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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

MORONGO BAND OF MISSION INDIANS, a federally recognized Indian Tribe, Plaintiff, **v.** **STATE OF CALIFORNIA; GOVERNOR GAVIN NEWSOM, in his official capacity,** Defendants.	5:25-CV-01098 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' STATE OF CALIFORNIA'S AND GOVERNOR GAVIN NEWSOM'S MOTION TO DISMISS** Date: July 25, 2025 Time: 2:00 p.m. Courtroom: 2 Judge: Hon. Sunshine S. Sykes Trial Date: None set Action Filed: 5/06/2025

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INTRODUCTION

The Morongo Band of Mission Indians (Morongo or Tribe) ask this Court to revisit decisions that Morongo made in negotiations more than seven years ago and, in so doing, to alter a bargain from which Morongo has benefited ever since. Specifically, in this lawsuit, Morongo seeks to revisit a negotiated and mutually agreed-upon tribal-state class III gaming compact (Compact) entered into between the State of California and Morongo in 2017, which was thereafter "deemed approved" by the Secretary of the Interior in 2018. Compl. ¶ 15. In 2024, more than six years after the Compact went into effect, Morongo sent the State a list of nineteen provisions that Morongo alleged to be inconsistent with the Indian Gaming Regulatory Act (IGRA). Because the Secretary's 2018 action meant that the Compact was approved to the extent it was consistent with IGRA, Morongo argued that its challenged provisions violate IGRA and are now void.

But nothing in IGRA allows Morongo to belatedly redline the agreement that it previously negotiated. IGRA requires state governments to negotiate in good faith and empowers tribal governments to sue (under IGRA's carefully limited remedial framework) if they do not. Here, however, the Tribe never alleged the State failed to negotiate in good faith. On the contrary, the Tribe and the State successfully negotiated a compact. IGRA does not allow a tribe to collaterally attack a compact to which the tribe itself has previously agreed. And the Compact here does not create a mechanism to collaterally attack its validity under IGRA, either. Morongo therefore has no cause of action, and its entire complaint should be dismissed.

Specific counts in Morongo's complaint should be dismissed for other, additional reasons. Morongo asks this Court to excise three core definitions ("Gaming Employee," "Gaming Facility," and "Gaming Operation") from the Compact. But because these definitions permeate the entire Compact, this Court could not simply delete them and sever the rest of the Compact. Regardless, on the

merits, these definitions do not violate IGRA. Additionally, Morongo's challenge to the Compact's labor regulation provisions (its anti-discrimination/harassment/ retaliation provision, its minimum wage, and its Tribal Labor Relations Ordinance) also fails on the merits: as this Court has previously recognized, those provisions are consistent with IGRA.

This is *not* a case about vindicating the Ninth Circuit's decision in *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024 (9th Cir. 2022). Whatever happens in this lawsuit, the State is committed to construing the Compact in a manner consistent with *Chicken Ranch*. The State would not seek to enforce the Compact's provisions regarding environmental review (Section 11.0 and related definitions, which Morongo challenges in Count Ten), and its provisions regarding child and spousal support orders (Section 12.10, which Morongo challenges in Count Seventeen). Additionally, the State would not seek to enforce the Compact's tort provisions (Section 12.4, which Morongo challenges in Count Fourteen) in a manner inconsistent with *Chicken Ranch*.

This case is also *not* about the State's duty to negotiate in good faith under IGRA. Rather, this case is about the parties' mutual obligation to adhere to a compact they negotiated years ago. Neither IGRA nor the Compact allows the parties to sue to alter the deal they previously negotiated. For that reason, and for the additional reasons given below as to specific counts in the complaint, Morongo's complaint should be dismissed.

