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8 **United States District Court**
9 **for the Eastern District of California**

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BISHOP PAIUTE TRIBE, a federally
12 recognized Indian tribal government,

13 Plaintiff,
14 vs.

15 GAVIN NEWSOM, Governor of the State of
16 California, and the STATE OF
17 CALIFORNIA,

18 Defendants.
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) Case No.

) **COMPLAINT FOR DECLARATORY**
) **AND INJUNCTIVE RELIEF**

) **25 U.S.C. § 2710(d)**
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21 **INTRODUCTION**

22 1. The Bishop Paiute Tribe (“Bishop” or “Tribe”), a federally recognized Indian tribal
23 government, brings this lawsuit against the Governor of the State of California (“Governor”) and
24 the State of California (“California”), for failure to negotiate in good faith as required by the
25 Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* (“IGRA”).
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27 2. Congress’ primary purpose in IGRA was to “provide a statutory basis for the operation
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3 of gaming by Indian tribes as a means of promoting tribal economic development,
4 self-sufficiency, and strong tribal governments.” 25 U.S.C. § 2702(1).
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6 3. Bishop’s Gaming Operation¹ serves this primary federal purpose by generating vital
7 revenues that enable the Tribe to provide essential governmental programs and services for its
8 members, including in the areas of education, health care, cultural preservation, elder care, head
9 start, child welfare, crisis counseling, court advocacy, environmental protection, victim
10 assistance, and substance abuse recovery. Tribal gaming revenues also enable Bishop to fund
11 Tribal government departments including Social Services, Family Formation, Human Resources,
12 Public Works, Historic Preservation, Tribal Employment Rights Office, Tribal Court and Tribal
13 Police. The Tribe's Gaming Operation also provides much needed employment, both on the
14 Reservation and in Inyo County generally. While gaming revenues have helped the Tribe to meet
15 many of its members' needs and progress toward self-sufficiency, a great deal of work remains to
16 address the badges and incidents of the "violence, exploitation, dispossession and the attempted
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20 ¹The capitalized terms “Gaming Operation”, “Gaming Activities” and “Gaming Facility”
21 in this Complaint refer to those terms as defined in the Tribe’s 1999 Compact, section 2, unless
22 otherwise stated. “Gaming Activities” “means the Class III gaming activities authorized under
23 this Gaming Compact.” 1999 Compact § 2.4. “Gaming Facility” “means any building in which
24 Class III gaming activities or gaming operations occur, or in which the business records, receipts,
25 or other funds of the gaming operation are maintained (but excluding offsite facilities primarily
26 dedicated to storage of those records, and financial institutions), and all rooms, buildings, and
27 areas, including parking lots and walkways, a principal purpose of which is to serve the activities
28 of the Gaming Operation, provided that nothing herein prevents the conduct of Class II gaming
(as defined under IGRA) therein.” *Id.* § 2.8. “Gaming Operation” “means the business
enterprise that offers and operates Class III Gaming Activities, whether exclusively or
otherwise.” *Id.* § 2.9.

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3 destruction of tribal communities" by the State, among others, which Defendant Governor
4 Newsom acknowledged, and for which he apologized on behalf the State, last year. *See*
5 Executive Order N-15-19 (June 18, 2019).
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7 4. Although IGRA requires Tribal-State Gaming Compacts to regulate tribal Class III
8 gaming activities, Congress never intended IGRA's compact requirement to allow States to
9 impose their non-gaming polices and laws on Indian tribes. Indeed, to the contrary, IGRA's
10 legislative history expressly asserts that "[t]he Committee does not intend that compacts be
11 used as a subterfuge for imposing State jurisdiction on tribal lands." S. REP. 100-446, at 13-
12 14 (1988), reprinted in 1988 U.S.C.C.A.N. 3071, 3083-84) (emphasis added) (quoted in *In re*
13 *Indian Gaming Related Cases*, 331 F.3d 1094, 1109 (9th Cir. 2003)). As the Ninth Circuit has
14 held, IGRA "limit[ed] the proper topics for compact negotiations to those that bear **a direct**
15 **relationship** to the operation of gaming activities" *In re Indian Gaming Related Cases*, 331
16 F.3d at 1111 (emphasis added). This limitation on the scope of permissible compact subjects
17 established "boundaries to restrain aggression by powerful states." *Rincon Band v.*
18 *Schwarzenegger*, 602 F.3d 1019, 1027 (9th Circ. 2010) (citing statement of Sen. John McCain).
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21 5. Despite the Senate Committee's explicit assertion that states may not use compact
22 negotiations as a subterfuge for imposing state law on tribes, the State of California has
23 consistently sought to do for years. In over five years of compact negotiations, the State
24 consistently has sought to impose a wide range of its non-gaming policies and laws on the Tribe,
25 directly contravening IGRA's plain language and Congress' intent.
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3 6. This case does *not* challenge the merits of the State’s non-gaming policy goals.
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5 Indeed, the Tribe shares many of the State’s governmental concerns with respect to subjects
6 ranging from protecting the environment to creating and preserving jobs. The issue here is this:
7 the State has every right to seek to advance its public interests in areas that are not directly
8 related to the regulation of tribal gaming, but it may *not* do so in the context of Tribal-State
9 gaming compact negotiations under IGRA. As the Ninth Circuit has held, “the only *state*
10 interests mentioned in [IGRA] § 2702 are protecting against organized crime and ensuring that
11 gaming is conducted fairly and honestly.” *Rincon Band of Luiseño Mission Indians of Rincon*
12 *Reservation v. Schwarzenegger*, 602 F.3d 1019, 1034 (9th Cir. 2010) (emphasis in original).
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14 7. IGRA’s legislative history confirms the statute’s plain meaning. “[T]here should be
15 *no balancing of State public policy and interest* when they conflict with tribal rights except
16 where expressly provided in this bill.” S. Rep. No. 446, 100th Cong., 2d Sess. 6 (1988),
17 *reprinted in* 1988 U.S.C.C.A.S.N. 3071 (Sen. Evans). Senate Indian Affairs Chairman Senator
18 Daniel Inouye explained that “[t]here is *no intent on the part of Congress* that the compacting
19 methodology be used *in such areas as taxation, water rights, environmental regulation, and*
20 *land use* The exigencies caused by the rapid growth of gaming in Indian country and the
21 threat of corruption and infiltration by criminal elements in class III gaming warranted the
22 utilization of existing State regulatory capabilities *in this one narrow area*.” 134 Cong. Rec.
23 S12643-01, at S12651 (1988) (statement of Sen. Inouye) (emphasis added) (*quoted in Rincon*
24 *Band*, 602 F.3d at 1029. Senator Inouye sponsored IGRA. *See*
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3 <https://www.congress.gov/bill/100th-congress/senate-bill/555>. The Secretary of the Interior has
4 expressly cited this legislative history in disapproving proposed Tribal-State Gaming Compacts.
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6 *See, e.g.*, Stockbridge-Munsee Disapproval Letter at fn. 2 (Feb. 18, 2011) (*available at*
7 <https://www.bia.gov/sites/bia.gov/files/assets/public/pdf/idc013173.pdf>).

