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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PICAYUNE RANCHERIA OF THE
CHUKCHANSI INDIANS,

Plaintiff,

v.

GAVIN NEWSOM, Governor of
California, and STATE OF
CALIFORNIA,

Defendants.

Case No.:

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

25 U.S.C. § 2701 et seq.

INTRODUCTION

This is an action brought by the Picayune Rancheria of the Chukchansi Indians (“Tribe”) against the Governor of the State of California and the State of California. The Tribe seeks an order from the Court declaring that the Governor and State (collectively, the “State”) violated the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* (“IGRA”), by not engaging in good faith negotiations with the Tribe to conclude a Tribal-State class III gaming compact, because the State demanded that the Tribe include in its compact provisions that fall outside the permissible scope of subjects that may be included in a compact. In addition, the Tribe seeks an order

1 from the Court declaring that the State's failure to negotiate a compact with the Tribe
2 in good faith constituted a violation of California Constitution, Article IV, § 19(f)
3 ("Cal. Const., art. IV, § 19(f)") and California Governor Code § 12012.25(d). The
4 Tribe also seeks an order from the Court directing the State and the Tribe to comply
5 with IGRA's remedial procedure where a state has been found to have failed to
6 negotiate in good faith, pursuant to 25 U.S.C. § 2710(d)(7)(B)(iii)-(vii).

7 **JURISDICTION**

8 1. This Court's jurisdiction over the Tribe's claims is based upon the
9 following:

10 (a) 28 U.S.C § 1331, in that this action arises under the Constitution
11 and laws of the United States, specifically, IGRA;

12 (b) 28 U.S.C. § 1362, in that the Tribe is a federally recognized
13 Indian tribe asserting that the State's actions violate the Constitution and laws of the
14 United States, including federal common law;

15 (c) 25 U.S.C. § 2710(d)(7)(A)(i), in that this is an action brought by
16 a federally recognized Indian tribe against the State alleging that the State has not
17 conducted negotiations with the Tribe to conclude a Tribal-State Compact in good
18 faith;

19 (d) 28 U.S.C. § 1367, in that the Tribe alleges that the State's actions
20 violated Cal. Const., art. IV, § 19(f), and Cal. Gov. Code § 12012.25(d) and the
21 alleged violations form part of the same case or controversy as claims that are
22 independently within the Court's original jurisdiction, because the claims share a
23 common nucleus of operative fact and arise from the same transaction or occurrence;
24 and

25 (e) The State has waived its sovereign immunity with regard to
26 disputes between the State and the Tribe on the issue of whether the State engaged
27 in good faith compact negotiations, Cal. Gov. Code § 98005. The State has also
28 waived its sovereign immunity with respect to the Tribe's state law claims based on

1 the issue of whether the State engaged in good faith compact negotiations required
2 by Cal. Const., art. IV, § 19(f), Cal. Gov. Code § 12012.25(d), and Cal. Gov. Code
3 § 98005.

4 **VENUE**

5 2. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391, in that the
6 Defendants reside within this District.

7 **PARTIES**

8 3. Plaintiff, Picayune Rancheria of the Chukchansi Indians, is a federally
9 recognized Indian tribe, organized under a written Constitution, which designates
10 the Picayune Rancheria Tribal Council as the governing body of the Tribe. The Tribe
11 is the beneficial owner of the Picayune Rancheria (“Reservation”), which is located
12 in Madera County, California.

13 4. Defendant Gavin Newsom is the duly elected Governor and chief
14 executive officer of the State of California and is sued in that capacity.

15 5. Defendant State of California is a quasi-sovereign governmental entity
16 and a state of the United States.

17 **GENERAL ALLEGATIONS PERTAINING TO IGRA**

18 6. In 1988, Congress enacted IGRA to create a framework for Indian
19 tribes, states, and the federal government to regulate on-reservation tribal gaming.

20 7. IGRA divides Indian gaming into three classes, with different
21 regulatory requirements for each class. Class I gaming consists of traditional tribal
22 games for prizes of minimal value connected with tribal ceremonies or celebrations.
23 25 U.S.C. § 2703(6). Class I gaming is within the exclusive regulatory jurisdiction
24 of the tribes. Class II gaming consists of bingo, “whether or not electronic, computer,
25 or other technological aids are used in connection therewith,” including “pull tabs,
26 lotto, punch boards, tip jars, instant bingo, and other games similar to bingo.” 25
27 U.S.C. § 2703(7)(A)(i). Also included in class II gaming are non-banked card games
28 either explicitly authorized by state law or not prohibited by state law and played in

1 conformity with state regulations regarding hours of play and limits on wagers and
2 pot sizes. 25 U.S.C. § 2703(7)(A)(i)-(ii) and (7)(B). Class III gaming is defined as
3 “all forms of gaming that are not class I gaming or class II gaming.” 25 U.S.C. §
4 2703(8).

5 8. Class III gaming is the most lucrative form of gaming. It includes the
6 games played in a typical casino in Las Vegas, such as slot machines, craps, roulette,
7 and house banked and percentage card games, like blackjack. Under Section §
8 2710(d)(1) of IGRA, in order for a tribe to be authorized to conduct class III gaming:
9 (1) the tribe must have adopted a tribal ordinance that authorizes the playing of the
10 class III games and the ordinance must have been approved by the Chairman of the
11 National Indian Gaming Commission (“NIGC”), a federal regulatory agency created
12 under IGRA; (2) the state in which the class III gaming will be conducted must
13 “permit” such gaming for any purpose by any person, organization, or entity; and
14 (3) the class III gaming must be conducted in conformance with a Tribal-State
15 compact entered into by the Indian tribe and the state, pursuant to 25 U.S.C. §
16 2710(d)(3).

17 9. In order to go into effect, a tribal-state class III gaming compact must
18 be approved by the Secretary of the Interior (“Secretary”), Section 2710(d)(8)(A),
19 or deemed approved by operation of law, Section 2710(d)(8)(C), and notice of
20 approval must be published in the Federal Register, Section 2710(d)(3)(B).

