No. 21-55017

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITE HERE LOCAL 30,

Plaintiff/Appellee,

v.

SYCUAN BAND OF THE KUMEYAAY NATION; DOES 1-100,

Defendant/Appellant.

On Appeal from the United States District Court
for the Southern District of California
Honorable Thomas J. Whelan, Judge

BRIEF OF THE STATE OF CALIFORNIA AS AMICUS CURIAE SUPPORTING AFFIRMANCE OF THE DISTRICT COURT'S ORDER

ROB BONTA
Attorney General of California
SARA J. DRAKE
Senior Assistant Attorney General
WILLIAM P. TORNGREN
Supervising Deputy Attorney General
PARAS HRISHIKESH MODHA
Deputy Attorney General
State Bar No. 215761
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-7777
Fax: (916) 327-2319
Email: Paras.Modha@doj.ca.gov
Attorneys for the State of California

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

INTRODUCTION

Amicus Curiae the State of California (State) and appellant the Sycuan Band of the Kumeyaay Nation (Sycuan or Tribe) are the only parties to a tribal-state class III gaming compact signed in 2015 (2015 Compact). That compact makes the Tribe's adoption and maintenance of a Tribal Labor Relations Ordinance (TLRO) a prerequisite to operating class III gaming at its gaming facility. The TLRO provides important labor protections for the State's citizens, who make up the majority of employees at the Tribe's gaming facility.

In the underlying action between appellee Unite Here Local 30 (Union) and the Tribe, the district court declined to exercise supplemental jurisdiction over the Tribe's counterclaim (Counterclaim) seeking a judicial declaration that the TLRO is preempted by the National Labor Relations Act (NLRA). Even though the Tribe seeks to invalidate a material requirement of the 2015 Compact, it has not complied with or sought recourse pursuant to any of the 2015 Compact's dispute resolution processes. Moreover, the State is not a party to the underlying action.

The State files this amicus brief in support of the district court's order declining to exercise supplemental jurisdiction over the Counterclaim. A tribal-state class III gaming compact is an agreement negotiated between

two sovereigns and approved by the United States as part of a cooperative federalism scheme set up in the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701-2712, 18 U.S.C. §§ 1166-1167, to balance the interests of different sovereigns in regulating class III gaming. As with all class III gaming compacts, the 2015 Compact establishes and governs the relationship between the State and Sycuan and is a package of inextricably linked material terms that define the parties' relationship.[1]

Neither party to a class III gaming compact may decide unilaterally that a compact term is null and void and simply cease compliance. Rather, when either party to a class III gaming compact – a tribe or the State – seeks to invalidate a compact term, it must comply with the compact's dispute resolution provisions.

---

[1] Like all class III gaming compacts, the 2015 Compact is a contract between the Tribe and the State. *See Cachil Dehe Band of Wintun Indians of the Colusa Indian Comm. v. Cal. Gambling Control Com'n*, 618 F.3d 1066, 1073 (9th Cir. 2010). Federal law looks to, and relies upon, California contract law to interpret a compact. *Id*. at 1073. California Civil Code section 1643 provides: "A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, *if it can be done without violating the intention of the parties*." (Emphasis added.) The Tribe's actions in the underlying case potentially negate this statutory requirement because the 2015 Compact's two parties are not involved in the lawsuit.

Under the 2015 Compact – as with all tribal-state class III gaming compacts in California – the Tribe agreed to resolve disputes over any provision of the compact by providing the State with notice and an opportunity to engage in a meet and confer process as set out in the compact before pursuing a judicial remedy. Importantly, any judicial remedy affecting the 2015 Compact necessarily must include the parties to the compact.

Resolution of this case could have far-reaching implications to the framework for adopting and maintaining the provisions of class III gaming compacts. The dispute resolution processes and other material terms become meaningless if either the State or a tribe unilaterally and at any time can repudiate a requirement in a compact. Importantly, compacts are at the core of the IGRA-created cooperative federalism concept, and an attempt to unilaterally void them would undermine the approach created by the Congress to balance the interests of different sovereigns in regulating class III gaming.

To preserve the interests of all sovereigns to tribal-state class III gaming compacts, the State respectfully requests that the Court affirm the district court's order declining to exercise supplemental jurisdiction over the Tribe's Counterclaim. If this Court's decision reaches the issue of the proper

process for resolving the Tribe's claim of preemption, it should direct the Tribe to comply with, and exhaust, the 2015 Compact's requirements for dispute resolution with the State.