8 8. Bishop seeks this Court’s order declaring that the Governor and California
9 (collectively the “State” or “Defendants”) violated IGRA by failing to negotiate in good faith to
10 conclude a Tribal-State class III gaming compact. The State’s lack of good faith is manifest in its
11 insistence, expressed continuously and without exception over five years of negotiations, that the
12 new or amended compact that Bishop requires to be able to operate gaming include subjects that
13 are beyond the scope of what IGRA allows in compacts, and in its failure to offer new,
14 meaningful consideration therefore.
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17 9. This Complaint respectfully seeks this Court’s order: (1) finding that the State’s
18 uncompromising insistence on including matters beyond the scope of permissible compact
19 subjects in Bishop’s new or amended compact did not meet IGRA’s standard for good faith
20 negotiations, *see* 25 U.S.C. § 2710(d)(3)-(7) ; (2) ordering the State and the Tribes to resume
21 compact negotiations and conclude a replacement compact within 60 days, *see* 25 U.S.C. §
22 2710(d)(7)(B)(iii); (3) if such negotiations do not result in a compact, appointing a mediator to
23 select the compact that best comports with IGRA, *see* 25 U.S.C. § 2710(d)(7)(B)(iv-vi); and (4)
24 if a compact is not thereby achieved, ordering the mediator to notify the Secretary of Interior to
25 promulgate procedures in lieu of a compact. *See* 25 U.S.C. § 2710(d)(7)(B)(vii).
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JURISDICTION

10. This Court has jurisdiction pursuant to:

(a) 28 U.S.C. § 1331 because this case arises under the Constitution and laws of the United States, specifically 25 U.S.C. § 2710(d)(7);

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

(c) 25 U.S.C. § 2710(d)(7)(A)(i) because this case is brought by a federally recognized Indian tribe against a State alleging that the State has not negotiated with the Tribe to conclude a Tribal-State Compact in good faith.

11. The State has waived its sovereign immunity to this lawsuit: “[T]he State of California also submits to the jurisdiction of the courts of the United States in any action brought against the state by any federally recognized California Indian tribe asserting any cause of action arising from the state's refusal to enter into negotiations with that tribe for the purpose of entering into a different Tribal-State compact pursuant to IGRA or to conduct those negotiations in good faith, the state's refusal to enter into negotiations concerning the amendment of a Tribal-State compact to which the state is a party, or to negotiate in good faith concerning that amendment” Cal. Gov't Code § 98005.

VENUE

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the Defendants

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3 reside within this District, a substantial part of the events or omissions giving rise to the Tribes'
4 claims occurred in this District, and a substantial part of property that is the subject of the action
5 is situated withing this District.
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7 **CASE OR CONTROVERSY**

8 13. An actual case or controversy exists between Bishop and the State. After negotiating
9 for more than five years, the parties have been unable to resolve their disagreement about
10 whether the subjects that the State has sought to negotiate over and insists on including in a
11 compact are, or are not, proper subjects of Tribal-State compact negotiations under IGRA.
12 Bishop contends that the State's ongoing insistence, over the past five years and continuing
13 through today, that the Tribe negotiate over subjects beyond the scope of those IGRA authorizes
14 to be included in compacts in 25 U.S.C. § 2710(d)(3), without the State offering Bishop in
15 exchange any meaningful concessions benefitting the Tribe as to something the State was
16 otherwise not required to negotiate, fails to satisfy the State's obligation under IGRA to negotiate
17 in good faith. The State, by contrast, contends that it may require the Tribe to negotiate for, and
18 include in a compact, such subjects, and that it need not offer such meaningful consideration.
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22 **THE PARTIES**

23 14. Plaintiff Bishop Paiute Tribe is a federally recognized Indian tribe within IGRA's
24 meaning. *See* 25 U.S.C. § 2703(5); 84 Fed. Reg. 1200, 1201 (Feb. 1, 2019) (listing tribes with
25 which the United States has a "government-to-government relationship" published pursuant to
26 Section 104 of the Act of November 2, 1994 (Pub. L. 103-454; 108 Stat. 4791, 4792)).
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3 15. Bishop is the beneficial owner of the Bishop Paiute Reservation (“Reservation”)
4 consisting of approximately 872.43 acres of land held in trust for the Tribe’s benefit by the
5 United States, which is “Indian land” within the meaning of IGRA, 25 U.S.C. § 2703(4), and
6 which is located within the exterior boundaries of Inyo County, California.
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8 16. Defendant Gavin Newsom is the duly-elected Governor and chief executive officer of
9 the State and is sued in his official capacity. The Governor is authorized by State law to enter
10 into compact negotiations, reach agreement, and execute compacts with tribes pursuant to IGRA.
11 *See* Cal. Gov’t Code § 98002.
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13 17. Defendant the State of California is a State of the United States within the meaning
14 of IGRA.
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16 **THE INDIAN GAMING REGULATORY ACT**

17 18. Congress enacted IGRA to “provide a statutory basis for the operation of gaming by
18 Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong
19 tribal governments.” 25 U.S.C. § 2702(1). Congress also intended IGRA to “provide a statutory
20 basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime
21 and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the
22 gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator
23 and the players.” *Id.* § 2702(1). Finally, Congress established the federal Indian Gaming
24 Commission (“NIGC”) as an independent federal regulatory authority. *See id.* § 2702(3).
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26 19. Congress divided Indian gaming into three classes, with different regulatory structures
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3 for each. Class I gaming includes traditional tribal games for prizes of minimal value connected
4 with tribal ceremonies or celebrations, and is regulated by the tribes. *See id.* at § 2703(6). Class
5 II gaming includes bingo and similar games, as well as certain non-banked card games. *See id.* at
6 § 2703(7)(A). Class II gaming is regulated by the tribes and the NIGC. Class I and II gaming are
7 not at issue in this case.
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10 20. Class III gaming includes “all forms of gaming that are not class I gaming or class II
11 gaming,” including slot machines (referred to in the 1999 Compact as “Gaming Devices”) and
12 house banked games such as blackjack. *Id.* at § 2703(8). IGRA provides that Class III gaming is
13 regulated pursuant to Tribal-State gaming compacts. Specifically, IGRA provides that Class III
14 gaming is lawful when: (1) conducted on Indian lands; (2) pursuant to a tribal gaming ordinance
15 that meets IGRA’s requirements that is approved by the NIGC Chairman; (3) is located in a State
16 that permits the activity; (4) and is “conducted in conformance with a Tribal-State compact
17 entered into by the Indian tribe and the State ... that is in effect.” *Id.* at § 2710(d)(1). This case
18 concerns IGRA’s compact provisions for Class III gaming.
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20 21. Exercising Congress’ plenary powers over Indian affairs, IGRA preempted whatever
21 jurisdiction the State may previously have had to apply its laws to the Tribe’s gaming on its
22 Reservation. *See* S. Rep. No. 446, 100th Cong., 2d Sess. 6 (1988), *reprinted in* 1988
23 U.S.C.C.A.S.N. 3071 (“...[t]his bill should be construed as an explicit preemption of the field of
24 gaming in Indian County”) (Sen. Evans). Rather, under IGRA, Class III gaming is subject only
25 to tribal law and a compact negotiated between the Tribe and the State.
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3 22. IGRA provides that the Tribe may request the State to enter into negotiations for a
4 compact that regulates Class III gaming activities on the Tribe’s Indian lands. Upon receiving
5 the Tribe’s request, the State “shall negotiate with the Indian tribe in good faith to enter into such
6 a compact.” *Id.* at § 2710(d)(3)(A). Compacts take effect upon publication of approval by the
7 Secretary of Interior in the Federal Register. *See id.* at § 2710(d)(3)(B).
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9 23. Importantly for this case, IGRA expressly enumerates the subjects that may be
10 included in compacts negotiated between tribes and states for the purpose of “governing gaming
11 activities on the Indian lands of the Indian tribe,” *id.* § 2710(d)(3)(B):
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13 “Any Tribal-State compact negotiated ... may include provisions relating to:

