- Owner-Person	GEOW-003733	Ted Kingston	4th Amended Statement of Issues
GE- Owner-Person	GEOW-002875	Ted Kingston	4th Amended Statement of Issues



License Type	License Number	Name	Pleading
Third Party-Registrant Player	TPPL-015467	Teresa Diehl-Govea	Statement of Reasons
GE- Owner-Person	GEOW-003717	Thomas B. Sheridan	Accusation
Third Party-Registrant Owner Person	TPOW-000380	Tricia Palmiano Castellanos	Statement of Issues
Third Party-Registrant Player	TPPL-019315	Valerie Chavez	Statement of Reasons
GE- Owner-Person	GEOW-003226	Willis Lee Hanna	Accusation
GE- Owner-Entity	GEOW-000533	Wizard Gaming, Inc.	Accusation

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## **EXHIBIT 2**

## Completed Administrative Hearings

[Click Here for Pending Administrative Hearings](#)

Show  entries

Search:

License Type	License Number	Name	Pleading	Decision
Third Party- Primary Provider	TPPP-000101	21 Vault Gaming	Statement of Issues 11/27/2018	Decision 3/27/2019
Third Party- Registrant Player	TPPL-013929	Abigail Morales	<b>No Pleading</b>	Decision 11/1/2018
GE - Key Employee	GEKE-001368	Adam Richard Soules	Statement of Reasons 12/24/2013	Decision 5/28/2014
GE- Work Permit	GEWP-002704	Adan Marquez	<b>No Pleading</b>	Decision 6/27/2019
Gambling Establishment	GEGE-000421	Albert Cianfichi, sole proprietor Kelly's Cardroom	Accusation 4/5/2006	Decision 9/14/2006
Gambling Establishment	GEGE-000421	Albert Cianfichi, sole proprietor Kelly's Cardroom	Accusation 1/21/2010	Decision 9/22/2011
Third Party- Registrant Player	TPPL-020779	Albert Tin King Wong	<b>No Pleading</b>	Decision 1/9/2020
Third Party- Registrant Player	TPPL-019805	Albert Tin King Wong	<b>No Pleading</b>	Decision 1/9/2020
Third Party Player	TPPL-012355	Aleksey Tkach	Statement of Reasons 9/18/2018	Decision 4/29/2019
GE - Key Employee	GEKE-001568	Alfred Perez	Statement of Reasons 8/20/2018	Decision 2/7/2019
Third Party- Registrant Player	TPPL-012761	Alice Mejia Catapia	Statement of Reasons 2/15/2018	Decision 10/12/2018
GE- Work Permit	GEWP-002664	Amanda Olson	<b>No Pleading</b>	Decision 11/1/2018
Third Party Player	TPPL-013174	Amber Jeanine Cadena	Statement of Reasons 8/23/2016	Decision 11/17/2016
GE- Work Permit	GEWP-002112	Andre Alex Owens	Statement of Particulars 8/14/2015	Decision 10/8/2015
Third Party- Registrant Player	TPPL-018728	Andrew Arellano	<b>No Pleading</b>	Decision 6/27/2019
GE- Owner-Person	GEOW-001069	Angela Harris, Sole Proprietor	Statement of Particulars 10/16/2018	Decision 2/7/2019
Third Party- Registrant Player	TPPL-015682	Angela Hoang	Statement of Reasons 9/17/2018	Decision 5/16/2019
GE - Key Employee	GEKE-001647	Angelo Lamont Bridges, Sr	<b>No Pleading</b>	Decision 8/13/2015
Third Party- Registrant Player	TPPL-018131	Antonio Leonido	<b>No Pleading</b>	Decision 4/29/2019
Third Party Primary Provider	TPPP-000067	Arise, LLC, and Darrell Stuart Miers, Managing Member	Accusation and Statement of Issues 12/4/2013	Decision 3/12/2015
GE - Key Employee	GEKE-002142	Armando Alcantar	Statement of Reasons 3/23/2018	Decision 7/12/2018

License Type	License Number	Name	Pleading	Decision
Gambling Establishment	GEGE-001007	Artichoke Joe's, a California Corporation dba Artichoke Joe's Casino	Accusation 3/4/2011	Decision 5/9/2011
Tribal Key Employee	TRKE-013625	Ashley Jack	Statement of Reasons 1/15/2015	Decision 7/30/2015
GE - Key Employee	GEKE-002284	Berney James Hoover	<b>No Pleading</b>	Decision 1/23/2020
GE - Key Employee	GEKE-002200	Bouakeo Phouminavong	<b>No Pleading</b>	Decision 11/1/2018
GE- Work Permit	GEWP-000325	Boutdy Phavavicyhane	Statement of Issues 9/18/2008	Decision 12/10/2009
GE- Work Permit	GEWP-002326	Brandi Wright	<b>No Pleading</b>	Default Decision 1/26/2017
GE - Key Employee	GEKE-002244	Brian Yee	Statement of Reasons 5/16/2019	Decision 10/24/2019
GE - Work Permit	GEWP-002711	Brian Yee	Statement of Reasons 5/16/2019	Decision 10/24/2019
Third Party Player	TPPL-014337	Brianna Montegrando-Klingenberg	Statement of Reasons 12/8/2015	Decision 2/25/2016
GE- Owner-Person	GEOW-003342	Brooke Lewis-Siemers	Statement of Reasons 10/1/2018	Decision 1/10/2019
Third Party-Registrant Player	TPPL-016247	Bryan Leon Garcia	Statement of Reasons 7/31/2018	Decision 12/18/2018
GE - Key Employee	GEKE-002170	Callaye Jo Strauss	<b>No Pleading</b>	Decision 1/23/2020
Gambling Establishment	GEGE-000340	Cameo Club	Statement of Reasons 10/1/2018	Decision 1/10/2019
GE- Work Permit	GEWP-001837	Cameron Austin Clem	<b>No Pleading</b>	Decision 11/19/2015
GE - Key Employee	GEKE-001831	Cameron Austin Clem	<b>No Pleading</b>	Decision 11/19/2015
GE- Owner-Person	GEOW-000996	Candelario Salas, Sole Proprietor	Statement of Issues 3/21/2012	Decision 1/7/2016
Gambling Establishment	GEGE-000438	Casino 99	Statement of Particulars 10/16/2018	Decision 2/7/2019
Gambling Establishment	GEGE-001295	Casino Royale	Accusation 11/26/2014	Decision 4/14/2016
Third Party Primary Provider	TPPP-000028	CB Certified Banker, Inc.	First Amended Accusation and Statement of Issues 10/16/2015	Stipulated Settlement Decision and Order 1/12/2017
Third Party-Registrant Player	TPPL-017468	Channy Kem	<b>No Pleading</b>	Decision 7/26/2018
GE- Work Permit	GEWP-001002	Chanthou Suon	First Amended Statement of Issues 4/4/2007	Decision 7/10/2007
Tribal Key Employee	TRKE-017146	Charles Bain	<b>No Pleading</b>	Decision 4/2/2018
GE - Key Employee	GEKE-001206	Charles Edwin McCormick, Jr.	Statement of Reasons 2/29/2016	Decision 8/25/2016
Tribal Key Employee	TRKE-008793	Charles Eric Youell	Accusation 7/20/2009	Decision 9/22/2010
GE- Work Permit	GEWP-002684	Chary Inthavong	<b>No Pleading</b>	Decision 1/24/2019