STATUTORY BACKGROUND

IGRA governs gaming by Indian Tribes on Indian lands in the United States. *See* 25 U.S.C. §§ 2701–2721, 18 U.S.C. §§ 1166–1167. IGRA is an example of cooperative federalism that balances the interests of the state, the tribe, and the federal government. *See Chicken Ranch*, 42 F.4th at 1032. Congress gave the states a significant interest in class III games occurring without their boundaries, as these games can only be conducted pursuant to tribal-state compacts approved by the

Secretary. States that permit gaming are required to negotiate compacts in good faith with tribes or face suit in federal court or imposed gaming procedures by the Secretary. 25 U.S.C. § 2710(d)(3) & (7).

Tribal-state compacts are negotiated between individual states and tribes and are intended to define more specifically the state's role regarding gaming activities on Indian lands. IGRA includes a preference for prompt federal consideration of negotiated compacts after authorized representatives from the tribe and the state consent to the negotiated compact. IGRA "expresses a congressional policy of putting compacts into force quickly, by requiring the secretary to approve or reject them within forty-five days of their submission. 25 U.S.C. § 2710(d)(8)(C). During this time, the Secretary must ensure that the compact complies with IGRA, other federal laws, and the United States' trust obligations to the tribe. 25 U.S.C. § 2710(d)(8)(B)." *Langley v. Edwards*, 872 F. Supp. 1531, 1535 (W.D. La. 1995), *aff'd*, 77 F.3d 479 (5th Cir. 1996). The compact becomes effective when notice of its federal approval is published in the Federal Register.

If the Secretary does not affirmatively approve or disapprove of the compact, but fails to act within 45 days, a compact is "considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of IGRA. 25 U.S.C. § 2710(d)(8)(C). This kind of approval is often called a "deemed approval" or "no-action approval." Here, the Compact was approved pursuant to the "no-action approval" provisions of IGRA. Compl. ¶ 15. The no-action approval is considered an "agency action" and is subject to federal judicial review. *Amador Cnty. v. Salazar,* 640 F.3d 373 (D.C. Cir. 2011).

The Compact took effect on January 22, 2018. Compl. ¶ 15. Morongo did not challenge the Secretary's no-action approval of the Compact. Indeed, since January 22, 2018, Morongo has enjoyed the benefits of the Compact, offering class III gaming pursuant to the Compact.

LEGAL STANDARD

A party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A motion to dismiss challenges the legal sufficiency of a claim and dismissal is appropriate where there is an absence of sufficient facts alleged to support a cognizable legal theory. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In considering a motion to dismiss, in addition to the allegations in the complaint, the court may also consider documents attached to the complaint, as well as those documents incorporated by reference. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Granting a motion to dismiss without leave to amend is appropriate when it is clear "the complaint could not be saved by any amendment," such that granting leave to amend would be "an exercise in futility." *Body Xchange Sports Club, LLC v. Zurich American Ins. Co.*, 648 F. Supp. 3d 1205, 1221 (E.D. Cal. 2022) (quoting *Intri-Plex Techs. v. Crest Grp.*, 499 F.3d 1048, 1056 (9th Cir. 2007); *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989).

ARGUMENT

I. MORONGO'S CLAIMS LACK A CAUSE OF ACTION AND ARE BARRED BY SOVEREIGN IMMUNITY.

Morongo cannot maintain this action because its claims lack a cause of action. Nothing in IGRA establishes a cause of action to collaterally attack the validity of a compact years after it has been negotiated, and the Compact itself establishes a cause of action only for claims that "arise under" the Compact, which Morongo's do not. Because Morongo's claims do not "arise under" the Compact, Morongo's claims are also barred by sovereign immunity: the State has waived its sovereign immunity only for claims that "arise under" the Compact.