21 10. Section 2710(d)(3) sets forth the process that a tribe and a state must
22 follow in order to negotiate and enter into a compact. Section 2710(d)(3)(A)
23 provides that, upon the request of a tribe, a state shall negotiate in “good faith” with
24 the tribe to enter into a compact. If the state fails to bargain in good faith, after 180
25 days has passed since the tribe requested that the state engage in compact
26 negotiations, the tribe can sue the state in federal court. 25 U.S.C. § 2710(d)(7)(A)(i).
27 If the court finds that the state failed to negotiate in good faith, the district court
28 “shall order” the state and tribe to conclude a compact within 60 days. 25 U.S.C. §

2710(d)(7)(B)(iii). If the parties do not reach agreement within the 60-day time period, they must engage in baseball style arbitration and submit their last, best offers to a court-appointed mediator, who chooses one of the two proposed compacts. 25 U.S.C. § 2710(d)(7)(B)(iv). If the mediator chooses the compact submitted by the state, it “shall be treated” as a tribal-state compact entered into by agreement of the parties. 25 U.S.C. § 2710(d)(7)(B)(vi). If the mediator chooses the compact submitted by the tribe, the state may consent to the selected compact or refuse to so consent. If the state does not consent to the proposed compact chosen by the mediator, the Secretary is notified of the State’s refusal. The Secretary is then required to issue procedures regulating the tribe’s gaming that are consistent with the selected compact, federal law, and the relevant provisions of state law. 25 U.S.C. § 2710(d)(7)(B)(vii).

11. Section 2710(d)(3)(C) provides a list of seven subjects that a class III gaming compact negotiated between a tribe and a state may address. The seven subjects listed in Section 2710(d)(3)(C) are:

- (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;
- (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
- (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
- (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
- (v) remedies for breach of contract;

- 1 (vi) standards for the operation of such activity and maintenance of
2 the gaming facility, including licensing; and
3 (vii) any other subjects that are directly related to the operation of
4 gaming activities.

5 12. The Ninth Circuit Court of Appeals has ruled that “the plain language
6 of § 2710(d)(3)(C) confirms that its list of seven topics is exhaustive.” *Chicken*
7 *Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024 (9th Cir. 2022)
8 (“*Chicken Ranch*”).

9 13. A state’s refusal to enter into a compact unless a tribe agrees to include
10 within the compact a provision that is not within the scope of the seven subjects
11 listed in Section 2710(d)(3)(C) constitutes a failure to engage in good faith
12 negotiation, in violation of Section 2710(d)(3)(A). *Id.* at 1035 (“Thus, a tribal-state
13 compact *may* include provisions relating to the seven identified topics (though it is
14 not necessarily required to), but it *may not* include provisions that do not relate to
15 the topics listed.”) (Emphasis in original).

16 14. IGRA prohibits a State and any of its political subdivisions from
17 imposing any tax, fee, charge, or other assessment upon an Indian tribe to engage in
18 class III gaming, 25 U.S.C. §§ 2710(d)(4), and provides that any demand by a State
19 for direct taxation of the Indian tribe or of any Indian lands is to be considered
20 evidence that the State failed to negotiate in good faith, 2710(d)(7)(iii)(II).

21 15. After the enactment of the IGRA, certain Indian tribes in California
22 sought to negotiate compacts with the state to permit the operation of class III
23 gaming on their reservations. The class III games over which the tribes sought to
24 negotiate included live house banked and percentage card games and stand-alone
25 electronic gaming devices, such as slot machines, which were not expressly
26 permitted under California law for any person, organization, or entity to operate or
27 play.
28

1 16. To address this problem, then Governor Gray Davis proposed an
2 amendment to the California Constitution that would exempt Indian tribes from the
3 State's constitutional prohibition on class III gaming.

4 17. In March of 2000, the California voters ratified Proposition 1A,
5 amending the California Constitution to provide: “. . . the Governor is authorized to
6 negotiate and conclude compacts, subject to ratification by the Legislature, for the
7 operation of slot machines and for the conduct of lottery games, and house bank and
8 percentage card games by federally recognized Indian tribes on Indian lands in
9 California in accordance with federal law. Accordingly, slot machines, lottery
10 games, and banking and percentage card games are hereby permitted to be conducted
11 and operated on tribal lands subject to those compacts.” Cal. Const., art. IV, § 19(f).

12 18. In order to implement Cal. Const., art. IV, § 19(f), the State Legislature
13 enacted Cal. Gov. Code § 12012.25(d) which provides: “The Governor is the
14 designated state officer responsible for negotiating and executing, on behalf of the
15 state, tribal-state gaming compacts with federally recognized Indian tribes located
16 within the State of California pursuant to the federal Indian Gaming Regulatory Act
17 of 1988.”

18 19. As set forth below, pursuant to the IGRA, Cal. Const., art. IV, § 19(f),
19 and Cal. Gov. Code § 12012.25(d), the State, in 1999, entered into class III compacts
20 with various California Indian tribes, including the Tribe.

21 20. On March 31, 2021, the United States District Court for the Eastern
22 District of California concluded that the State had failed to negotiate in good faith
23 with a group of five plaintiff tribes by insisting on the inclusion of provisions in the
24 tribes' compacts that were not directly related to class III gaming activities. *Chicken*
25 *Ranch Rancheria of Me-Wuk Indians v. Newsom*, 530 F. Supp. 3d 970 (E.D. Cal.
26 2021).

1 21. On July 28, 2022, the United States Court of Appeals for the Ninth
2 Circuit affirmed the District Court’s conclusion that the State had failed to negotiate
3 in good faith. *Chicken Ranch, supra*.

4 22. In its ruling, the Ninth Circuit identified four provisions that it
5 concluded did not fall within IGRA’s proper subjects of negotiation and, therefore,
6 could not be included in a valid IGRA compact, as they were not directly related to
7 gaming. *Id.* at 1035

8 23. The provisions that the Ninth Circuit specifically concluded could not
9 be included in a class III gaming compact addressed the application of state
10 environmental tort and child and spousal support laws. The Ninth Circuit also
11 concluded that certain definitions insisted upon by the State were impermissibly
12 broad. *Id.* at 1037-1039.

13 24. The Ninth Circuit did not rule on the plaintiff tribes’ claims challenging
14 certain other provisions demanded by the State, including revenue sharing
15 provisions, concluding that it was not necessary to rule on those provisions in order
16 to determine that the State had failed to negotiate in good faith. *Id.* at 1040, fn. 4.

