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11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

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 15  
 16 **MORONGO BAND OF MISSION**

5:25-CV-01098

17 **INDIANS, a federally recognized  
 Indian Tribe,**

18 Plaintiff,

**DEFENDANTS' STATE OF  
 CALIFORNIA'S AND GOVERNOR  
 GAVIN NEWSOM'S REPLY TO  
 PLAINTIFF MORONGO BAND OF  
 MISSION INDIANS' OPPOSITION  
 TO DEFENDANTS' MOTION TO  
 DISMISS**

19 v.

20 **STATE OF CALIFORNIA;  
 GOVERNOR**

Date: July 25, 2025  
 Time: 2:00 p.m.  
 Courtroom: 2  
 Judge: The Honorable Sunshine  
 S. Sykes

21 **GAVIN NEWSOM, in his official  
 capacity,**

22 Defendants.

Trial Date:  
 Action Filed: 5/06/2025

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**INTRODUCTION**

The Morongo Band of Mission Indians (Morongo or the Tribe) has not sufficiently pled facts establishing the existence of any valid dispute between the parties which arises under its 2018 tribal-state class III gaming compact (Compact). As such, Morongo’s claims are outside the Compact’s dispute-resolution provision and related, mutual limited waiver of sovereign immunity, and are therefore barred. In its opposition, Morongo relies on caselaw that demonstrates active disputes over the meaning of terms within the four corners of a contract, yet Morongo does not allege such a dispute. Rather, Morongo has only alleged a purported dispute about the effect the inaction (“deemed-approval”) that the Department of the Interior’s Principal Deputy Assistant Secretary—Indian Affairs (DOI) had on the Compact pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2710(d)(8)(C). This dispute is not one between the parties that arises under the Compact and thus Morongo’s claims against the State are not encompassed by its waiver of sovereign immunity in the Compact. As a result, all claims in Morongo’s complaint should be dismissed without leave to amend.

In addition, Morongo does not address the State’s separate arguments that specific counts in the complaint fail for independent reasons as a matter of law. First, as to the key definitions, this Court cannot grant the relief Morongo seeks: it is not possible simply to delete the definitions of key terms while leaving the rest of the Compact intact. And, in any event, those definitions are consistent with IGRA as a matter of law—and Morongo points to no specific factual allegations (as opposed to legal conclusions) to the contrary. Second, Morongo does not even attempt to distinguish controlling case law which independently bars its claims regarding the labor provisions of the Compact—and does not otherwise attempt to refute the State’s argument that those claims fail as a matter of law.

1 **I. MORONGO’S CLAIMS DO NOT “ARISE UNDER” THE COMPACT**

2 The Tribe has not pled sufficient facts to establish that its claims “arise under”  
3 the Compact. Thus, its claims cannot be maintained under the Compact’s dispute-  
4 resolution provision and are barred by sovereign immunity.

5 **A. Morongo Fails to State A Claim Under the Compact**

6 Morongo does not plead facts that would establish any dispute about the  
7 meaning of terms in the Compact, nor any contractual defenses to enforcement of  
8 the Compact, such as misrepresentation. Further, the complaint pleads no facts  
9 establishing any breach of the compact by the state, nor does it contain facts  
10 showing that the Tribe has suffered damages. The Tribe alleges only that, “[i]n its  
11 Complaint, Morongo contends that seventeen provisions of its Compact are not  
12 enforceable, either entirely or in part, either because, under IGRA, they are not  
13 proper subjects of negotiation or impose an impermissible tax, fee, or other  
14 assessment. *See* 25 U.S.C. § 2710(d)(3)(C)(i)–(vii) & (d)(4).” *Opp.* at 3-4. But  
15 this is tantamount to an agreement that the Tribe’s claims arise under IGRA, and  
16 not under the terms of the Compact.