STATEMENT OF INTEREST

The State files this amicus brief pursuant to Federal Rules of Appellate Procedure 29(a)(2) to protect its substantial interests in the 2015 Compact to which it is a party and in preserving the broader framework of its relationships created by class III gaming compacts with other gaming tribes.

Specifically, the State has a substantial interest in preserving the agreed-upon bilateral dispute resolution procedures in the 2015 Compact. In addition to providing a clear process to meet and confer and to resolve disputes regarding compact provisions, those procedures ensure that the State is a party to any subsequent related litigation affecting its rights under the compact.

Additionally, the State has a substantial interest in the continued validity of the TLRO, a material term in the 2015 Compact that reflects the "State's concern for the rights of its citizens employed at tribal gaming establishments." *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1116 (9th Cir. 2003) (*Coyote Valley II*).

Importantly, the State's substantial interests extend beyond the 2015 Compact. Every compact authorizing class III gaming in California includes a dispute resolution process virtually identical to that in the 2015 Compact. Those compacts also include the TLRO or a similar labor relations ordinance, as well as numerous other provisions potentially subject to the dispute resolution process. As a result, the outcome of this litigation could affect the State's relationship with more than seventy other tribes.

SUMMARY OF ARGUMENT

The 2015 Compact provides that "Gaming Activities may continue only as long as the Tribe maintains the [TLRO]." ER00239.[2] The TLRO is a material term to the compact because it is a prerequisite to the Tribe's operating class III gaming in its gaming facility. The TLRO's labor provisions reflect the State's concern for protecting its citizens, who make up the vast majority of employees at Sycuan's gaming facility, *Coyote Valley II*, 331 F.3d at 1116, and its public policy favoring labor-organizing rights, *see* California Labor Code section 923 ("for the purpose of collective bargaining or other mutual aid or protection").

[2] The Excerpts of Record are referred to as "ER" followed by the applicable page referenced.

In this context, Sycuan's failure to follow the 2015 Compact's dispute resolution processes prior to filing the Counterclaim is an appropriate basis for the Court to affirm the district court's decision declining supplemental jurisdiction over the Counterclaim. Despite agreeing to adopt and maintain the TLRO in its 2015 Compact, the Tribe now seeks to invalidate the TLRO in a suit to which the State is not a party. However, before filing the Counterclaim, Sycuan – in recognition of the government-to-government relationship and compliance with the dispute resolution processes agreed to in the 2015 Compact – was required to provide the State with notice and then attempt to resolve the issues through the compact's dispute resolution processes.

The potentially far-reaching implications of this case are readily apparent. Even though the Tribe can seek to invalidate a compact provision, nothing in IGRA or the 2015 Compact suggests that either the Tribe or the State may seek to invalidate any of the compact's terms by circumventing the dispute resolution process and litigating issues involving compact interpretation with an affected third party. Contractual rights, obligations, and validity are determined as between the parties to a contract. The importance of the issues to nonparties in the underlying lawsuit – i.e., the State and the other class III gaming tribes in California – is a compelling

reason to decline supplemental jurisdiction over the Counterclaim. Therefore, the district court's declining to exercise supplemental jurisdiction over the Counterclaim in these circumstances is proper.

BACKGROUND

I. THE INDIAN GAMING REGULATORY ACT AND CLASS III GAMING COMPACTS IN CALIFORNIA

Congress enacted IGRA to "provide a statutory basis for the operation of gaming by Indian tribes." 25 U.S.C. § 2702(1). IGRA is best understood as an example of "cooperative federalism" because it distributes power over tribal gaming among the three affected governments – the tribe, the state, and the federal government – while recognizing their inherent powers and limitations. *Artichoke Joe's Cal. Grand Casino v. Norton*, 353 F.3d 712, 715 (9th Cir. 2003).

IGRA creates three classes of gaming. Class III gaming includes "the types of high-stakes games usually associated with Nevada-style gambling." *Coyote Valley II*, 331 F.3d at 1097; s*ee* 25 U.S.C. § 2703(8). Class III gaming activities are lawful on tribal lands only if they are conducted in conformance with a tribal-state compact that has been approved by the Secretary of the Department of the Interior. 25 U.S.C. § 2710(d)(1), (3)(B).

In California, both the Governor and the Legislature act on the State's behalf in reaching compacts. The California Constitution authorizes the Governor to negotiate the terms of tribal-state class III gaming compacts subject to ratification by the Legislature pursuant to which California tribes are authorized to conduct class III gaming. Cal. Const. art. IV, § 19(f).

