

1 George Forman (SBN 047822)
Jay B. Shapiro (SBN 224100)
2 Margaret C. Rosenfeld (SBN 127309)
FORMAN & ASSOCIATES
3 4340 Redwood Highway, Suite E352
San Rafael, CA 94903
4 Telephone: 415/491-2310
Facsimile: 415/491-2313
5 george@gformanlaw.com

6 Attorneys for Plaintiff

7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 CAHUILLA BAND OF INDIANS, a federally
11 recognized Indian Tribe,

12 Plaintiff,

13 vs.

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

16 Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

17
18
19 Plaintiff, the Cahuilla Band of Indians ("Cahuilla"), by and through its attorneys of record
20 herein, complains and alleges as follows:

21 **JURISDICTION**

22 1. Plaintiff, the Cahuilla Band of Indians ("Cahuilla"), alleges that the State of
23 California ("State") has failed to negotiate in good faith under the Indian Gaming Regulatory Act
24 ("IGRA"), 25 U.S.C. § 2701, *et seq.*, in response to Cahuilla's request for a new class III Gaming
25 Compact to replace Cahuilla's current class III Gaming Compact. Therefore, this Court has
26 original jurisdiction over the subject matter of Cahuilla's action pursuant to 28 U.S.C. §§ 1331
27 and 1362, in that Cahuilla's claims arise under 25 U.S.C. § 2710(d)(7)(A).

28 2. Defendant State of California affirmatively has waived its sovereign immunity to

2 **VENUE**

3 3. Venue in this action lies in this District pursuant to 28 U.S.C. § 1391(b) and Calif.
4 Code of Civil Procedure § 401, in that the Attorney General of California maintains an office in
5 Fresno County, California, within the Eastern District of California.

6 **PARTIES**

7 4. Plaintiff Cahuilla is a sovereign federally-recognized Indian Tribe that maintains
8 government-to-government relations with the United States.

9 5. Defendant State is the State of California.

10 6. Defendant Gavin Newsom is the duly-elected Governor of the State of California,
11 and is sued in his official capacity.

12 **FACTUAL ALLEGATIONS**

13 7. Cahuilla realleges each of the allegations set forth in Paragraphs 1 – 6 above, and
14 by this reference incorporates each such allegation herein as if set forth in full.

15 8. Cahuilla is the beneficial owner of and exercises governmental authority over the
16 Cahuilla Indian Reservation ("Reservation") in Riverside County, California, the lands of which
17 the federal government holds in trust for Cahuilla. The Cahuilla Reservation is "Indian country"
18 within the meaning of 18 U.S.C. § 1151, and the lands of the Cahuilla Reservation, having been
19 held in trust by the United State prior to October 17, 1988, are "Indian lands" as defined in 25
20 U.S.C. § 2703(4).

21 9. In 1999, Cahuilla and the State executed a Compact ("1999 Compact") pursuant to
22 IGRA that took effect on or about May 16, 2000. If not renegotiated or replaced by December
23 31, 2020, Cahuilla's 1999 Compact's term automatically will be extended until June 30, 2022,
24 unless the parties have agreed to an earlier termination date.

25 10. Pursuant to its 1999 Compact, Cahuilla owns and operates the Cahuilla Casino
26 Hotel (formerly the Cahuilla Creek Casino) on the Reservation, several miles from Anza,
27 California, the nearest non-tribal community.

28 11. IGRA categorizes gaming into three "Classes": social games for prizes of minimal

1 value, and ceremonial games ("Class I"); bingo and games similar to bingo, including electronic,
2 computer or other technologic aids to such games, and non-banking card games, to the extent
3 either such games either are expressly authorized or not expressly prohibited by State law ("Class
4 II"); and all other forms of gaming, including slot machines ("Gaming Devices") and "banked
5 games" (e.g., blackjack, in which the "house" or "bank" takes on all comers, paying all winners
6 and collecting from all losers) ("Class III").

7 12. IGRA preempted whatever jurisdiction the State may have had to enforce its
8 gambling laws against Indians in Indian country. Nonetheless, IGRA provides that if a Tribe
9 wants to conduct Class III gaming on its Indian lands, the Tribe must request that the State enter
10 into negotiations for a tribal-state compact setting forth the terms and conditions under which the
11 Tribe may conduct Gaming Activities, a term that IGRA does not specifically define, but that the
12 U.S. Supreme Court as defined as meaning, "... what goes on in a casino – each roll of the dice
13 and spin of the wheel." *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 783 (2014).
14 Consistent with *Bay Mills*, in this Complaint the term "Gaming Activities" shall refer to the Class
15 III gaming that is authorized in the current and any future Compact between the State and
16 Cahuilla.