14 (i) the application of the criminal and civil laws and regulations of the Indian tribe or the
15 State that are *directly related to, and necessary for, the licensing and regulation of such*
16 *activity*;

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18 (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe
19 necessary for the enforcement of *such laws and regulations*;

20 (iii) the assessment by the State of such activities in such amounts as are *necessary* to
21 defray the costs of *regulating such activity*;

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23 (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts
24 assessed by the State for comparable activities;

25 (v) remedies for breach of contract;

26 (vi) *standards for the operation of such activity and maintenance of the gaming*
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3 *facility, including licensing*; and

4 (vii) any other subjects that are *directly related to the operation of gaming activities.*"

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6 *Id.* § 2710(d)(3)(C) (emphasis added).

7 24. IGRA provides that except for assessments "that are necessary to defray the costs of
8 regulating such activity," *id.* at § 2710(d)(3)(C)(iii), "nothing in this section shall be interpreted
9 as conferring upon a State or any of its political subdivisions authority to impose any tax, fee,
10 charge, or other assessment upon an Indian tribe No State may refuse to enter into the
11 negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its
12 political subdivisions, to impose such a tax, fee, charge, or other assessment." *Id.* § 2710(d)(4).

13 "The court ... shall consider any demand by the State for direct taxation of the Indian Tribe or any
14 Indian lands as evidence that the State has not negotiated in good faith." *Id.* §
15 2710(d)(7)(B)(iii)(II).

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18 25. The State's insistence on including in a compact terms that are not within the scope
19 of the seven subjects listed in Section 2710(d)(3)(C) constitutes a failure to engage in good faith
20 negotiation in violation of Section 2710(d)(3)(A).

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22 26. IGRA grants federal courts subject matter jurisdiction over tribal lawsuits against
23 states for failing to negotiate in good faith. 25 U.S.C. § 2710(d)(7)(A)(i). Congress provided
24 that the "burden of proof shall be upon the State to prove that the State has negotiated with the
25 Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming
26 activities." *Id.* § 2710(d)(7)(B)(ii)(II). Congress intended that the Court should "interpret any
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3 ambiguities on these issues in a manner that will be most favorable to tribal interests.” S. Rep.
4 No. 100-446, at 15 (1988), *reprinted in* 1988 U.S.C.C.A.N. 3071, 3085 (*quoted in In re Indian*
5 *Gaming Related Cases*, 331 F.3d 1094, 1111 (9th Cir. 2003)). If the court finds that the state
6 failed to negotiate in good faith, the court “shall order” the state and tribe to conclude a compact
7 within 60 days. 25 U.S.C. § 2710(d)(7)(B)(iii). If the parties do not reach an agreement within
8 60 days, they submit their last best offers to a court-appointed mediator, who chooses the
9 proposed compact that “best comports” with IGRA. 25 U.S.C. § 2710(d)(7)(B)(iv). If the state
10 does not consent to the proposed compact chosen by the mediator, the Secretary is notified. The
11 Secretary is then required to issue regulations consistent with the selected proposal for the
12 conduct of class III gaming on the reservation by the tribe. 25 U.S.C. § 2710(d)(7)(B)(vii).

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15 **THE BISHOP TRIBE’S GAMING ACTIVITIES AND**
16 **COMPACT NEGOTIATIONS UNDER IGRA**

17 27. Bishop re-alleges each of the allegations in paragraphs 1-26 above and by this
18 reference incorporates each such allegation as if fully set forth herein.

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20 28. In 1999, Bishop entered into a Class III Tribal-State Gaming Compact with the State
21 (the “1999 Compact”). The 1999 Compact was ratified by the State Legislature, *see* Cal. Gov’t
22 Code § 12012.25(a)(6), and approved by the Assistant Secretary–Indian Affairs pursuant to
23 IGRA. *See* 65 Fed. Reg. 31189 (May 16, 2000).

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25 29. The 1999 Compact initially was to terminate December 31, 2020. *See* 1999 Compact
26 § 11.2.1(a). If the 1999 Compact is not renegotiated, amended or superceded by a new compact,
27 that termination date is automatically extended to June 30, 2022, pursuant to the terms of

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3 Addendum A to the 1999 Compact, Modification No. 4 modifying section 11.2.1(a). The State
4 has acknowledged the modified terminate date of June 30, 2022.
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6 30. At all times relevant to the subject matter of this Complaint, Bishop has owned and
7 operated a Gaming Operation on its Reservation, pursuant to the 1999 Compact, IGRA, and
8 Tribal law.

9 31. Bishop formally requested that the State enter into negotiations for a new or amended
10 compact by letter dated February 19, 2014.
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12 32. On or about March 17, 2014, Bishop joined other tribes, with virtually identical 1999
13 compacts, to negotiate an amended or new compact with the State. The committee formed to
14 conduct these negotiations on behalf of the tribes was called the “1999 Compact Tribes Steering
15 Committee,” abbreviated and commonly referred to as the “CTSC.”
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17 33. Bishop, as a member of the CTSC, began compact negotiations with the State on or
18 about January 21, 2015. Bishop’s last formal negotiation with the State occurred on or about
19 April 23, 2020. Bishop, together with the CTSC, conducted no less than 45 individual, separate
20 days of compact negotiations with the State over that five-plus year period. In addition to those
21 45 days of negotiations, Bishop, together with the CTSC, also conducted numerous additional
22 “sub-committee” negotiation sessions with the State, addressing single subjects such as gaming
23 regulation and environmental issues.
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25 34. The Tribe does *not* allege that the State was literally unwilling, in a narrow sense, to
26 continue to meet and negotiate. Indeed, the State would be happy to continue to meet and
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3 negotiate indefinitely, in futile, meaningless negotiations, until the Tribe's 1999 Compact expires
4 on June 30, 2022. The Tribe would then either be forced to capitulate to the State's unilateral
5 terms, including its insistence on imposing on the Tribe numerous State laws and policies that
6 are unrelated to gaming, or lose the right to continue conducting Class III Gaming Activities. In
7 the context of the 1999 Compact's pending expiration, the State's continued disregard of IGRA's
8 express provisions enumerating the proper subjects for compacts, and its failure to offer
9 meaningful concessions in exchange for the Tribe negotiating over subjects not included in
10 IGRA's scope, constitute the State's failure to negotiate in good faith.
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13 35. More than 180 days have passed since the date on which Bishop requested that the
14 State enter into compact negotiations.

15 36. Despite Bishop's willingness to engage in these extensive negotiations, its five-plus-
16 years-long negotiations failed to result in a mutually acceptable compact because the State:
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18 a. consistently insisted on negotiating over and incorporating into a new or
19 amended compact terms and policies that are not proper subjects of compact negotiation under
20 IGRA because they do not establish standards for the operation of Gaming Activities or
21 maintenance of the Gaming Facility, or are not otherwise directly related to the operation of
22 Gaming Activities;
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24 b. failed to substantively respond to the Tribe's repeated objections to the State's
25 insistence on negotiating and including in a compact such Non-Statutory Subjects; and
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27 c. failed to offer meaningful consideration to the Tribe, beyond what was offered
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3 in the 1999 Compact, in exchange for the Tribe negotiating over such Non-Statutory Subjects.