17 **GENERAL ALLEGATIONS PERTAINING**
18 **TO GAMING BY THE TRIBE**

19 **A. 1999 Tribal State Compact**

20 25. On September 9, 1999, the Tribe entered into a class III Tribal-State
21 gaming compact with the State (“1999 Compact”). The 1999 Compact was ratified
22 by the California State Legislature by statute, Cal. Gov. Code § 12012.25(a)(32). On
23 May 5, 2000, the compact was approved by Assistant Secretary–Indian Affairs
24 Kevin Gover. Notice of Approved Tribal-State Compacts, 65 Fed. Reg. 31189 (May
25 16, 2000).

26 26. Pursuant to Section 11.2.1 of the 1999 Compact, the compact was to
27 expire on December 31, 2020. On the date of expiration, the Tribe and the State were
28

1 in negotiations to conclude a new compact and the expiration date of the Compact
2 was extended to June 30, 2022, pursuant to Addendum A of the Compact.

3 **B. 2021 Compact — Disapproval**

4 27. On or about August 19, 2014, the Tribe began negotiating with the State
5 to conclude a new compact that would replace the Tribe's 1999 Compact through a
6 coalition of federally recognized California Indian tribes called the Compact Tribes
7 Steering Committee.

8 28. On or about August 10, 2021, the Tribe and the State ("Parties")
9 reached agreement on a new compact and, on September 24, 2021, submitted the
10 compact to the Secretary for approval.

11 29. In a letter dated November 5, 2021, the Assistant Secretary – Indian
12 Affairs disapproved the submitted compact because he found that certain provisions
13 violated IGRA, and other provisions sought to impermissibly extend State regulatory
14 jurisdiction to activities taking place on the Tribe's reservation land that were not
15 directly related to gaming ("Disapproval Letter"). A true and correct copy of the
16 Disapproval Letter is hereby incorporated by this reference and attached hereto as
17 **Exhibit A.**

18 30. The Disapproval Letter also emphasized that the broad definitions of
19 the terms "Gaming Facility" and "Gaming Operation" in the submitted compact had
20 the effect of extending State regulatory jurisdiction beyond the permissible scope of
21 IGRA.

22 **C. New Compact Negotiations — 2021-2024**

23 31. On or about May 11, 2022, the State agreed to extend the term of the
24 1999 Compact to December 31, 2023.

25 32. On October 20, 2022, the Parties restarted negotiations for a new
26 compact in light of the disapproval of the previously submitted compact.

27 33. The State's initial compact proposals included provisions that were the
28 same or substantially similar to the provisions prohibited by the Ninth Circuit in

1 *Chicken Ranch* and provisions identified as the bases for disapproval of the compact
2 in the Disapproval Letter.

3 34. On or about July 26, 2023, the State extended the term of the compact
4 to December 31, 2024.

5 35. In January of 2024, after months of unsuccessful negotiation, the Tribe
6 hired new legal counsel to conduct its compact negotiations.

7 **D. Current Compact Negotiations**

8 36. On or about January 24, 2024, the Tribe submitted a compact proposal
9 to the State containing substantial revisions to the previously proposed compacts.

10 37. On January 31, 2024, at the first negotiation session involving the
11 Tribe's new negotiator, the Tribe informed the State that it was the Tribe's position
12 that a significant number of the provisions in the State's most recent proposed
13 Compact violate IGRA. In particular, the Parties negotiated over and could not reach
14 consensus concerning the scope of the definition of "Gaming Facility," and whether
15 the definition contained in the State's November 14, 2023 compact proposal
16 complied with IGRA.

17 38. On March 7, 2024, the Parties negotiated over and could not reach
18 consensus on, among other topics: whether the exclusive right to engage in tribal
19 class III gaming ("Exclusivity"), which is granted to tribes by Cal. Const. art. IV §
20 19(f), constituted a meaningful concession that justified the State's proposed
21 revenue sharing provisions; whether the State's proposed provision requiring the
22 Tribe to fund an "Impact Mitigation Fund" is permitted under IGRA and, if so,
23 whether that additional revenue sharing obligation required separate consideration
24 ("Meaningful Concession"); and whether inclusion of a provision requiring the Tribe
25 to maintain and comply with a Memorandum of Understanding ("MOU") between
26 the Tribe and the County of Madera is permitted under IGRA.

27 39. On April 3, 2024, the Parties negotiated over and could not reach
28 consensus on, among other topics: whether the State's proposed definitions of

1 “Gaming Facility” and “Gaming Operation” were overbroad and allowed State
2 regulation of tribal activities beyond the scope of IGRA, such as regulation of
3 alcohol sales and food health standards; whether the pro rata formula for determining
4 the Tribe’s contribution to the Special Distribution Fund (“SDF”) and the uses
5 thereof were permissible under IGRA, specifically 25 U.S.C. § 2710(d)(3)(C)(iii),
6 as regulatory costs subject to reimbursement to the State or a tax prohibited by the
7 IGRA; whether the cost of that regulation can be assessed in a way that only captures
8 the Tribe’s share of the actual cost; whether the Tribe should be required to make a
9 payment into the SDF while a surplus covering regulatory costs exists in the SDF;
10 whether the Tribe’s payments into the Revenue Sharing Trust Fund (“RSTF”) can
11 be assessed in a way that only captures the Tribe’s share of the actual cost of RSTF
12 payments to non-gaming and limited gaming tribes; whether the State would provide
13 the Tribe with actual or reasonably estimated costs arising from the State’s gaming
14 regulatory activities; and whether the Tribal Nation Grant Fund (“TNGF”) is
15 sufficiently similar to the RSTF to be considered a proper subject of negotiations
16 and whether the State’s repeated demand that the Tribe pay into the TNGF required
17 separate consideration as a meaningful concession.

18 40. On April 24, 2024, the Parties again negotiated and were unable to
19 reach consensus on, among other topics: whether the pro rata formula for paying into
20 the SDF and the uses thereof were proper under IGRA, specifically 25 U.S.C. §
21 2710(d)(3)(C)(iii), as regulatory costs subject to reimbursement by the State or a tax
22 prohibited by the IGRA; whether inclusion of a requirement that the Tribe maintain
23 and comply with a Memorandum of Understanding (“MOU”) between the Tribe and
24 the County of Madera is permitted under IGRA; whether a State proposed Impact
25 Mitigation Fund is a proper subject of IGRA, specifically 25 U.S.C. § 2710(d)(3)(C);
26 whether a restriction on the number of gaming devices is appropriate under IGRA;
27 and whether indemnification or market-share protection is a proper subject of
28 negotiation.