A. Morongo Lacks A Cause Of Action Under IGRA.

IGRA itself provides no cause of action for Morongo's claims. "[W]here IGRA creates a private cause of action, it does so explicitly." *Hein v. Capitan*

Grande Band of Diegueno Mission Indians, 201 F.3d 1256, 1260 (9th Cir. 2000). Indeed, IGRA explicitly creates a cause of action allowing tribes to sue over a state's failure "to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under [25 U.S.C. § 2710(d)(3)] or to conduct such negotiations in good faith." 25 U.S.C. § 2710(d)(7)(A)(i). But that is not the posture here: Morongo and the State concluded their negotiations long ago, and mutually agreed upon the Compact. IGRA does not create a cause of action to collaterally attack the validity of a compact to which a state and a tribe have previously agreed. *Cf.* 25 U.S.C. § 2710(d)(7)(B)(ii)(I) (requiring a tribe challenging a state's failure to negotiate in good faith under IGRA to show that "a Tribal-State compact has not been entered into"). IGRA therefore does not give Morongo a cause of action here.[1]

B. Morongo Lacks A Cause Of Action Under The Compact.

Because IGRA provides no cause of action, Morongo appears to root its claims in the dispute resolution provisions in Section 13.0 of the Compact. *See* Compl. ¶¶ 1, 16, 17. Those provisions do not apply here, however, because they are limited to "disputes that arise under this Compact." *Id*. at Exh. 1 at p. 101, § 13.1.

Morongo's claims, however, do not "arise under" the Compact: they arise under IGRA. "Whether a claim is contractually or statutorily based depends upon the 'source of the rights upon which the plaintiff bases its claim.'" *United States v. Park Place Assocs., Ltd.*, 563 F.3d 907, 931 (9th Cir. 2009) (quoting *N. Star Alaska v. United States,* 14 F.3d 36, 37 (9th Cir.1994)). Here, the essence of Morongo's

[1] Nor can Morongo point to other authority—such as *Ex parte Young* or the Declaratory Judgment Act—to create a cause of action based on IGRA here. The Supreme Court has made clear that *Ex parte Young* cannot be used to supplement IGRA's limited remedial scheme. *See Seminole Tribe v. Florida*, 517 U.S. 44, 74–76 (1996). And "[t]he Declaratory Judgment Act does not provide a cause of action when a party . . . lacks a cause of action under a separate statute and seeks to use the Act to obtain affirmative relief." *City of Reno v. Netflix, Inc.*, 52 F.4th 874, 878 (9th Cir. 2022).

complaint is that "all or parts of [certain] Compact sections are inconsistent with IGRA." Compl. ¶ 16. The Compact itself is not the source of the rights that Morongo asserts in its complaint: rather, Morongo claims a right *not* to comply with the Compact as written, based on the Compact's alleged inconsistency with IGRA. Morongo's claims thus "arise under" IGRA, rather than the Compact.

It does not matter that Morongo frames the issue as whether the challenged Compact provisions are approved or enforceable. As the Ninth Circuit has previously recognized, a claim asserting that a contract is unenforceable under a federal statute is a claim arising from the federal statute, rather than the contract. *See N. Side Lumber Co. v. Block*, 753 F.2d 1482, 1484–86 (9th Cir. 1985) (describing a claim asserting "that enforcement of the contracts would violate" federal statutes as a "statutory claim," and concluding it was not subject to the Tucker Act's restrictions on claims arising under federal contracts). The Ninth Circuit has distinguished between claims that "seek a declaration of contract rights" and claims seeking "a declaration that, whatever the content of those rights, federal statutes preclude the [counterparty] from enforcing them": even when the latter are "contract-related," they "rest at bottom on statutory rights." *Id.* at 1485–86. This distinction confirms that Morongo's claims (which challenge the Compact's enforceability under IGRA) arise under IGRA, not the Compact.

Three further considerations establish that Section 13.0's "arise under" language should be construed narrowly—such that Morongo's claims do not "arise under" the Compact.

First, elsewhere in the Compact, the parties agreed upon language confirming that the phrase "arise under" has a different, narrower meaning than "connected with" or "related to." As discussed, the Compact's dispute resolution provides are limited to claims that "arise under" the Compact. In other Compact provisions, however, the parties cast a broader net: other Compact provisions refer to "disputes arising from, connected with, or related to" a negotiation (Compl. Exh. 1 at p. 84,

§ 11.8), and to tort claims "arising out of, connected with, or relating to" the operation of the Gaming Facility (*id.* at 101, § 12.4(a)). The parties therefore distinguished between claims that "arise under" something and claims that are merely "connected with" or "related to" it. Although the parties elsewhere made provisions for disputes and claims that are merely "connected with" or "related to" the relevant subject matter, the parties focused the Compact's dispute resolution provisions more narrowly, limiting those provisions to disputes that actually "arise under" the Compact.