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5 37. While IGRA does not define “Gaming Activities,” the Supreme Court has given the
6 phrase a plain meaning definition as “...what goes on in a casino – each roll of the dice and spin
7 of the wheel.” *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 783 (2014). This
8 definition is consistent with section 2.4 of the 1999 Compact, defining “Gaming Activities” as
9 “the Class III gaming activity authorized under this Gaming Compact.” 1999 Compact section
10 4.1 authorizes “Gaming Devices,” “[a]ny banking or percentage card game,” and “... any devices
11 or games that are authorized under state law to the California State Lottery”
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13 38. Among the subjects, terms, and policies the State sought to impose on the Tribe in
14 compaction negotiations that are beyond the scope of gaming-related subjects permitted by
15 IGRA, and which do not address the kind of risks that Congress permitted States to address in
16 Class III gaming compacts (collectively “Non-Statutory Subjects”), are the following:
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18 a. Insistence on extending the State's environmental laws to Bishop's Reservation,
19 and requiring negotiation and arbitration of binding and enforceable mitigation agreements with
20 the State’s political subdivisions and agencies;

21 b. Payment by Bishop into the Special Distribution Fund (“SDF”) of more than is
22 necessary to defray the State's necessary costs of regulating Bishop’s Gaming Activities;

23 c. An overly broad definition of “Gaming Facility” that would result in State
24 regulation, though the compact, of structures, areas and improvements in which no Gaming
25 Activities occur;
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3 d. An overly broad definition of “Gaming Operation” that would result in State
4 regulation, through the compact, of activities or functions that are not, themselves, Gaming
5 Activities, or are not directly related to or necessary for the operation or regulation of Gaming
6 Activities or the maintenance of gaming facilities;
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8 e. Requiring Bishop to forfeit the benefits Congress has enacted for Indian Tribes –
9 by excluding them from the definition of “employer” in both 42 U.S.C. §§ 2000e(b) (Title VII)
10 and 12111(5)(b) (Americans with Disabilities Act) -- by: (i) seeking to require Bishop to enact an
11 ordinance regulating the Tribe’s employment relationship with its employees with respect to
12 workplace discrimination, harassment and retaliation; (ii) creating money damages remedies
13 against the Tribe; and (iii) requiring Bishop to carry millions of dollars in employment practices
14 insurance;
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16 f. Generally prohibiting Bishop’s Gaming Operation from cashing various kinds of
17 checks;
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19 g. Requiring compliance with California's minimum wage law and regulations for all
20 Tribal employees at the Gaming Operation, including for employees not directly involved in the
21 operation or regulation of Gaming Activities or the maintenance of Gaming Facilities;
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23 h. Requiring Bishop to carry \$10 million in liability insurance, and to waive its
24 sovereign immunity to, and create remedies in money damages for, claims for personal injury,
25 bodily injury or property damage sustained on the Reservation, including injuries allegedly
26 sustained while not participating in Gaming Activities;
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3 i. Requiring Bishop to withhold and pay over to the State income taxes from the
4 wages of all non-tribal employees at the Gaming Operation;

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6 j. Requiring Bishop to enact an ordinance or otherwise requiring Bishop to honor
7 California State court spousal and child support orders directed at all employees at the Gaming
8 Operation;

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10 k. Requiring Bishop to enact a new Tribal Labor Relations Ordinance dictated by the
11 State, thereby subjecting Bishop to a labor relations regime unlike that applicable to any other
12 non-Tribal California employer over which the National Labor Relations Board asserts
13 jurisdiction, the subject matter of which is preempted by the National Labor Relations Act;

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15 l. Insistence on defining "Gaming Employees" to include Tribal employees at the
16 Gaming Operation having no direct involvement in the operation or regulation of Gaming
17 Activities;

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19 m. Requiring potential payment into the Revenue Sharing Trust Fund ("RSTF") of
20 more than is needed to distribute up to \$1.1 million per year to each federally recognized
21 California Indian Tribe operating fewer than 350 Gaming Devices; and

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23 n. Allocation of any surplus in the RSTF to the State's Tribal Nations Grant Fund
24 ("TNGF") for "discretionary distribution," Cal. Gov't Code § 12019.35(b), for purposes that,
25 while potentially laudable, are not "necessary to defray the costs of regulating" Bishop's Gaming
26 Activities. 25 U.S.C. § 2710(d)(3)(C)(iii).

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28 39. The State has, over these more than five years of negotiations, been unwilling to

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3 negotiate and conclude a compact that did not include each of these Non-Statutory Subjects.

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5 40. Because, as a practical matter, the Tribe's time to resolve this dispute was running
6 out, including as alleged herein including in paragraph 34 above, on or about July 28, 2020,
7 Bishop presented the State with Bishop's last, best offer of a new compact. The State declined to
8 accept the Tribe's offer.

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10 41. During the more than five years of compact negotiations, the State never offered
11 Bishop any meaningful consideration benefitting the Tribe as to something the State was
12 otherwise not required to negotiate, in exchange for the Tribe's agreement to include in its
13 compact one or more of the Non-Statutory Subjects.

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16 **CLAIM FOR RELIEF**

17 **For the State's Failure to Negotiate in Good Faith**
18 **25 U.S.C. § 2710(d)(3)**

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20 42. Bishop re-alleges each of the allegations in paragraphs 1-41 above and by this
reference incorporates each such allegation as if fully set forth herein.

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22 43. IGRA sets forth the proper subjects that may be included in Tribal-State gaming
23 compacts. The Non-Statutory Subjects are beyond the scope of those permissible subjects for
inclusion in compacts.

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25 44. Never in the five years of compact negotiations with Bishop has the State offered any
26 meaningful consideration in exchange for any concession by the Tribe as to any Non-Statutory
27 Subject the State has demanded be included in a new or amended compact.

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3 45. The State's insistence that Bishop include Non-Statutory Provisions in any new or
4 amended compact, without offering meaningful consideration therefore as described above,
5 violates IGRA's limits on the scope of permissible compact subjects, and constitutes the State's
6 failure to conduct compact negotiations in good faith within the meaning of IGRA, 25 U.S.C. §
7 2710(d)(7)(A)(i).
8

9 46. The State and Bishop have an actual controversy regarding the State's good faith, or
10 lack thereof, with respect to compact negotiations under IGRA.
11

12 **COUNT ONE**

13 **The State's Uncompromising Insistence On Extending Its Environmental Laws**
14 **To Bishop's Reservation and Requiring Bishop to Negotiate a Binding**
15 **Inter-Governmental Agreement with Inyo County**
as a Precondition to Building a Project on the Reservation

16 47. Bishop re-alleges each of the allegations in paragraphs 1-46 above and by this
17 reference incorporates each such allegation as if fully set forth herein.
18

