George Forman (SBN 047822)
Jay B. Shapiro (SBN 224100)
Margaret C. Rosenfeld (SBN 127309)
FORMAN SHAPIRO & ROSENFELD LLP
5055 Lucas Valley Road
Nicasio, CA 94946
Telephone: 415/491-2310
Email: george@fsrlegal.net
Email: jay@fsrlegal.net

Attorneys for Plaintiff Morongo Band of Mission Indians

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

MORONGO BAND OF MISSION INDIANS, a federally recognized Indian Tribe,

Plaintiff,

v.

STATE OF CALIFORNIA, and GAVIN NEWSOM IN HIS OFFICIAL CAPACITY AS GOVERNOR OF CALIFORNIA,

Defendants.

Case No.: 5:25-cv-01098-SSS-SP

PLAINTIFF MORONGO'S RESPONSE TO DEFENDANTS' SUPPLEMENTAL BRIEF REGARDING THE RIPENESS OF MORONGO'S CLAIMS

Hearing Date: TBA
Hearing Time: TBA
Courtroom: 2
Judge: Hon. Sunshine S. Sykes

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. INTRODUCTION

Defendants (collectively, the "State") contend that Morongo's Complaint presents only "hypothetical," "imagined disputes" premised upon future events that may never come to pass. It is the State that needs a reality check. The parties actively disagree about the lawfulness and thus enforceability of most of the Compact[1] provisions put at issue by Morongo's Complaint. Were it otherwise, Morongo would not have filed suit. This is no theoretical or abstract disagreement. Because the State rejects Morongo's interpretation of the disputed Compact provisions, Morongo must not only continue paying more than $35 million *annually* but also yield to the State on a daily basis the sovereign Tribal authority that IGRA did not entitle the State to usurp. Thus, *right now*, the parties find themselves in "an unavoidable dispute over the meaning of a contract. Courts exist to resolve such disputes." *Principal Life Ins. Co. v. Robinson*, 394 F.3d 665, 672 (9th Cir. 2005).

The State imagines, and would have the Court believe, that Morongo could have blithely stopped complying with the objectionable Compact provisions, including those requiring Morongo to pay tens of millions of dollars a year, and dared the State to bring an enforcement action, at which point Morongo could have raised the provisions' unenforceability as a defense. That was never an option. Following the State's course would have constituted a clear breach of the Compact, not only imperiling the Tribe's ability to continue operating its gaming facilities, but also potentially rendering the Tribe in default to the holders of the bonds and notes used to finance those facilities. Either outcome would prove financially calamitous, thus jeopardizing Morongo's ability to provide essential services and programs for the residents, visitors, and businesses on its Reservation.

In short, the parties' dispute is ripe for review. The Court must resolve it.

[1] "Compact" refers to the Class III gaming compact between Morongo and the State, a copy of which is attached as Exhibit 1 to Morongo's Complaint.

II. SUPPLEMENTAL FACTS RELEVANT TO THE RIPENESS ANALYSIS

A. The Payments Required by Morongo's Compact

Morongo's current Compact requires the Tribe to make payments into four different funds: the Special Distribution Fund (Compact § 4.3); the Revenue Sharing Trust Fund/Tribal Nation Grant Fund (Compact § 5.1); the Local Community Benefit Fund (Compact § 5.2); and the Rainy Day Fund (Compact § 5.3). *See* Declaration of Joseph Santos in Support of Morongo's Supplemental Brief Regarding Ripeness ("Santos Decl.") ¶ 3. Since Morongo's Compact took effect on January 22, 2018, Morongo has paid, in total, approximately $280,000,000 into those Four Funds. Santos Decl. ¶ 4. At this rate, which Morongo expects will continue barring changed circumstances, the Tribe will pay at least an additional $***612,624,662*** into these Funds through the remaining 18 years of the Compact's term. Santos Decl. ¶ 4.

B. Morongo's Gaming-Related Debt Obligations

Morongo is the government primarily responsible for providing and funding the broad array of essential governmental services and programs for its citizens, residents, employees, and others visiting the Morongo Indian Reservation ("Reservation"). *See* Declaration of Charles Martin in Support of Morongo's Supplemental Brief Regarding Ripeness ("Martin Decl.") ¶ 3. Morongo's gaming revenues are not sufficient to fund the full range of services and programs essential to the well-being of its citizens and at the same time develop and operate the gaming enterprise that has become Morongo's economic lifeblood; consequently, Morongo has issued hundreds of millions of dollars of bonds and notes with which to build, maintain, operate and from time to time expand its gaming facilities. *Id*.

