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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CHEMEHUEVI INDIAN TRIBE, and CHICKEN RANCH RANCHERIA OF ME-WUK INDIANS,

Plaintiffs,

v.

JERRY BROWN, Governor of California, and STATE OF CALIFORNIA,

Defendants.

Case No. 5:16-cv-1347

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

JURISDICTION

1. This Court's jurisdiction over the Chicken Ranch Rancheria of Me-Wuk Indians and Chemehuevi Indian Tribe ("Tribes") claims is based upon the following:

(a) 28 U.S.C § 1331, in that this action arises under the Constitution and laws of the United States, specifically, the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq. ("IGRA"); and

(b) 28 U.S.C. § 1362, in that the Tribes are federally recognized Indian tribes asserting that the State's actions violate the Constitution and laws of the United

States, including federal common law.

(c) The State of California ("State") has waived its sovereign immunity with regard to issues arising from the Tribal-State Gaming Compacts of 1999 ("1999 Compacts"), compacts entered into between the State and the Tribes pursuant to § 9.4 of the 1999 Compacts.

2. The Parties have fulfilled the notice, meet and confer requirements of the dispute resolution provision set forth in Section 9.1 of the 1999 Compacts. The Tribes, therefore, have exhausted their administrative remedies and are authorized to file this lawsuit.

VENUE

3. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391, in that:

A. Pursuant to Section 9.1(d) of the 1999 Compacts, the State and the Tribes have agreed that claims arising from the 1999 Compacts that are not resolved by other means shall be resolved in the United States District Court in which a claimant tribe's gaming facility is located, and the Chemehuevi Indian Tribe's gaming facility is located in this District; and

B. A substantial part of the events or omissions giving rise to the Tribes' claims occurred in this District.

PARTIES

4. Plaintiff, Chicken Ranch Rancheria of Me-Wuk Indians ("Chicken Ranch"), is a federally recognized Indian tribe organized under a written Constitution

which designates the Chicken Ranch Tribal Council as the governing body of the Chicken Ranch Rancheria. The Chicken Ranch Rancheria or Reservation ("Rancheria") is located in Tuolumne County, California.

5. Plaintiff, Chemehuevi Indian Tribe ("Tribe"), is a federally recognized Indian tribe, organized under the provisions of the Indian Reorganization Act, 25 U.S.C. § 476, under a written Constitution that has been approved by the Secretary of the Interior and which designates the Chemehuevi Tribal Council as the governing body of the Tribe. The Chemehuevi Indian Reservation ("Reservation") is located in San Bernardino County, California.

6. Defendant, Jerry Brown ("Governor Brown"), is the duly-elected Governor and chief executive officer of the State, and is sued in that capacity.

7. Defendant, State is a quasi-sovereign governmental entity and a state of the United States.

GENERAL ALLEGATIONS

8. This case arises from the refusal on the part of the Governor of the State, acting on behalf of the State (together, "State"), to remove the duration provision from the 1999 Compacts between the State and Tribes. Section 11.2.1 of the 1999 Compacts[1]

[1] A true and correct copy of the Tribal State Compact between the State and Chicken Ranch is attached hereto as **Exhibit 1**. A true and correct copy of the Tribal State Compact between the State and Chemehuevi Indian Tribe is attached hereto as **Exhibit 2**. Because the 1999 Compact was a model compact, the provisions of Chemehuevi Indian Tribe's compact are the same as those of the Chicken Ranch Compact. Any quote from or citation to a provision of the 1999 Compact is applicable to both of the Tribes' compacts.

requires the Tribes Compacts to terminate on December 31, 2020, effectively granting the State the power to terminate the Tribes' gaming activities by refusing to reach agreement on a renewed compact at the end of the 1999 Compact term, if the Tribes do not agree to the compact term favored by the State.

9. Congress' fundamental purpose in enacting the IGRA was to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." The IGRA does not authorize states to terminate Indian tribes' class III gaming or to prevent Indian tribes from conducting such gaming pursuant to the IGRA, as long as a state, such as California, permits any person, organization or entity to play some form of class III gaming, as defined by the IGRA, within the state. Yet, that is the practical effect of Section 11.2.1 of the 1999 Compacts ("Termination Provision").

10. The Tribes seek an order from the Court declaring that the Termination Provision in the 1999 Compacts violates the plain wording of the IGRA and Congress' intent in enacting the IGRA, and is, therefore, void. The Tribes further seek an order from the Court severing the Termination Provision from the 1999 Compacts.

