

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

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CACHIL DEHE BAND OF WINTUN INDIANS
OF THE COLUSA INDIAN COMMUNITY, a
federally recognized Indian Colusa,

Plaintiff,

vs.

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

Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff, the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community, by and through its attorneys of record herein, complains and alleges as follows:

JURISDICTION

1. Plaintiff, the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community (hereinafter "Colusa" or "the Tribe"), alleges that the State of California ("State") has failed to negotiate in good faith under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701, *et seq.*, in response to Colusa's request for a new class III Gaming Compact to replace Colusa's current class III Gaming Compact. Therefore, this Court has original jurisdiction over the subject matter of Colusa's action pursuant to 28 U.S.C. §§ 1331 and 1362, in that Colusa's

1 claim arises under 25 U.S.C. § 2710(d)(7)(A)(i).

2 2. Defendant State of California affirmatively has waived its sovereign immunity to
3 this suit pursuant to Calif. Gov't. Code § 98005.

4 **VENUE**

5 3. Venue in this action lies in this District pursuant to 28 U.S.C. § 1391(b)(1) and
6 Calif. Code of Civ. Procedure § 401, in that the State's Attorney General maintains an office in
7 Fresno County, California, within the Eastern District of California.

8 **PARTIES**

9 4. Colusa is a sovereign federally-recognized Indian Tribe that maintains
10 government-to-government relations with the United States.

11 5. Defendant State is the State of California.

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

14 **FACTUAL ALLEGATIONS**

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

17 8. Colusa is the beneficial owner of and exercises governmental authority over the
18 Colusa Indian Reservation ("Reservation"), located several miles from the city of Colusa in a
19 rural agricultural area of Colusa County, California. The federal government holds the lands of
20 the Reservation in trust for Colusa. The Reservation is "Indian country" within the meaning of
21 18 U.S.C. § 1151, and the lands of the Reservation, having been held in trust by the United States
22 prior to October 17, 1988, are "Indian lands" as defined in 25 U.S.C. § 2703(4).

23 9. In 1999, Colusa and the State executed a Compact ("1999 Compact") pursuant to
24 IGRA that took effect on or about May 16, 2000. If not renegotiated or replaced by December
25 31, 2020, Colusa's 1999 Compact's term automatically will be extended until June 30, 2022,
26 unless the parties have agreed to an earlier termination date.

27 10. Pursuant to and in compliance with the terms of its 1999 Compact, Colusa owns
28 and operates the Colusa Casino Resort ("Casino") on the Reservation. However, between

1 September, 2003 and October, 2009, the State violated Colusa's Compact by imposing multiple
2 erroneous interpretations of § 4.3.2.2(a) of Colusa's 1999 Compact, wrongfully preventing
3 Colusa from drawing as many additional Gaming Device licenses as Colusa actually was entitled
4 to draw under its Compact, thereby depriving Colusa of the opportunity to generate significant
5 additional revenues to support its government, and placing Colusa at a competitive disadvantage
6 relative to other nearby Tribes. To force the State to stop violating Colusa's Compact, Colusa had
7 to sue the State in federal court. First filed in 2004, Colusa's lawsuit was bitterly fought by the
8 State, including seeking U.S. Supreme Court review of the judgment in Colusa's favor, thereby
9 depriving Colusa of the full benefit of its Compact for five years – 20% of the Compact's initial
10 term.

11 11. IGRA categorizes gaming into three "Classes": social games for prizes of minimal
12 value, and ceremonial games ("Class I"); bingo and games similar to bingo, including electronic,
13 computer or other technologic aids to such games, and non-banking card games, to the extent
14 either such games either are expressly authorized or not expressly prohibited by State law ("Class
15 II"); and all other forms of gaming, including slot machines ("Gaming Devices") and "banked
16 games" (*e.g.*, blackjack, in which the "house" or "bank" takes on all comers, paying all winners
17 and collecting from all losers) ("Class III").

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

27 13. In response to a Colusa's request to negotiate (or renegotiate) the terms of a
28 Compact, the State is obligated to negotiate in good faith about Colusa's request. 25 U.S.C.

1 § 2710(d)(3)(A).

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

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

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

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

11 (iv) taxation by the Indian tribe of such [Class III gaming] activity in amounts
12 comparable to amounts assessed by the State for comparable activities;

13 (v) remedies for breach of contract;

14 (vi) standards for the operation of such [Class III gaming] activity and
15 maintenance of the gaming facility, including licensing; and

16 (vii) any other subjects that are directly related to the operation of [Class III]
17 gaming activities.

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

24 16. The Colusa's 1999 Compact with the State of California authorizes Colusa to
25 operate up to two Gaming Facilities, up to 2,000 Gaming Devices (*i.e.*, slot machines), banked
26 and percentage card games, and games and devices that State law authorizes to the California
27 State Lottery.

28 17. Section 5.1 of Colusa's Compact obligates Colusa to pay into the Indian Gaming

1 Special Distribution Fund ("SDF") that the California Legislature created in the State Treasury a
2 percentage of the Gaming Device net win from the number of Gaming Devices in excess of 200
3 that it operated on September 1, 1999. On September 1, 1999, Colusa operated 523 Gaming
4 Devices, and thus pays into the SDF a percentage of the net win from 323 Gaming Devices.
5 Under its 1999 Compact, Colusa pays into the SDF approximately twice what Colusa would pay
6 as its pro rata share of the State's legitimate regulatory costs.