Following completion of successful negotiations, the Governor is required to submit compacts to both houses of the California Legislature for ratification. Cal. Gov't Code § 12012.25(e). Any amendments to a compact also require ratification by the Legislature. *See e.g., id.* at § 12012.40.

The California Constitution gives tribes that have entered into a compact with the State a monopoly to conduct most types of class III gaming in the state. *Coyote Valley II*, 331 F.3d at 1103. Every California class III gaming compact includes a multitude of provisions addressing gaming-related topics, including the TLRO or a substantially similar tribal labor relations ordinance, prescribed dispute resolution processes to address disagreements that arise regarding these provisions, and termination upon invalidation of a material compact term.[3] Maintaining a compact in its

[3] True and correct copies of all tribal-state gaming compacts are available on the California Gambling Control Commission's website at: http://www.cgcc.ca.gov/?pageID=compacts (last visited on June 12, 2021).

entirety provides predictability to the three sovereigns that approved it – i.e., the tribe, the state, and the federal government. No California class III gaming compact includes a severability provision.

II. THE 2015 COMPACT

In 1999, Sycuan and the State entered into the first compact governing class III gaming on Sycuan's tribal lands (1999 Compact).[4] ER00148. In 2015, Sycuan and the State replaced the 1999 Compact with the newly negotiated and executed 2015 Compact.[5] Consistent with California's Constitution, the Governor negotiated and the Legislature ratified the 2015 Compact. Cal. Gov't Code § 12012.69. The 2015 Compact went into effect after publication in the federal register. 80 Fed. Reg. No. 79926 (Dec. 23, 2015).

III. THE 2015 COMPACT'S AND OTHER CLASS III GAMING COMPACTS' DISPUTE RESOLUTION PROVISIONS

Like the 1999 Compact, Sycuan's 2015 Compact includes dispute

---

[4] A true and correct copy of the 1999 Compact is available on the Commission website at: http://www.cgcc.ca.gov/documents/compacts/original_compacts/Sycuan_Compact.pdf (last visited on June 12, 2021).

[5] A true and correct copy of the 2015 Compact is available on the Commission's website at: http://www.cgcc.ca.gov/documents/compacts/AMENDED_COMPACTS/Sycuan%20Compact%202015%20(3).pdf (last visited on June 12, 2021).

resolution provisions. Except in limited circumstances, before either the Tribe or the State may bring a legal action on a dispute regarding the 2015 Compact, section 13.1 requires compliance with its dispute resolution processes. ER00239-ER00240. Section 13.1 provides for meeting and conferring after giving prompt written notice of a concern before going to arbitration or federal court. Section 13.1 states, in pertinent part:

> In recognition of the government-to-government relationship of the Tribe and the State, the parties shall make their best efforts to resolve disputes that arise under this Compact by good faith negotiations whenever possible. Therefore, except for the right of either party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the Tribe and the State *shall seek to resolve disputes by first meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of the performance and compliance of the terms, provisions, and conditions of this Compact,* as follows:
>
> (a) Either party *shall give the other, as soon as possible after the event giving rise to the concern, a written notice* setting forth the facts giving rise to the dispute and with specificity, the issues to be resolved.
>
> * * *
>
> (e) *Disputes that are not otherwise resolved by arbitration or other*

> *mutually agreed means may be resolved in the United States District Court* in the judicial district where the Tribe's Gaming Facility is located, or if those federal courts lack jurisdiction, in any state court of competent jurisdiction in or over the County.

ER00239-ER00240 (emphasis added).

Every class III gaming compact between the State and other tribes contains a similar dispute resolution process – i.e., the need to meet and confer in good faith to resolve disputes before resorting to the courts.

IV. THE TLRO IN THE 2015 COMPACT AND OTHER CLASS III GAMING COMPACTS

As in the 1999 Compact, the 2015 Compact provides for certain labor protections including that the Tribe adopt and maintain the TLRO. The TLRO is Appendix C to the 2015 Compact.[6] ER00172-ER00188.

In *Coyote Valley II*, this Court affirmed the appropriateness under IGRA of negotiations over basic labor provisions in tribal-state class III gaming compacts. *Coyote Valley II*, 331 F.3d at 1115-17. In support of such labor provisions, the State argued: "because thousands of its citizens are employed at tribal casinos, it is proper for the State to insist on some

[6] The tribal labor relations ordinance in the 1999 Compact was not identical, but was substantially similar, to the TLRO.

minimal level of protection for those workers" through the compacts. *Id.* at 1115. This Court agreed and held that such protections were "directly related to the operation of gaming activities" and thus permissible under IGRA. *Id.* at 1116 (citing 25 U.S.C. § 2710(d)(3)(C)(vii)).