17 This is fatal to Morongo’s claims: if Morongo’s claims “arise under” IGRA,  
18 rather than the compact, then Morongo lacks a cause of action and its claims are  
19 barred by sovereign immunity. While the parties agreed to a dispute-resolution  
20 mechanism in section 13.0, this applies only to “disputes that arise under this  
21 Compact.” *Compl.*, Exh.1 at 101, § 13.1. And the parties’ related, limited waiver  
22 of sovereign immunity in section 13.4 likewise applies only to “disputes between  
23 the State and the Tribe that arise under this Compact and the enforcement of any  
24 judgment or award resulting therefrom.” *Id.* at 104, § 13.4(a). The parties then  
25 again emphasize that the dispute must be “limited solely to issues arising under this  
26 Compact.” *Id.* This repetition demonstrates that the parties did not intend to waive  
27 their sovereign immunity to any dispute that may arise between them. The dispute  
28 must arise under, and thus be limited by, the deal that was struck in the Compact

1 itself. Section 13.4(d) buttresses this point by specifying that the Compact’s waiver  
2 was to be the only waiver of sovereign immunity between them, replacing any other  
3 waiver, whether express or implied, existing in state statute or otherwise. *Id.* at  
4 105, § 13.4(d).

5 Compare this dispute with disputes that clearly *do* “arise under” the Compact.  
6 Suppose, for example, that Morongo and the State disagreed as to whether a  
7 specific employee (or set of employees) fell within the definition of “Gaming  
8 Employee” in section 2.12 and thus were subject to the licensing requirements in  
9 section 6.4.3. Or suppose the parties disagreed about whether a specific structure  
10 fell within the definition of “Gaming Facility” and was thus subject to the  
11 construction, fire, and health and safety standards in section 6.4.2. Or suppose the  
12 dispute was about whether an activity was a “project” within the meaning of section  
13 2.25 and section 11.0 (though, to be clear, the State would not seek to enforce those  
14 provisions after *Chicken Ranch*). All these disputes would “arise under” the  
15 Compact: they would concern rights and obligations created by the Compact, and  
16 (more specifically) a dispute between the parties about whether and how those  
17 obligations apply to a specific set of facts. Here, however, the parties’ dispute is  
18 quite different: the parties do not disagree about how to apply the relevant Compact  
19 provisions, but about whether IGRA allows those Compact provisions to apply at  
20 all. Morongo’s claims thus are not about the meaning of the Compact but are  
21 instead about the meaning of IGRA—which is to say that they “arise under” IGRA,  
22 not the Compact.

23 And while the question before the Court is ultimately about the scope of  
24 section 13.0 of the Compact rather than the scope of IGRA,<sup>1</sup> IGRA itself only

25 <sup>1</sup> The question before the Court is whether this dispute “arises under” the  
26 Compact, and (relatedly) whether the State has waived its sovereign immunity  
27 against Morongo’s claims. In other words, the question before the Court is  
28 ultimately about the scope of the State’s waiver of sovereign immunity (which is  
coextensive with the Compact’s dispute resolution provision)—not about the scope  
of IGRA. And any ambiguity about the scope of a waiver of a sovereign immunity  
(continued...)

1 further reinforces this conclusion. *Cf.* Opp. at 11–14. IGRA has carefully limited  
2 the way in which its provisions are judicially enforceable—and courts should be  
3 wary of lawsuits that seek to supplement IGRA’s limited remedial framework. *See*  
4 *Seminole Tribe v. Florida*, 517 U.S. 44, 74–76 (1996). IGRA is therefore not  
5 “silent” on this subject (*cf.* Opp. at 14), and it does not evince a Congressional  
6 policy to favor broad litigation (outside that limited remedial framework) to enforce  
7 25 U.S.C. § 2710(d)(3) (*cf.* Opp. at 13–14). *See Seminole Tribe*, 517 U.S. at 74.

8 In any event, the State’s position still allows courts to give “practical effect”  
9 (Opp. at 14) to IGRA’s limits in compacts that have been “deemed approved.” If  
10 the State were to seek to enforce the challenged Compact provisions against  
11 Morongo—for example, by bringing an action for breach (*see* Compl., Exh. 1 at  
12 105–06, § 14.2(b))—Morongo would remain free to assert, as a defense, that the  
13 challenged Compact provisions are void and unenforceable because they are  
14 inconsistent with IGRA.<sup>2</sup> The question here, however, is whether Morongo can  
15 take the additional step of bringing affirmative litigation to proactively challenge  
16 any Compact provisions it chooses, in the absence of any action to enforce those  
17 provisions (or any dispute about how those provisions, by their terms, apply to a  
18 particular set of facts). The answer is no: such affirmative litigation requires a  
19 cause of action (which neither IGRA nor the Compact supply) and is barred by  
20 sovereign immunity.

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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).