19 48. In enacting IGRA, Congress did not intend that the compacting process be used by
20 States to extend their jurisdiction regarding non-gaming matters on Indian tribes acting on Indian
21 lands, such as by imposing State environmental laws or policies in Tribal-State Gaming
22 Compacts. *See In re Indian Gaming Related Cases*, 331 F.3d 1094, 1109 (9th Cir. 2003)
23 (*quoting* S. REP. 100-446, at 13-14 (1988), *reprinted in* 1988 U.S.C.C.A.N. 3071, 3083-84).
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25 49. Bishop's 1999 Compact requires it to adopt an ordinance mandating that the Tribe
26 prepare, circulate and consider environmental impact reports and public comments thereon
27 concerning potential off-Reservation environmental impacts of projects commenced on or after
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3 the 1999 Compact's effective date. *See* 1999 Compact § 10.1. The 1999 Compact also requires
4 Bishop to make a good faith effort to incorporate the policies and purposes of the National
5 Environmental Policy Act and the California Environmental Quality Act consistent with Bishop's
6 governmental interests. *See id.*
7

8 50. In return for Bishop's agreement to include these non-gaming obligations in its 1999
9 Compact, the State offered Bishop material consideration of unique value to the Tribe on an issue
10 about which the State was not otherwise obligated to negotiate. That meaningful consideration
11 was an amendment to the California Constitution allowing the Governor to negotiate, and the
12 Legislature to ratify, Tribal-State Compacts authorizing federally-recognized California Indian
13 tribes the right, exclusive of all other persons and entities, to operate on their Indian lands slot
14 machines, banked and percentage card games, and games and devices authorized to the
15 California State Lottery.
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18 51. Since its 1999 Compact took effect more than 20 years ago, Bishop has fully
19 complied with its environmental obligations thereunder. Reflecting that fact, the State has never
20 alleged that Bishop has failed to comply with section 10.8.1 or any other provision of the 1999
21 Compact. Nor has the State ever alleged that section 10.8 is inadequate to protect the
22 off-Reservation environment from significant adverse impacts resulting from Bishop's projects,
23 or that the State needs to renegotiate the 1999 Compact to ensure Bishop's adequate mitigation
24 of significant adverse off-Reservation impacts. Nor has the State ever alleged at any time over
25 the past two decades that Bishop's Gaming Facility is located in an unusually environmentally
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3 sensitive area, such that future projects may have unusual off-Reservation environmental impacts
4 meriting mitigation measures beyond those provided for in the 1999 Compact.
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6 52. Throughout the past five years of compact negotiations, the State has insisted that a
7 new or amended Compact include substantial provisions requiring Bishop to agree to a wide
8 range of new and far more extensive and burdensome obligations – as compared to the 1999
9 Compact – addressing off-Reservation environmental issues. The State has taken this position
10 without offering any Bishop-specific justification or meaningful consideration benefitting the
11 Tribe as to something the State was otherwise not required to negotiate. The State’s new
12 demands include, *inter alia*, that:
13

14 (a) prior to embarking on any on-Reservation project, the Tribe negotiate, and if
15 necessary arbitrate, the terms of binding and enforceable intergovernmental agreements to
16 mitigate all off-Reservation environmental impacts alleged by Inyo County (and potentially other
17 State political subdivisions and agencies) to be related, in whole or in part, to the Tribe’s on-
18 reservation projects; and
19

20 (b) the Tribe implement mitigation measures unilaterally mandated by Inyo
21 County (and potentially by other State political subdivisions and agencies), including the
22 expenditure of funds by the Tribe and/or payments by the Tribe of fees, charges or assessments to
23 implement such unilateral mitigation measures; and
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25 (c) the Tribe enact a new off-Reservation environmental ordinance that
26 incorporates the State’s environmental interests, even if they are not directly related to and
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3 necessary for the regulation and licensing of Bishop's Gaming Activities, and even if they do not
4 establish standards for the operation of Gaming Activities or maintenance of Gaming Facilities,
5 or otherwise are not directly related to the operation of Gaming Activities; and
6

7 (d) the Tribe perform a detailed and public analysis, exceeding the scope of the
8 1999 Compact's requirements, regarding the potential significant effects of a proposed on-
9 Reservation project on the off-Reservation environment.
10

11 53. The State's new mandatory off-Reservation environmental demands are not directly
12 related to and necessary for the regulation and licensing of Bishop's Gaming Activities. They do
13 not establish standards for the operation of Bishop's Gaming Activities or maintenance of
14 Bishop's Gaming Facility, nor are they otherwise directly related to the operation of Bishop's
15 Gaming Activities. Thus they are not a proper subject of negotiation under IGRA.
16

17 54. The State's insistence that Bishop's Compact include a requirement that the Tribe
18 negotiate one or more intergovernmental agreements with political subdivisions and/or agencies
19 of the State contravenes IGRA's requirement – and Congress' intent – that the Tribe negotiate
20 with the State for Class III gaming compacts. Inyo County and other political subdivisions and
21 agencies of the State will inevitably demand non-gaming-related financial payments from the
22 Tribe as a prerequisite to the Tribe's ability to engage in development on its federal Indian lands.
23 The State's insistence that the Tribe's Compact include other intergovernmental agreements with
24 State political subdivisions and/or agencies constitutes the imposition of an impermissible
25 assessment prohibited by IGRA, 25 U.S.C. § 2710(d)(4), and is not directly related to and
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3 necessary for the regulation and licensing of Bishop's Gaming Activities. It does not establish
4 standards for the operation of Bishop's Gaming Activities or maintenance of Bishop's Gaming
5 Facility, nor is it otherwise directly related to the operation of Bishop's Gaming Activities. Thus
6 it is not a proper subject of negotiation under IGRA.
7

8 55. The State's uncompromising insistence on including such provisions in a Compact –
9 or, put another way, its unwillingness to enter into a Compact that does not include them –
10 without offering any new meaningful consideration to Bishop in exchange therefore, constitutes
11 the State's failure to negotiate in good faith.
12

13 **COUNT TWO**

14 **The State's Uncompromising Insistence That Bishop Pay More**
15 **into the Special Distribution Fund Than Is Necessary to**
16 **Defray the Costs of Regulating Gaming Activity**

17 56. Bishop re-alleges each of the allegations in paragraphs 1-55 above and by this
18 reference incorporates each such allegation as if fully set forth herein.

19 57. Throughout Bishop's negotiations for a new or amended Compact, the State insisted
20 that Bishop pay more into the SDF than is necessary to reimburse the State for its actual and
21 reasonable costs that are directly related to regulation of Bishop's Gaming Activities.
22

23 58. By insisting that Bishop pay fees that exceed what is necessary to defray the
24 State's costs of exercising its regulatory authority under a new or amended Compact, *see* 25
25 U.S.C. § 2710(d)(3)(C)(iii), the State seeks to impose a "tax, fee, charge or other assessment" on
26 Bishop's Gaming Activities. *Id.* at § 2710(d)(4). The Court "shall consider any demand by the
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3 State for direct taxation of the Indian tribe ... as evidence that the State has not negotiated in good
4 faith.” *Id.* at § 2710(d)(7)(B)(iii)(II). The State has failed to “conduct such [compact]
5 negotiations in good faith.” *Id.* at § 2710(d)(7)(A)(i).
6

7 **COUNT THREE**

8 **The State’s Uncompromising Insistence That "Gaming Facility"**
9 **Be Defined To Include Structures And Other Areas Of The Reservation**
10 **In Which No Gaming Activities Occur**

11 59. Bishop re-alleges each of the allegations in paragraphs 1-58 above and by this
12 reference incorporates each such allegation as if fully set forth herein.