Under the agreements by which Morongo has financed the construction, maintenance, and expansion of its gaming facilities, Morongo is required to provide its lenders with quarterly and annual financial statements concerning its casino operations, each of which must be accompanied by a certification that no event of

default exists; committing a material breach of the Compact would constitute an event of default. Martin Decl. ¶ 10. Morongo must also promptly provide to its lenders any written notices from any government authority alleging that the Tribe is in non-compliance with any legal requirement that could have a material adverse effect on Morongo's ability to meet its financial obligations to those lenders. *Id*.

In the event of an actual or alleged default on its gaming-related financial obligations, such as notice from the State alleging that Morongo has breached its Compact, the investment-grade rating of Morongo's gaming-related debt could be downgraded, which would trigger an increase in the interest rate on that debt. Martin Decl. ¶ 11; Santos Decl. ¶ 6. In that event, Morongo's lenders also could accelerate its repayment obligations, which would seriously disrupt the Tribe's ability to fulfill its obligations to both its lenders and the Reservation community that depends on Morongo's government to provide essential services and programs unavailable from other sources. *Id*. Because such an outcome could be financially calamitous, Morongo cannot, as a practical matter, cease complying with its Compact in a way the State would or might regard as a breach of the Compact. That includes the non-payment of money into either the Special Distribution Fund or Revenue Sharing Trust Fund, as the Compact provides: "Failure to make timely payment [into either Fund] shall be deemed a material breach of this Compact." Compact § 4.4(d).

C. The State Insists that the Disputed Compact Provisions are Lawful and Enforceable

In April 2024, Morongo notified the State in writing that the Tribe disputes the enforceability of 19[2] provisions of the parties' Compact, including those requiring payments into the Four Funds. Compact ¶ 16. Morongo continued to make timely payments into the Four Funds while the parties were meeting and conferring (Complaint ¶ 17; Martin Decl. ¶ 7) because a failure to do so not only

[2] Several of those provisions are definitions that are incorporated into Count 10 of the Complaint.

would have constituted a material breach of the Compact, but also would have required Morongo to cease operating all of its Gaming Devices 60 days after the State notified Morongo of the arrearage (unless the State were to affirmatively relieve Morongo of that obligation, of which Morongo has no assurance). Compact § 4.4(d)–(e). Such a breach would not only have led to the possible termination of Morongo's Compact but would also have jeopardized the Tribe's good standing with its lenders, thereby potentially leading to significantly adverse financial consequences on short notice. Martin Decl. ¶¶ 10–13; Santos Decl. ¶¶ 5–6.

During the meet-and-confer process, the State took the position that the only unenforceable provisions of Morongo's Compact were the ones specifically addressed by the Ninth Circuit's decision in *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024 (9th Cir. 2022). On that basis, the State flatly rejected Morongo's contention that the Compact provisions requiring payments into the Four Funds, as well as the other disputed provisions, are not enforceable. Matthew Lee, the Governor's chief Compact negotiator, memorialized the State's position in his letter dated February 28, 2025, writing that the State "is prepared to construe Compact terms addressed by *Chicken Ranch* in a manner consistent with *Chicken Ranch*." Martin Decl. ¶ 8 & Exh. 1. The letter identified the few provisions that the State would reconstrue in light of *Chicken Ranch* but was silent about the other provisions that Morongo had challenged. *Id*.

In a subsequent letter dated March 28, 2025, Mr. Lee reiterated the State's position that only four Compact provisions were unenforceable under *Chicken Ranch*. Martin Decl. ¶ 9 & Exh. 2. Regarding the remaining disputed provisions, including those requiring payments into the Four Funds, Mr. Lee wrote: "The State respectfully adheres to its position that these provisions are consistent with IGRA. . . . Accordingly, the State maintains its position that new negotiations over these issues are unnecessary and not required by the Compact and respectfully declines to renegotiate them." *Id*.