11. In *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) ("*Cabazon*"), the United States Supreme Court ruled that Indian tribes had the right to conduct gaming on their Indian trust lands free of state regulation. States had no authority to regulate tribal gaming on Indian lands until Congress, in response to the *Cabazon* decision, enacted the IGRA.

12. The IGRA divides gaming into three classes. Class I is comprised of traditional tribal gaming; class II is comprised of bingo and non-banked card games; class III includes gambling not covered in class I or class II, and includes the more lucrative forums of casino-style gaming, such as slot machines and banked card games. 25 U.S.C. § 2703(6)-(8).

13. In enacting the IGRA, Congress explicitly identified the goals that the IGRA was intended to achieve, including 25 U.S.C. § 2702(1): "The purpose of this Act is—(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments."

14. The IGRA authorizes an Indian tribe to conduct class III gaming on its Indian lands if the tribe meets three conditions: (1) the gaming must be authorized by an ordinance or resolution that is enacted by the tribal government and is approved by the Chairperson of the National Indian Gaming Commission ("NIGC"); (2) the gaming is located in a state that permits such gaming for any purpose by any person, organization, or entity; and (3) the gaming is conducted in conformance with a Tribal-State gaming compact entered into by the Indian tribe and the State that is in effect. 25 U.S.C. § 2710(d)(1).

15. The IGRA, 25 U.S.C. 2703(4), defines "Indian lands" as:

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

16. If an Indian tribe conducts class III gaming on its Indian lands without a Tribal-State class III gaming compact with a state that is in effect, the gaming violates federal law. 18 U.S.C. 1166; 15 U.S.C. 1175; 25 U.S.C. § 2710(d)(6).

17. In imposing the requirement that Indian tribes enter into compacts with states in order to conduct class III gaming pursuant to the IGRA, Congress explicitly stated that the compacting requirement was not to be used by states to prevent Indian tribes from conducting gaming: "It is the Committee's intent that the compact requirement for class III not be used as a justification by a State for excluding Indian tribes from such gaming or for the protection of other State-licensed gaming enterprises from free market competition with Indian tribes." S. Rep. No. 100-446, at 13.

18. The IGRA does not require that compacts include a termination provision. It does not refer to a termination provision relating to gaming compacts anywhere in the statute.

19. In 1999, fifty-seven Indian tribes entered into a model class III gaming compact with the State, pursuant to the IGRA. The compacts were ratified by the California Legislature by statute, Cal. Gov't Code § 12012.25.

20. Section 9 of the 1999 Compacts sets forth the Compact's dispute resolution provisions. Section 9 states, in relevant part:

> In recognition of the government-to-government relationship of the Tribe and the State, the parties shall make their best efforts to resolve disputes that occur under this Gaming Compact by good faith negotiations whenever possible. Therefore, without prejudice to the right of either party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the parties hereby establish a threshold requirement that disputes between the Tribe and the State first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions, and conditions of this Gaming Compact, as follows:
>
> (a) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.
>
> (b) The parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than 10 days after receipt of the notice, unless both parties agree in writing to an extension of time.
>
> (c) If the dispute is not resolved to the satisfaction of the parties within 30 calendar days after the first meeting, then either party may seek

to have the dispute resolved by an arbitrator in accordance with this section, but neither party shall be required to agree to submit to arbitration.

(d) Disagreements that are not otherwise resolved by arbitration or other mutually acceptable means as provided in Section 9.3 may be resolved in the United States District Court where the Tribe's Gaming Facility is located, or is to be located, and the Ninth Circuit Court of Appeals (or, if those federal courts lack jurisdiction, in any state court of competent jurisdiction and its related courts of appeal).

21. Section 11.2.1 of the 1999 Compact states, "Once effective this Compact shall be in full force and effect for state law purposes until December 31, 2020."

22. On October 8, 1999, the Chicken Ranch entered into the 1999 Model Tribal-State gaming compact with the State. The compact was ratified by the California State Legislature by statute, Cal. Gov't Code § 12012.25(a)(13). On May 5, 2000, the compact was approved by Assistant Secretary – Indian Affairs Kevin Gover. Chicken Ranch has conducted gaming at the Chicken Ranch Casino and Bingo ("Chicken Ranch Casino") on the Rancheria since that time.

23. The Chicken Ranch Casino is located on a three-acre parcel of land owned by the United States of America in trust for the Chicken Ranch and located within the exterior boundaries of the Rancheria.