1 41. On May 29, 2024, the Parties again negotiated and were unable to reach
2 consensus on, among other topics: whether the pro rata formula for determining the
3 Tribe's contribution to the SDF required separate consideration as a meaningful
4 concession; whether the State proposed Mitigation Fund was a proper subject of
5 negotiation under IGRA, specifically 25 U.S.C. § 2710(d)(3)(C) and, if so, whether
6 agreement to include it required separate consideration as a meaningful concession;
7 whether a pro rata formula for calculating the RSTF payment is consistent with
8 IGRA; and whether the TNGF is an impermissible tax.

9 42. On June 5, 2024, the Parties again negotiated and were unable to reach
10 consensus on, among other topics: whether the pro rata formula for paying into the
11 SDF proposed by the State has components that are impermissible under IGRA;
12 whether the State's proposed revenue sharing provisions required separate
13 consideration as a meaningful concession; and whether a progressive payment
14 structure governing payments into the RSTF was consistent with IGRA and
15 California State law.

16 43. On June 10, 2024, the Parties again negotiated and were unable to reach
17 consensus on, among other topics: whether, in addition to continued exclusivity, a
18 provision that would cover future trust land constituted a meaningful concession that
19 justified the State's proposed revenue sharing provisions; whether State proposed
20 restrictions on cashing government issued checks at the Tribe's casino is a
21 permissible subject under IGRA; whether the State intended to provide a cost
22 breakdown of regulatory activities supporting the SDF as consistent with 25 U.S.C.
23 § 2710(d)(3)(C)(iii) and whether the uses of the SDF funds require separate
24 consideration as a meaningful concession; whether payments into the RSTF above
25 and beyond what is required under Cal. Gov. Code § 12012.90 were consistent with
26 IGRA and California State law; and whether the Mitigation Fund was a revenue
27 sharing provision that required separate consideration as a meaningful concession.
28

1 44. One June 24, 2024, the Parties again negotiated and were unable to
2 reach consensus on issues concerning: whether continued exclusivity could be
3 guaranteed over the life of the State's proposed compact; whether continued
4 exclusivity constituted a meaningful concession with a substantial economic benefit
5 pursuant to 25 C.F.R. § 293.1-293.31 ("Part 293 Regulations"); whether the State
6 had authority to offer exclusivity as a part of the negotiations; whether the Mitigation
7 Fund is duplicative of Cal. Gov. Code § 12012.85(b); and whether the Part 293
8 regulations restrict the inclusion of the Tribe's MOU in the compact.

9 45. Throughout the compact negotiations that took place in 2024, the Tribe
10 repeatedly requested a further compact extension on the grounds that: the parties
11 needed more time to complete negotiations before the Tribe's Compact terminated;
12 the parties were making progress; both the Tribe and the State had changed lead
13 negotiators; and the Secretary of the Interior had enacted new regulations
14 implementing IGRA, the Part 293 Regulations, altering the criteria for approval of a
15 compact. The State repeatedly informed the Tribe that the State was not willing to
16 agree to any more compact extensions.

17 46. On July 9, 2024, the State submitted its last offer compact to the Tribe.

18 47. On or about July 19, 2024, the Tribe informed the State that consensus
19 could not be reached on the State's last proposal and, due to imminent termination
20 of the compact, the Tribe submitted its last proposal to the State for consideration.

21 48. On or about July 28, 2024, the State informed the Tribe that consensus
22 could not be reached concerning the Tribe's last proposal, effectively ending
23 negotiations on the grounds that the Parties had irreconcilable positions on material
24 provisions of the proposed compacts.

25 49. On or about August 2, 2024, the State informed the Tribe that it would
26 agree to extend the term of the Tribe's Compact to December 31, 2025, and provided
27 a proposed term amendment for the Tribe's consideration, which the Tribe executed
28 and submitted to the State.

1 50. More than 180 days have elapsed since the Tribe requested negotiations
2 with the State for a new compact to replace its 1999 Compact.

3 **FIRST CLAIM**

4 **(Violation of the Indian Gaming Regulatory Act—Check Cashing Provision)**

5 51. The Tribe realleges each of the allegations set forth in Paragraphs 1
6 through 50 above and by this reference incorporates each allegation as if set forth
7 herein in full.

8 52. Throughout the Tribe’s negotiations for a new compact, the State
9 insisted that the new compact include a provision prohibiting the Tribe’s gaming
10 operation from cashing any check drawn against a federal, state, county, or city fund,
11 including, but not limited to, Social Security, unemployment insurance, disability
12 payments, or public assistance payments, except for checks issued to the Tribe’s
13 members.

14 53. Prohibiting the Tribe from cashing checks drawn against government
15 accounts is not a proper subject of negotiation under IGRA, because it is not “directly
16 related to the operation of gaming activities” and the State’s demand for such a
17 provision in a new compact constituted a failure by the State to negotiate in good
18 faith.

19 54. An actual case or controversy exists between the Tribe and the State, in
20 that the Tribe asserts that the State’s insistence that the new compact include a
21 provision that prohibits the Tribe’s gaming operation from cashing checks drawn
22 against a federal, state, county, or city fund issued to non-members constitutes a
23 failure to negotiate in good faith because it is not a permissible topic of negotiation,
24 while the State contends that the prohibition on check cashing does not violate
25 IGRA.

26 WHEREFORE, the Tribe prays as hereinafter set forth below.

27 **SECOND CLAIM**

28 **(Violation of the Indian Gaming Regulatory Act—**

Memorandum of Understanding)

55. The Tribe realleges each of the allegations set forth in Paragraphs 1 through 54 above and by this reference incorporates each allegation as if set forth herein in full.

56. Throughout the compact negotiations, the State insisted that the Compact include a provision requiring the Tribe to maintain and comply with the August 1, 2021, Amended and Restated Memorandum of Understanding between the Tribe and the County of Madera. Among other requirements, the MOU obligates the Tribe to make a variety of payments to the County.

57. In 25 U.S.C. § 2710(d)(3)(C)(i)-(vii), Congress set forth the subjects that may be included in a class III compact. Those subjects do not include agreements with local governmental entities relating to the mitigation of the impact of tribal gaming.

58. IGRA expressly prohibits a compact requirement that a tribe make payments to local government entities, “[N]othing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into . . . [compact] negotiations . . . based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.” 25 U.S.C. 2710(d)(4).