License Type	License Number	Name	Pleading	Decision
GE - Key Employee	GEKE-000317	Cheng Vang	Accusation 1/29/2014	Decision 3/20/2014
GE- Owner-Person	GEOW-003293	Cherna Moskowitz	Accusation 11/18/2019	Decision 12/5/2019
Third Party Player	TPPL-018570	Chi Kang Tea	<b>No Pleading</b>	Decision 7/25/2019
GE - Key Employee	GEKE-002298	Chris Perez	<b>No Pleading</b>	Default Decision 9/26/2019
GE - Key Employee	GEKE-002226	Christopher Stigers	Statement of Reasons 1/31/2019	Decision 5/16/2019
GE- Work Permit	GEWP-002046	Christopher Tuck	Statement of Reasons 6/2/2015	Decision 8/27/2015
Third Party Player	TPPL-020480	Christopher Walker	<b>No Pleading</b>	Decision 11/7/2019
Third Party- Registrant Player	TPPL-014270	Cindy Yanez	Statement of Reasons 4/8/2019	Decision 5/30/2019
Third Party- Registrant Player	TPPL-016124	Claudia Carmona	Statement of Reasons 4/20/2018	Decision 9/20/2018
Gambling Establishment	GEKE-001013	Clovis 500 Club	Clovis 500 Accusation re. Emergency Order (Case HQ2017- 00001AC) 8/21/2017	Decision 12/18/2017
Gambling Establishment	GEKE-001013	Clovis 500 Club	Clovis 500 Accusation (Case No. HQ2013- 00003AC) 6/30/2017	Decision 12/18/2017
GE - Key Employee	GEKE-001666	Craig Teruo Ogasawara	Statement of Particulars 6/5/2013	Decision 10/1/2013
Tribal Key Employee	TRKE-012797	Crystal Piper	Statement of Issues 6/22/2015	Decision 3/10/2016
GE- Work Permit	GEWP-001624	Curt Mieczkowski	Statement of Reasons 5/26/2015	Decision 8/27/2015
Third Party Player	TPPL-019798	Daisy Aguilar	<b>No Pleading</b>	Decision 8/29/2019
GE - Work Permit	GEWP-002488	Daniel Thomas	Statement of Reasons 10/3/2017	Decision 1/11/2018
GE - Key Employee	GEKE-002205	Danny Liv	Statement of Reasons 5/2/2018	Decision 11/29/2018
GE - Key Employee	GEKE-002300	Darren Reed	<b>No Pleading</b>	Decision 12/17/2019
Third Party- Registrant Player	TPPL-019863	Darrion Griffith	Statement of Reasons 9/17/2018	Decision 2/7/2019
GE- Owner-Entity	GEOW-003234	David and Margaret Lewis Family Trust 1999	Statement of Reasons 10/1/2018	Decision 1/10/2019
GE- Work Permit	GEWP-002211	David Arts	<b>No Pleading</b>	Decision 5/12/2016
GE - Key Employee	GEKE-001387	David La	Accusation 10/30/2013	Stipulated Settlement 8/29/2019
GE- Owner-Person	GEOW-000966	David Moskowitz	Accusation 11/18/2019	Decision 12/5/2019
GE- Owner-Person	GEOW-003341	David Ryan Lewis	Statement of Reasons 10/1/2018	Decision 1/10/2019
Gambling Establishment	GEKE-001029	David Stearns, sole shareholder, Central Coast Casino-Grover Beach, Inc.	Accusation 1/11/2011	Decision 3/8/2012

License Type	License Number	Name	Pleading	Decision
Third Party- Owner-Person	TPOW-000460	Debbie Willhalm	Statement of Issues 11/27/2018	Decision 3/27/2019
Tribal Key Employee	TRKE-013458	Debra Adelle Anderson	Statement of Reasons 7/22/2014	Decision 11/6/2014
Third Party-Registrant Player	TPPL-018611	Derek Gaxiola	Statement of Reasons 9/17/2018	Decision 5/16/2019
Third Party-Registrant Player	TPPL-018871	Diana Plong	Statement of Reasons 9/18/2018	Decision 1/24/2019
Tribal Key Employee	TRKE-012604	Diane Salcido	Statement of Issues 9/3/2013	Decision 10/18/2013
Third Party-Registrant Playe	TPPL-016256	Dianne Tran	Statement of Reasons 2/15/2018	Decision 5/23/2018
Third Party Primary Provider	TPPP-000013	Dog Named Blue Inc., dba California Gaming Consultants	Accusation 12/1/2010	Decision 4/26/2012
Third Party Primary Provider	TPPP-000013	Dog Named Blue, DBA California Gaming Consultants, The Rick Balderamos Trust; and Richard Baladaramos	Statement of Reasons 1/20/2016	Decision 6/8/2017
Third Party Player	TPPL-014032	Dominica Ortiz	<b>No Pleading</b>	Decision 8/27/2015
Gambling Establishment	990039	Don Juan Club and Casino Juan Guzman, Owner	Accusation 11/20/2006	Decision 6/28/2007
Gambling Establishment	990039	Don Juan Club and Casino Juan Guzman, Owner	Accusation & Statement of Issues 12/22/2005	Decision 6/22/2006
GE- Work Permit	GEWP-002013	Donald Harte	Statement of Reasons 8/24/2015	Decision 11/17/2015
GE - Key Employee	GEKE-002250	Donald Ly	Statement of Reasons 11/19/2018	Decision 1/24/2019
GE- Owner-Person	GEOW-002374	Donald M. Staats	Accusation and Statement of Issues 12/14/2015	Decision 8/11/2016
GE- Owner-Person	GEOW-002374	Donald Staats, partner	Statement of Reasons 8/13/2013	Decision 9/5/2013
GE- Work Permit	GEWP-002354	Duangmanee Charoensuk	Statement of Reasons 1/23/2018	Decision 5/23/2018
Tribal Key Employee	TRKE-019231	Edgar Arriaga	<b>No Pleading</b>	Decision 12/19/2019
GE - Work Permit	GEWP-002723	Eduardo Martinez	Statement of Reasons 8/7/2019	Decision 11/4/2019
GE - Key Employee	GEKE-001212	Edward Glen Mason	First Amended Statement of Issues 6/30/2017	Decision 4/29/2019
Tribal Key Employee	TRKE-013481	Edward Wilson Augustine	Statement of Reasons 7/22/2014	Decision 11/6/2014
Gambling Establishment	GEGE-000518	El Dorado Enterprises, Inc., dba Hustler Casino Larry Flynt Revocable Trust, Larry Flynt Trustee, Trustor, and Beneficiary, sole shareholder	Accusation 11/17/2011	Decision 6/14/2012
Third Party-Registrant Supervisor	TPSU-001328	Elena Drouillard	Statement of Reasons 5/8/2019	Decision 8/29/2019
GE- Owner-Person	GEOW-003396	Elizabeth J. Souza	Accusation 9/23/2015	Decision 3/23/2017
GE- Owner-Person	GEOW-003456	Emmanuel Macalino	Statement of Issues 11/20/2018	Decision 5/30/2019

License Type	License Number	Name	Pleading	Decision
Third Party Player	TPPL-017652	Eric Ortiz	<b>No Pleading</b>	Decision 8/29/2019
GE- Owner-Person	GEOW-001330	Eric Swallow	First Amended Accusation and Statement of Issues 7/22/2015	Decision 5/26/2016
Third Party- Registrant Player	TPPL-020575	Ernesto De Leon	Statement of Reasons 8/23/2019	Decision 1/9/2020
GE - Key Employee	GEKE-001572	Eugene Victor Lopez	First Amended Statement of Issues 12/2/2013	Decision 2/13/2014
GE- Work Permit	GEWP-002633	Evan Jones	<b>No Pleading</b>	Decision 2/21/2019
Third Party- Registrant Player	TPPL-016816	Fabian S. Torres	Statement of Reasons 3/8/2018	Decision 6/20/2018
GE - Work Permit	GEWP-002467	Farm Saechao	<b>No Pleading</b>	Default Decision 2/8/2018
GE- Work Permit	GEWP-001733	Farm Saetern	Statement of Reasons 8/10/2015	Decision 11/17/2015
GE- Owner-Person	GEOW-003392	Faye E. Stearns	Accusation 11/26/2014	Decision 4/14/2016
GE- Owner-Entity	GEOW-003391	Faye E. Stearns Living Trust	Accusation 11/26/2014	Decision 4/14/2016
Tribal Key Employee	TRKE-002328	Fernando Allan Lopez, Jr.	Accusation 12/18/2012	Decision 7/25/2013
GE- Work Permit	GEWP-001812	Francisco Monares	Statement of Reasons 6/11/2015	Decision 8/27/2015
Third Party- Registrant Player	TPPL-013562	Frank Vang	<b>No Pleading</b>	Decision 11/1/2018
Gambling Establishment	GEGE-000410	Garden City , Inc., doing business as CASINO M8TRIX Amended	Accusation and Statement of Issues 3/27/2015	Decision 5/14/2015
GE- Owner-Person	GEOW-001070	Gary Harris, Community Property Interest Holder	Statement of Particulars 10/16/2018	Decision 2/7/2019
GE- Owner-Person	GEOW-003402	Gary Kramer	Accusation 11/18/2019	Decision 12/5/2019
Tribal Key Employee	TRKE-015150	Gary Lee Robinson	<b>No Pleading</b>	Decision 8/27/2015
Tribal Key Employee	TRKE-016725	Gary Steve Kirby	Statement of Reasons 3/23/2018	Decision 5/23/2018
GE- Work Permit	GEWP-002167	Gerry Yang	Statement of Particulars 10/16/2015	Decision 2/9/2016
GE- Work Permit	GEWP-002559	Gloria Georgina Sibbald	Statement of Reasons 1/23/2018	Decision 5/3/2018
Gambling Establishment	GEGE-001162	Gloria Gutierrez, sole proprietor Gloria's Lounge & Casino	Statement of Issues 5/26/2010	Decision 12/9/2010
GE- Work Permit	GEWP-002276	Grant Doiron	Statement of Reasons 9/22/2016	Decision 2/23/2017
Tribal Key Employee	TRKE-015691	Greg Docherty	Statement of Reasons 8/30/2016	Decision 3/8/2017
Third Party- Registrant Player	TPPL-012955	Gregory Hill	Statement of Particulars 4/10/2018	Decision 9/20/2018
GE- Owner-Person	GEOW-001103	Gregory Miller	Accusation 10/30/2013	Decision 4/25/2016