The Morongo Tribal Council—the Tribe's elected governing body—interpreted Mr. Lee's statement to mean that if Morongo were to cease complying with any or all of the disputed provisions, the State would treat such noncompliance as a material breach of the Compact and thus attempt to legally enforce the provisions through the Compact's dispute resolution process. Martin Decl. ¶ 9. The Tribe chose to file a declaratory relief suit while continuing to comply with the disputed Compact provisions because refusing to comply would have constituted a breach of the Compact, thus posing an imminent risk to the financial foundation of Morongo's government and its gaming enterprise. Martin Decl. ¶¶ 10–13.

III. ARGUMENT

The Court has questioned whether Morongo's Claim for Relief is ripe for judicial review—specifically, whether Morongo has alleged an injury that is "'(a) concrete and particularized[,] and (b) actual or imminent, not conjectural or hypothetical.'" *Twitter Inc. v. Paxton*, 56 F.4th 1170, 1173 (9th Cir. 2022) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

In the declaratory relief context, the appropriate inquiry for determining ripeness is "whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (quoting *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941)); *Principal Life*, 394 F.3d at 671. The disputed Counts in Morongo's Complaint easily satisfy this standard.

A. The State's "Disavowals" Resolve Counts 10 and 17 But Not Counts 2 and 14, Which are Ripe for Review

The State has "completely disavowed" the Compact provisions challenged in Counts 10 and 17 of the Complaint. *See* Decl. of Matthew Lee in Support of Defs'.

Supp. Br. Regarding Ripeness ¶ 4 ("Lee Decl."); Defs'. Supp. Br. at 3:6–16. Morongo construes the State's concession as a commitment to this Court to bind future administrations for the duration of the Compact; therefore, these Counts should be deemed resolved for purposes of this litigation.

The same cannot be said for Counts 2 and 14, which concern, respectively, the definition of "Gaming Facility" and the availability of tort remedies to persons lawfully present anywhere within a Gaming Facility. The State has "disavowed the[se] challenged Compact provisions in relevant part" (Lee Decl. ¶ 4; Defs'. Supp. Br. at 3:19–21),[3] but Morongo disagrees that the State's narrower construction comports with the key principle set out in *Chicken Ranch*—that a compact may only address subjects that are directly connected to the actual operation of Gaming Activities.

For example, the State understands the "Gaming Facility" definition "to be limited to the buildings or structures in which Class III Gaming, as authorized by the Compact, is conducted." Defs'. Supp. Br. at 4:2–4. But the State's definition includes an array of areas—such as restaurants, restrooms, spa, back-of-house operations unrelated to gambling—that have nothing to do with the operation of Gaming Activities, much less the "direct relationship" that IGRA requires. *See Chicken Ranch*, 42 F.4th at 1034 (recognizing IGRA's constraint "that any Class III compact provision be directly related to the operation of gaming activities"). As a result, any Compact provision extending a policy to "the Gaming Facility" as a whole necessarily applies to areas beyond what IGRA allows, and thereby is inconsistent with IGRA, infringes on the Tribe's sovereignty over those areas, and imposes ongoing burdens and potential liability for the Tribe.

Fittingly, the State's overly broad conception of "Gaming Facility" illustrates why its re-interpretation of the tort liability provisions is not consistent with *Chicken Ranch*. The State avows to "construe the tort provisions of section 12.4 . . .

[3] Presumably only the part requiring Morongo to adopt California tort law as its own.

to be limited to injuries or property damage that occur within the Gaming Facility." Defs'. Supp. Br. at 4:16–18. While this new construction may reduce the spatial scope of the Tribe's tort liability obligations somewhat compared to the State's previous reading of the provision, it doesn't go nearly far enough because, as noted, the State's understanding of "Gaming Facility" sweeps too broadly. Morongo must still extend insurance coverage and tort remedies to guests who claim to have been injured in areas not properly subject to regulation under the Compact. That will remain the case until a Court declares the proper interpretation of the provisions challenged in Counts 2 and 14.