25 <sup>2</sup> The State reiterates that it would not seek to enforce the Compact’s  
26 provisions regarding environmental review (section 11.0 and related definitions,  
27 which Morongo challenges in Count Ten), and its provisions regarding child and  
28 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*.

1           **B. The Tribe’s Cited Caselaw Does Not Support Its Argument**  
2           **That Its Claims “Arise Under” The Compact**

3           The Tribe urges this Court to interpret the term “arising under” broadly  
4 enough to convert IGRA-based claims into compact-based claims. The Tribe bases  
5 this argument on *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369 (2004), *Pauma*  
6 *Band of Luiseño Mission Indians of the Pauma & Yuima Reservation v. California*  
7 *(Pauma)*, 813 F.3d 1155 (9th Cir. 2015), *Mediterranean Enterprises v. Ssangyong*,  
8 708 F.2d 1458 (9th Cir. 1983), *Tracer Research Corp. v. Natl. Envir. Services Co.*,  
9 42 F.3d 1292 (9th Cir. 1994), and *Cape Flattery Ltd. v. Titan Maritime*, 647 F.3d  
10 914 (9th Cir. 2011). The cases are all distinguishable.

11           The Tribe first relies on *Pauma*, 813 F.3d 1155 (9th Cir. 2015) to claim that  
12 the State has waived its sovereign immunity. *Opp.* at 5-6. In fact, *Pauma* was a  
13 contract misrepresentation claim based on the prior interpretation of an ambiguous  
14 compact provision in *Cachil Dehe Band of Wintun Indians of the Colusa Indian*  
15 *Community v. California (Colusa II)*, 618 F.3d 1066 (9th Cir.2010). *Pauma*, 813  
16 F.3d at 1159. *Colusa II* conducted a de novo review of ambiguous “License Pool”  
17 provisions governing slot machines in a tribe’s compact. *Colusa II*, 618 F.3d at  
18 1075. The outcome of *Colusa II*’s determination of the meaning of these “License  
19 Pool” provisions led to a different tribe suing California for misrepresentation  
20 which became the *Pauma* case. *Pauma*, 813 F.3d at 1159. At issue in *Pauma* was  
21 whether the meaning of the compact terms decided by *Colusa II* applied  
22 retroactively to allow a misrepresentation claim, if so, what was the appropriate  
23 remedy, and whether the State’s waiver of sovereign immunity in the compact  
24 extended to that remedy. *Id.*

25           Here, the facts are quite different. Morongo has not made any contractual  
26 defense claim, such as misrepresentation, nor are its claims based on the parties’  
27 differing interpretation of ambiguous compact terms, like the License Pool  
28 provisions at the heart of *Colusa II* and *Pauma*. There is no alleged dispute

1 between the parties about the *meaning* of ambiguous terms of the Compact. If  
2 Morongo had pled facts to support such a dispute between the parties' interpretation  
3 of various terms, there would be little question that this dispute would arise under  
4 the Compact and would be subject to the limited waiver of sovereign immunity.  
5 Instead, Morongo is disputing the validity of certain provisions based on DOI's  
6 inaction on the Compact and IGRA. These claims necessarily arise under IGRA  
7 rather than the Compact and are thus not included within the Compact's dispute  
8 resolution mechanism in section 13.1 or its related sovereign immunity waiver in  
9 section 13.4.

10 Morongo's interpretation of *Pauma*'s rejection of the State's waiver of  
11 sovereign immunity argument is similarly misguided. The issue in *Pauma* was  
12 whether the waiver's inclusion of equitable relief allowed restitution despite the  
13 exclusion of monetary damages. *Pauma*, 813 F.3d at 1170. Since the court found  
14 that the State had misrepresented material facts in contract negotiation based on its  
15 interpretation of compact terms, the court found that the waiver included restitution,  
16 even if it resulted in monetary damages. *Pauma* holds only that a claim arising  
17 under the compact (there a dispute about the meaning of License Pool provisions  
18 giving rise to a misrepresentation claim) seeking equitable remedies, including  
19 restitution, falls within the ambit of a mutual waiver of sovereign immunity  
20 contained in that same compact.