License Type	License Number	Name	Pleading	Decision
GE- Owner-Person	GEOW-001222	Haig Kelegian, Jr., partner, Ocean's Eleven Casino	Statement of Issues 3/21/2012	Decision 6/12/2014
GE- Owner-Person	980039_A	Haig Kelegian, Jr., shareholder Oceans 11, Inc.	<b>No Pleading</b>	Decision 6/22/2006
GE- Owner-Person	GEOW-003104	Haig Kelegian, Jr., shareholder, Crystal Casino & Hotel	Statement of Issues 3/21/2012	Decision 6/12/2014
GE- Owner-Person	980039_B	Haig Kelegian, Sr., shareholder Oceans 11, Inc.	<b>No Pleading</b>	Decision 6/22/2006
GE- Owner-Entity	GEOW-003394	Harvey and Bette Souza Living Trust	Accusation 9/23/2015	Decision 3/23/2017
GE- Owner-Person	GEOW-003395	Harvey F. Souza	Accusation 9/23/2015	Decision 3/23/2017
Gambling Establishment	GEGE-000392	Hawaiian Gardens Casino	Accusation 11/18/2019	Decision 12/5/2019
GE- Owner-Entity	GEOW-000961	Hawaiian Gardens Casino, Inc.	Accusation 11/18/2019	Decision 12/5/2019
Gambling Establishment	GEGE-000599	Her J. Xiong, sole proprietor Merced Poker Room	Accusation 5/10/2010	Decision 6/16/2011
Third Party-Registrant Player	TPPL-018896	Hero Tip	<b>No Pleading</b>	Decision 6/27/2019
Third Party Player	TPPL-012366	Hilary Brummett	Statement of Particulars 4/3/2018	Decision 10/4/2018
GE - Key Employee	GEKE-000971	Hoa The Nguyen	Statement of Reasons 2/27/2017	Decision 7/27/2017
Third Party-Registrant Player	TPPL-016719	Hong Heng	<b>No Pleading</b>	Decision and Order 7/12/2018
Tribal Key Employee	TRKE-017065	Hue Vang	Statement of Reasons 12/8/2016	Decision 5/11/2017
Third Party-Registrant Player	TPPL-019568	Ian Riley	Statement of Particulars 11/8/2018	Decision 4/29/2019
Third Party Player	TPPL-011183	Idanay Cheris Phillips	Statement of Reasons 10/24/2014	Decision 3/12/2015
Tribal Key Employee	TRKE-016931	IL Koo Lee	Statement of Reasons 12/8/2016	Decision 4/6/2017
GE- Owner-Person	GEOW-003292	Irving Moskowitz	Accusation	Withdrawal of Accusation 11/15/2016
Third Party-Registrant Player	TPPL-014608	Ja'Meika Thompson	Statement of Reasons 10/5/2018	Decision 4/10/2019
Third Party-Registrant Player	TPPL-014490	Jackie Sum	Statement of Reasons 3/8/2018	Decision 7/26/2018
GE - Key Employee	GEKE-001641	James Craig Tobiasz	Statement of Particulars 7/22/2014	Decision 12/2/2014
GE- Owner-Person	GEOW-003185	James Kouretas	Accusation 11/26/2014	Decision 4/14/2016
GE- Work Permit	GEWP-001992	Jared Watson	<b>No Pleading</b>	Decision 8/13/2015
GE- Owner-Person	GEOW-003119	Jeanne Lynn Lunardi	Amended Accusation and Statement of Issues 3/27/2015	Decision 5/14/2015
Third Party-Registrant Supervisor	TPSU-001149	Jeffrey Stubblebine	Statement of Reasons 8/16/2018	Decision 11/8/2018
Tribal Key Employee	TRKE-014594	Jeffrey-Jun Sambrano	Statement of Reasons 10/16/2015	Decision 4/20/2017



License Type	License Number	Name	Pleading	Decision
GE- Work Permit	GEWP-002436	Jennifer Domingos-Vital	Statement of Reasons 2/10/2017	Decision 7/13/2017
GE- Work Permit	GEWP-002615	Jensen Wrona	Statement of Reasons 10/18/2018	Decision 12/18/2018
Third Party-Registrant Player	TPPL-018397	Jimena Mejia	Statement of Reasons 7/24/2019	Decision 8/29/2019
Tribal Key Employee	TRKE-006255	Jimmy Joon Yum	Statement of Issues 7/17/2008	Decision 10/22/2009
Third Party-Registrant Player	TPPL-018080	Joel Muniz	<b>No Pleading</b>	Decision 11/1/2018
GE - Key Employee	GEKE-001708	John Buys	Statement of Reasons 7/10/2014	Decision 12/22/2014
GE- Owner-Person	GEOW-003222	John Park, sole member of CAL-PAC Rancho Cordova, LLC, owner of Cordova Restaurant and Casino	Accusation 6/7/2012	Decision 12/13/2012
GE- Owner-Person	GEOW-003312	John Park, sole shareholder of The Silver Fox, Inc., owner of Lotus Casino	Accusation 6/7/2012	Decision 12/13/2012
GE - Key Employee	GEKE-001722	John Su'a	Statement of Reasons 10/3/2014	Decision 3/12/2015
GE - Key Employee	GEKE-001413	Jon Strecker	Amended Statement of Issues 6/30/2017	Decision 4/29/2019
Third Party-Registrant Player	TPPL-018586	Jonathan Xiong	<b>No Pleading</b>	Default Decision 4/12/2018
Gambling Establishment	GEGE-000485	Jose Alvarez Cahue, sole proprietor Caesar's Club	Accusation 2/24/2010	Decision 6/30/2011
GE- Owner-Person	GEOW-002594	Joseph A. Melech	Accusation 7/14/2017	Decision 5/30/2019
GE- Owner-Person	GEOW-003461	Joseph A. Melech	Statement of Issues 11/20/2018	Decision 5/30/2019
GE - Key Employee	GEKE-001669	Joseph Beltran	Statement of Reasons 10/3/2014	Decision 3/12/2015
Third Party Player	TPPL-006948	Joseph Frederick Capps	Statement of Issues 9/16/2018	Non-Adoption of Decision 8/23/2018 Decision 11/29/2018
Third Party Player	TPPL-008545	Joshua Allen Hamilton	Statement of Issues 1/16/2014	Decision 7/10/2014
Third Party-Registrant Player	TPPL-014353	Joshua D. Betancur	Statement of Reasons 10/3/2017	Decision 1/11/2018
Tribal Key Employee	TRKE-016442	Joshua Metcalfe	Statement of Particulars 5/9/2018	Decision 8/23/2018
Third Party-Registrant Player	TPPL-019209	Josue Brian Barrientos	Statement of Reasons 3/9/2018	Decision 5/9/2018
GE- Owner-Person	GEOW-002900	Juan L. Carrillo, Sole Proprietor	<b>No Pleading</b>	Default Decision 2/8/2018
Third Party-Registrant Player	TPPL-012862	Junly Phon	Statement of Reasons 10/9/2019	Decision 1/9/2020
Third Party Player	TPPL-010999	Kaleang Vang	<b>No Pleading</b>	Decision 7/30/2015
Third Party-Registrant Player	TPPL-013561	Kamphan Keooupalath	<b>No Pleading</b>	Decision 1/24/2019
GE- Work Permit	GEWP-002096	Kannitha Phonn	Statement of Reasons 12/30/2015	Decision 3/10/2016