Further, this Court determined that the labor relations framework established by the 1999 compacts is a regulatory matter of state public policy and tribal sovereign authority. *Coyote Valley II*, 331 F.3d at 1116. This Court also clarified that the State did not demand that tribes adopt a specific set of legal rules governing all employment practices on tribal lands, but that the tribes meet with labor unions to independently negotiate a labor ordinance addressing organizational and representational rights limited to employees of tribal casinos and related facilities. *Id.* This Court observed: "The TLRO provides only modest organizing rights to tribal gaming employees and contains several provisions protective of tribal sovereignty." *Id*.

As authorized by this Court in *Coyote Valley II* and carried forward from the 1999 Compact, the State and Sycuan mutually agreed to the TLRO in the 2015 Compact. Section 12.10 (TLRO Provision) makes the TLRO a prerequisite to the Tribe's class III gaming operations. The TLRO Provision is unequivocal, stating in full:

> The Gaming Activities authorized by this Compact may only commence after the Tribe has adopted an ordinance identical to the Tribal Labor Relations Ordinance attached hereto as Appendix D [sic], and *the Gaming Activities may only continue as long as the Tribe maintains the ordinance.* The Tribe shall provide written notice to the State that it has adopted the ordinance, along with a copy of the ordinance, within thirty (30) days after the effective date of this Compact.

ER00239 (emphasis added).

The TLRO Provision deals with potential "negative externalities" that may affect workers at the Tribe's casino. *See Rincon Band of Luiseno Mission Indians of Rincon Rsrv. v. Schwarzenegger*, 602 F.3d 1019, 1033 (9th Cir. 2010). The TLRO's adoption and maintenance benefit the State's citizens who work at the Tribe's gaming facility and enable those citizens to have the assistance from a labor union, when the workers deem it necessary. *See NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 113 (1956) ("The right of self-organization depends in some measure on the ability of employees to learn the advantages of self-organization from others.").

Every class III gaming compact between the State and a tribe includes a tribal labor relations ordinance and makes its adoption and maintenance a prerequisite for class III gaming operations. Consistent with these provisions, in *Casino Pauma v. National Labor Relations Board*, 888 F.3d

1066, 1079-80 (9th Cir. 2018) (*Casino Pauma*), compacting tribes through associations of gaming tribes, tribal chairs, and tribal governments as amici curiae[7] sought a determination that IGRA's provisions, as implemented through the TLRO, overrode the NLRA. In response to that argument, this Court held: "We have not uncovered any conflict between the NLRA and IGRA."[8] *Id*. at 1079.

V. THE COUNTERCLAIM AND THE DISTRICT COURT'S ORDER

Sycuan's Counterclaim requests an order declaring that the NLRA "preempts and invalidates enforcement of the TLRO, thus rendering the purported dispute between the parties [Sycuan and the Union] non-arbitrable, and preserving the Sycuan Band's sovereign immunity from suit." ER00265. The Counterclaim also states that the Tribe's legal position is that the TLRO is preempted by the NLRA "and is therefore null and void and the Tribe has no obligation to comply with it." ER00273. Before filing the Counterclaim, Sycuan did not provide notice to the State regarding, or make

[7] Sycuan is a member of each of the amici associations identified in *Casino Pauma*. *See* 888 F.3d at 1069 (listing amici).

[8] This Court's holding is directly contrary to the Tribe's assertion that *Casino Pauma* definitively resolved "whether the NLRA preempted some or all of the TLRO created under state law." Opening Br., 6.

a request to meet and confer over, the validity of the 2015 Compact's requirement that the Tribe maintain the TLRO.[9]

The district court declined to exercise supplemental jurisdiction over the Counterclaim based on 28 U.S.C. § 1367(c)(4) (the court may decline to exercise supplemental jurisdiction if "in exceptional circumstances, there are compelling reasons for declining jurisdiction"). ER00011. The reason given for declining supplemental jurisdiction was: "In a challenge involving a contract with an arbitration clause, the issue of a contract's validity as a whole is to be considered by the arbitrator [hearing the claims of the Union and the Tribe], not the court. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 446 (2006)." *Id.*

[9] Of note, when the Tribe and the State negotiated the 2015 Compact, the National Labor Relations Board's jurisdiction over tribal commercial gaming enterprises was established. *San Manuel Indian Bingo & Casino v. NLRB*, 475 F.3d 1306, 1318 (D.C. Cir. 2007); *see also NLRB v. Little River Band of Ottawa Indians Tribal Gov't*, 788 F.3d 537, 553-54 (6th Cir. 2015). The Tribe, however, did not raise its NLRA preemption concerns until it filed the Counterclaim, and even then did not give notice to the State or initiate the 2015 Compact's dispute resolution process.