Second, the parties' mutual waiver of sovereign immunity also weighs against a broad understanding of what it means to "arise under" the Compact. "[S]overeign-immunity waivers must be construed narrowly." *United States v. Miller*, 145 S. Ct. 839, 853 (2025). This is true not only for the existence of a waiver, but also for its scope: courts "construe any ambiguities in the scope of a waiver in favor of the sovereign[s]." *FAA v. Cooper*, 566 U.S. 284, 291 (2012). Here, the Tribe and the State have mutually agreed to waive their sovereign immunity, but have limited the scope of that waiver to claims that "arise under" the Compact. Compl. Exh. 1 at p. 104, § 13.4(a). Because the parties' waiver of sovereign immunity must be construed narrowly, the same is true for the phrase ("arise under") that defines the scope of that waiver.

Third, IGRA itself counsels against a broad reading of the Compact's dispute resolution provisions, because a broad reading risks disrupting IGRA's own careful framework governing compact negotiations and related litigation. As Morongo acknowledges, IGRA's limitations on the scope of compact negotiations are set forth in 25 U.S.C. § 2710(d)(3). Compl. ¶ 9. The Supreme Court has emphasized that courts should hesitate to expand the scope of judicial remedies available to enforce § 2710(d)(3). "Congress intended § 2710(d)(3) to be enforced against the State in an action brought under § 2710(d)(7); the intricate procedures set forth in that provision show that Congress intended therein not only to define, but also to

limit significantly, the duty imposed by § 2710(d)(3)." *Seminole Tribe v. Florida*, 517 U.S. 44, 74 (1996). Courts should be wary of embracing lawsuits (like Morongo's) that expand upon IGRA's remedial framework.

Allowing such lawsuits could have significant unintended consequences. Such suits could significantly disturb the balance of the compact negotiation process envisioned by IGRA, by permitting parties to selectively challenge and excise provisions of compacts negotiated and finalized long ago. Indeed, parties could readily agree to certain terms in negotiations, and could even extract concessions in return, only to belatedly challenge those same terms in future litigation.[2] Worse yet, parties could ask courts to modify those terms in ways untethered from the parties' actual negotiations, as Morongo seems to do here.[3] These possibilities, and others like them, threaten to undermine "the give-and-take compacting process and the tribes' economic interests in securing a compact." *Chicken Ranch*, 42 F.4th at 1041 n.5.

Indeed, it is not obvious that IGRA would *allow* a compact to include provisions allowing collateral attacks on the compact's compliance with IGRA. IGRA allows compacts to include provisions relating to "remedies for breach of contract." 25 U.S.C. § 2710(d)(3)(v). Nothing in IGRA, however, authorizes a

[2] No matter if brought by states or tribes, such claims disrupt the balance of a negotiated compact. For example, here the parties agreed to a five-percent annual cap on increases to the Tribe's pro rata share payment to the Special Distribution Fund (SDF). This benefit inures to the Tribe to limit the amount of increase it could pay to the SDF year-over-year. Compl. Exh. 1 at p. 12, § 4.3(d). If any deemed-approved compact's terms are free to be individually voided at some later date, the State could seek to remove this provision by alleging that it "violates IGRA" in isolation and ask a court to invalidate it, removing a benefit that Tribe obtained in the complex exchange implicit in compact negotiations. This invites gamesmanship during the negotiation process. Parties could agree to provisions to reach compact consensus, with an eye on seeking judicial invalidation of these provisions at some later date.