License Type	License Number	Name	Pleading	Decision
Third Party Player	TPPL-011145	Karina Corona	Statement of Reasons 9/18/2014	Decision 1/26/2015
GE- Owner-Person	GEOW-003097	Keith Miller, CFO Napa Valley Casino	Statement of Issues 7/5/2013	Decision 12/12/2013
Third Party-Registrant Player	TPPL-018884	Kenneth Searle	<b>No Pleading</b>	Decision 2/21/2019
GE- Owner-Person	GEOW-000994	Kermit D. Schayltz	Accusation 1/11/2011	Decision 3/7/2013
GE- Owner-Person	GEOW-003413	Kermit D. Schayltz	Accusation 6/17/2016	Decision 9/8/2016
GE- Owner-Person	GEOW-003414	Kermit D. Schayltz	Accusation 6/17/2016	Decision 9/8/2016
GE- Owner-Person	GEOW-003488	Kermit D. Schayltz	Accusation 6/17/2016	Decision 9/8/2016
GE- Owner-Person	GEOW-003496	Kermit D. Schayltz	Accusation 6/17/2016	Decision 9/8/2016
GE - Key Employee	GEKE-002180	Kevin Chao	<b>No Pleading</b>	Decision 5/10/2018
Gaming Vendor Owner-Person	GVPO-000620	Kevin Freels and New Gaming Systems, Inc.	Statement of Issues 7/27/2007	Decision 4/28/2011
Third Party-Registrant Player	TPPL-007175	Kin Ping Wong	Statement of Particulars 1/18/2018	Decision 4/2/2018
GE- Owner-Entity	GEOW-003482	King's Casino Management Corp.	Accusation 6/17/2016	Decision 9/8/2016
GE- Owner-Entity	GEOW-003483	King's Casino Management Corp.	Accusation 6/17/2016	Decision 9/8/2016
GE- Owner-Entity	GEOW-003406	King's Casino, LLC	Accusation 6/17/2016	Decision 9/8/2016
GE- Owner-Entity	GEOW-003407	King's Casino, LLC	Accusation 6/17/2016	Decision 9/8/2016
Third Party-Registrant Player	TPPL-016044	Kom Bang	Statement of Reasons 1/17/2019	Decision 4/10/2019
GE- Owner-Entity	GEOW-003803	Kris Kat, LLC	Statement of Reasons 8/10/2018	Decision 1/12/2019
Third Party-Registrant Player	TPPL-017913	Kyle Baisa	Statement of Reasons 4/27/2018	Decision 7/26/2018
Gambling Establishment	GEGE-000408	La Primavera Pool Hall and Café	Statement of Issues 3/21/2012	Decision 1/7/2016
GE- Owner-Person	GEOW-001102	Lawrence Miller	Accusation 10/30/2013	Decision 4/25/2016
GE - Key Employee	GEKE-000452	Lawson Vernon Smith	Statement of Particulars 12/20/2013	Decision 4/22/2014
GE - Key Employee	GEKE-001408	Leon Bernardi	Statement of Issues 6/30/2017	Decision 8/23/2018 Stipulated Settlement Decision 4/29/2019
GE- Owner-Entity	GEOW-000853	Lewis & Lewis, Inc.	Statement of Reasons 10/1/2018	Decision 1/10/2019
Gambling Establishment	GEGE-000340	Lewis & Lewis, Inc., Natalie Lewis and David Lewis, and the Cameo Club	Accusation 9/29/2007	Decision 10/23/2008
Tribal Key Employee	TRKE-013272	Linh Dao	Statement of Reasons 2/22/2016	Decision 7/7/2016

License Type	License Number	Name	Pleading	Decision
GE- Work Permit	GEWP-002630	Linh Ngo	Statement of Reasons 11/20/2018	Decision 5/30/2019
GE- Work Permit	GEWP-001900	Lippine Nop	Statement of Reasons 8/28/2014	Decision 12/2/2014
GE- Work Permit	GEWP-002412	Lippine Nop	Statement of Reasons 8/18/2016	Decision 2/23/2017
Third Party-Registrant Player	TPPL-018000	Liqin Qian	Statement of Reasons 9/20/2018	Decision 12/7/2018
Third Party-Registrant Player	TPPL-012779	Lloyd D. Marin, Jr.	Statement of Reasons 3/26/2019	Decision 5/30/2019
Third Party-Registrant Player	TPPL-020353	Lola Walker Marcia	<b>No Pleading</b>	Decision 4/29/2019
GE- Owner-Person	GEOW-002381	Louis Sarantos, Jr	Clovis 500 Accusation re. Emergency Order (Case HQ2017-00001AC) 8/21/2017	Decision 12/18/2017
GE- Owner-Person	GEOW-002381	Louis Sarantos, Jr	Clovis 500 Accusation (Case No. HQ2013-00003AC) 6/30/2017	Decision 12/18/2017
Gambling Establishment	GEGE-001108	Lucky Chances Inc., dba Lucky Chances Casino	Accusation 8/19/2011	Decision 11/10/2011
GE- Owner-Entity	GEOW-002757	Lucky Chances, Inc.	Accusation 8/12/2015	Decision and Order 2/9/2017
Gambling Establishment	GEGE-000407	Lucky Derby Casino	Accusation 1/11/2011	Decision 3/7/2013
GE - Key Employee	GEKE-001586	Lysing Esconde	Accusation 8/13/2013	Decision 10/30/2013
GE- Work Permit	GEWP-002403	Mai Xiong	<b>No Pleading</b>	Default Decision 11/3/2016
Third Party Player	TPPL-018694	Maira Ramirez-Frausto	<b>No Pleading</b>	Decision 8/29/2019
Gambling Establishment	GEGE-001164	Marcos Cabrera, sole proprietor El Resbalon	Statement of Issues 10/10/2008	Decision 9/9/2009
GE- Owner-Person	GEOW-003216	Margaret Lewis	Statement of Reasons 10/1/2018	Decision 1/10/2019
GE- Work Permit	GEWP-002169	Mario Reyes	Statement of Reasons 4/30/2015	Decision 7/30/2015
GE- Owner-Person	980039_C	Mark A Kelegian, shareholder Oceans 11, Inc.	<b>No Pleading</b>	Decision 6/22/2006
GE- Work Permit	GEWP-001924	Mark Gill	<b>No Pleading</b>	Decision 8/27/2015
Tribal Key Employee	TRKE-015507	Mark Kruspe		Decision 9/19/2017
GE- Key Employee	GEKE-002011	Mark Pickens	<b>No Pleading</b>	Decision 3/8/2017
GE- Owner-Person	GEOW-003180	Mark S. Adam	Statement of Reasons 7/28/2016	Decision 4/6/2017
GE- Owner-Person	GEOW-001189	Mark S. Luciano	Statement of Issues 3/7/2002	Decision 4/11/2003
Third Party Player	TPPL-010733	Mary Mati	<b>No Pleading</b>	Decision 8/13/2015
GE- Owner-Person	GEOW-003410	Masis A. Kevorkian	Accusation 6/17/2016	Decision 9/8/2016
GE- Owner-Person	GEOW-003411	Masis A. Kevorkian	Accusation 6/17/2016	Decision 9/8/2016