24. Chicken Ranch has enacted a Gaming Ordinance, which was approved by the Chairperson of the NIGC.

25. On September 10, 1999, the Chemehuevi Indian Tribe entered into the 1999 Model Tribal-State gaming compact with the State of California. The compact was ratified by the California State Legislature by statute, Cal. Gov't Code § 12012.25(a)(12). On May 5, 2000, the compact was approved by Assistant Secretary – Indian Affairs Kevin Gover. The Tribe has conducted gaming at the Havasu Landing Resort and Casino ("Havasu Landing Casino") since that time.

26. The Havasu Landing Casino is located on land owned by the United States of America in trust for the Tribe within the exterior boundaries of the Chemehuevi Indian Reservation.

27. The Tribe has enacted a Gaming Ordinance, which was approved by the Chairperson of the NIGC.

28. In a letter dated April 20, 2016 ("Letter"), the Tribes requested that the State agree that the Termination Provision in the 1999 Compacts violates the IGRA and is void. The Letter further stated that, in the event that the State refused to agree that the Termination Provision is void, the Letter should be considered formal notice that the Tribes were initiating the 1999 Compact's dispute resolution process, pursuant to Section 9.1 of the 1999 Compact. A true and correct copy of the April 20, 2016, Letter is incorporated by this reference and attached hereto as **Exhibit 3**.

29. On May 3, 2016, representatives of the Tribes and the State met in person to confer with regard to the Tribes' request that the State agree that the Termination Provision in the 1999 Compacts violates the IGRA, was void and that the Tribes had no

further obligation under their 1999 Compacts to negotiate a renewal of their 1999 Compacts. At the end of the meeting, the State representatives informed the Tribes' representatives that the State did not agree that the Termination Provision in the 1999 Compact is void because it violates the IGRA, that the Tribes had an obligation to negotiate with the State to renew their 1999 Compacts and that the State would provide a formal written response to the Tribe's request by May 20, 2016.

30. In a letter dated May 20, 2016 ("State's Response Letter"), officials representing the State informed the Tribes that the State would not agree to remove the Termination Provision from the 1999 Compacts. A true and correct copy of the State's Response Letter is incorporated by this reference and attached hereto as **Exhibit 4**.

31. More than 30 days have passed since the parties met in an attempt to resolve the dispute.

32. The Parties have fulfilled the meet and confer requirements of Section 9.1 of the Compacts. Pursuant to the terms of their 1999 Compacts, the Tribes are authorized to file this lawsuit.

FIRST CAUSE OF ACTION

(Violation of the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq.)

33. The Tribes reallege each of the allegations set forth in Paragraphs 1 through 32 above, and by this reference incorporate each allegation herein as if set forth here in full.

34. Congress' primary purposes in enacting the IGRA were to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments" and "to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences." 25 U.S.C. § 2702.

35. The IGRA states: "Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity." 25 U.S.C. § 2701(5).

36. The gaming conducted at the Tribes' gaming facilities on their Indian lands is not prohibited by the laws of the State of California. Indian tribes are specifically authorized to engage in class III gaming pursuant to Article IV, Sec. 19(f) of the California Constitution. Pursuant to Article IV, Sec. 19(f) of the California Constitution the State permits "entities," such as the Tribes, to engage in Class III gaming within the meaning of 25 U.S.C. § 2710 (d)(1).

37. Pursuant to the IGRA, the Tribes have the right to engage in class III gaming. The IGRA states: "Class III gaming activities ***shall be lawful*** on Indian lands" if they are authorized by a duly enacted and approved gaming ordinance, they are located in a State that permits such gaming for any purpose by any person, organization, or entity, and they are conducted in conformance with a Tribal-State compact. 25

U.S.C. § 2710(d)(1). The Tribes meet all three of the criteria set forth in 25 U.S.C. § 2710(d)(1).

38. It was not the intent of Congress to allow states to use the compacting process to prevent tribes from engaging in gaming on their Indian lands: "It is the Committee's intent that the compact requirement for class III [gaming] not be used as a justification by a State for excluding Indian tribes from such gaming . . . ." S. Rep. No. 100-446, at 13.