59. In *Chicken Ranch*, the Ninth Circuit concluded that the provisions in the State’s proposed compact to the plaintiff tribes requiring mitigation of alleged off-reservation environmental impacts, including the requirement that the plaintiff tribes enter into intergovernmental agreements with local governmental entities concerning mitigation of impacts of tribal gaming and the requirement that the tribes make payments to local governmental entities for mitigation of alleged impacts,

1 cannot be included in class III gaming compacts because they do not fall within the
2 permissible topics of compact negotiation set forth in IGRA.

3 60. By insisting that the Tribes include a provision in its new Compact
4 compelling the Tribe to maintain and comply with the MOU, the State failed to
5 negotiate in good faith as required by 25 U.S.C. § 2710(d)(3)(A).

6 61. An actual case or controversy exists between the Tribe and the State, in
7 that the Tribe asserts that the State's insistence that the new Compact include a
8 provision that compels the Tribe to maintain and comply with the MOU violates
9 IGRA because it is not a permissible topic of negotiation, while the State contends
10 that the inclusion of a provision that compels the Tribe to maintain and comply with
11 the MOU does not violate IGRA.

12 WHEREFORE, the Tribe prays as hereinafter set forth below.

13 **THIRD CLAIM**

14 **(Violation of the Indian Gaming Regulatory Act—Impact Mitigation Fund)**

15 62. The Tribe realleges each of the allegations set forth in Paragraphs 1
16 through 61 above and by this reference incorporates each allegation as if set forth
17 herein in full.

18 63. 25 U.S.C. § 2710(d)(3)(C) provides that a tribal-state gaming compact
19 “may include provisions relating to ... (iii) the assessment by the State of such
20 activities in such amounts as are necessary to defray the costs of regulating such
21 activity.”

22 64. 25 U.S.C. § 2710(d)(4) provides that, “[e]xcept for any assessments that
23 may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in [the
24 IGRA] shall be interpreted as conferring upon a State or any of its political
25 subdivisions authority to impose any tax, fee, charge, or other assessment upon an
26 Indian tribe or upon any other person or entity authorized by an Indian tribe to
27 engage in a class III activity.”
28

1 65. The only exception to the prohibition on the imposition of a tax, fee,
2 charge, or other assessment is if the tribe agrees to the revenue sharing provision in
3 exchange for a meaningful concession: something of value to the tribe that is directly
4 related to gaming activity, that carries out the purposes of IGRA, and is not a subject
5 over which the state is otherwise obligated to negotiate under IGRA. *Chicken Ranch*,
6 at 1048; 25 C.F.R. § 293.2(h).

7 67. Cal. Gov. Code § 12012.85(b) provides that SDF monies may be used
8 for “[g]rants, including any administrative costs, for the support of state and local
9 government agencies impacted by tribal government gaming,” and Cal. Gov. Code
10 § 12012.85(g) establishes that an “appropriation for the support of local government
11 agencies impacted by tribal gaming” is authorized once shortfalls in the RSTF and
12 problem gambling programs have been funded, and State regulatory costs have been
13 reimbursed, and thus the Impact Mitigation Fund creates multiple and duplicative
14 revenue sharing obligations to local governments of the State.

15 68. By demanding that the Tribe pay 2% of the net win from all machines
16 in excess of 2000 machines annually into an Impact Mitigation Fund, the State
17 attempted to impose a tax, fee, charge, or assessment on the Tribe to engage in a
18 class III activity.

19 69. The State failed to provide a meaningful concession to the Tribe in
20 exchange for the Impact Mitigation Fund payment provision and the multiple and
21 duplicative revenue sharing obligations it imposes on the Tribe.

22 70. By demanding that the Tribe agree to include a provision requiring the
23 Tribe to pay 2% of the Net Win from all machines in excess of 2000 machines
24 annually into an Impact Mitigation Fund and disperse money from the fund to local
25 governmental entities to mitigate alleged impacts from the Gaming Facility without
26 providing a meaningful concession to the Tribe, the State violated 25 U.S.C. §
27 2710(d)(4) and thereby failed to negotiate in good faith as required by 25 U.S.C. §
28 2710(d)(3)(A).

71. An actual case or controversy exists between the Tribe and the State, in that the Tribe asserts that the State's insistence that the new Compact include the Impact Mitigation Fund provision without providing a meaningful concession to the Tribe violates 25 U.S.C. § 2710(d)(4), while the State contends that the inclusion of the Impact Mitigation Fund provision in the Tribe's compact does not violate IGRA.

WHEREFORE, the Tribe prays as hereinafter set forth below.

FOURTH CLAIM

(Violation of the Indian Gaming Regulatory Act— Special Distribution Fund)

72. The Tribe realleges each of the allegations set forth in Paragraphs 1 through 71 above and by this reference incorporates each allegation as if set forth herein in full.

73. 25 U.S.C. § 2710(d)(3)(C) provides that a tribal-state gaming compact “may include provisions relating to ... (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity.”

74. 25 U.S.C. § 2710(d)(4) provides that, “[e]xcept for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in [the IGRA] shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity.”

75. The only exception to the prohibition on the imposition of a tax, fee, charge, or other assessment is if the tribe agrees to the revenue sharing provision in exchange for a meaningful concession: something of value to the tribe that is directly related to gaming activity, that carries out the purposes of IGRA, and is not a subject over which the state is otherwise obligated to negotiate under IGRA. *Chicken Ranch*, at 1048, 25 C.F.R. § 293.2(h).

1 76. Throughout the negotiations, the State insisted on the inclusion of a
2 provision requiring the Tribe to “pay to the State for deposit into the Special
3 Distribution Fund created by the Legislature on a pro rata basis the State’s 25 U.S.C.
4 § 2710(d)(3)(C) costs incurred for purposes consistent with IGRA, including for the
5 performance of all its duties under this Compact, the administration and
6 implementation of tribal-state Class III Gaming compacts and Secretarial
7 Procedures, and funding for the Office of Problem Gambling, as determined by the
8 monies appropriated in the annual Budget Act each fiscal year to carry out those
9 purposes (Appropriation).”

10 77. The “pro rata share” to be paid by the Tribe to the State under the State’s
11 formula is not based on the actual costs the State incurs in regulating the Tribe’s
12 class III gaming activities, but, rather, on what the California Legislature arbitrarily
13 appropriates to the State Gaming Agency.