ARGUMENT

I. THE DISTRICT COURT'S ORDER DECLINING SUPPLEMENTAL JURISDICTION OVER THE COUNTERCLAIM SHOULD BE AFFIRMED BECAUSE SYCUAN DID NOT COMPLY WITH THE 2015 COMPACT'S DISPUTE RESOLUTION PROCESSES

The Court should affirm the district court's order because the Tribe's failure to follow the dispute resolution processes contained in the 2015 Compact provides a compelling reason to decline supplemental jurisdiction over the Counterclaim under 28 U.S.C. § 1367(c)(4).

The 2015 Compact requires that Sycuan follow the dispute resolution process before taking its dispute to the courts. ER00240. The 2015 Compact is in full force and effect. ER00243. Pursuant to section 13.1 of the 2015 Compact, Sycuan may bring an action for a declaration of rights regarding any disputes that arise under it only after providing notice and an opportunity to the State to resolve the dispute. ER00239-ER00240. And any challenge must be filed against the State, not a third party. *See* 2015 Compact § 13.4, ER00241-ER00242. This assures that the State will be a party to litigation involving a dispute regarding a compact provision. Therefore, issues raised by the Counterclaim must be addressed in the first

instance by the parties to the 2015 Compact. *Cf. Amato v. Bernard*, 618 F.2d 559, 568 (9th Cir. 1980) (exhaustion required in claim for declaration of rights).

Ignoring the dispute resolution provisions in the 2015 Compact has the potential to unsettle other vital provisions in the compact, and undermine all other class III gaming compacts to which the State is a party. The spirit of good faith, comity and cooperative sovereignty that buttresses all the compacts will be imperiled by any decision allowing the Counterclaim to go forward in this proceeding. If Sycuan desires to challenge the requirement that it maintain the TLRO, it has a mechanism to do so: the agreed-upon dispute resolution provisions in the 2015 Compact. The Tribe, however, may not simply circumvent those processes, as it has done by filing the Counterclaim.[10]

Sycuan argues the "Counterclaim raises novel issues of federal law and federal preemption that are uniquely suited to resolution by a federal court."

---

[10] The 2015 Compact also may be amended. ER00230. Sycuan, however, has not invoked section 15.3 of the Compact which provides: "All requests to amend this Compact or to negotiate to extend the term of this Compact or to negotiate for a new Class III Gaming compact shall be in writing, addressed to the Tribal Chair or the Governor, as the case may be, and shall include the activities or circumstances to be negotiated, together with a statement of the basis supporting the request." *See* page 97 of the 2015 Compact.

Opening Br., 38. But this argument carries no weight until and unless, as agreed in the 2015 Compact, the parties exhaust its dispute resolution processes and the issue is properly presented to the court in a suit between the compacting parties. *See* discussion *infra* Section II. Those processes in the 2015 Compact, as well as in other class III gaming compacts, provide a broader and more comprehensive method for resolving the entire dispute between the parties.

Here, when Sycuan had NLRA pre-emption based concerns to maintaining the TLRO, it should have raised those to the State through the 2015 Compact's dispute resolution processes. Instead, the Tribe unilaterally elected not to comply with this material compact term, and waited until the Union brought this suit to raise its NLRA preemption-based claims.

Because the Tribe did not initiate, much less exhaust, required dispute resolution processes, declining to exercise supplemental jurisdiction over the Counterclaim in these circumstances promotes judicial fairness, the agreements of sovereigns, and judicial economy and prevents circumventing obligations included in the 2015 Compact. These are compelling reasons to decline jurisdiction. 28 U.S.C. § 1367(c)(4). Therefore, the Court should affirm the portion of the district court's order declining supplemental jurisdiction over the Counterclaim.