[3] Morongo appears to ask this Court to rewrite certain provisions if it is not able to completely invalidate them. *See*, *e.g.*, Compl. at p. 25, Prayer ¶ 5 (requesting this Court reduce the Tribe's agreed upon payments into the Revenue Sharing Trust Fund to a specific amount while simultaneously prohibiting deposit of monies into the Tribal Nation Grant Fund, even though the Compact's terms explicitly allow such deposits and govern their use).

compact to include provisions relating to the compact's compliance with IGRA, to otherwise supplement IGRA's remedial process. This, too, counsels in favor of the view that Section 13.0 of the Compact is focused on the contractual rights of the parties, rather than the contours of IGRA—further confirming that Morongo's claims do not "arise under" the Compact.

C. Morongo's Claims Are Barred By Sovereign Immunity.

Because Morongo's claims do not "arise under" the Compact, Morongo's claims are also barred by sovereign immunity. As explained in Section I.B above, the State has waived its sovereign immunity (as relevant here) only as to disputes "that arise under this Compact." Compact at 104, § 13.4(a).[4] Also, as explained in Section I.B above, Morongo's claims do not "arise under" the Compact. Any ambiguity on this point must be resolved in favor of sovereign immunity. *See United States v. Miller*, 145 S. Ct. 839, 853 (2025); *FAA v. Cooper*, 566 U.S. 284, 291 (2012). In short, because Morongo's claims do not "arise under" the Compact, they are additionally barred by the State's sovereign immunity.

* * *

In sum, Morongo cannot maintain its claims because it lacks a cause of action under either IGRA (which does not create a cause of action to collaterally attack existing compacts) or the Compact (which provides a cause of action only for disputes that "arise under" the Compact itself, rather than IGRA). Because Morongo's claims do not "arise under" the Compact, Morongo's claims are also barred by sovereign immunity. Morongo's complaint should therefore be dismissed without leave to amend.

[4] While the State has waived its immunity to claims for failure to negotiate in good faith under IGRA (*see* Cal. Gov't Code § 98005), those claims are not relevant here. Indeed, Section 13.4(d) of the Compact makes clear that, except as provided in the Compact itself, "no other waivers or consents to be sued are granted by either party . . . whether in state statute or otherwise, including but not limited to Government Code section 98005." Compl. Exh. 1 at p. 105, § 13.4(d).

II. MORONGO CANNOT EXCISE CORE DEFINITIONS FROM THE COMPACT. (COUNTS ONE, TWO, AND THREE)

Counts One, Two, and Three of Morongo's complaint should be dismissed for additional reasons. These counts seek a declaration that three key definitions are unenforceable. But those definitions— "Gaming Employee" (Count One), "Gaming Facility" (Count Two), and "Gaming Operation" (Count Three)—are core to the entire Compact. For this reason, these definitions (standing alone) cannot simply be declared unenforceable and, in turn, severed from the rest of the Compact. Notwithstanding, these definitions are permissible under IGRA.

A. The Definitions Cannot Be Severed From The Compact.

In Counts One, Two, and Three, Morongo seeks a declaration that these definitions are unenforceable. Compl. ¶¶ 19-23. The Court, however, cannot give Morongo the relief that it seeks, namely the Court cannot declare these definitions unenforceable in isolation, because these definitions are not severable from the remainder of the Compact.

These definitions permeate all aspects of the Compact. Without a defined term for "Gaming Employee," the parties will not have an understanding as to who needs to be licensed under the Compact, and what process is required for their licensure. *See* Compl. Exh. 1 at pp. 32–33, § 6.4.3. Likewise, if "Gaming Facility" is undefined the parties will not know to which structure to apply the public health and safety protections (including, but not limited to, construction and fire safety) in the Compact. *See id.* at 26-27, § 6.4.3. Finally, and in a similar vein, without the "Gaming Operation" being defined, it is impossible for the parties to define the business that must be kept free from criminal and dishonest elements per the terms of the Compact. *See id.* at 42, § 6.4.7(a). As such, Morongo's challenge to these definitions threatens to undo the entire Compact.