17 13. In response to a Tribe's request to negotiate (or renegotiate) the terms of a
18 Compact, the State is obligated to negotiate in good faith about the Tribe's request. 25 U.S.C.
19 § 2710(d)(3)(A).

20 14. IGRA, 25 U.S.C. § 2710(d)(3)(C), provides that a compact, may include
21 provisions relating to c

22 (i) the application of the criminal and civil laws and regulations of the Indian
23 tribe or the State that are directly related to, and necessary for, the licensing and regulation of
24 such [Class III gaming] activity;

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

27 (iii) the assessment by the State of such [Class III gaming] activities in such
28 amounts as are necessary to defray the costs of regulating such [Class III gaming] activity;

1 (iv) taxation by the Indian tribe of such [Class III gaming] activity in amounts
2 comparable to amounts assessed by the State for comparable activities;
3 (v) remedies for breach of contract;
4 (vi) standards for the operation of such [Class III gaming] activity and
5 maintenance of the gaming facility, including licensing; and
6 (vii) any other subjects that are directly related to the operation of [Class III
7 gaming] activities.

8 15. IGRA does not authorize the State or any of its political subdivisions to impose a
9 tax on a Tribe via a Class III gaming compact, but IGRA permits the State to negotiate the
10 payment of fees to reimburse the State for its regulatory costs incurred in connection with a
11 compact. 25 U.S.C. § 2710(d)(4). Under IGRA, the Court is to consider any demand by the
12 State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has
13 not negotiated in good faith.

14 16. Cahuilla's 1999 Compact with the State of California authorizes Cahuilla to
15 operate up to two Gaming Facilities, up to 2,000 Gaming Devices (*i.e.*, slot machines), banked
16 and percentage card games, and games and devices that State law authorizes to the California
17 State Lottery.

18 17. Section 5.1 of Cahuilla's Compact obligates Cahuilla to pay into the Indian
19 Gaming Special Distribution Fund ("SDF") that the California Legislature created in the State
20 Treasury a percentage of the Gaming Device net win from the number of Gaming Devices in
21 excess of 200 that it operated on September 1, 1999. On September 1, 1999, Cahuilla operated
22 207 Gaming Devices.

23 18. In or about August, 2014, the State received Cahuilla's formal request, dated July
24 29, 2014, that the State enter into negotiations for a new Compact to replace Cahuilla's 1999
25 Compact on or before that Compact expires. To facilitate those negotiations, Cahuilla joined with
26 a group of other Tribes with materially identical 1999 Compacts to form the 1999 Compact
27 Tribes Steering Committee ("CTSC") and participate as a group in negotiating new compacts to
28 replace their 1999 Compacts that are due to expire no later than June 30, 2022.

1 19. Formal negotiations between Cahuilla and the State commenced in or about
2 December, 2014. The last negotiating session between Cahuilla and the State's negotiating team
3 occurred on April 23, 2020.

4 20. The negotiations between the State and Cahuilla failed to culminate in agreement
5 on the terms of a new Compact to replace Cahuilla's 1999 Compact, due to the State's insistence
6 on including in a new Compact the following provisions that Cahuilla consistently has contended
7 are not directly related to and necessary for the licensing and regulation of Gaming Activities, do
8 not establish standards for the operation of Gaming Activities or maintenance of a Gaming
9 Facility, or are not otherwise directly related to the operation of Gaming Activities, and thus are
10 not proper subjects of negotiation under IGRA:

11 a. Payment into the SDF of more than is necessary to defray the State's costs
12 of regulating Cahuilla's Gaming Activities;

13 b. In the event that Cahuilla ever operates more than 350 Gaming Devices,
14 requiring payment into the RSTF of more than is needed to distribute up to \$1.1 million per year
15 to each federally recognized California Indian Tribe operating fewer than 350 Gaming Devices;

16 c. Including in a new Compact the State-created Tribal Nations Grant Fund
17 ("TNGF"), and allocating any surplus in the RSTF to the TNGF;

18 d. A definition of "Gaming Facility" that includes structures and other
19 improvements in which no Gaming Activities occurs;

20 e. A definition of "Gaming Operation" that includes activities or functions
21 that are not, themselves, Gaming Activities, or are not directly related to or necessary for the
22 operation or regulation of Gaming Activities or the maintenance of Gaming Facilities;