13 60. Throughout Bishop's negotiations for a new or amended Compact, the State insisted
14 upon defining "Gaming Facility" to include not only structures in which Gaming Activities are
15 conducted, but also structures and other improvements on the Reservation in which no Gaming
16 Activities occur.
17

18 61. By insisting on including in the definition of "Gaming Facility" structures or areas of
19 the Reservation within or upon which no Gaming Activities are conducted, the State sought to
20 regulate such structures and areas through the Compact. The State's proposed regulation of
21 structures and areas in which no Gaming Activities occur is neither directly related to nor
22 necessary for the regulation and licensing of Gaming Activities, nor does it establish a standard
23 for operation of Gaming Activities or maintenance of Bishop's Gaming Facilities, nor is it
24 otherwise directly related to the operation of Gaming Activities. Thus it is not a proper subject of
25 negotiation under IGRA, and the State's uncompromising insistence on including such a provision
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3 in Bishop's Compact constituted the State's failure to negotiate in good faith.

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5 **COUNT FOUR**

6 **The State's Uncompromising Insistence on an Overbroad Definition**
7 **of "Gaming Operation" Exceeds IGRA's Scope**

8 62. Bishop re-alleges each of the allegations in paragraphs 1-61 above and by this
9 reference incorporates each such allegation as if fully set forth herein.

10 63. Throughout Bishop's negotiations for a new or amended Compact, the State insisted
11 upon defining "Gaming Operation" to include not only the actual operation of Gaming Activities
12 and activities directly related to the operation of Gaming Activities and maintenance of Bishop's
13 Gaming Facility, but also activities and areas of the Reservation that are not directly related to or
14 necessary for the regulation and licensing of Gaming Activities, or the operation of Gaming
15 Activities or maintenance of Gaming Facilities. In so doing, the State insisted on regulating
16 Bishop's non-gaming activities.
17

18 64. The State's uncompromising insistence on defining "Gaming Operation" in Bishop's
19 Compact to include activities and areas of the Reservation that are not directly related to or
20 necessary for the regulation and licensing of Gaming Activities or that establish standards for the
21 operation of Gaming Activities or maintenance of Bishop's Gaming Facilities, is beyond the scope
22 of proper subjects of negotiation under IGRA, and constitutes the State's failure to negotiate in
23 good faith.
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COUNT FIVE

The State's Uncompromising Insistence That Bishop Forfeit the Benefit of Congress' Exempting Tribes From the Definition of "Employer" in Federal Employment Statutes and Imposing Other Employment-Related Terms

65. Bishop re-alleges each of the allegations in paragraphs 1-64 above and by this reference incorporates each such allegation as if fully set forth herein.

66. Congress expressly excluded tribes from the definition of "employer" under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act. Further, federal courts have held that federally recognized Indian tribes are not subject to private lawsuits for money damages under various other federal statutes dealing with workplace discrimination.

67. Notwithstanding federal statutes excluding Bishop from the definition of "employer," and federal court decisions holding that tribes are not subject to private suit for money damages under certain federal statutes, the State insisted on including in a new or amended Compact requirements that Bishop: (i) carry \$3 million in employment practices liability insurance; (ii) enact a tribal ordinance that prohibits workplace discrimination, harassment and retaliation; and (iii) create remedies in money damages for *all* Gaming Operation employees, including employees not directly involved in the operation of Gaming Activities or maintenance of a Gaming Facility, alleging violation of the State-mandated tribal ordinance.

68. The State's uncompromising insistence that Bishop carry \$3 million in employment practices liability insurance and enact a tribal ordinance that both prohibits workplace discrimination, harassment and retaliation and creates remedies in money damages for claimants

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3 alleging such wrongful acts, including claimants not involved in Gaming Activities, neither is
4 directly related to nor necessary for the regulation and licensing of Gaming Activities, nor is it a
5 standard for the operation of Gaming Activities or maintenance of Gaming Facilities, nor is
6 otherwise directly related to the operation of Gaming Activities. Thus it is not a proper subject of
7 negotiation under 25 U.S.C. § 2710(d)(3)(C), and the State's uncompromising insistence on
8 including such a provision in a new or amended Compact constituted the State's failure to
9 negotiate in good faith.
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12 **COUNT SIX**

13 **The State's Uncompromising Insistence on Prohibiting Cashing Certain Checks**

14 69. Bishop re-alleges each of the allegations in paragraphs 1-68 above and by this
15 reference incorporates each such allegation as if fully set forth herein.
16

17 70. Throughout Bishop's negotiations for a new or amended Compact, the State insisted on
18 including a provision prohibiting Bishop's Gaming Operation from cashing any check drawn
19 against a federal, state, county, or city fund, including, but not limited to, Social Security,
20 unemployment insurance, disability payments, or public assistance payments, except for Bishop's
21 tribal members.
22

23 71. Cashing checks is not directly related to and necessary for the regulation and licensing
24 of Gaming Activities, nor is it a standard for the operation of Gaming Activities or maintenance of
25 Bishop's Gaming Facility, nor is it otherwise directly related to the operation of Gaming
26 Activities. Thus it is not a proper subject of negotiation under IGRA, and the State's
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3 uncompromising insistence on including such a provision in a new or amended Compact
4 constituted the State's failure to negotiate in good faith.
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6 **COUNT SEVEN**

7 **The State's Uncompromising Insistence That Bishop Comply with**
8 **California's Minimum Wage Law and Regulations**

9 72. Bishop re-alleges each of the allegations in paragraphs 1-71 above and by this
10 reference incorporates each such allegation as if fully set forth herein.

11 73. Although Bishop is subject to the federal Fair Labor Standards Act, throughout
12 Bishop's negotiations for a new or amended Compact, the State insisted on including a provision
13 requiring that Bishop comply with California's minimum wage law and implementing regulations
14 for all Gaming Operation employees.
15

16 74. California's minimum wage law and implementing regulations are not directly related
17 to and necessary for the regulation and licensing of Bishop's Gaming Activities, are not standards
18 for the operation of Gaming Activities or maintenance of Bishop's Gaming Facilities, or are not
19 otherwise directly related to the operation of Gaming Activities. Thus they are not proper subjects
20 of negotiation under IGRA, and the State's uncompromising insistence on imposing its minimum
21 wage laws and regulations on the Tribe on its federal Indian lands constituted the State's failure to
22 negotiate in good faith.
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4 **COUNT EIGHT**

5 **The State's Uncompromising Insistence That Bishop Enact a New Tort Liability Ordinance**
6 **And Procedures for Remedies for Injuries Unrelated to Gaming Activities**

7 75. Bishop re-alleges each of the allegations in paragraphs 1-74 above and by this
8 reference incorporates each such allegation as if fully set forth herein.

9 76. Throughout Bishop's negotiations for a new or amended Compact, the State insisted
10 on including provisions requiring Bishop to obtain \$10 million in liability insurance and to enact
11 an ordinance creating procedures for awarding money damages to persons claiming to have
12 sustained bodily injury, personal injury or property damage on or near Bishop's Gaming Facility,
13 whether or not under circumstances involving participation in or operation of Bishop's Gaming
14 Activities.