To underscore this point, Morongo does not allege any facts establishing an active dispute between the parties regarding the application of these definitions.

Morongo does not allege a dispute between the parties regarding whether a particular employee is included in the definition of "Gaming Employee," or whether a particular structure is included within the definition of "Gaming Facility," or whether a particular part of the business that runs the casino is included within the definition of "Gaming Operation." Instead, Morongo alleges that the definitions in and of themselves are unenforceable and asks this Court to delete them entirely.

"It is a well-known principle in contract law that a clause cannot be severed from a contract when it is an integrated part of the contract." *Graham Oil Co. v. ARCO Prods. Co.*, 43 F.3d 1244, 1248 (9th Cir. 1994), *as amended* (Mar. 13, 1995).[5] Because these definitions permeate the entire Compact, they cannot be severed from the rest of the Compact. Accordingly, this Court cannot give Morongo the relief that it seeks in Counts One, Two, and Three.

B. The Definitions Do Not Violate IGRA.

On the merits, the definitions are permissible under IGRA. These definitions are not beyond the scope of the permissible topics of negotiations delineated by IGRA in 25 U.S.C. § 2710(d)(3)(C)(i)–(vii). On the contrary, definitions for "Gaming Employee," "Gaming Facility," and "Gaming Operation" are integral to the regulation of class III gaming—which helps explain why (as discussed above in Section II.A) these definitions permeate the entire Compact.

Morongo contends that these terms are overbroad because they include items that are unrelated to the operation or regulation of class III gaming. Compl. ¶¶ 19-23. But Morongo's allegations do not actually show overbreadth. On "Gaming Employee," Morongo focuses on the fact that the definition includes persons "in a category under federal or tribal gaming law requiring licensing." *Id.* at ¶ 19. But if an employee must be licensed under federal or tribal gaming law, it is reasonable to

[5] General principles of federal contract law govern the interpretation of tribal-state compacts entered into pursuant to IGRA. *Cachil Dehe Band of Wintun Indians of Colusa Indian Cmty. v. California*, 618 F.3d 1066, 1073 (9th Cir. 2010).

conclude that the employee's role is related to gaming. Additionally, the other prongs of the definition underscore this link to gaming activities: they include an employee who "conducts, operates, maintains, repairs, accounts for, or assists in any Gaming Activities, or is in any way responsible for supervising such Gaming Activities or persons who conduct, operate, maintain, repair, account for, assist, or supervise any such Gaming Activities"; "an employee of the Tribal Gaming Agency with access to confidential information"; and "a person whose employment duties require or authorize unescorted access to areas of the Gaming Facility in which Gaming Activities are conducted but that are not open to the public." Compl. Exh. 1 at p. 4, § 2.12. Likewise, Morongo fails to show overbreadth in the definitions of "Gaming Facility": that the former includes areas "within which no class III gaming activities are conducted" (*id*. at ¶ 21) does not mean that it is *unrelated* to class III gaming activities. "Gaming Operation," likewise, is tethered to the business enterprise "that offers and operates Gaming Activities." *Id.* at Exh. 1 at p. 5, § 2.14.

Moreover, Morongo has not shown that these definitions are sufficiently overbroad to violate IGRA. Even in the context of ongoing negotiations and related bad-faith litigation—where a tribal government has not agreed to a compact, and IGRA clearly contemplates judicial intervention—the Ninth Circuit has declined to address "whether a state's slight or negligible overstep of § 2710(d)(3)(C)'s boundaries" violates IGRA. *Chicken Ranch*, 42 F.4th at 1041 n.4. Such reluctance is even more appropriate here, where Morongo asks the Court to disturb an existing Compact to which Morongo previously agreed. Even if Morongo could show that these three definitions should be more narrowly drawn on a blank slate, this would not justify reaching back in time to second-guess the deal that the parties struck more than seven years ago.