23 f. Requiring Cahuilla to enact an ordinance that not only prohibits workplace
24 discrimination, harassment and retaliation and creates remedies in money damages for such
25 claims, but also requiring Cahuilla to carry at least \$3 million in employment practices insurance,
26 notwithstanding that 42 U.S.C. §§ 2000e(b) ("Title VII") and 12111(5)(b) ("ADA") expressly
27 exclude federally recognized Indian Tribes from the definition of "employer;"

28 g. Generally prohibiting Cahuilla's Gaming Operation from cashing various

1 kinds of government checks;

2 h. Requiring compliance with California's minimum wage law and
3 regulations for all Gaming Operation employees, including for employees not directly involved
4 in the operation or regulation of Gaming Activities or the maintenance of Gaming Facilities;

5 i. Requiring Cahuilla to carry \$10 million in liability insurance, thus greatly
6 increasing cost of premiums; and to waive its sovereign immunity to, and create remedies in
7 money damages for, claims for personal injury, bodily injury or property damage sustained on the
8 Reservation even if not sustained in a Gaming Facility while participating in or otherwise directly
9 in connection with operation of Gaming Activities;

10 j. Requiring Cahuilla to withhold and pay over to the State California income
11 taxes from the wages of all Gaming Operation employees except for enrolled Cahuilla Tribal
12 members residing on the Reservation;

13 k. Requiring Cahuilla to enact an ordinance or otherwise to require
14 compliance with California state court spousal and child support orders directed at all Gaming
15 Operation employees;

16 l. Requiring Cahuilla to enact a new Tribal Labor Relations Ordinance
17 dictated by the State, and subjecting Cahuilla to a labor-management relations regime unlike that
18 applicable to any other non-Tribal California employer over which the National Labor Relations
19 Board asserts jurisdiction.

20 21. On or about July 13, 2020, Cahuilla presented the State with Cahuilla's last, best
21 offer of the terms of a new Compact to replace Cahuilla's 1999 Compact; gave the State until and
22 including July 31, 2020 to respond; and informed the State, *inter alia*, that if the State did not
23 timely accept Cahuilla's last, best offer of a new Compact, Cahuilla would file suit against the
24 State alleging that the State had failed to negotiate in good faith.

25 22. On or about July 15, 2020, the State sent Cahuilla a letter in which the State, *inter*
26 *alia*, acknowledged receipt of Cahuilla's last, best offer of the terms of a new Compact to replace
27 Cahuilla's 1999.

28 23. On or about July 15, 2020, the State sent Cahuilla a letter in which the State, *inter*

1 *alia*, acknowledged receipt of Cahuilla's last, best offer of the terms of a new Compact to replace
2 Cahuilla's Compact, and requested that Cahuilla agree that the State could have until August 31,
3 2020 to respond to that offer.

4 24. By letter dated July 17, 2020, Cahuilla rejected the State's request for additional
5 time to respond to Cahuilla's last, best offer of a new Compact to replace Cahuilla's existing
6 Compact due to the short time remaining on the term of Cahuilla's existing Compact, unless the
7 State would agree to amend Cahuilla's 1999 Compact by extending its term by two years from
8 June 30, 2022, and revising the basis for determining Cahuilla's payments into the SDF to more
9 closely conform to the pro rata share formula used in more recent Compacts, in which event
10 Cahuilla would agree to extend the State's time to respond to Cahuilla's last, best offer of a new
11 Compact by sixty days, rather than the thirty days the State had requested.

12 25. By letter dated July 31, 2020, the State rejected Cahuilla's last, best offer of the
13 terms of a new Compact, and also rejected Cahuilla's proposal for a two-year extension of
14 Cahuilla's 1999 Compact.

15 26. At no time during the five years of negotiations in which Cahuilla participated as
16 part of the CTSC did the State offer any meaningful consideration in the form of a substantial
17 concession on an issue about which the State is not obligated to negotiate in good faith, in
18 exchange for any of the concessions the State demanded of Cahuilla as enumerated in Paragraph
19 20 above.

20 **FIRST CLAIM FOR RELIEF**

21 **State's Failure To Negotiate In Good Faith By Insisting On Inclusion In Compact Of**
22 **Provisions That Are Not Proper Subjects of Negotiation under IGRA**

23 27. Cahuilla hereby realleges each of the facts alleged in Paragraphs 1–26 above, and
24 by this reference incorporates each such reference herein as if set forth in full.