License Type	License Number	Name	Pleading	Decision
GE- Owner-Person	GEOW-003486	Masis A. Kevorkian	Accusation 6/17/2016	Decision 9/8/2016
GE- Owner-Person	GEOW-003498	Masis A. Kevorkian	Accusation 6/17/2016	Decision 9/8/2016
Third Party Player	TPPL-008987	Meng Chea	Statement of Reasons 2/6/2014	Decision 5/29/2014
GE- Owner-Person	GEOW-002034	Michael A. Whiteley, Jr.	Ammended Accusation 5/16/2017	Stipulated Settlement 1/25/2018
GE - Key Employee	GEKE-001709	Michael Freeze Arvizu	Statement of Reasons 7/10/2014	Decision 10/9/2014
GE - Key Employee	GEKE-001887	Michael Fuston	Statement of Reasons 8/14/2015	Decision 4/14/2016
GE - Key Employee	GEKE-002232	Michael Lopez	Statement of Reasons 11/19/2018	Decision 3/28/2019
GE - Key Employee	GEKE-002305	Michael Owens	<b>No Pleading</b>	Decision 10/10/2019
GE - Key Employee	GEKE-001243	Michael Penn	Accusation 11/14/2011	Decision 8/29/2012
GE - Key Employee	GEKE-001290	Michelle Miller-Wahler	Accusation 10/30/2013	Stipulated Settlement 8/29/2019
Third Party Player	TPPL-001381	Miguel O. Aguilar	Statement of Reasons 1/15/2015	Decision 5/28/2015
Gambling Establishment	GEKE-000811	Mike's Card Casino	Ammended Accusation 5/16/2017	Stipulated Settlement 1/25/2018
GE- Work Permit	GEWP-002717	Mindy Or	<b>No Pleading</b>	Decision 8/29/2019
GE - Key Employee	GEKE-002249	Misty Vargas Alonzo	Statement of Reasons 4/12/2019	Decision 6/14/2019
GE - Key Employee	GEKE-001667	Moacyr Vadas	Accusation 2/24/2016	Decision 7/7/2016
GE- Owner-Person	GEOW-002593	Monica M. Melech	Accusation 7/14/2017	Decision 5/30/2019
GE- Owner-Person	GEOW-003462	Monica M. Melech	Statement of Issues 11/20/2018	Decision 5/30/2019
Third Party- Registrant Player	TPPL-013776 TPPL-018807	Monita Chan	Statement of Reasons 8/31/2017	Decision 3/8/2018
Third Party- Registrant Player	TPPL-011301	Myron Lazo	<b>No Pleading</b>	Default Decision 4/12/2018
GE - Key Employee	GEKE-002179	Nadar Tafty	Statement of Reasons 6/5/2018	Stipulated Settlement 8/23/2018
GE- Owner-Person	GEOW-003241	Nader H. Tafty, shareholder of Delta CM, Inc. general partner and a limited partner of Delta C, LP owners of Delta Casino Downtown	Statement of Issues 1/11/2012	Decision 12/12/2012
GE- Owner-Person	GEOW-003242	Nader H. Tafty, shareholder of Delta CM, Inc., general partner and a limited partner of Delta C, LP owners of Delta Casino	Statement of Issues 1/11/2012	Decision 12/12/2012
GE - Key Employee	GEKE-001211	Naseem Salem	Statement of Reasons 8/2/2012	Decision 9/5/2013
GE- Owner-Entity	GEOW-003284	Natalie J. Lewis Survivors Trust	Statement of Reasons 10/1/2018	Decision 1/10/2019

License Type	License Number	Name	Pleading	Decision
Gambling Establishment	GEGE-000448	Normandie Club, Gambling Establishment	Accusation 10/30/2013	Decision 4/25/2016
GE- Owner-Entity	GEOW-001099	Normandie Club, General Partnership	Accusation 10/30/2013	Decision 4/25/2016
Gambling Establishment	GEGE-001339	Oasis Card Room	Statement of Reasons 11/24/2015	Decision 5/26/2016 Reconsideration Decision 10/20/2016
Gambling Establishment	GEGE-001301	Oceana Cardroom	Statement of Reasons 7/28/2016	Decision 4/6/2017
Third Party-Registrant Player	TPPL-020001	Odyleo Divina	Statement of Reasons 9/30/2019	Decision 12/19/2019
GE- Owner-Person	GEOW-000472	Otho M. Smith	<b>No Pleading</b>	Decision 6/22/2017
Gambling Establishment	GEGE-000206	Otho Smith, sole proprietor S&K Cardroom	Accusation 5/3/2007	Decision 9/6/2007
Gambling Establishment	GEGE-001008	Palomar Card Room	Statement of Reasons 8/13/2013	Decision 9/5/2013
Gambling Establishment	GEGE-001008	Palomar Card Room	Accusation and Statement of Issues 12/14/2015	Decision 8/11/2016
GE - Key Employee	GEKE-002185	Patricia Ann Hernandez	<b>No Pleading</b>	Default Decision 3/8/2018
Third Party Player	TPPL-002913	Paul Ngo	Statement of Issues 5/11/2012	Decision 11/15/2012
Third Party-Registrant Player	TPPL-018701	Pedro Reyes-Amado	Statement of Reasons 9/11/2019	Decision 11/22/2019
GE- Owner-Person	GEOW-001331	Peter V. Lunardi III	Amended Accusation and Statement of Issues 3/27/2015	Decision 5/14/2015
Tribal Key Employee	TRKE-003606	Phetsamone Phaphol	Statement of Issues 2/4/2008	Decision 8/12/2008
GE - Key Employee	GEKE-002013	Phoungneune Borihanh	Statement of Reasons 10/27/2016	Decision 3/23/2017
GE- Owner-Entity	GEOW-000993	Point-Walker, Inc.	Accusation 1/11/2011	Decision 3/7/2013
Gambling Establishment	GEGE-000407(2007)	Point-Walker, Inc., Lucky Derby Casino Kermit Schayltz, shareholder Leo Chu, shareholder	Accusation 11/20/2006	Decision 7/26/2007
Gambling Establishment	GEGE-001276	Poker Flats Casino	Statement of Reasons 3/7/2016	Decision 12/8/2016
Gambling Establishment	GEGE-001276	Poker Flats Casino	Statement of Reasons 6/15/2018	Decision 7/25/2018
Third Party Primary Provider	TPPP-000004	PT Gaming, LLC Patrick A. Tierney & Jamie L. Tierney Family Trust, sole member	Statement of Issues 7/25/2012	Decision 8/29/2012
Third Party-Primary Provider	TPPP-000080	Qualified Player Services, LLC	Statement of Reasons 5/14/2018	Decision 9/6/2018
GE- Work Permit	GEWP-002610	Ramon R. Lopez	<b>No Pleading</b>	Decision 12/13/2018
Third Party-Registrant Player	TPPL-018751	Raymond Smith, Jr.	Statement of Reasons 8/16/2018	Decision 10/18/2018
Third Party Player	TPPL-008622	Remar Moscardon	Statement of Particulars 8/14/2015	Decision 10/8/2015



License Type	License Number	Name	Pleading	Decision
Third Party Player	TPPL-009803	Rene Vidales	Statement of Reasons 7/22/2014	Decision 11/6/2014
GE - Key Employee	GEKE-002182	Rhea A. Motley	Statement of Reasons 6/23/2017	Decision 10/06/2017
GE - Key Employee	GEKE-001790	Richard Kwan	Statement of Reasons 10/24/2014	Decision 3/12/2015
Third Party Player	TPPL-012552	Richard Patrick Ponte	<b>No Pleading</b>	Decision 1/21/2016
GE - Key Employee	GEKE-001797	Richard Sharrah, Jr.	Statement of Reasons 8/31/2015	Decision 11/17/2015
Gambling Establishment	GEGE-000474	Robert Brown and Deuces Wild, Inc., dba Deuces Wild Casino & Lounge	Statement of Issues 11/17/2011	Decision 3/21/2013
GE - Key Employee	GEKE-001373	Robert E. Lytle	Accusation and Statement of Issues 9/28/2015	Decision 8/11/2016
GE- Owner-Person	GEOW-003415	Robert E. Lytle	Accusation and Statement of Issues 9/28/2015	Decision 8/11/2016
GE- Owner-Person	GEOW-003416	Robert E. Lytle	Accusation and Statement of Issues 9/28/2015	Decision 8/11/2016
GE - Key Employee	GEKE-001997	Robert Ezzell	Statement of Reasons 8/8/2018	Decision 11/29/2018
Gaming Vendor Provider	GVPR-000087	Robert Saucier and Galaxy Gaming of California, LILAC	Statement of Issues 10/19/2009	Decision 7/11/2013
GE - Key Employee	GEKE-001720	Roberto Pena	Accusation 7/24/2015	Decision 4/14/2016
GE- Owner-Person	GEOW-001327	Rommel Medina	Accusation 8/12/2015	Decision and Order 2/9/2017
GE - Key Employee	GEKE-002066	Rommel Naraval	Statement of Reasons 8/15/2017	Decision 3/8/2018
Third Party Player	TPPL-010352	Ronald Hellen, III	Statement of Reasons 1/14/2016	Decision 4/25/2016
GE- Work Permit	GEWP-001113	Ronald M. Roberts	Statement of Issues 2/4/2008	Decision 10/23/2008
GE - Key Employee	GEKE-001763	Ruben Moreno	Statement of Reasons 6/15/2015	Decision 8/27/2015
GE- Owner-Person	GEOW-001326	Ruell Medina	Accusation 8/12/2015	Decision and Order 2/9/2017
Tribal Key Employee	TRKE-013636	Russell Bunch	Statement of Reasons 7/22/2014	Decision 11/6/2014
GE- Owner-Person	GEOW-001100	Russell Miller	Accusation 10/30/2013	Decision 4/25/2016
Third Party Player	TPPL-017297	Ruth Reyes	<b>No Pleading</b>	Decision 11/7/2019
GE- Owner-Person	GEOW-003408	Ryan E. Stone	Accusation 6/17/2016	Decision 9/8/2016
GE- Owner-Person	GEOW-003409	Ryan E. Stone	Accusation 6/17/2016	Decision 9/8/2016
GE- Owner-Person	GEOW-003487	Ryan E. Stone	Accusation 6/17/2016	Decision 9/8/2016
GE- Owner-Person	GEOW-003499	Ryan E. Stone	Accusation 6/17/2016	Decision 9/8/2016
Gambling Establishment	GEGE-000206	S&K Cardroom	<b>No Pleading</b>	Decision 6/22/2017