14 78. The amounts demanded by the State for payment into the SDF are more
15 than is necessary to defray the State’s costs of regulating the Tribe’s class III gaming
16 activities under the Compact and, therefore, constitutes an impermissible tax, fee,
17 charge, or other assessment in violation of 25 U.S.C. § 2710(d)(4) and is not
18 consistent with the IGRA.

19 79. The State failed to offer a meaningful concession to the Tribe in
20 exchange for the payments into the SDF that are more than is necessary to defray
21 the State’s costs of regulating the Tribe’s class III gaming activities.

22 80. By demanding that the Tribe agree to include in the Compact a
23 requirement that the Tribe pay into the SDF more than is necessary to defray the
24 State’s costs of regulating the Tribe’s class III gaming, and failing to offer a
25 meaningful concession to the Tribe, the State sought to impose a tax, fee, charge or
26 other assessment on the Tribe’s Gaming Activities in violation of IGRA and thereby
27 failed to negotiate in good faith as required by 25 U.S.C. § 2710(d)(3)(A).
28

81. An actual case or controversy exists between the Tribe and the State, in that the Tribe asserts that the State's insistence that the Tribe pay into the SDF more than is necessary to defray the State's costs of regulating the Tribe's class III gaming, and failing to offer a meaningful concession to the Tribe, violates 25 U.S.C. § 2710(d)(4), while the State contends that the State's insistence on the SDF provision does not violate IGRA.

WHEREFORE, the Tribe prays as hereinafter set forth below.

FIFTH CLAIM

**(Violation of the Indian Gaming Regulatory Act—
Revenue Sharing Trust Fund)**

82. The Tribe realleges each of the allegations set forth in Paragraphs 1 through 81 above and by this reference incorporates each allegation as if set forth herein in full.

83. 25 U.S.C. § 2710(d)(3)(C) provides that a tribal-state gaming compact “may include provisions relating to ... (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity.”

84. 25 U.S.C. § 2710(d)(4) provides that, “[e]xcept for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in [the IGRA] shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity.”

85. The only exception to the prohibition on the imposition of a tax, fee, charge, or other assessment is if the tribe agrees to the revenue sharing provision in exchange for a meaningful concession: something of value to the tribe that is directly related to gaming activity, that carries out the purposes of IGRA, and is not a subject

1 over which the state is otherwise obligated to negotiate under IGRA. *Chicken Ranch*,
2 at 1048; 25 C.F.R. § 293.2(h).

3 86. Throughout the negotiations, the State insisted on the inclusion of
4 provisions in the Tribe's new Compact that required the Tribe to pay an amount in
5 excess of the Tribe's proportionate share of the Revenue Sharing Trust Fund
6 necessary to distribute \$1.1 million to each tribe eligible to receive distributions from
7 the RSTF as required by State law.

8 87. In the course of the more recent rounds of compact negotiations, the
9 State demanded that the Tribe pay an increasing percentage (2% - 5.5%) of the
10 Tribe's net win from gaming devices operated in excess of 350 devices as its
11 contribution to the RSTF.

12 88. On or about June 5, 2024, the Tribe demonstrated to the State that the
13 State's formula exceeded the Tribe's proportionate share of the RSTF payments
14 necessary to distribute \$1.1 million to each eligible tribe and proposed a formula that
15 would obligate the Tribe only pay its proportionate share of the RSTF.

16 89. On or about June 5, 2024, the State agreed to the Tribe's proposed
17 formula for calculating the RSTF payment, but simultaneously demanded that the
18 Tribe make a supplementary RSTF payment of an increasing percentage (2.5% -
19 7%) of the net win from gaming devices operated in excess of 2000 devices.

20 90. The State explicitly acknowledged that the supplementary RSTF
21 payment insisted upon by the State was not necessary to distribute \$1.1 million to
22 each eligible tribe.

23 91. The State explicitly acknowledged that the supplementary RSTF
24 payment was intended to provide an additional payment to non-gaming and limited-
25 gaming tribes above and beyond the \$1.1 million RSTF payments made to non-
26 gaming and limited-gaming tribes.

27 92. By demanding that the Tribe pay in excess of the Tribe's proportionate
28 share of the RSTF payments necessary to distribute \$1.1 million to each tribe eligible

1 to receive distributions from the RSTF, the State sought to impose a tax, fee or
2 assessment on the Tribe that is impermissible under 25 U.S.C. §2710(d)(4).

3 93. By demanding that the Tribe make a new, supplementary payment into
4 the RSTF, the State sought to impose a tax, fee or assessment on the Tribe that is
5 impermissible under 25 U.S.C. §2710(d)(4).

6 94. The State failed to offer a meaningful concession to the Tribe in
7 exchange for the supplementary payment into the RSTF demanded by the State.

8 95. The State, therefore, failed to negotiate in good faith as required by 25
9 U.S.C. § 2710(d)(3)(A).

10 96. An actual case or controversy exists between the Tribe and the State, in
11 that the Tribe maintains that the State's demand that the Tribe make a supplementary
12 RSTF payment without providing a meaningful concession to the Tribe violates 25
13 U.S.C. § 2710(d)(4), while the State contends that the State's demand that the Tribe
14 make a supplementary RSTF payment does not violate IGRA.

15 WHEREFORE, the Tribe prays as hereinafter set forth below.

16 **SIXTH CLAIM**

17 **(Violation of Cal. Const., Art. IV, § 19(f) and Cal. Gov. Code § 12012.25)**

18 97. The Tribe realleges each of the allegations set forth in Paragraphs 1
19 through 96 above and by this reference incorporates each allegation as if set forth
20 herein in full.

21 98. The Constitution of the State of California, Cal. Const., art. IV, § 19(f)
22 and California statutory law, Cal. Gov. Code § 12012.25, incorporate the IGRA and
23 place a mandatory duty on the Governor of the State of California to negotiate tribal-
24 state gaming compacts with California Indian tribes in good faith, in accordance with
25 the Indian Gaming Regulatory Act.

26 99. As more particularly described in the Tribe's First through Fifth
27 Claims, set forth above, the Governor failed to conduct tribal-state compact
28 negotiations with the Tribe in good faith, in violation of the IGRA. Violations of the

1 good faith negotiations requirements of the IGRA also constitute violations of Cal.
2 Const., art. IV, § 19(f) and Cal. Gov. Code § 12012.25, which require the Governor
3 to negotiate tribal-state gaming compacts in good faith.