In an attempt to cast doubt on the ripeness of these issues, the State asserts: "It is far from obvious that such claims [unrelated to the operation of Gaming Activities] will ever arise in the real world." Defs'. Supp. Br. at 5:1–2. Yet at Morongo Casino Resort Spa—which is located in the real world—the facts refute the State's position. Over the last three years, forty-six percent (46%) of all the tort claims filed against Morongo have arisen from incidents that occurred in areas of the Gaming Facility not directly related (or related at all) to the actual operation of Gaming Activities. *See* Declaration of Ken Meredith in Support of Morongo's Supplemental Brief Regarding Ripeness ¶ 5. There is every reason to believe such claims will continue to arise for the duration of Morongo's Compact. As long as they do, the Compact obligates Morongo to process them like any other claim.[4]

The State also muses that it might not "feel compelled to sue for breach" if Morongo withholds tort remedies in a way the State thinks violates the Compact. Defs'. Supp. Br. at 5:8. By the same token, however, the State *might* feel such a compulsion, leaving Morongo to guess what its legal obligations are and how the State might respond.

In short, the parties disagree about the scope of Morongo's tort liability

[4] That is not to say that Morongo would not fairly address such claims as a matter of good governance and good business; rather, only that IGRA does not permit the State to impose that liability on Morongo.

obligations under the Compact, and Morongo is prejudiced by this uncertainty. This dispute is ripe for review.

B. Morongo's Challenges to the Compact's Financial Provisions Are Ripe for Review (Counts 4, 6, 7, 8, 9)

The State contends that Morongo's challenges to the provisions requiring payments into the Four Funds are not ripe because Morongo has not yet breached the Compact by withholding payment. Absent such a breach, the State argues, there is no "imminent threat of enforcement" and the dispute lacks the "sufficient immediacy and reality" needed to create a ripe controversy. Defs'. Supp. Br. at 9:4–11. Not so. Morongo and the State maintain diametrically opposite views regarding the Compact's financial provisions. Morongo contends they violate IGRA and are therefore unenforceable; the State insists they are "consistent with IGRA" and, therefore, has "decline[d] to renegotiate them." Martin Decl. ¶ 9 & Exh. 2. Up to now, Morongo has paid, on average, $35.6 million annually into the Four Funds pursuant to Compact provisions that the Tribe regards as unlawful under IGRA as interpreted by the Ninth Circuit in *Chicken Ranch* and by the Secretary of the Interior in its regulations governing Class III Tribal State Gaming Compacts.[5] Santos Decl. ¶ 4; Martin Decl. ¶ 6. Morongo projects those annual payments to remain steady or increase for the remainder of the Compact's term. Santos Decl. ¶ 4.

It is true that Morongo has continued paying into the Four Funds rather than breach its Compact obligations and dare the State to enforce its alleged right to compel payment. This does not, however, render the dispute unripe, because Morongo's "self-avoidance of imminent injury is coerced by threatened enforcement action," and that coerced compliance satisfies the ripeness requirement. *MedImmune*, 548 U.S. at 130. The State seems to ignore, but the

[5] *See* Class III Tribal State Gaming Compacts, 89 Fed. Reg. 13,232 (Feb. 21, 2024) (to be codified at 25 CFR pt. 293).

Court should not, that Compact § 4.3(c) *requires* Morongo to continue paying into the Special Distribution Fund as a condition precedent to disputing the amount of that obligation under the Compact's dispute resolution provisions. What's more, Compact § 4.4(d) treats the "[f]ailure to make timely payment" into either the Special Distribution Fund or the Revenue Sharing Trust Fund as a per se "material breach of this Compact." In the same vein, Compact § 4.4(e) requires that Morongo cease operating Gaming Devices altogether if it falls more than 60 days in arrears on its Special Distribution Fund or Revenue Sharing Trust Fund payments (unless the State grants a reprieve). Such a result would be financially catastrophic. Martin Decl. ¶¶ 10–13; Santos Decl. ¶¶ 5–6. In short, Morongo had and has no choice but to continue making the payments into the Four Funds, and doing so does not render its claims unripe.