This Court has previously concluded that similar definitions do not "plainly" violate IGRA. *Augustine Band of Cahuilla Indians v. California*, No. 5:23-cv-620-

SSS-DTBX, 2024 WL 3898546, at *6 (C.D. Cal. July 23, 2024). That conclusion—which this Court previously reached in the context of litigation over still-pending negotiations—is even more appropriate here, where Morongo seeks to disturb its Compact that was negotiated long ago, with Morongo's assent. Thus, Counts One, Two, and Three of Morongo's complaint should be dismissed.

III. THE CHALLENGED LABOR REGULATION PROVISIONS ARE CONSISTENT WITH IGRA. (COUNTS ELEVEN, THIRTEEN, AND SIXTEEN)

Likewise, on the merits, the Compact's challenged labor regulation provisions are consistent with IGRA. These are the Compact's anti-discrimination/harassment/retaliation provision, Section 12.2(f); the minimum wage provision, Section 12.2(k); and the Tribal Labor Relations Ordinance (TLRO) required by Section 12.9. The Ninth Circuit and this Court have already held that the TLRO is a permissible subject of negotiations under IGRA, and the same logic applies to the anti-discrimination and minimum wage provisions. Accordingly, the relevant counts in Morongo's complaint (Counts Eleven, Thirteen, and Sixteen) should be dismissed.

A. The TLRO Is Consistent With IGRA. (Count Sixteen)

Contrary to Morongo's contention in Count Sixteen, the TLRO does not violate IGRA.

Labor regulation provisions like the TLRO are permissible under IGRA. *In re Indian Gaming Related Cases* (*Coyote Valley II*), 331 F.3d 1094, 1116 (9th Cir. 2003). In *Coyote Valley II*, the Ninth Circuit concluded that the TLRO is "directly related to the operation of gaming activities"—and therefore consistent with IGRA—because "[w]ithout the 'operation of gaming activities,' the jobs this provision covers would not exist; nor, conversely, could Indian gaming activities operate without someone performing these jobs." 331 F.3d at 1116. This Court reached the same conclusion about a similar TLRO more recently. *Augustine,* 2024 WL 3898546, at *6. Morongo has failed to plead facts to distinguish the TLRO at

issue here from the TLROs upheld in *Coyote Valley II* and *Augustine*. Indeed, the TLRO at issue here is very similar to the TLRO upheld in *Coyote Valley II* and *Augustine*: it addresses organizational and representational rights of employees, a topic within IGRA's scope. *See* Compl. Exh. 1 at p. 101, § 12.9.

Morongo alleges that Section 12.9 is outside IGRA's scope because the TLRO applies "to all but a few categories of Gaming Operation employees, as well as to employees in related facilities in which no class III gaming activities are conducted." Compl. ¶ 80. But the TLRO limits itself to employees "employed within a tribal casino in which class III gaming is conducted pursuant to a tribal-state compact or other related facility, the only significant purpose of which is to facilitate patronage of the class III gaming operations." *Id*. at Exh. 1 at p. B-1, § 2(a). This scope is permissible under *Coyote Valley II* and this Court's decision in *Augustine*.

Nor does it matter that the TLRO goes beyond the baseline established by the National Labor Relations Act (NLRA). Morongo alleges that because the TLRO "gives labor unions more rights than the organizational and representational rights conferred by the [NLRA]", it "deprives the Morongo Band and employees … of rights otherwise conferred by the NLRA, and "discriminates against [Morongo] relative to other non-tribal California employers subject to the NLRA". Compl. ¶ 80. These are not legitimate bases to request that the Court find the TLRO impermissible under IGRA. That the TLRO goes beyond the NLRA does not mean it is impermissible under IGRA: IGRA allows parties to negotiate for requirements that go above and beyond the bare minimum already required by other federal laws. And, as this Court has previously recognized, it is not the case that "a compact term directed to an otherwise on-list topic may be deemed off-list merely because it is 'unreasonable,' 'unnecessary,' or even because it requires the Tribe to comply with more onerous regulations than those applied to other non-tribal employers in the state." *Augustine*, 2024 WL 3898546, at *6.