39. The Termination Provision in the 1999 Compacts has the effect of preventing Tribes from obtaining financing, particularly long-term bond financing for the construction of new or expanded gaming facilities. The inability of the Tribes to construct new or expanded gaming facilities also prevents the Tribes from being able to finance, with increased gaming revenues from new or expanded gaming facilities, the infrastructure improvements on the Tribes' reservations that are necessary to develop new non-gaming business, which, in turn, is necessary to create jobs on the Tribes' reservations, and provide the revenue necessary for the Tribes to fund and provide essential governmental services to its members.

40. Since the Termination Provision in the 1999 Compacts has the effect of preventing the Tribes from being able to obtain the financing necessary to construct new or expanded gaming and non-gaming facilities and infrastructure improvements on the Tribes' reservations, thereby preventing the Tribes from increasing their gaming and non-gaming revenues, and gives the State the power to terminate the 1999 Compacts

and, thereby, prevent the Tribes from gaming on their Indian lands altogether, the inclusion of a Termination Provision in the 1999 Compacts is in conflict with the plain wording of the IGRA, Congress' purposes in enacting the IGRA, and Congress' intention that the compacting requirement not be used to prevent Indian tribes from conducting gaming on their Indian lands.

41. An actual case and controversy now exists between the Tribes and the State in that the Tribes maintain that the inclusion of the Termination Provision in the 1999 Compacts is a violation of the plain wording of the IGRA and the explicitly expressed purposes of the IGRA, while the State maintains that the Termination Provision set forth in the 1999 Compacts does not violate the IGRA and is valid and enforceable.

42. Unless this Court issues an order declaring that the Termination Provision in the Tribes' 1999 Compacts violates the plain wording of the IGRA and Congress' expressly stated goals in enacting the IGRA, the State will continue to insist that the Termination Provision included in the 1999 Compacts between the State and the Tribes is valid and that the Tribes' Compacts, unless renewed, will terminate, and the Tribes will have to cease all forms of class III gaming on December 31, 2020. By refusing to agree that the Termination Provision in the Tribes' 1999 Compacts violates the IGRA, is void, and can be severed from the 1999 Compacts, the State will prevent the Tribes from conducting class III gaming on their Indian lands when the term of the 1999 Compacts expires, will require that the Tribes engage in mandatory negotiations to

renew the 1999 Compacts or force the Tribes to violate federal and state law if they continue to conduct gaming on their Indian lands after the 1999 Compacts expire.

43. Unless this Court issues an order declaring that the Termination Provision in the Tribes' 1999 Compacts violates the plain wording of the IGRA and the purposes of the IGRA, and, on that basis, declares that Section 11.2.1 of the 1999 Compacts is void and unenforceable, the State will continue to insist that Section 11.2.1 is valid and enforceable, which will prevent the Tribes from conducting class III gaming on their Indian lands, and thereby prevent the Tribes from achieving one of the primary purposes of the IGRA, "promoting tribal economic development, self-sufficiency, and strong tribal governments."

44. Unless the Court declares the Termination Provision void and orders it severed from the 1999 Compacts, the Tribes will suffer severe and irreparable harm for which they have no plain, speedy or adequate remedy at law, in that the Tribes are and will continue to be prevented from building new gaming facilities, expanding their existing gaming facilities in the short term and from conducting gaming "as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments" after December 31, 2020.

WHEREFORE, the Tribes pray as hereinafter set forth.

PRAYER FOR RELIEF

Pursuant to its claims and cause of action alleged herein, the Tribes pray as follows:

1. That the Court declare that the Termination Provision in the 1999 Compacts entered into by the Tribes, Section 11.2.1, violates the provisions of the IGRA and the purposes of the IGRA;

2. That the Court declare that Section 11.2.1 of the Tribes' 1999 Compacts is void and unenforceable;

3. That the Court declare that the Tribes have no obligation under the 1999 Compacts to negotiate a renewal of the 1999 Compacts;

4. That the Court declare and order that Section 11.2.1 is severed from the 1999 Compacts and that the remaining provisions of the 1999 Compacts are in full force;

5. That the Court enter an order provisionally and permanently restraining and enjoining the State, and each of them, their officers, agents and employees, from demanding that the Tribes negotiate to include in the Tribes' Compacts a Termination Provision;

6. That Plaintiffs be awarded costs and reasonable attorneys' fees; and

7. That the Court grant such other relief as may be deemed appropriate.

June 23, 2016

Respectfully Submitted,

RAPPORT AND MARSTON

By: */s/ Lester J. Marston*
LESTER J. MARSTON, Attorney for Chicken Ranch Rancheria of Me-Wuk Indians and the Chemehuevi Indian Tribe