25 **COUNT ONE**

26 **State's Insistence That Cahuilla Make Excessive Payments Into**
27 **The Indian Gaming Special Distribution Fund**

28 28. Throughout Cahuilla's negotiations for a new Compact, the State insisted that

1 Cahuilla pay more into the SDF than is necessary to reimburse the State for its actual and
2 reasonable costs that are directly related to regulation of Cahuilla's Gaming Activities.

3 29. By insisting upon the payment of fees that exceed what is necessary to defray the
4 State's legitimate costs of exercising its regulatory authority under a new Compact, the State
5 seeks to impose a tax, fee, charge or other assessment on Cahuilla's Gaming Activities, and thus
6 the State failed to negotiate in good faith.

7 **COUNT TWO**

8 **State's Insistence That Cahuilla Make Excessive Payments Into**
9 **The Indian Gaming Revenue Sharing Trust Fund**

10 30. Throughout Cahuilla's negotiations for a new Compact, the State insisted that if
11 Cahuilla were to operate more than 350 Gaming Devices, Cahuilla would have to pay into the
12 RSTF more than would be needed to distribute \$1.1 Million per year to each California Tribe
13 operating fewer than 350 Gaming Devices, when Cahuilla's payments are combined with other
14 Tribes' payments into the RSTF.

15 31. By insisting that Cahuilla would have to pay into the RSTF more than is needed to
16 distribute \$1.1 million per year to each California Tribe operating fewer than 350 Gaming
17 Devices, the State seeks to impose a tax, fee or assessment on Cahuilla's Gaming Activities that is
18 impermissible under 25 U.S.C. § 2710(d)(4), and thus the State has failed to negotiate in good
19 faith.

20 **COUNT THREE**

21 **State's Insistence On Inclusion Of The State-Created Tribal Nations Grant Fund**

22 32. Throughout Cahuilla's negotiations for a new Compact, the State insisted, over
23 Cahuilla's continuing objections, that a new Compact must include the State-created Tribal
24 Nations Grant Fund ("TNGF") from which a State-created administrative body, without input
25 from Cahuilla but using funds provided in part by Cahuilla if Cahuilla were to operate more than
26 350 Gaming Devices, would award grants on a competitive basis to Tribes with small or no
27 gaming operations, subject to various restrictions, and a provision allowing for the transfer of any
28 surplus in the RSTF to the TNGF.

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

2 34. The State's insistence that Cahuilla agree to include the TNGF in a new Compact,
3 and that any future payments Cahuilla might be required to make into the RSTF could be
4 allocated to the TNGF if the RSTF contains more money than necessary to distribute \$1.1 million
5 per year to each RSTF-eligible Tribe, constituted a demand for direct taxation of Cahuilla, and
6 thus constituted a failure by the State to negotiate in good faith.

7 35. Although Cahuilla objected throughout the negotiations that the TNGF is not a
8 proper subject of negotiation under IGRA unless the State were to offer meaningful consideration
9 in the form of a substantial concession on an issue about which the State is not otherwise
10 obligated to negotiate in good faith, Cahuilla joined in a counter-proposal to the State to create a
11 second fund ("Revenue Sharing Trust Fund II") that would accomplish the objective of making
12 more money available for distribution to RSTF-eligible Tribes, but without involving the TNGF.
13 Although the State's negotiating team asked questions about how the RSTF II might be
14 implemented, and indicated that the State would review the proposal, over the course of the year
15 since the proposal was made, the State never provided a substantive response to that proposal.

16 **COUNT FOUR**

17 **State's Insistence That "Gaming Facility" Be Defined To Include Structures And Other**
18 **Areas Of The Reservation In Which No Gaming Activities Occur**

19 36. Throughout Cahuilla's negotiations for a new Compact, the State insisted upon
20 defining "Gaming Facility" to include not only structures in which Gaming Activities are
21 conducted, but also structures and other improvements on the Reservation in which no Gaming
22 Activities occur.

23 37. By insisting on including in the definition of "Gaming Facility" structures or areas
24 of the Reservation within or upon which no Gaming Activities or activities directly related to
25 Gaming Activities are conducted, the State's proposed definition of "Gaming Facility" neither is
26 directly related to or necessary for the regulation and licensing of Gaming Activities, nor
27 establishes a standard for operation of Gaming Activities or maintenance of Cahuilla's Gaming
28 Facilities, nor is otherwise directly related to the operation of Gaming Activities, and thus is not a

1 proper subject of negotiation under IGRA. Therefore, the State's insistence on including such a
2 provision constituted a failure by the State to negotiate in good faith.