Because the TLRO required by Compact Section 12.9 is consistent with IGRA, Count Sixteen should be dismissed without leave to amend.

B. The Anti-Discrimination Provision Is Consistent With IGRA. (Count Eleven)

For the same reasons (contrary to Morongo's contention in Count Eleven), the anti-discrimination provision in Compact Section 12.2(f) is consistent with IGRA. As explained in Section IV.A above, labor regulation provisions—like the anti-discrimination provision—are directly related to class III gaming activities and are therefore permissible under IGRA. *Coyote Valley II,* 331 F.3d at 1116; *Augustine,* 2024 WL 3898546, at *4.

Morongo suggests that this provision is overbroad because it "applies to and regulates employees whose duties are unrelated to the operation of class III gaming activities." Compl. ¶ 66. But this scope is a function of the Compact's definitions of "Gaming Operation" and "Gaming Facility." *See Id*. at Exh. 1 at p. 88, § 12.2(f). Accordingly, Morongo's challenge to the scope of the anti-discrimination provision is really a challenge to the breadth of those definitions—which fails for the reasons discussed in Section II above.

As with the TLRO and the NLRA, it does not matter that the anti-discrimination goes beyond the bare minimum already required by other federal laws. Morongo emphasizes that "Congress has expressly excluded Indian tribes from the definition of 'employer' under federal anti-discrimination laws." Compl. ¶ 67. But it does not follow that Section 12.2(f) is impermissible under IGRA: IGRA allows the parties to negotiate above and beyond the baseline requirements already established by other federal laws. Furthermore, the Compact provides for "Indian preference" (*id.* at Exh. 1 at p. 88, §12.2(f)) to promote Morongo's self-governance of employment practices like "Title VII exempt[ing] [Indian preference] from its coverage . . ." by excluding Indian Tribes as employers under the federal anti-discrimination law. *See Cohen's Handbook of Federal Indian Law*, § 17.03 (2024)

(citing 42 US.C. 2000e-2(a); and *EEOC v. Peabody W. Coal Co*., 773 F.3d 977, 988-89 (9th Cir. 2014)).

Because the anti-discrimination provision in Compact Section 12.2(f) is consistent with IGRA, Count Eleven should be dismissed without leave to amend.

C. The Minimum Wage Provision Is Consistent With IGRA (Count Thirteen)

The same is true for the minimum wage provision (Compact Section 12.2(k)) at issue in Count Thirteen. *See* Compl. ¶¶ 70-74. Here again, labor regulations (like the minimum wage requirement at issue here) are directly related to class III gaming activities and permissible topics to be included in an IGRA compact. *Coyote Valley II,* 331 F.3d at 1116; *Augustine,* 2024 WL 3898546, at *4. And here again, Morongo's challenge to the scope of the minimum wage provision (*see id*. at ¶ 74) is really a challenge to the scope of the definition of "Gaming Facility" (*see id*. at Exh. 1 at pp. 93–94, § 12.2(k)), and therefore fails for the reasons given above in Section II. Accordingly, Count Thirteen should also be dismissed without leave to amend.

CONCLUSION

For all the reasons set forth above, the Court should grant this motion and dismiss Morongo's entire complaint without leave to amend. Alternatively, this Court should dismiss Counts One, Two, Three, Eleven, Thirteen, and Sixteen without leave to amend.

Dated: June 27, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for The State of California and Governor Gavin Newsom, certifies that this brief contains 4,832 words, which:

X complies with the word limit of L.R. 11-6.1.

__ complies with the word limit set by court order dated [date].

Dated: June 27, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

Case Name:	**Morongo Band of Mission Indians v. State of Caifornia etal.**	Case Number:	**5:25-CV-01098**

I hereby certify that on June 27, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' STATE OF CALIFORNIA'S AND GOVERNOR GAVIN NEWSOM'S MOTION TO DISMISS

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 27, 2025, at Los Angeles, California.

Dora Mora	*/S/ Dora Mora*
Declarant	Signature

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