The Supreme Court's decision in *MedImmune* is instructive and dispositive. MedImmune and Genentech entered into an agreement pursuant to which MedImmune agreed to pay royalties to Genentech in exchange for licenses to an existing and a pending patent. Subsequently, Genentech notified MedImmune that a drug manufactured by MedImmune was covered by one of the licensed patents and thus Genentech was entitled to royalties under the parties' agreement. MedImmune disagreed that royalties were owed but nevertheless "considered the letter to be a clear threat to enforce [Genentech's] patent, terminate the 1997 license agreement, and sue for patent infringement if [MedImmune] did not make royalty payments as demanded." *MedImmune*, 549 U.S. at 122. MedImmune felt it had no choice: if it refused to pay, thus triggering a patent infringement action, and lost at trial, it "could be ordered to pay treble damages and attorney's fees, and could be enjoined from selling [its supposedly infringing drug], a product that has accounted for more than 80 percent of its revenue." *Id*. "Unwilling to risk such serious consequences, [MedImmune] paid the demanded royalties under protest" and filed a declaratory judgment on its "contractual rights and obligations,"

"disput[ing] its obligation to make payments under the 1997 License Agreement." *Id*. at 122, 123. On Genentech's motion, the district court dismissed the case for lack of jurisdiction based on the absence of a case or controversy. *Id*. at 122. The Federal Circuit affirmed.

The Supreme Court reversed. All agreed that Genentech asserted a right to royalties that MedImmune rejected and had threatened to enforce its rights under the license agreement if MedImmune withheld the disputed royalties. *Id*. at 128. Thus, "[t]he factual and legal dimensions of the dispute [were] well defined and, but for [MedImmune's] continuing to make royalty payments, nothing about the dispute would render it unfit for judicial resolution." *Id*. Yet, MedImmune's "continuation of royalty payments [had made] what would otherwise be an imminent threat at least remote, if not nonexistent," and thereby, seemingly, called the ripeness of its claim into question.

Nonetheless, the Supreme Court held that a ripe controversy existed. Quoting from an earlier decision involving similar facts, the Court observed: "The fact that royalties were being paid did not make this a difference or dispute of a hypothetical or abstract character." *Id*. at 131 (quoting *Altvater v. Freeman*, 319 U.S. 359, 364 (1943) (cleaned up). For standing/ripeness purposes, it was sufficient that MedImmune's "self-avoidance of imminent injury [was] coerced by threatened enforcement action." *Id*. at 130. "The rule that a plaintiff must destroy a large building, bet the farm, or (as here) risk treble damages and the loss of 80 percent of its business before seeking a declaration of its actively contested legal rights finds no support in Article III." *Id*. at 134.

The Ninth Circuit's decision in *Principal Life* likewise compels a finding that the parties' dispute over the financial provisions is ripe for adjudication. In 1978, Robinson entered into a 99-year ground lease with Principal Life Insurance's predecessor in interest. In 1985, the parties realized they disagreed over the interpretation of a key rent recalculation provision that would kick in at years 31

and 61 of the lease term (2008 and 2038). *Principal Life*, 394 F.3d at 668. Because the parties were at loggerheads and the need for resolution was not imminent, they agreed to table the issue and memorialized the dispute in a lease amendment. *Id*. In 1998, Principal attempted to sell its interest in the lease, but the uncertainty over the interpretation of the rent recalculation cast doubt over the value of the lease.

"Without a definitive way to calculate the value of the lease, Principal found itself unable to make a reasonable business decision." *Id*. at 669. As a result, Principal sought a declaratory judgment that its interpretation of the dispute rent provision was correct. The district court found there was a "substantial controversy" between the parties, but the dispute was not ripe because "Principal had failed to prove that it would suffer a direct and immediate hardship that is more than possible financial loss." *Id*. (cleaned up).

The Ninth Circuit reversed. At the outset, the Court held that the parties' dispute over the rent recalculation provision "is not an abstract or hypothetical disagreement. This is a typical contract dispute under which the parties' interests are clearly adverse, and a decision will affect the value of the lease." *Id*. at 671. Therefore, the only question for the Court was "whether, at this point, the controversy has become sufficiently immediate, such that the district court has Article III jurisdiction to decide it." *Id*. The Court had no trouble finding the claim was ripe. Without the Court's pronouncement of the proper interpretation of the lease, the value would remain "unascertainable" and the proper sale price "unpredictable." *Id*. Under these conditions, Principal could not reasonably decide whether to sell or maintain its interest. This created a dispute that was imminent and concrete, not abstract or hypothetical. *Id*. at 672.

Finally, the Court rejected the notion that the case was unripe because Principal purchased its predecessor's interest in the lease knowing of the disputed interpretation of the rent recalculation. "The parties did not "invite" this problem any more than does any party finding itself in an unavoidable dispute over the

meaning of a contract. Courts exist to resolve such disputes. Thus, we conclude that the case is ripe." *Id*.