3 **COUNT FIVE**

4 **State's Insistence That "Gaming Operation" Be Defined To Encompass Activities Or**
5 **Functions Not Directly Related To Or Necessary For The Regulation And Licensing Or**
6 **Establishment of Standards for the Operation Of**
7 **Gaming Activities or Maintenance of Gaming Facilities**

8 38. Throughout Cahuilla's negotiations for a new Compact, the State insisted upon
9 defining "Gaming Operation" to include not only the actual operation of Gaming Activities and
10 activities directly related to the operation of Gaming Activities and maintenance of Cahuilla's
11 Gaming Facility, but also activities and areas of the Reservation that are not directly related to or
12 necessary for the regulation and licensing of Gaming Activities, or the operation of Gaming
13 Activities or maintenance of Gaming Facilities.

14 39. By insisting on defining "Gaming Operation" to include activities and areas of the
15 Reservation that are not directly related to or necessary for the regulation and licensing of
16 Gaming Activities or that establish standards for the operation of Gaming Activities or
17 maintenance of Cahuilla's Gaming Facilities, the State insisted upon including in a new Compact
18 a provision that is not a proper subject of negotiation under IGRA, which insistence constituted a
19 failure by the State to negotiate in good faith.

20 **COUNT SIX**

21 **State's Insistence That Cahuilla Create Remedies In Money Damages For Workplace**
22 **Discrimination, Harassment And Retaliation**

23 40. As a federally-recognized Indian Tribe, Cahuilla is expressly excluded from the
24 definition of "employer" under Title VII of the Civil Rights Act of 1964, and the Americans with
25 Disabilities Act, and federal courts have held that federally recognized Indian Tribes are not
26 subject to private lawsuits for money damages under various other federal statutes dealing with
27 workplace discrimination.

28 41. Notwithstanding federal statutes that exclude Cahuilla from the definition of
"employer," and federal court decisions holding that Tribes are not subject to private suit for

1 money damages under those statutes, the State insisted on including in a new Compact with
2 Cahuilla the requirement that Cahuilla carry \$3 million in employment practices liability
3 insurance (thereby increasing the cost of Cahuilla's insurance premiums and reducing the amount
4 of net revenues available to Cahuilla's government), and enact a tribal ordinance that not only
5 prohibits workplace discrimination, harassment and retaliation, but also creates remedies in
6 money damages for all Gaming Operation employees, including employees not directly involved
7 in the operation of Gaming Activities or maintenance of a Gaming Facility.

8 42. The State's insistence that Cahuilla carry \$3 million in employment practices
9 liability insurance and enact a tribal ordinance that both prohibits workplace discrimination,
10 harassment and retaliation and creates remedies in money damages for claimants alleging such
11 wrongful acts, neither is directly related to nor necessary for the regulation and licensing of
12 Gaming Activities, nor is it a standard for the operation of Gaming Activities or maintenance of
13 Gaming Facilities, nor is otherwise directly related to the operation of Gaming Activities, and
14 thus is not a proper subject of negotiation under 25 U.S.C. § 2710(d)(3)(C), and the State's
15 insistence on including such a provision in a new Compact constituted a failure by the State to
16 negotiate in good faith.

17 **COUNT SEVEN**

18 **State's Insistence On Restrictions Against Cashing Government Checks**

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

24 44. Cashing checks is not directly related to and necessary for the regulation and
25 licensing of Gaming Activities, nor is it a standard for the operation of Gaming Activities or
26 maintenance of Cahuilla's Gaming Facility, nor is it otherwise directly related to the operation of
27 Gaming Activities, and thus is not a proper subject of negotiation under IGRA, and the State's
28 insistence on including such a provision in a new Compact constituted a failure by the State to

1 negotiate in good faith.

2 **COUNT EIGHT**

3 **State's Insistence That Cahuilla Comply With California's Minimum Wage Law**
4 **And Regulations**

5 45. Although Cahuilla is subject to the federal Fair Labor Standards Act, throughout
6 Cahuilla's negotiations for a new Compact, the State insisted on including a provision requiring
7 that Cahuilla comply with California's minimum wage law and implementing regulations for all
8 Gaming Operation employees.