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16 77. Requiring the creation of remedies in money damages for bodily injury, personal
17 injury and property damage *other than* that sustained while participating in Gaming Activities or
18 caused by equipment used in conducting Gaming Activities is not a proper subject of negotiation
19 under 25 U.S.C. § 2710(d)(3)(C). Thus the State's uncompromising insistence on including such
20 a provision constituted a failure to negotiate in good faith.
21

22 **COUNT NINE**

23 **The State's Uncompromising Insistence That Bishop Collect and Remit**
24 **State Taxes On Gaming Operation Employees**

25 78. Bishop re-alleges each of the allegations in paragraphs 1-77 above and by this
26 reference incorporates each such allegation as if fully set forth herein.
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3 79. Throughout Bishop's negotiations for a new or amended Compact, the State insisted
4 on including provisions requiring Bishop to withhold and remit to the State California income
5 taxes from the wages of all non-tribal Gaming Operation and Gaming Facility employees, and file
6 with the California Franchise Tax Board a copy of any information tax return filed with the
7 Secretary of the Treasury, except for returns pertaining to the tribal members living on Bishop
8 Reservation.
9

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11 80. Withholding and remitting State income taxes is not directly related to and
12 necessary for the regulation and licensing of Bishop's Gaming Activities, is not a standard for the
13 operation of Gaming Activities or maintenance of Bishop's Gaming Facilities, and is not
14 otherwise directly related to the operation of Gaming Activities. Thus it is not a proper subject
15 of negotiation under IGRA, and the State's uncompromising insistence on including such a
16 provision constituted the State's failure to negotiate in good faith.
17

18 **COUNT TEN**

19 **The State's Uncompromising Insistence That Bishop Recognize and Enforce**
20 **State and Federal Court Child and Spousal Support Orders**
21 **or Judgments Involving Gaming Operation Employees**

22 81. Bishop re-alleges each of the allegations in paragraphs 1-80 above and by this
23 reference incorporates each such allegation as if fully set forth herein.

24 82. Throughout Bishop's negotiations for a new or amended Compact, the State insisted
25 that a new or amended Compact must include provisions requiring Bishop to recognize and
26 enforce California and federal court orders or judgments and earnings withholding orders for
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3 child or spousal support directed at all Gaming Operation employees.

4 83. Enforcement of spousal and child support obligations is not directly related to and
5 necessary for regulation and licensing of Bishop's Gaming Activities, is not a standard for the
6 operation of Gaming Activities or maintenance of Bishop's Gaming Facility, and is not otherwise
7 directly related to the operation of Gaming Activities. Thus it is not a proper subject of
8 negotiation under IGRA, 25 U.S.C. § 2710(d)(3)(C), and the State's uncompromising insistence
9 on including such a provision in a new or amended Compact constituted the State's failure to
10 negotiate in good faith.
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13 **COUNT ELEVEN**

14 **The State's Uncompromising Insistence That Bishop Enact a New,**
15 **State-dictated Tribal Labor Relations Ordinance**

16 84. Bishop re-alleges each of the allegations in paragraphs 1-83 above and by this
17 reference incorporates each such allegation as if fully set forth herein.

18 85. When Bishop's 1999 Compact took effect in May, 2000, the National Labor
19 Relations Board ("NLRB") had not yet asserted jurisdiction over tribal government Gaming
20 Activities.
21

22 86. One of the concessions that the State demanded as a condition to the State's entry
23 into the 1999 Compact was that Bishop provide the State with an "agreement or other procedure
24 acceptable to the State for addressing organizational and representational rights of Class III
25 Gaming Employees and other employees associated with Bishop's Class III gaming enterprise,
26 such as food and beverage, housekeeping, cleaning, bell and door services, and laundry employees
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3 at the Gaming Facility or any related facility, the only significant purpose of which is to facilitate
4 patronage at the Gaming Facility." 1999 Compact § 10.7.
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6 87. The only "agreement or other procedure acceptable to the State" under § 10.7 of
7 Bishop's 1999 Compact was a model Tribal Labor Relations Ordinance ("TLRO") appended to
8 the Compact, the terms of which were negotiated directly between a group of California gaming
9 tribes, including Bishop, and representatives of Organized Labor, including the California Labor
10 Federation and a number of its constituent labor unions, and facilitated through the Director of
11 the State's Office of Personnel Management and the then President Pro Tem of the State Senate,
12 John Burton.
13

14 88. As consideration for Bishop's and other tribes' agreement to adopt the model
15 TLRO, the State made a substantial concession of unique value to Bishop, in the form of an
16 amendment to Article IV, § 19 of the California Constitution that authorized the Governor to
17 negotiate and the Legislature to ratify tribal-state compacts that grant California Indian tribes the
18 exclusive right to operate on their Indian lands slot machines, banked and percentage card games,
19 and games and devices permitted by State law to the California Lottery.
20

21 89. As required by § 10.7 of its 1999 Compact, Bishop enacted the required TLRO, timely
22 submitted it to the State, and has maintained it in effect ever since.
23

24 90. The NLRB now asserts jurisdiction over tribal government gaming operations
25 pursuant to the National Labor Relations Act. *See In Re San Manuel Indian Bingo & Casino*, 341
26 NLRB 1055 (2004); *see also San Manuel Indian Bingo & Casino v. N.L.R.B.*, 475 F.3d 1306
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3 (D.C. Cir. 2007). The NLRB's assertion of jurisdiction has also been upheld by the Ninth Circuit
4 Court of Appeals. *See Pauma v. Nat'l Labor Relations Bd.*, 888 F.3d 1066 (9th Cir. 2018).
5

6 91. Although the organizational and representational rights of all of Bishop's Gaming
7 Operation employees are fully protected by the National Labor Relations Act and Bishop's 1999
8 TLRO, when Bishop's negotiations for a new or amended Compact began, the State proposed a
9 new TLRO that would deprive Bishop of some of the rights it has as an "employer" subject to the
10 NLRB's jurisdiction, expand the rights of labor organizations beyond those conferred by the
11 National Labor Relations Act, and subject Bishop to a labor relations regime unlike that
12 applicable to any other California employer.
13

14 92. Bishop consistently objected to the State's proposed new TLRO as not
15 being a proper subject for negotiation under IGRA, given that Bishop's Gaming Operation is
16 subject to the NLRB's jurisdiction. Nonetheless, in an effort to reach an agreement, and
17 contingent upon the State's offer of meaningful consideration benefitting the Tribe as to
18 something the State was otherwise not required to negotiate, Bishop joined in the CTSC's effort
19 to propose to the State a revised TLRO as a counterproposal to the State's new proposed TLRO.
20

21 93. Since first proposing its new TLRO, and despite the Tribe's repeated requests to
22 negotiate about the content of a new TLRO, the State consistently refused to engage in substantive
23 negotiations about its new proposed TLRO, and never formally responded to or was willing to
24 even negotiate about the Tribe's counterproposal for a revised TLRO. Moreover, despite repeated
25 requests, the State never explained why the model TLRO enacted pursuant to § 10.7 of the 1999
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3 Compacts is deficient in any way. Further, the State never offered any meaningful consideration
4 benefitting the Tribe as to something the State was otherwise not required to negotiate, in return
5 for Bishop's acceptance of either the State's proposed new TLRO or the tribal counter-proposal.
6

7 94. The State's uncompromising insistence on imposing upon Bishop a labor relations
8 regime unlike that applicable to any other California employer subject to the NLRB's jurisdiction,
9 and that would deprive Bishop of rights it would otherwise enjoy under the National Labor
10 Relations Act, is not necessary for and directly related to the regulation and licensing of Bishop's
11 Gaming Activities, does not establish a standard for operation of Bishop's Gaming Activities or
12 maintenance of Bishop's Gaming Facilities, and is not otherwise directly related to the operation
13 of Gaming Activities. Thus it is not a proper subject of negotiation under IGRA, and the State's
14 insistence on including such a provision in a new or amended Compact constituted the State's
15 failure to negotiate in good faith.
16
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18 **COUNT TWELVE**

19 **The State's Uncompromising Insistence on Defining "Gaming Employees" to Include**
20 **Gaming Operation Employees Having No Direct Involvement**
21 **in the Operation Or Regulation of Gaming Activities**

22 95. Bishop re-alleges each of the allegations in paragraphs 1-94 above and by this
23 reference incorporates each such allegation as if fully set forth herein.