Morongo's dispute with the State is analogous to those found ripe in *MedImmune* and *Principal Life*. Like MedImmune and Genentech, Morongo and the State disagree over the interpretation of their contract and, thus, whether Morongo remains obligated to comply with the Compact provisions requiring payments into the Four Funds. Morongo has explained its position and given the State every opportunity to reconsider its stance, but the State (like Genentech) remains adamant that the disputed provisions are enforceable. Morongo (like MedImmune) has reasonably concluded that if it stops timely making payments in full into the Four Funds, the State intends to legally enforce the provisions. If the State's March 28, 2025 letter left any doubt (*see* Martin Decl. Exh. 2), the State's Supplemental Brief erases it: "There is no question, under the Compact, that the Tribe owes this money." Defs'. Supp. Brief at 9:25–26.

Indeed, Morongo has even less discretion to withhold payments than MedImmune did. Morongo cannot stop payments into the Special Distribution Fund, as doing so would forfeit its right to pursue an SDF-related challenge under the Compact. Compact § 4.3(c). Moreover, the Compact deems a failure to pay into the Special Distribution Fund or the Revenue Sharing Trust Fund as not only a *per se* material breach of the Compact but also the trigger requiring that the Tribe "cease operating all of its Gaming Devices until full payment is made" (unless the State agrees otherwise). Compact §§ 4.4(d) & 4.4(e). Consequently, Morongo's decision to continue making payments totaling around $36.5 million *annually* is not truly voluntary but, like MedImmune's continued payments to Genentech, is coerced by the threat of legal enforcement by the State. In short, the Supreme Court's finding of ripeness in *MedImmune* compels the same result here.

The Ninth Circuit's decision in *Principal Life* is also instructive. Principal Life Insurance and Robinson were locked in a dispute over the key term of a

ground lease that injured Principal financially: the uncertainty cast a cloud over the value of the lease, thereby preventing Principal from determining whether to sell its interest (and, if so, for how much) or to hold onto its interest and continue performing. Notably, the injury to Principal was much less concrete and immediate than the one Morongo continues to suffer. When Principal sued for declaratory relief, the rent adjustment provision would not kick in for many more years. The injury to Principal was its inability to properly price its lease interest for a potential sale to a third party. Morongo, by contrast, has been paying and as a practical matter must continue to pay more than $36 million *every year*. In addition, Morongo must comply every day with noneconomic provisions of its Compact that the Tribe contends are unlawful and unenforceable under IGRA. The Ninth Circuit held that Principal's dispute was ripe for adjudication; *a fortiori*, so is Morongo's.

C. Morongo's Challenge to the Unauthorized Use of Special Distribution Fund Proceeds is Ripe for Review (Count 5)

The State argues that Count 5 of Morongo's Complaint is not ripe because the State has "effectively disavowed *most* of the potential spending that the Tribe challenges." Defs'. Supp. Br. at 10:1–2 (emphasis added). The State seems to concede, however, that at least *some* unauthorized spending continues or is permitted by State law. To the extent that the State can spend Morongo's payments to the Special Distribution Fund for *any* purposes that Morongo contends are unlawful under IGRA, Count 5 of Morongo's Complaint is ripe for this Court's adjudication on the merits.

D. Morongo's Challenges to the Non-Financial Compact Provisions are Ripe for Review (Counts 1, 3, 11, 12, 13, and 15)

The State argues that the remaining Counts are not ripe because they are abstract and hypothetical and hinge on the occurrence of future events that may never occur. The State's position is not persuasive.

As an initial matter, with respect to Counts 11 (compliance with federal anti-

discrimination standards), 12 (check cashing), 13 (complying with State minimum wage), and 15 (remittance of unemployment insurance and income taxes), the State argues that the disputed provisions are "indisputably valid" insofar as they apply to certain persons or activities. Defs'. Supp. Br. at 7:3–28. But that's an assertion about the *merits* of Morongo's Counts, not about their ripeness for adjudication. What matters for assessing ripeness is that Morongo contests the lawfulness of these Compact provisions that affect the daily functioning of Morongo's Gaming Facilities, whereas the State defends them. As with the financial provisions of the Compact, Morongo is currently complying with the provisions addressed in Counts 11, 12, 13, and 15 on a daily basis, and will continue to do so to avoid the substantial harm that could result from its breach of the Compact. It follows that the disagreements over these provisions constitute a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