9 46. California's minimum wage law and implementing regulations are not directly
10 related to and necessary for the regulation and licensing of Cahuilla's Gaming Activities, are not
11 standards for the operation of Gaming Activities or maintenance of Cahuilla's Gaming Facilities,
12 or are not otherwise directly related to the operation of Gaming Activities, and thus are not
13 proper subjects of negotiation under IGRA, and the State's insistence on including such a
14 provision constituted a failure by the State to negotiate in good faith.

15 **COUNT NINE**

16 **State's Insistence That Cahuilla Enact A New Tort Liability Ordinance And Procedures**
17 **For Remedies For Injuries Unrelated To Cahuilla's Gaming Activities**

18 47. Throughout Cahuilla's negotiations for a new Compact, the State insisted on
19 including provisions requiring Cahuilla to obtain \$10 million in liability insurance and enact an
20 ordinance creating procedures for awarding money damages to persons claiming to have
21 sustained bodily injury, personal injury or property damage on or near Cahuilla's Gaming
22 Facility, whether or not under circumstances involving participation in or operation of Cahuilla's
23 Gaming Activities.

24 48. Requiring creation of remedies in money damages for bodily injury, personal
25 injury and property damage whether or not sustained under circumstances involving participation
26 in or operation of Colusa's Gaming Activities is not a proper subject of negotiation under 25
27 U.S.C. § 2710(d)(3)(C), and the State's insistence on including such a provision constituted a
28 failure to negotiate in good faith.

COUNT TEN

State's Insistence That Cahuilla Collect And Remit State Taxes On Gaming Operation Employees

49. Throughout Cahuilla's negotiations for a new Compact, the State insisted on including provisions requiring Cahuilla to withhold and remit to the State from the wages of all Gaming Operation and Gaming Facility employees, except enrolled tribal members and other Native American employees choosing to opt out of State tax withholding, California income taxes, and to file with the California Franchise Tax Board a copy of any information tax return filed with the Secretary of the Treasury, except for returns pertaining to the tribal members living on the Cahuilla Reservation.

50. Withholding and remitting State income taxes is not directly related to and necessary for the regulation and licensing of Cahuilla's Gaming Activities, is not a standard for the operation of Gaming Activities or maintenance of Cahuilla's Gaming Facilities, and is not otherwise directly related to the operation of Gaming Activities, and thus is not a proper subject of negotiation under IGRA, and the State's insistence on including such a provision constituted a failure by the State to negotiate in good faith.

COUNT ELEVEN

State's Insistence That Cahuilla Recognize And Enforce State And Federal Court Child Or Spousal Support Orders Or Judgments Involving Gaming Operation Employees

51. Throughout Cahuilla's negotiations for a new Compact, the State insisted in various formulations that a new Compact must include provisions requiring Cahuilla to recognize and enforce California and federal court orders or judgments and earnings withholding orders for child or spousal support directed at all Gaming Operation employees.

52. Enforcement of spousal and child support obligations is not directly related to and necessary for regulation and licensing of Cahuilla's Gaming Activities, is not a standard for the operation of Gaming Activities or maintenance of Cahuilla's Gaming Facility, and is not otherwise directly related to the operation of Gaming Activities, and thus is not a proper subject of negotiation under IGRA, 25 U.S.C. § 2710(d)(3)(C), and the State's insistence on including

1 such a provision in a new Compact constituted a failure by the State to negotiate in good faith.

2 **COUNT TWELVE**

3 **State's Insistence That Cahuilla Enact A New, State-Dictated Tribal Labor Relations**
4 **Ordinance**

5 53. When Cahuilla's 1999 Compact took effect in May, 2000, the National Labor
6 Relations Board had not asserted jurisdiction over tribal government Gaming Activities.

7 54. One of the concessions that the State demanded as a condition to the State's entry
8 into Cahuilla's 1999 Compact was that on or before October 13, 1999, Cahuilla had to provide the
9 State with an,

10 "agreement or other procedure acceptable to the State for
11 addressing organizational and representational rights of Class III
12 Gaming Employees and other employees associated with Cahuilla's
13 Class III gaming enterprise, such as food and beverage,
14 housekeeping, cleaning, bell and door services, and laundry
employees at the Gaming Facility or any related facility, the only
significant purpose of which is to facilitate patronage at the
Gaming Facility."