24 96. Throughout Bishop's negotiations with the State for a new or amended Compact, the
25 State insisted on including within the definition of "Gaming Employee" personnel such as food
26 and beverage cooks and servers, hotel housekeeping employees, parking attendants and other
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3 employees whose duties would not include direct or even indirect involvement in the actual
4 operation or regulation of Gaming Activities.
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6 97. By defining "Gaming Employees" so broadly, the State would bring within the scope
7 of the Compact personnel not directly related to and necessary for the regulation and licensing of
8 Bishop's Gaming Activities, or not otherwise directly related to the operation of Gaming
9 Activities, and thus the State's definition of "Gaming Employees" goes beyond what is a proper
10 subject of negotiation under IGRA. Thus, the State's uncompromising insistence on including
11 such a broad definition of "Gaming Employees" constituted a failure to negotiate in good faith.
12

13 **COUNT THIRTEEN**

14 **The State's Uncompromising Insistence That Bishop Make Excessive Payments**
15 **into The Indian Gaming Revenue Sharing Trust Fund**

16 98. Bishop re-alleges each of the allegations in paragraphs 1-97 above and by this
17 reference incorporates each such allegation as if fully set forth herein.
18

19 99. Throughout Bishop's negotiations for a new or amended Compact, the State insisted
20 that Bishop potentially pay into the RSTF more than would be needed to distribute \$1.1 million
21 per year to each California tribe operating fewer than 350 Gaming Devices when Bishop's
22 payments, if any, are combined with other tribes' payments into the RSTF.

23 100. By insisting that Bishop potentially pay into the RSTF more than is needed to
24 distribute \$1.1 million per year to each California tribe operating fewer than 350 Gaming Devices,
25 the State seeks to impose a tax, fee or assessment on Bishop's Gaming Activities that is
26 impermissible under 25 U.S.C. § 2710(d)(4), and thus the State has failed to negotiate in good
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3 faith.

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5 **COUNT FOURTEEN**

6 **The State's Uncompromising Insistence on Including**
7 **the State-created Tribal Nations Grant Fund**

8 101. Bishop re-alleges each of the allegations in paragraphs 1-100 above and by this
9 reference incorporates each such allegation as if fully set forth herein.

10 102. Throughout Bishop's negotiations for a new or amended Compact, the State insisted,
11 over Bishop's continuing objections, that a new or amended Compact must include the
12 State-created Tribal Nations Grant Fund ("TNGF"), under which the State would unilaterally
13 move any surplus in the RSTF to the TNGF for "discretionary distribution," Cal. Gov't Code §
14 12019.35(b), a State-created administrative body for purposes that, while laudable, are not
15 "necessary to defray the costs of regulating" Bishop's Gaming Activities. 25 U.S.C. §
16 2710(d)(3)(C)(iii).
17

18 103. The TNGF is not a proper subject of negotiation under 25 U.S.C. § 2710(d)(3)(C).
19

20 104. Bishop objected throughout the negotiations that the TNGF is not a proper subject of
21 negotiation under IGRA unless the State were to offer meaningful consideration benefitting the
22 Tribe as to something the State was otherwise not required to negotiate. Nonetheless, in an
23 attempt to move the negotiations forward, Bishop joined in a CTSC counter-proposal to the State
24 to create a second fund ("Revenue Sharing Trust Fund II") that would accomplish the objective of
25 making more money available for distribution to RSTF-eligible tribes, but without involving the
26 TNGF. The State never provided a formal response to that proposal.
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3 105. The State's uncompromising insistence that Bishop agree to include the TNGF in a
4 new or amended Compact and that Bishop's payments into the RSTF could be allocated to that
5 fund if the RSTF contained more money than necessary to distribute \$1.1 million per year to each
6 RSTF-eligible tribe, constituted a demand for direct taxation of Bishop, and thus constituted the
7 State's failure to negotiate in good faith.
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11 **PRAYER FOR RELIEF**

12 **WHEREFORE, Bishop prays as follows:**

13 1. That the Court enter judgment declaring that as to one or more of Counts One through
14 Fourteen of Bishop's Claim for Relief, the State of California failed to negotiate in good
15 faith as required by IGRA;
16

17 2. That the Court order the parties to enter into further Compact negotiations for a
18 period of sixty (60) days from the entry of the Court's judgment, pursuant to 25 U.S.C. §
19 2710(d)(7)(B)(iii), and if the parties are unable to agree to the terms of a new or amended
20 Compact within that time, to file with the Court a joint report to that effect;
21

22 3. That if the parties have not agreed on the terms of a new or amended Compact within
23 the sixty (60) day period referenced above, the Court appoint a mediator to whom Bishop and the
24 State each will submit its respective new last, best offer for a Compact, and ordering the mediator
25 to select from the two proposed Compacts the one that best comports with IGRA's terms, those of
26 any other applicable Federal law, and the Court's findings and order, and submit that proposed
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3 Compact to the State and Tribe;

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5 4. That if the State consents to the proposed Compact selected by the mediator during
6 the 60-day period beginning on the date on which the proposed Compact is submitted by the
7 mediator to the State and Tribe, the proposed Compact shall be treated as a Tribal-State compact
8 entered into under IGRA;

9
10 5. That if the State does not consent to the proposed Compact submitted by the
11 mediator, the Court order the mediator to notify the Secretary of the Interior thereof, and direct the
12 Secretary to prescribe, in consultation with Bishop, procedures under which Bishop may continue
13 to conduct Class III Gaming Activities on its Indian lands beyond June 30, 2022; and

14
15 6. That the Court order that, in the event that a new or amended Compact with the State or
16 Class III gaming procedures prescribed by the Secretary of the Interior has not taken effect prior to
17 June 30, 2022, Bishop may continue operating Class III Gaming Activities pursuant to its 1999
18 Compact until the effective date of either a new or amended Compact or procedures prescribed by
19 the Secretary of the Interior.

20 7. That the Court grant such other relief as it deems appropriate;

21 8. That Bishop be awarded its costs of suit and reasonable attorneys' fees; and

22
23 9. That the State reimburse the Indian Gaming Special Distribution Fund in an amount
24 equal to what the State has charged that Fund for its defense of this action, plus interest accrued at
25 the same rate as California law imposes on debts owed to the State.
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Dated: September 15, 2020 Respectfully submitted,
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