21 But here, there is no claim of misrepresentation and there is no claim that any  
22 dispute between the parties is based upon the Compact itself. Morongo has not  
23 pled that the parties dispute the *meaning* of the seventeen provisions of the  
24 Compact; Morongo disputes only whether they are valid in light of DOI's inaction  
25 and IGRA. But such a dispute without a contractual defense to anchor these claims,  
26 like the misrepresentation claim in *Pauma*, arises outside of the Compact and thus  
27 outside the scope of the State's sovereign immunity waiver.  
28

1 Morongo’s citation to *Mediterranean Enterprises v. Ssangyong Corp.*  
2 (*Mediterranean*), 708 F.2d 1458 (9th Cir. 1983) actually supports the State’s  
3 position. This case deals with the scope of an arbitration agreement. Morongo  
4 cites this opinion for the proposition that “arising hereunder” means “arising under  
5 the contract itself” and thus this phrase is “was not intended to cover matters or  
6 claims independent of the contract or collateral thereto.” Opp. at 7, citing  
7 *Mediterranean* at 1463. The court found the term “arising hereunder” to be  
8 narrower in scope than the similar phrases such as “arising out of or relating to.”  
9 *Id.* at 1464, citing *Michele Amoruso E Figli v. Fisheries Development Corp.*, 499 F.  
10 Supp. 1074, 1080 (S.D.N.Y. 1980).

11 The term “arising hereunder” is synonymous in scope and meaning with the  
12 term “arise under” as used in the Compact between Morongo and the State in  
13 section 13.4(a). See Compl., Exh. 1, at 104. Morongo’s claims can be distilled to  
14 the effect of DOI’s inaction, by “deeming” it approved, had on the Compact. In the  
15 line of reasoning expressed by *Mediterranean*, these claims are independent or  
16 collateral to the Compact. Consequently, the decision in *Mediterranean* favors a  
17 narrow interpretation, and confirms that Morongo’s claims, pled as arising under  
18 IGRA (see Opp. at 3-4) do not arise from the Compact and thus are barred by the  
19 State’s sovereign immunity.

20 Similarly, Morongo’s citation to *Tracer Research Corp. v. Natl. Envir.*  
21 *Services Co.*, 42 F.3d 1292 (9th Cir. 1994) favors the State’s position. There, the  
22 Ninth Circuit held that an arbitration clause that covered disputes arising under an  
23 agreement only pertained to disputes regarding the interpretation and performance  
24 of the contract itself. *Id.* at 1295. Here, Morongo has not alleged any dispute  
25 between the parties about the interpretation or performance of the Compact, only  
26 that some of its terms are invalid considering DOI’s action of deeming the Compact  
27 approved.

28

1 Finally, Morongo’s reliance upon *Cape Flattery Ltd. v. Titan Maritime*, 647  
2 F.3d 914 (9th Cir. 2011), which also concerned the scope of an arbitration  
3 agreement, is similarly misplaced. In 2005, Cape Flattery contracted Titan  
4 Maritime (Titan) to recover a ship run aground on a reef of the coast of Oahu,  
5 Hawaii. *Cape Flattery*, 647 F.3d at 916. The ship was recovered. *Id.* During the  
6 grounding or recovery, the reef was damaged. *Id.* Cape Flattery was liable to the  
7 federal government for that damage. *Id.* The federal government notified Cape  
8 Flattery that it would likely be liable for damages exceeding \$15 million. *Id.* In  
9 response, Cape Flattery sued Titan seeking indemnity or contribution for alleged  
10 gross negligence by Titan in recovering the ship from the reef. *Id.* at 916-917.  
11 Titan moved to compel arbitration under the contract, which contained a provision  
12 requiring arbitration for “[a]ny dispute arising under this Agreement.” *Id.* In  
13 affirming the district court’s narrow construction of “arising under,” the appellate  
14 court concluded that, “because the language in the arbitration provisions in  
15 *Mediterranean* and *Tracer* is the same as the language in the Agreement, the  
16 narrow interpretation of ‘arising under’ in those cases controls. Applying  
17 *Mediterranean* and *Tracer*, we have no difficulty concluding that the present  
18 dispute is not arbitrable.” *Id.* at 923. *Cape Flattery* and the other cases cited by  
19 Morongo each support a narrow reading of the term which limits the mutual waiver  
20 of sovereign immunity to only those disputes that arise directly from the formation  
21 or performance of the parties under the terms of the Compact.