15 55. The only "agreement or other procedure acceptable to the State" under § 10.7 of
16 Cahuilla's 1999 Compact was a model Tribal Labor Relations Ordinance ("TLRO") appended to
17 the Compact, the terms of which were negotiated directly between a group of California gaming
18 Tribes, including Cahuilla, and representatives of Organized Labor, including the California
19 Labor Federation and a number of its constituent labor unions, and facilitated through the
20 Director of the State's Office of Personnel Management and the then President Pro Tem of the
21 State Senate, John Burton.

22 56. As consideration for Cahuilla's and other Tribes' agreement to adopt the model
23 TLRO, the State made a substantial concession of unique value to Cahuilla, in the form of an
24 amendment to Article IV, § 19 of the California Constitution that authorized the Governor to
25 negotiate and the Legislature to ratify tribal-state compacts that grant California Indian Tribes the
26 exclusive right to operate on their Indian lands slot machines, banked and percentage card games,
27 and games and devices permitted by State law to the California Lottery.

28 57. As required by § 10.7 of its Compact, Cahuilla enacted the required TLRO, timely

1 submitted it to the State, and has maintained it in effect ever since.

2 58. For more than nine (9) years, the National Labor Relations Board ("NLRB") has
3 asserted jurisdiction over tribal government gaming operations pursuant to the National Labor
4 Relations Act. The NLRB's assertion of jurisdiction has been upheld by the Ninth Circuit Court
5 of Appeals (among others).

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

13 60. Although Cahuilla consistently objected to the State's proposed new TLRO as not
14 being a proper subject for negotiation under IGRA, given that Cahuilla's gaming operation is
15 subject to the NLRB's jurisdiction, in an effort to reach an agreement, and expressly contingent
16 upon the State's offer of material consideration in the form of a substantial concession on an issue
17 about which the State is not otherwise obligated to negotiate in good faith, Cahuilla joined in
18 presenting the State with a revised TLRO as a counterproposal to the State's new proposed
19 TLRO.

20 61. Since first proposing its new TLRO, and despite repeated requests to negotiate
21 about the content of a new TLRO, the State consistently has refused to engage in substantive
22 negotiations about the State's new proposed TLRO, and never formally responded to or was
23 willing to negotiate about Cahuilla's counterproposal for a revised TLRO. Moreover, despite
24 repeated requests, the State never explained why the model TLRO enacted pursuant to § 10.7 of
25 Tribes' respective 1999 Compacts is deficient in any way, and the State never offered any
26 material consideration in the form of a substantial concession of unique value to Cahuilla and
27 about which the State is not otherwise obligated to negotiate in good faith, in return for Cahuilla's
28 acceptance of either the State's proposed new TLRO or the tribal counter-proposal.

1 Lottery.

2 66. The Cahuilla Reservation is located in a sparsely-populated portion of Riverside
3 County many miles away from any urban areas, and since its Compact took effect twenty (20)
4 years ago, the State never has alleged that Cahuilla has not fully complied with § 10.8.1 of
5 Cahuilla's 1999 Compact, or that § 10.8 is inadequate to protect the off-Reservation environment
6 from significant adverse impacts resulting from any gaming-related Projects undertaken by
7 Cahuilla, or that renegotiation of § 10.8 of Cahuilla's 1999 Compact was necessary to ensure
8 adequate mitigation by Cahuilla of significant adverse off-Reservation impacts.

9 67. Throughout Cahuilla's negotiations for a new Compact, and without offering any
10 Cahuilla-specific justification or material consideration in the form of a substantial concession of
11 unique value to Cahuilla on an issue about which the State is not otherwise required to negotiate
12 in good faith, the State insisted that a new Compact require Cahuilla to, *inter alia*: (a) enact a new
13 ordinance that incorporates "the relevant policies and purposes of NEPA [National
14 Environmental Policy Act] and CEQA [California Environmental Quality Act] consistent with
15 legitimate governmental interests of Cahuilla and the State" and requires a much more detailed
16 and comprehensive CEQA-based environmental review of the potential significant adverse
17 impacts on the off-Reservation environment of proposed "Projects," even if not directly related to
18 and necessary for the regulation and licensing of Cahuilla's Gaming Activities, or establishing
19 standards for the operation of Gaming Activities or maintenance of Gaming Facilities, or
20 otherwise directly related to the operation of Gaming Activities; (b) prior to commencing any
21 "Project," provide wide-ranging notice to the public and State and local government agencies of
22 the environmental review of proposed "Projects"; (c) prior to commencing a Project, offer to
23 negotiate, enter into, and if necessary arbitrate, with surrounding local governments and the
24 California Department of Transportation (if a State highway would be impacted) for binding and
25 enforceable agreements to mitigate a proposed Project's off-Reservation environmental and other
26 impacts; and (d) implement the mitigation measures identified in Cahuilla's environmental
27 document for the "Project."