The dispute about the definitions of "Gaming Employee," "Gaming Facility," and "Gaming Operation" is that they sweep within the reach of the Compact spaces and personnel not directly related to the actual operation of Class III Gaming Activities. *See* Section III-A, *supra* (discussing "Gaming Facility"). For example, Morongo Casino Resort Spa and Casino Morongo—the Gaming Facilities that comprise the Tribe's "Gaming Operation"—include areas in which no Class III Gaming Activities are conducted, such as restrooms, restaurants and kitchens, meeting rooms, swimming pools, retail shops, hotel rooms, and parking structures.

Likewise, Morongo's "Gaming Operation" collectively employs a total of 2,169 people, but 1,482 of them—68%—are not involved, directly or indirectly, with the operation of Class III Gaming Activities. *See* Declaration of Karina Abarca in Support of Morongo's Supplemental Brief Regarding Ripeness ¶ 3. As a consequence, because Compact §§ 12.2(f) (remedies for discrimination), 12.2(k) (State minimum wage), and 12.5 (State income tax withholding)[6] apply to *all*

[6] With the exception of Tribal Members residing on the Morongo Reservation.

Gaming Operation employees, not just Gaming Employees, these provisions extend the Compact's reach to employees whose duties are unrelated to the actual operation of Class III Gaming Activities; to the extent they do, the provisions are inconsistent with IGRA and unenforceable. Moreover, by obligating Morongo to extend these policies to employees who should not be covered, the Compact imposes ongoing burdens on the Gaming Operation's management and administrative staff, as well as infringing on Morongo's sovereign prerogatives. These burdens will continue until the parties' rights and obligations are resolved judicially. Morongo's challenges to these disputed Compact provisions are, therefore, ripe for review.

E. Morongo's Challenge to the Tribal Labor Relations Ordinance Requirement is Ripe for Review (Count 16)

Compact § 12.9 requires that Morongo adopt the specific Tribal Labor Relations Ordinance ("TLRO") attached as Exhibit B to the Compact, and conditions Morongo's right to continue operating Class III gaming on its having done so.

The TLRO effectively deprives Morongo of certain of its important rights as an "employer" under applicable federal law, rights that are essential to making decisions about labor-management relations that are consistent with the needs of Morongo's government and its customs and traditions. Moreover, as noted above, under the TLRO, Morongo citizens could be required to join or pay fees to a labor union in order to be employed or continue working in the Gaming Facility or for the Gaming Operation as a whole. On any given day, without having been authorized to represent a single Gaming Operation or Gaming Facility employee, a private labor organization could invoke the TLRO and trigger a series of events that could proceed without regard either for the Tribal government's need for revenues or Morongo's customary decision-making process.[7]

[7] Under TLRO § 13(c), if a union has served a Notice of Intent to Organize and agreed not to

This threat is real and ongoing, making Morongo's dispute about the binding effect of the TLRO ripe for adjudication.

IV. CONCLUSION

The Court should find that the disputed Counts in Morongo's Complaint are ripe for adjudication. On the merits, Morongo's claims challenging the legality of the disputed Compact provisions arise under the Compact. Therefore, the Court should deny the Motion to Dismiss.

Dated: November 26, 2025

RESPECTFULLY:

By: Jay Shapiro

Jay B. Shapiro
Forman Shapiro & Rosenfeld LLP
Attorneys for Plaintiff Morongo Band of Mission Indians

---

strike, collective bargaining impasses not resolved within 120 days (including 30 days of mediation) are to be resolved on the merits by the "mediator."

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Form CV-141. Certificate of Compliance

Case Number(s) 5:25-cv-01098-SSS-SP

I am the attorney or self-represented party.

This brief contains 5,064 **words**, excluding the items exempted by Local Civil Rule 11-6.1.

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

- ● complies with the word limit of L.R. 11-6.1.
- ○ complies with the word limit designated by court order dated _____.
- ○ complies with the page limit of L.R. 11-6.1 as a typewritten or handwritten brief.

Signature s/Jay Shapiro **Date** November 26, 2025
(use "s/[typed name]" to sign electronically-filed documents)