4 100. The Tribe is entitled to an order from this Court, declaring that the
5 Governor engaged in bad faith compact negotiations with the Tribe in violation of
6 Cal. Const., art. IV, § 19(f) and Cal. Gov. Code § 12012.25 and directing the
7 Governor to resume compact negotiations with the Tribe and engage in good faith
8 compact negotiations with the Tribe pursuant to the IGRA.

9 101. An actual case or controversy exists between the Tribe and the State, in
10 that the Tribe asserts that the State failed to engage in good faith compact
11 negotiations with the Tribe, in violation of Cal. Const., art. IV, § 19(f) and Cal. Gov.
12 Code § 12012.25, while the State contends that it did not fail to engage in good faith
13 compact negotiations with the Tribe in violation of Cal. Const., art. IV, § 19(f) and
14 Cal. Gov. Code § 12012.25.

15 WHEREFORE, the Tribe prays as hereinafter set forth below.

16 **SEVENTH CLAIM**

17 **(Violation of Cal. Gov. Code § 12012.75, Cal. Gov. Code § 12012.85,**
18 **Cal. Gov. Code § 12012.90, and Cal. Gov. Code § 12019.35)**

19 102. The Tribe realleges each of the allegations set forth in Paragraphs 1
20 through 101 above and by this reference incorporates each allegation as if set forth
21 herein in full.

22 103. Cal. Gov. Code § 12012.75 establishes the RSTF, “pursuant to the
23 terms of tribal-state gaming compacts for the purpose of making distributions to
24 eligible recipient Indian tribes . . . in accordance with distribution plans specified in
25 tribal-state gaming compacts.”

26 104. Cal. Gov. Code § 12012.85(d) establishes that the SDF will cover
27 shortfalls in the RSTF and Cal. Gov. Code § 12012.85(g)(1)-(3) establishes that
28

1 funding the RSTF takes priority over funding the State’s regulatory functions as
2 appropriated in the annual Budget Act.

3 105. Cal. Gov. Code § 12012.90(b) establishes that the “Legislature shall
4 transfer from the [SDF] to the [RSTF]” two hundred seventy-five thousand dollars
5 (\$275,000) for each eligible recipient Indian tribe for each quarter, “for a total not to
6 exceed one million one hundred thousand dollars (\$1,100,000) for the entire fiscal
7 year,” and Cal. Gov. Code § 12012.90(c) establishes that surplus monies in the RSTF
8 “shall remain in the [RSTF] for disbursement in future years”

9 106. Cal. Gov. Code § 12019.35(a) establishes “the [TNGF] for the receipt
10 and deposit of moneys received by the state from Indian tribes pursuant to the terms
11 of tribal-state gaming compacts,” and establishes that monies “in the fund shall be
12 available, upon appropriation by the Legislature, for the discretionary distribution of
13 funds to nongaming tribes and limited-gaming tribes”

14 107. Throughout the negotiations, the State’s proposed compacts
15 persistently, and over repeated objections by the Tribe, included Section 5.1, which
16 provided that excess RSTF funds “shall remain in the [RSTF] available for
17 disbursement in future years, or deposited into the [TNGF], but shall not be used for
18 purposes other than the [RSTF] or the [TNGF].”

19 108. Throughout the negotiations, the State insisted on the inclusion of
20 provisions in the Tribe’s new Compact that required the Tribe to pay an amount in
21 excess of the Tribe’s proportionate share of the Revenue Sharing Trust Fund
22 necessary to distribute \$1.1 million to each tribe eligible to receive distributions from
23 the RSTF as required by State law.

24 109. On or about June 5, 2024, the Tribe demonstrated to the State that the
25 State’s formula exceeded the Tribe’s proportionate share of the RSTF payments
26 necessary to distribute \$1.1 million to each eligible tribe pursuant to Cal. Gov. Code
27 §§ 12012.75 and 12012.90 and proposed a formula that would obligate the Tribe
28 only pay its proportionate share of the RSTF.

1 110. On or about June 5, 2024, the State agreed to the Tribe's proposed
2 formula for calculating the RSTF payment, but demanded, in exchange for the
3 change in the formula and in lieu of the Tribe explicitly authorizing excess RSTF
4 funds to be deposited into the TNGF, that the Tribe make a supplementary RSTF
5 payment of an increasing percentage (2.5% - 7%) of the net win from gaming devices
6 operated in excess of 2000 devices.

7 111. The State explicitly acknowledged that the supplementary RSTF
8 payment insisted upon by the State was not necessary to distribute \$1.1 million to
9 each eligible tribe and would be distributed in excess of the \$1.1 million restriction
10 established in Cal. Gov. Code § 12012.90.

11 112. By demanding that the Tribe pay in excess of the Tribe's proportionate
12 share of the RSTF payments necessary to distribute \$1.1 million to each tribe eligible
13 to receive distributions from the RSTF, the State sought to impose obligations on the
14 Tribe that are inconsistent with State law mandates governing distribution of the
15 SDF, RSTF, and TNGF.

16 113. By demanding that the Tribe make a new, supplementary payment into
17 the RSTF, the State sought to impose obligations on the Tribe that are not authorized
18 by State law and are inconsistent with State law mandates governing distribution of
19 the SDF, RSTF, and TNGF.

20 114. An actual case or controversy exists between the Tribe and the State, in
21 that the Tribe maintains that the State's demand that the Tribe either make payments
22 into the RSTF under the State's proposed formula and explicitly authorize excess
23 RSTF funds to be deposited into the TNGF or make a supplementary RSTF payment
24 violates Cal. Const., Art. IV, § 19(f), Cal. Gov. Code § 12012.25, and Cal. Gov.
25 Code § 98005 and the good faith requirements established therein, while the State
26 contends that the State's demand that the Tribe make payments into the RSTF under
27 the State's proposed formula and explicitly authorize excess RSTF funds to be
28

1 deposited into the TNGF or make a supplementary RSTF payment does not violate
2 the State statutory framework governing the SDF, RSTF, and TNGF funds.

3 WHEREFORE, the Tribe prays as hereinafter set forth below.

4 **EIGHTH CLAIM**

5 **(Violation of Cal. Gov. Code § 12012.85)**

6 115. The Tribe realleges each of the allegations set forth in Paragraphs 1
7 through 114 above and by this reference incorporates each allegation as if set forth
8 herein in full.

9 116. Cal. Gov. Code § 12012.85(c) establishes that one of several uses of the
10 SDF is reimbursement “for regulatory costs incurred by the State Gaming Agency
11 and the Department of Justice in connection with the implementation and
12 administration of tribal-state gaming compacts.”