License Type	License Number	Name	Pleading	Decision
Gambling Establishment	GEGE-001041	S&S Gaming, Inc., dba Club Caribe Casino	Accusation 5/3/2007	Decision 9/6/2007
GE- Owner-Entity	GEOW-003186	Sacramento Casino Royale, LLC	Accusation 11/26/2014	Decision 4/14/2016
GE - Key Employee	GEKE-002177	Sai Saechao	Statement of Reasons 7/25/2018	Decision 12/12/2018
GE - Work Permit	GEWP-001461	Sai Saechao	Statement of Reasons 7/25/2018	Decision 12/12/2018
GE- Work Permit	GEWP-002686	Samantha Sales	<b>No Pleading</b>	Decision 1/24/2019
Third Party Supervisor	TPSU-000222	Samnang Phoung	Statement of Reasons 3/14/2013	Decision 5/23/2013
Gambling Business Supervisor	TPSU-000207	Samnang Phoung	Statement of Reasons 3/14/2013	Decision 5/23/2013
GE- Work Permit	GEWP-001829	Scott Gerald Smith	Accusation 4/7/2017	Decision 7/13/2017
Gambling Establishment	GEGE-000466	Seven Mile Casino	Accusation 9/23/2015	Decision 3/23/2017
Gaming Vendor Provider	GVPR-000110	Sharp Image Gaming, Inc. Christopher Scott Anderson, and Kelli Anderson	Statement of Reasons 2/19/2016	Decision 5/12/2016
GE- Work Permit	GEWP-001289	Shawn Kalani Kahanu	Statement of Reasons 9/20/2016	Decision 1/3/2017
GE- Work Permit	GEWP-001347	Sherwin Balano Pilalia	Statement of Issues 1/29/2010	Decision 3/8/2012
Third Party-Registrant Player	TPPL-020013	Sianna Hasenberg	Statement of Reasons 8/27/2018	Decision 2/21/2019
GE- Owner-Person	GEOW-003393	Stanley Parrish	Accusation 11/26/2014	Decision 4/14/2016
Gambling Establishment	GEGE-000950	Stanley Penn, sole proprietor Lucky Lady Cardroom	Accusation 11/14/2011	Decision 8/29/2012
Gambling Establishment	GEGE-001082	Star's Casino	Accusation 7/14/2017	Decision 5/30/2019
Gambling Establishment	GEGE-001082	Star's Casino	Statement of Issues 11/20/2018	Decision 5/30/2019
GE- Owner-Entity	GEOW-003460	Star's Gaming, Inc	Statement of Issues 11/20/2018	Decision 5/30/2019
GE - Key Employee	GEKE-001786	Steph Stapornkul	Statement of Reasons 7/10/2015	Decision 10/8/2015
GE- Work Permit	GEWP-002554	Stephen Eric Herrera	Statement of Reasons 1/23/2018	Decision 6/7/2018
GE- Owner-Person	GEOW-001104	Stephen Miller	Accusation 10/30/2013	Decision 4/25/2016
Third Party Supervisor	TPSU-000534	Stephen Patrick Evans	Statement of Particulars 8/14/2015	Decision 10/8/2015
GE- Work Permit	GEWP-001349	Stephen Sottero	Statement of Reasons 12/16/2013	Decision 4/9/2015
GE- Work Permit	GEWP-002627	Steve Hodge	Statement of Reasons 3/13/2019	Decision 5/30/2019
GE- Owner-Person	GEOW-003802	Steven Ayers	Statement of Reasons 8/10/2018	Decision 1/12/2019
Tribal Key Employee	TRKE-012607	Steven James Williamson	Statement of Particulars 7/23/2013	Decision 11/25/2013
Third Party Player	TPPL-011589	Sumeet Anand	<b>No Pleading</b>	Decision and Order 7/12/2018

License Type	License Number	Name	Pleading	Decision
Gambling Establishment	02001	Susan J. Barrows, sole proprietor Gold Rush Gaming Parlor and Saloon	Accusation 4/17/2006	Decision 2/8/2007
GE- Owner-Person	GEOW-002375	Susan L. Staats	Accusation and Statement of Issues 12/14/2015	Decision 8/11/2016
GE- Owner-Person	GEOW-002375	Susan Staats, partner	Statement of Reasons 8/13/2013	Decision 9/5/2013
Third Party-Registrant Player	TPPL-018180	Sweeney Jahrin Williams	Statement of Reasons 1/4/2018	Decision 10/4/2018
Third Party Owner-Person	TPOW-000135	Tam Si Luu	First Amended Accusation and Statement of Issues 10/16/2015	Stipulated Settlement Decision and Order 1/12/2017
Third Party-Registrant Player	TPPL-015687	Tanisha Grant	Statement of Reasons 9/19/2019	Decision 1/9/2020
GE - Key Employee	GEKE-002174	Tawni Vargas	<b>No Pleading</b>	Decision 3/6/2019
GE- Owner-Person	GEOW-003095	Terry Vargas	Statement of Reasons 3/7/2016	Decision 12/8/2016
GE- Owner-Person	GEOW-003095	Terry Vargas, Sole Proprietor	Statement of Reasons 6/15/2018	Decision 7/25/2018
GE- Owner-Person	GEOW-003259	The Lunardi Family Living Trust	Amended Accusation and Statement of Issues 3/27/2015	Decision 5/14/2015
GE- Owner-Entity	GEOW-003294	The Moskowitz joint Revocable Living Trust	Accusation 11/18/2019	Decision 12/5/2019
Gambling Establishment	GEGE-001063	The Oaks Card Club	Accusation 3/4/2011	Decision 5/9/2011
Gambling Establishment	GEGE-001336	The Saloon at Stones Gambling Hall	Accusation 6/17/2016	Decision 9/8/2016
Gambling Establishment	GEGE-001337	The Tavern at Stones Gambling Hall	Accusation 6/17/2016	Decision 9/8/2016
GE- Work Permit	GEWP-002668	Thea Bun	<b>No Pleading</b>	Decision 11/1/2018
Tribal Key Employee	TRKE-012129	Thomas Miller	Statement of Particulars 7/14/2015	Decision 1/7/2016
GE- Work Permit	GEWP-001984	Thomas Moore	<b>No Pleading</b>	Decision 11/19/2015
GE- Work Permit	GEWP-002140	Thyda Nop	<b>No Pleading</b>	Decision 8/13/2015
GE- Owner-Person	GEOW-003143	Tigran Marcarian, shareholder Delta CM Corporation	<b>No Pleading</b>	Decision 12/11/2008
GE- Owner-Person	GEOW-002680	Timothy Eugene Stroud	Statement of Issues 9/5/2006	Decision 7/10/2007
GE- Owner-Person	GEOW-003107	Timothy J. Long, sole proprietor Hemphill's Lounge and Cadroom	Statement of Issues 6/7/2012	Decision 4/22/2014
GE - Key Employee	GEKE-002267	Timothy Tran Rupert	Statement of Reasons 1/24/2019	Decision 4/11/2019
GE- Owner-Person	GEOW-003450	Todd J. Mather	Statement of Reasons 11/24/2015	Decision 5/26/2016
				Reconsideration Decision 10/20/2016
GE - Key Employee	GEKE-002159	Tom Bowling	Statement of Reasons 8/30/2018	Decision 1/11/2019