28 68. Requiring Cahuilla to: enact a new ordinance that incorporates both CEQA and

1 NEPA; perform a detailed and public analysis of the potential significant effects of a proposed
2 Project on the off-Reservation environment; negotiate, enter into, and if necessary arbitrate, the
3 terms of binding and enforceable mitigation agreements with surrounding local governments and
4 the California Department of Transportation; and thereafter to implement identified mitigation
5 measures, is not directly related to and necessary for the regulation and licensing of Cahuilla's
6 Gaming Activities, does not establish standards for the operation of Cahuilla's Gaming Activities
7 or maintenance of Cahuilla's Gaming Facility, and is not otherwise directly related to the
8 operation of Cahuilla's Gaming Activities, and thus is not a proper subject of negotiation under
9 IGRA, and the State's insistence on including such a provision in a new Compact constituted a
10 failure by the State to negotiate in good faith.

11 **COUNT FOURTEEN**

12 **Insisting On Defining "Gaming Employees" To Include Gaming Operation Employees**
13 **Having No Direct Involvement In The Operation Or Regulation Of Gaming Activities**

14 69. Throughout Cahuilla's negotiations with the State for a new Compact, the State
15 insisted on including within the definition of "Gaming Employee" personnel such as food and
16 beverage cooks and servers, hotel housekeeping employees, parking attendants and other
17 employees whose duties would not include direct or even indirect involvement in the actual
18 operation or regulation of Gaming Activities. By defining "Gaming Employees" so broadly, the
19 State would bring within the scope of the Compact personnel not directly related to and necessary
20 for the regulation and licensing of Cahuilla's Gaming Activities, or not otherwise directly related
21 to the operation of Gaming Activities, and thus the definition of "Gaming Employees" insisted
22 upon by the State goes beyond what is a proper subject of negotiation under IGRA, and the
23 State's insistence on including so broad a definition of "Gaming Employees" constituted a failure
24 to negotiate in good faith.

25 **WHEREFORE**, Cahuilla prays as follows:

26 1. that the Court enter judgment declaring that as to each of Counts One through
27 Fourteen of Cahuilla's Claim for Relief, the State of California has failed to negotiate in good
28 faith as required by IGRA by insisting upon including in a new Compact provisions that are not

1 proper subjects of negotiation under IGRA;

2 2. that the Court order the parties to enter into further Compact negotiations for a
3 period of sixty (60) days from the entry of the Court's judgment, and if the parties are unable to
4 agree to the terms of a new Compact within that time, to jointly file with the Court a joint report
5 to that effect;

6 3. that if the parties have not agreed on the terms of a new Compact within the sixty
7 (60) days the Court allows for further negotiations, the Court will appoint a mediator to whom
8 the Tribe and the State each will submit its respective last, best offer for a Compact, and the
9 mediator shall select from the two proposed Compacts the one that best comports with the terms
10 of IGRA and any other applicable Federal law and with the Court's findings and order, and
11 submit that proposed Compact to the State;

12 4. that if the State consents to the proposed Compact selected by the mediator during
13 the 60-day period beginning on the date on which the proposed Compact is submitted by the
14 mediator to the State, the proposed Compact shall be treated as a Tribal-State compact entered
15 into under paragraph (3);

16 5. that if the State does not consent to the proposed Compact submitted by the
17 mediator, Cahuilla shall be entitled to obtain from the Secretary of the Interior procedures under
18 which Cahuilla may continue to conduct Gaming Activities on its Indian lands; and

19 6. that if a new Compact with the State or Class III gaming procedures prescribed by
20 the Secretary of the Interior has not taken effect on or before June 30, 2022, Cahuilla may
21 continue operating Gaming Activities pursuant to its 1999 Compact until the effective date of
22 either a new Compact or procedures prescribed by the Secretary of the Interior.

23 7. that the Court grant such other relief as it deems appropriate;

24 8. that Cahuilla be awarded its costs of suit and reasonable attorneys' fees; and

25 9. that the State reimburse the Indian Gaming Special Distribution Fund in an
26 amount equal to what the State has charged that Fund for its defense of this action, plus interest

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Dated: August 13, 2020

Respectfully submitted,

By: /s/ George Forman
George Forman
FORMAN & ASSOCIATES
Attorneys for Plaintiff