22 **II. MORONGO CANNOT ESTABLISH SEVERAL CLAIMS AS A MATTER OF**  
23 **LAW**

24 Irrespective of whether sovereign immunity bars all of Morongo’s claims,  
25 independent grounds exist to dismiss several claims in the Complaint. Counts  
26 regarding the definitions “Gaming Employee” (Count One), “Gaming Facility”  
27 (Count Two), and “Gaming Operation” (Count Three) and the labor provisions in  
28

1 the Compact (Counts Eleven, Thirteen, and Sixteen). Morongo does not even  
2 counter the State’s arguments on these provisions except to broadly, without any  
3 citation to authority, assert that they go to the merits and thus (in Morongo’s view)  
4 are beyond the scope of the State’s Motion to Dismiss. Opp. at 15. But as the State  
5 has explained, these claims fail as a matter of law.

6 **A. Established Precedent Independently Bars Several of**  
7 **Morongo’s Claims**

8 As the State’s cited authority shows, these provisions are within the bounds of  
9 the compact topics delineated by IGRA in 25 U.S.C. § 2710(d)(3)(C)(i)–(vii). *See*  
10 *Indian Gaming Related Cases (Coyote Valley II)*, 331 F.3d 1094, 1116 (9th Cir.  
11 2003), *Augustine Band of Cahuilla Indians v. California*, No. 5:23-cv-620-SSS-  
12 DTBX, 2024 WL 3898546, at \*6 (C.D. Cal. July 23, 2024). These cases  
13 demonstrate that these provisions do not violate IGRA. No further factual  
14 development is necessary here: Morongo’s allegations that these provisions violate  
15 IGRA are simply legal conclusions (which contradict the case law cited by the  
16 State). As a result, there is no way for Morongo to establish its claims that the  
17 provisions in regarding Counts One, Two, Three, Eleven, Thirteen, and Sixteen  
18 violate IGRA. Morongo has not even attempted to argue otherwise in its  
19 Opposition—and has therefore waived any contrary argument. As such, these  
20 Counts should be dismissed.

21 **B. Morongo Does Not Explain How This Court Can Grant Relief**  
22 **on Counts One, Two, And Three**

23 In its opposition, Morongo has also not explained how this Court can delete  
24 the definitions of “Gaming Employee” (Count One), “Gaming Facility” (Count  
25 Two), and “Gaming Operation” (Count Three) while still maintaining the Compact.  
26 It is undisputed that there is no severability clause in the Compact, and (as  
27 explained in the State’s Motion to Dismiss) it is not possible to sever these  
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1 definitions from the remainder of the Compact in practice. For these reasons, these  
2 definitions cannot simply be declared unenforceable and, in turn, severed from the  
3 rest of the Compact. Notwithstanding, as noted earlier, these definitions are  
4 permissible under IGRA per established precedent. Morongo has not even pled  
5 facts establishing an active dispute between the parties regarding the interpretation  
6 or application of these terms. These are independent grounds for this Court to  
7 dismiss these Counts.<sup>3</sup>

8 **CONCLUSION**

9 Because Morongo’s claims do not “arise under” the Compact, its claims lack a  
10 cause of action and are barred by sovereign immunity; thus, the entire complaint  
11 should be dismissed. Alternatively, specific claims in Morongo’s complaint—the  
12 Tribe’s claims that the provisions described in Counts One, Two, Three, Eleven,  
13 Thirteen, and Sixteen violate IGRA—fail as a matter of law for additional,  
14 independent reasons, and should therefore be dismissed.

15  
16 Dated: July 11, 2025

Respectfully submitted,

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27 <sup>3</sup> Morongo’s account of “the State’s long history of violating IGRA to the  
28 detriment of tribes” (Opp. at 16; *see id.* at 16–18) is not relevant to this Motion to Dismiss.

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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 2,932 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: July 11, 2025

Respectfully submitted,

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*/s/Bart E. Hightower*  
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## CERTIFICATE OF SERVICE

Case Name: **Morongo Band of Mission  
Indians v. State of California et al.**

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Case Number: **5:25-CV-01098**

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I hereby certify that on July 11, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANTS' STATE OF CALIFORNIA'S AND GOVERNOR GAVIN NEWSOM'S  
REPLY TO PLAINTIFF MORONGO BAND OF MISSION INDIANS' OPPOSITION  
TO DEFENDANTS' 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 July 11, 2025, at Los Angeles, California.

---

Dora Mora  
Declarant

---

*/S/ Dora Mora*  
Signature