License Type	License Number	Name	Pleading	Decision
Tribal Key Employee	TRKE-017147	Tony Corkhill	Statement of Particulars 10/25/2017	Decision 1/23/2018
Tribal Key Employee	TRKE-013722	Tonya Rogers	<b>No Pleading</b>	Decision 7/30/2015
GE - Key Employee	GEKE-001694	Travis Seiler	Statement of Particulars 1/14/2016	Decision 8/11/2016
GE- Owner-Entity	GEOW-003332	University Heights Associates, LLC Naseem Salem, Managing Member Adel Salem, Member	Statement of Reasons 8/13/2012	Decision 9/5/2013
GE- Owner-Entity	GEOW-003390	V.C. Cardroom Inc.	Accusation 9/23/2015	Decision 3/23/2017
Third Party-Registrant Player	TPPL-018710	Vanessa Ellis	Statement of Reasons 11/13/2018	Decision 1/24/2019
Third Party Player	TPPL-010978	Vanessa Garcia	Statement of Reasons 12/8/2015	Decision 2/25/2016
Gambling Establishment	GEGE-001168	Ven-A-Mexico	<b>No Pleading</b>	Default Decision 2/8/2018
GE - Key Employee	GEKE-001938	Vicente Lopez	Statement of Reasons 2/24/2016	Decision 5/24/2016
GE- Work Permit	GEWP-001921	Vichai Kevin Yang	Statement of Reasons 1/15/2015	Decision 7/9/2015
Tribal Key Employee	TRKE-014957	Wei Zu	Statement of Reasons 4/8/2016	Decision 8/11/2016
GE- Owner-Person	GEOW-003187	William Blanas	Accusation 11/26/2014	Decision 4/14/2016
GE- Work Permit	GEWP-002142	William Karr	Statement of Reasons 1/19/2016	Decision 5/24/2016
Tribal Key Employee	TRKE-012114	William Robert Hayward	Statement of Issues 3/14/2013	Decision 7/25/2013
Third Party-Registrant Player	TPPL-013500	Xiu Guo Zhang	<b>No Pleading</b>	Decision 5/30/2019
GE - Key Employee	GEKE-002169	Zack Esmaili	<b>No Pleading</b>	Decision 12/13/2018

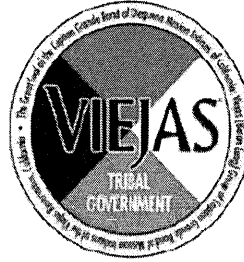
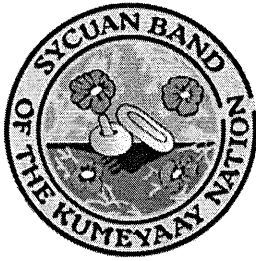
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## **EXHIBIT 3**



January 29, 2020

**VIA ELECTRONIC AND U.S. MAIL**

(stephanie.shimazu@doj.ca.gov; bgc\_regulations@doj.ca.gov)

Stephanie Shimazu  
Susanne George  
Bureau of Gambling Control  
Department of Justice  
P.O. Box 168024  
Sacramento, California 95816-8024

**RE: "CONCEPT" LANGUAGE FOR PLAYER-DEALER ROTATION**

Dear Director Shimazu and Ms. George:

As the elected leaders of our respective nations, we write to provide our nations' comments on the "concept" language the Bureau of Gambling Control released on December 3, 2019 with respect to the rotation of the player-dealer position in California cardrooms. We also respond to some of the written comments submitted by cardroom representatives regarding the proposed regulation's perceived failures.

**1. THE CONCEPT LANGUAGE**

As an initial matter, we applaud the Bureau for taking this action. The proposed regulation, even if just a concept at this point, acknowledges what the tribes have said for most of the last decade: The cardrooms have been playing illegal banked games by failing to rotate the player-dealer position as the law requires.

While the concept language is a good start, it could go further. The proposed regulation requires rotation every two hands, but the law is more exacting. Penal Code section 330 prohibits any "banking" game played with cards, and by definition that is any game where one person bets against all others at the table, paying the winners and collecting from the losers. *Sullivan v. Fox*, 189 Cal. App. 3d 673, 678 (1987). Notwithstanding the provisions of Penal Code section 330.11, we submit that allowing a person to bank even a

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*single hand* in a cardroom still results in an illegal banked game.

That said, we understand how the Bureau arrived at the concept's two hand rotation. After all, the *cardrooms themselves* established mandatory rotation every two hands as an industry standard and they specifically acknowledged that such rotation is required by law. We previously explained to the Bureau that our representatives painstakingly examined every single blackjack rule – 208 of them – on the Bureau's website. That examination revealed that fully 98 percent of those rules specifically required that the player-dealer position be offered or actually rotate every two hands. Here is an example of the rotation language in those rules:

**LEGAL**

The Player-Dealer position must rotate in a continuous and systematic fashion, and cannot be occupied by one person for more than two consecutive hands. There must be an intervening player-dealer so that no single player can continually occupy the player-dealer position within the meaning of *Oliver v. County of Los Angeles* (1998) 66 Cal. App. 4<sup>th</sup> 1397, 1408-1409. If there is not an intervening person occupying the Player-Dealer's position, the game will be "broke" or stopped, as required by the California Penal Code.

This rule language effectively tracks that of the concept under consideration. As a tribal representative remarked at the Bureau's December 18, 2019 workshop, neither the Bureau nor the tribes drafted the rule language. The cardrooms did. Thus, the concept language does nothing more than reflect the *cardrooms' own understanding* of the legal rotation requirements. As such, the cardrooms have no valid basis to complain about the concept language.

In light of Penal Code section 330.11, we assume the Bureau will not altogether prohibit player-dealer games in cardrooms. In that case, we have little in the way of substantive comments about the concept, because it is generally well-drafted and we believe that if enacted (and adequately enforced) it would limit the banking of games to no more than two hands. The concept includes two options under section (a)(2). We believe the first option ("until that person accepts the player-dealer position") is the only one consistent with section 330.11. Under that section, the player-dealer position "must be continuously and systematically rotated amongst *each* of the participants during the play of the game." That necessarily means *all* players at the table must take the position. While section 330.11 has an exception to this rule, it applies *only* if the Bureau finds the rules of the game "render the maintenance of or operation of a bank impossible by other means." If the Bureau uses the first option in the concept, a player will be excluded from the game until he or she accepts the player-dealer position, unless the cardroom can prove to the

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Bureau that the “maintenance or operation of a bank is rendered impossible by virtue of the game rules.” In other words, the concept language tracks exactly what section 330.11 requires.

One other minor matter bears discussion. Section (a)(6) in the concept references regulation 12200 subdivision (a)(16). We believe that instead should be (b)(16).

## **2. REBUTTAL OF CARDROOM COMMENTS**

We will not address in detail the myriad comments the Bureau has received from cardroom employees, owners and beneficiaries (including third party proposition player (“TPP”) companies and the various municipalities which derive tax revenue from the illegal gaming) claiming the proposed regulatory action will economically harm them. Suffice it to say that the Bureau is a law enforcement agency, and thus should not be concerned with public policy arguments about how enforcing the law will affect one or another group. Those are policy issues for the Legislature or the people of the state to address. Moreover, the fact that many people profit from the illegal conduct in California cardrooms does not mean the State should not stop it.

There are relatively few substantive comments supporting the cardrooms’ position. That is understandable, because no one can seriously contend that position is legally tenable.

### **A. The Bureau Is Authorized To Regulate Illegal Gaming**

In their December 12, 2019 letters, Jarhett Blonien and Kyle Kirkland, in his role as the President of the California Gaming Association, assert that the Bureau lacks the authority to promulgate regulations to prevent banked games. According to Mr. Blonien, the “plain language” of Business and Professions Code section 19826(g), “limits the Bureau’s authority to restrictions on how a game is played, not how all games must be played.” (Emphasis in original.) Mr. Blonien reasons that because the concept addresses *all* player-dealer games, it is beyond the Bureau’s authority. Mr. Kirkland takes a broader approach than Mr. Blonien by citing many cases and statutes which he claims prove the Bureau “lacks authority to promulgate regulations prohibiting or restricting, on a statewide basis, previously approved games.”

We trust the Bureau does not question its authority to enforce gaming laws, including the promulgations of regulations to that end. Otherwise, we doubt the Bureau would have started this process in the first place. Regardless, it appears Messrs. Blonien and Kirkland hoped their forceful assertion would deter anyone at the Bureau from actually reading the authority they cite. One need look no further than section 19826 of the Gambling Control Act – the very section upon which Mr. Blonien relies – to conclude the Bureau has all the authority it needs. That section tasks the Bureau with a number of “responsibilities,” including: “(f) To adopt regulations reasonably related to its functions

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and duties in this chapter.” In case there is any doubt about whether those “functions and duties” include game regulation, the very next subsection, 19826(g), requires the Bureau to “[a]pprove the play of any controlled game, including placing restrictions and limitations on how a controlled game may be played.” This is the section Mr. Blonien claims allows the Bureau to regulate a single game, but not all games. Setting aside that Mr. Blonien’s argument makes no sense, it also demonstrates that he conveniently chose to ignore the first part of the sentence which specifically extends the Bureau’s authority to “*any* controlled game.”