13 117. Cal. Gov. Code § 12012.85(d) establishes that one of several uses of
14 the SDF is to compensate for “shortfalls that may occur in the [RSTF],” which “shall
15 be the priority use of moneys in the [SDF].”

16 118. Cal. Gov. Code § 12012.85(g)(1)-(3) provides that reimbursement of
17 State regulatory costs is the third priority in a hierarchy of uses, after funding
18 shortfalls in the RSTF and funding programs treating gambling addiction and
19 thereby establishes that principal objective of the SDF statute governing the fund is
20 not reimbursement of regulatory costs, but, rather, funding the RSTF and gambling
21 prevention programs.

22 119. *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1113-1114 (9th
23 Cir. 2003) (“Coyote Valley II”) establishes that the SDF is a revenue sharing fund,
24 lawful under 25 U.S.C. § 2710(d)(3)(C)(vii). The *Coyote Valley II* court did not
25 conclude that the SDF is lawful under 25 U.S.C. § 2710(d)(3)(C)(iii).

26 120. Throughout the negotiations, the State insisted on the inclusion of
27 Section 4.1, requiring the Tribe to “pay to the State for deposit into the Special
28 Distribution Fund created by the Legislature on a pro rata basis the State’s 25 U.S.C.

1 § 2710(d)(3)(C) costs incurred for purposes consistent with IGRA, including for the
2 performance of all its duties under this Compact, the administration and
3 implementation of tribal-state Class III Gaming compacts and Secretarial
4 Procedures, and funding for the Office of Problem Gambling, as determined by the
5 monies appropriated in the annual Budget Act each fiscal year to carry out those
6 purposes (Appropriation).”

7 121. Throughout the negotiations, the State insisted that the SDF payment in
8 Section 4.1 of the compact was authorized solely under 25 U.S.C. §
9 2710(d)(3)(C)(iii), notwithstanding the fact that the enumerated uses in Section 4.1
10 and the enumerated uses of the SDF fund established in Cal. Gov. Code § 12012.85
11 are beyond the scope of 25 U.S.C. § 2710(d)(3)(C)(iii), and would prevent the SDF
12 from being used for, inter alia, its principal purpose of, first, funding the RSTF and,
13 second, funding gambling prevention programs, since these uses do not fall within
14 the scope of class III regulatory costs under 25 U.S.C. § 2710(d)(3)(C)(iii) of IGRA.

15 122. By demanding that the Tribe agree to include in the Compact a
16 requirement that the Tribe pay into the SDF pursuant to the restrictions established
17 in 25 U.S.C. § 2710(d)(3)(C)(iii) of IGRA, the State is imposing obligations on the
18 Tribe that conflict with the principal purposes of Cal. Gov. Code § 12012.85.

19 123. An actual case or controversy exists between the Tribe and the State, in
20 that the Tribe asserts that the State’s insistence that the SDF be treated as a regulatory
21 cost reimbursement fund, not a revenue sharing fund, is contrary to the express,
22 enumerated uses of Cal. Gov. Code § 12012.85 and the express, enumerated uses of
23 Section 4.1 of the State’s proposed compact, and therefore violates Cal. Const., Art.
24 IV, § 19(f), Cal. Gov. Code § 12012.25, and Cal. Gov. Code § 98005 and the good
25 faith requirements established therein, while the State contends that the SDF and
26 Cal. Gov. Code § 12012.85 are within the scope of 25 U.S.C. § 2710(d)(3)(C)(iii) of
27 IGRA.

28 WHEREFORE, the Tribe prays as hereinafter set forth below.

PRAYER FOR RELIEF

1
2 1. That the Court enter judgment declaring that, as to each of the above-
3 alleged claims, the State of California failed to negotiate in good faith as required by
4 IGRA by insisting upon the inclusion of compact provisions that are not proper
5 subjects of negotiation under IGRA, and, therefore, failed to negotiate with the Tribe
6 in good faith, in violation of 25 U.S.C. § 2710(d)(3)(A);

7 2. That the Court enter judgment declaring that, with regard to the Third,
8 Fourth, and Fifth Claims, the State of California was obligated to offer meaningful
9 concessions in return for the inclusion of those revenue sharing provisions in the
10 Tribe's new compact, and failed to offer such concessions, and, therefore, the State
11 attempted to "impose [a] tax, fee, charge, or other assessment" upon the Tribe to
12 engage in a class III activity, in violation of 25 U.S.C. § 2710(d)(4), and, therefore,
13 failed to negotiate with the Tribe in good faith, in violation of 25 U.S.C. §
14 2710(d)(3)(A);

15 3. That the Court issue an order directing the State and the Tribe to comply
16 with IGRA's remedial procedure where a state has been found to have failed to
17 negotiate in good faith, pursuant to 25 U.S.C. § 2710(d)(7)(B)(iii)-(vii), and
18 directing the State and the Tribe to resume compact negotiations and conclude a new
19 compact within 60 days of the date of the Court's order pursuant to 25 U.S.C. §
20 2710(d)(7)(B)(iii);

21 4. That the Court enter judgment declaring that the State of California
22 failed to negotiate in good faith as required by the IGRA by insisting upon the
23 inclusion of compact provisions that are not proper subjects of negotiations under
24 the IGRA, and, therefore, failed to negotiate with the Tribe in good faith in violation
25 of Cal. Const., art. IV, § 19(f) and Cal. Gov. Code § 12012.25;

26 5. That the Court enter judgment declaring that the State insisted on
27 including compact provisions relating to the Special Distribution Fund, the Revue
28 Sharing Trust Fund, and the Tribal Nation Grant Fund that are inconsistent with

1 California law, and, therefore, failed to negotiate with the Tribe in good faith in
2 violation of Cal. Const., art. IV, § 19(f) and Cal. Gov. Code § 12012.25;

3 6. That the State reimburse the Indian Gaming Special Distribution Fund
4 in an amount equal to what the State has charged that fund for its defense of this
5 action, plus interest accrued at the same rate as California law imposes on debts
6 owed to the State;

7 7. That the Tribe be awarded its costs and reasonable attorney fees; and

8 8. That the Court grants such other relief as may be deemed appropriate.

9
10 DATED: September 26, 2024

/s/ Lester J. Marston

LESTER J. MARSTON

California State Bar No. 081030

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