II. THE DISTRICT COURT'S ORDER DECLINING SUPPLEMENTAL JURISDICTION OVER THE COUNTERCLAIM SHOULD BE AFFIRMED BECAUSE THE 2015 COMPACT CANNOT BE INVALIDATED IN LITIGATION TO WHICH THE STATE IS NOT A PARTY

The district court's order declining supplemental jurisdiction over the Counterclaim was correct for the additional compelling reason that the State must be a party to a suit seeking to invalidate a material term contained in the 2015 Compact. In its Counterclaim, the Tribe seeks a declaration that a material term of the 2015 Compact with the State is invalid. Specifically, the Tribe alleges that the NLRA "invalidates enforcement of the TLRO" (ER00265) and the TLRO is "null and void and *the Tribe has no obligation to comply with it*" (ER00273 (emphasis added)). Resolution of that dispute squarely implicates the State's rights under the 2015 Compact.

Fundamentally, litigation involving a contract's rights or validity must include all parties to the contract. *Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1325 (9th Cir. 1975) (in actions involving contractual rights, all parties to the contract are indispensable); *EEOC v. Peabody W. Coal Co.*, 610 F.3d 1070, 1082 (9th Cir. 2010); *Dawavendewa v. Salt River Project Agric. Improvement & Power Dist.*, 276 F.3d 1150, 1156-57 (9th Cir. 2002) ("[T]oday we reaffirm the *fundamental principle* . . . : a party to a contract is necessary, and if not susceptible to joinder, indispensable to litigation

seeking to decimate that contract") (emphasis added). This fundamental principle – i.e., all parties to a contract must be before the court – bars lawsuits seeking to invalidate tribal-state compacts without involving all parties. *Wilbur v. Locke*, 423 F.3d 1101, 1111-12 (9th Cir. 2005) (tribal-state cigarette tax compact), *overruled on other grounds by Levin v. Commerce Energy*, 560 U.S. 413 (2010); *Am. Greyhound Racing v. Hull*, 305 F.3d 1015, 1027 (9th Cir. 2002) (tribal-state gaming compact).

The Counterclaim implicates the State's rights and interests under the 2015 Compact. As set forth above, the TLRO is a material term, and the 2015 Compact's parties agreed to the dispute resolution process. Therefore, the State is a necessary party to any litigation involving the parties' rights, and duties interests under the 2015 Compact. *Lomayaktewa*, 520 F.2d at 1325.

As the Tribe recognizes, judicial invalidation of the 2015 Compact TLRO Provision also could have significant impacts on other tribal-state gaming compacts:

> a federal court ruling on the issue of NLRA preemption will provide clarity with respect to the impact of the NLRA on California gaming compacts, thereby providing guidance to other tribes in the State and avoiding the very real possibility that arbitrators will decide the issue of NLRA preemption differently with respect to

> different tribes, even though the tribes are operating under identical TLROs.

Opening Br., 39. The Counterclaim thus directly challenges the validity of a provision of the 2015 Compact, to which the State is a party, and resolution of that challenge could hinder the State's ability to protect the public's interest in the 2015 Compact, and possibly other class III gaming compacts. Accordingly, compelling reasons exist for declining supplemental jurisdiction over the Counterclaim. 28 U.S.C. § 1367(c)(4).

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's order declining to exercise supplemental jurisdiction over the Counterclaim. That claim is subject to the dispute resolution requirements of the 2015 Compact between Sycuan and the State.

Dated: June 16, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
SARA J. DRAKE
Senior Assistant Attorney General
WILLIAM P. TORNGREN
Supervising Deputy Attorney General

s/ Paras Hrishikesh Modha

PARAS HRISHIKESH MODHA
Deputy Attorney General
Attorneys for the State of California

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form08instructions.pdf

9th Cir. Case Number(s) 21-55017

I am the attorney or self-represented party.

This brief contains 3,825 **words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief *(select only one)*:

- ○ complies with the word limit of Cir. R. 32-1.
- ○ is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- ◉ is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- ○ is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ○ complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one):*
  - ○ it is a joint brief submitted by separately represented parties;
  - ○ a party or parties are filing a single brief in response to multiple briefs; or
  - ○ a party or parties are filing a single brief in response to a longer joint brief.
- ○ complies with the length limit designated by court order dated [ ].
- ○ is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature s/ Paras Hrishikesh Modha **Date** June 18, 2021

*(use "*s/[typed name]*" to sign electronically-filed documents)*

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2021, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

BRIEF OF THE STATE OF CALIFORNIA AS AMICUS CURIAE SUPPORTING AFFIRMANCE OF THE DISTRICT COURT'S ORDER

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

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 16, 2021, at Sacramento, California.

PAULA CORRAL	*s/ Paula Corral*
Declarant	Signature