One final point: In this section of his letter, Mr. Kirkland claims the “Bureau’s concept language would effectively revoke existing game approvals for cardrooms’ player-dealer games.” As noted above, however, the cardrooms’ own existing game rules already provide for the concept’s two hand rotation. Thus, the concept should have no effect on those rules.

**B. Section 330.11 And “Mandate[d] Acceptance”**

Messrs. Blonien and Kirkland, as well as Jimmy Gutierrez (in his December 16, 2019 letter), claim the concept language violates section 330.11. As Mr. Blonien puts it:

The newly proposed language forces every player to either accept the position of player-dealer or sit out of the game. This is a mandate [*sic*] acceptance of the player-dealer position by every person at the table or the game cannot be played. This is inapposite to the plain language of Penal Code 330.11.<sup>1</sup>

This assertion is incorrect. Preliminarily, nothing in section 330.11 prohibits a regulation from mandating acceptance of the-deal by every player at a table. The statute simply clarifies that the Legislature did not *intend* mandated acceptance by all if – but only if – the Bureau found the rules of the game in question made the maintenance of a bank impossible by other means. Stated otherwise, if the Bureau cannot conclude the rules of the game prevent the maintenance of a bank by means other than mandated rotation among all players, then that mandated rotation is perfectly appropriate.

In any event, the concept does not do what the cardroom representatives claim. As noted above, the concept mandates acceptance of the player-dealer position, but it includes a carve-out where the cardroom “submit[s] information to the Bureau to establish how the

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<sup>1</sup> Similarly, Mr. Gutierrez asserts that the “proposed regulation requires acceptance of the deal by every player, even if the division finds that the rules of the game render the maintenance of or operation of a bank impossible by other means.”



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maintenance or operation of a bank is rendered impossible by virtue of the game rules.” Thus, the concept is *exactly* consistent with section 330.11.

### C. The Four Cases (Plus Oliver)

In his lengthy letter, Mr. Kirkland cites four decisions from California appellate courts which he claims “have held that player-dealer games are not banking games.” Those cases are *Bell Gardens v. County of Los Angeles*, 231 Cal. App. 3d 1563 (1991), *Huntington Park v. County of Los Angeles*, 206 Cal. App. 3d 241 (1988), *Walker v. Meehan*, 194 Cal. App. 3d 1290 (1987), and the above-referenced *Sullivan v. Fox*. According to Mr. Kirkland, in “these four cases, the practice was to offer the *opportunity* to be the player-dealer every two hands in clockwise order to each active player.” (Emphasis in original.) Mr. Kirkland may have – again – hoped the Bureau would not actually read what he cited. Stated succinctly, *none* of the four decisions even remotely supports the notions that the games played in cardrooms are (1) “not banking games,” or (2) legal as long as they “offer the opportunity” to take the deal.

We will not belabor the point, because the Bureau’s representatives can read the cases as easily as anyone else. However, we note that *Sullivan* and *Walker* ultimately addressed percentage games, not banking games, and thus rotation of the player dealer position was not at issue. See *Sullivan*, 189 Cal. App. 3d at 684 (“the undisputed evidence of plaintiff Sullivan’s ‘Pai Gow manager’ and the San Jose police investigator establishes that plaintiff Sullivan is operating a percentage game as we have defined that term.”); *Walker*, 194 Cal. App. 3d at 1304 (“We conclude that the *Sullivan* definition is not unconstitutionally vague and that it is supported by legislative history as well as commonly accepted definitions of the term ‘percentage game.’”)

*Huntington Park* and *Bell Gardens* are no more helpful to the cardrooms. In the first, the lower court made a specific factual finding that the dealer position in the pai gow game at issue “continually and systematically rotates among each of the participants” in the game and the house did not participate in the game or have any interest in its outcome. 206 Cal. App. 3d at 245. Based on that finding, the appellate court concluded that “under the present facts pai gow is not a banking game proscribed under section 330 since the record does not establish that either plaintiffs (the house) or any other entity maintains or operates a ‘bank.’” 206 Cal. App. 3d at 250. *Huntington Park* might support the cardrooms if the player-dealer position in their games *actually rotated* continually among each of the players. As we all know, that is hardly what happens in the cardrooms. Rather, the TPP banks the game the entire time and the player-dealer position *never* rotates. As an aside, Mr. Kirkland suggests the TPPs’ show of offering the player-dealer position in the cardrooms legitimizes their games. None of the cases Mr. Kirkland cites supports that proposition. Indeed, its only support is the now thoroughly discredited “Lytle Letter.” We assume even Mr. Kirkland will no longer wish to reference that letter as support for anything.

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In *Bell Gardens*, the county attempted to re-litigate the exact issue decided in *Huntington Park*. As such, the court reached the same result and sanctioned the county for its conduct. Notably, the *Bell Gardens* court explained that the result could be different if the game rules were changed: “For example, if a rule change permitted a player to take on all comers, pay all winners, and collect from all losers, the game would, under the *Sullivan* definition, be a banking game.” 231 Cal. App. 3d at 1569. That is precisely how the TPPs operate in cardrooms today – they take on all comers and thus operate an illegal bank.

Mr. Kirkland also continues a troublesome trend by cardroom interests to misrepresent the holding in *Oliver v. County of Los Angeles*, 66 Cal. App. 4th 1397 (1998). Quoting dicta from that decision, Mr. Kirkland’s letter suggests the applicable rotation standard is “a long time.” Apparently, this means that if a player holds the deal “a long time,” the game is banked, but if the deal rotates in something less than “a long time,” the game is legal. Mr. Kirkland is not the only one pushing this proposition. At the Bureau’s workshops in 2018 and 2019 various cardroom owners and attorneys repeated this notion several times, perhaps hoping that doing so would have a talismanic effect and make it true. It is anything *but* true. The actual holding of *Oliver* – which can be determined because the court used the words “we now hold” – is that “a game will be determined to be a banking game if under the rules of that game, it is possible that the house, another entity, a player, or an observer can maintain a bank or operate as a bank during the play of the game.” 66 Cal. App. 4th at 1408. In the case of the Newjack game at issue in *Oliver*, the rules did not actually require rotation, so the court found it was illegal. The primary significance of *Oliver* is that it conclusively proves the cardrooms play illegal banked games.

Mr. Kirkland also accuses the tribes of asserting that *Oliver* requires rotation every two hands. We are unaware of any tribe making such an assertion. Rather, as the cardroom game rule quoted above demonstrates, it was the cardrooms themselves that seemed to have interpreted *Oliver* to have required rotation every two hands and therefore that is the industry standard the cardrooms created.

Thus, the lesson all parties can draw from the cases Mr. Kirkland cited, as well as the overlay of the later-enacted Penal Code section 330.11, is that the player-dealer position must *actually rotate*, and must do so *continuously*. The Bureau’s only task, then, is to define “continuously” and in the concept it understandably chose to adopt the cardrooms’ own two-hand standard.

There is a final point we would like to make. Mr. Kirkland reveals that the illegal games “comprise approximately 65-70% of the gaming activity and revenue at California cardrooms” and that stopping that illegal gaming will have an “impact of over \$5.6 billion.” Those remarkable figures show only one thing: The scope of the harm to the



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tribes the cardrooms have caused. The cardrooms have no right to benefit from patently illegal conduct.

We look forward to the Bureau's next steps in implementing the regulations to finally enforce the law and preclude further harm to the tribes.

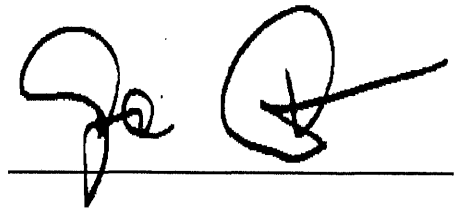
Sincerely,



Cody J. Martinez  
Tribal Chairman  
Sycuan Band of Kumeyaay  
Indians



Jeff Grubbe  
Tribal Chairman  
Agua Caliente Band of  
Cahuilla Indians



John Christman  
Tribal Chairman  
Viejas Band of Kumeyaay  
Indians



Anthony Roberts  
Tribal Chairman  
Yocha Dehe Wintun Nation