7 18. Section 4.3.2.2(a) of Colusa's 1999 Compact provides that in order to operate
8 more Gaming Devices than the 523 that Colusa operated on September 1, 1999, Colusa must
9 draw licenses from a statewide pool of Gaming Device licenses, and for each license drawn, pay
10 into the Indian Gaming Revenue Sharing Trust Fund ("RSTF") a non-refundable, one-time pre-
11 payment fee of \$1,250, and for licenses in excess of the first 350 drawn, pay into the RSTF an
12 annual license fee of between \$900 and \$4,350 for each Gaming Device license maintained.

13 19. By letter dated February 19, 2015, Colusa confirmed its formal request that the
14 State enter into negotiations for a new Compact to replace Colusa's 1999 Compact on or before
15 that Compact expires, and that Colusa had joined the 1999 Compact Tribes Steering Committee
16 ("CTSC"), a coalition of other Tribes with materially identical 1999 Compacts formed to
17 participate as a group in negotiating new compacts to replace their 1999 Compacts that are due to
18 expire no later than June 30, 2022.

19 20. Formal negotiations between Colusa, as part of the CTSC, and the State
20 commenced in or about December, 2014. The last negotiating session between Colusa and the
21 State's negotiating team occurred on April 23, 2020.

22 21. The negotiations between the State and Colusa failed to culminate in agreement on
23 the terms of new Compacts to replace Colusa's 1999 Compact, due to the State's insistence on
24 including in new Compacts the following provisions that Colusa contended are not directly
25 related to and necessary for the licensing and regulation of Gaming Activities, do not establish
26 standards for the operation of Gaming Activities or maintenance of a Gaming Facility, or are not
27 otherwise directly related to the operation of Gaming Activities, and thus are not proper subjects
28 of negotiation under IGRA:

- 1 a. Payment into the SDF of more than is necessary to defray the State's costs
2 of regulating Colusa's Gaming Activities;
- 3 b. Requiring payment into the RSTF of more than is needed to distribute up
4 to \$1.1 million per year to each federally recognized California Indian Tribe operating fewer than
5 350 Gaming Devices;
- 6 c. Allocation of any surplus in the RSTF to the State's proposed Tribal
7 Nations Grant Fund ("TNGF");
- 8 d. A definition of "Gaming Facility" that includes structures and other
9 improvements in which no Gaming Activities occurs;
- 10 e. A definition of "Gaming Operation" that includes activities or functions
11 that are not, themselves, Gaming Activities, or are not directly related to or necessary for the
12 operation or regulation of Gaming Activities or the maintenance of Gaming Facilities;
- 13 f. Requiring Colusa to enact an ordinance that not only prohibits workplace
14 discrimination, harassment and retaliation and creates remedies in money damages for such
15 claims, but also requiring Colusa to carry at least \$3 million in employment practices insurance,
16 notwithstanding that 42 U.S.C. §§ 2000e(b) ("Title VII") and 12111(5)(b) ("ADA") expressly
17 exclude federally recognized Indian Tribes from the definition of "employer;"
- 18 g. Generally prohibiting Colusa's Gaming Operation from cashing various
19 kinds of government checks;
- 20 h. Requiring compliance with California's minimum wage law and
21 regulations for all Gaming Operation employees, including for employees not directly involved
22 in the operation or regulation of Gaming Activities or the maintenance of Gaming Facilities;
- 23 i. Requiring Colusa to carry \$10 million in liability insurance, and to waive
24 its sovereign immunity to, and create remedies in money damages for, claims for personal injury,
25 bodily injury or property damage sustained on the Reservation while not participating in Gaming
26 Activities;
- 27 j. Requiring Colusa to withhold and pay over to the State California income
28 taxes from the wages of all Gaming Operation employees except for enrolled Tribal members

1 residing on the Reservation and other Native Americans who opt out of state income tax

2 withholding;

3 k. Requiring Colusa to enact an ordinance or otherwise to require Colusa to
4 honor California state court spousal and child support orders directed at all Gaming Operation
5 employees;

6 l. Requiring Colusa to enact a new Tribal Labor Relations Ordinance
7 dictated by the State, and subjecting Colusa to a labor-management relations regime unlike that
8 applicable to any other non-Tribal California employer over which the National Labor Relations
9 Board asserts jurisdiction.

10 22. On or about July 14, 2020, Colusa presented the State with Colusa's last, best offer
11 of the terms of a new Compact to replace Colusa's 1999 Compact; gave the State until and
12 including July 31, 2020 to respond; and informed the State, *inter alia*, that if the State did not
13 timely accept Colusa's last, best offer of a new Compact, Colusa would file suit against the State
14 alleging that the State had failed to negotiate in good faith.

15 23. On or about July 15, 2020, the State sent Colusa a letter in which the State, *inter*
16 *alia*, acknowledged receipt of Colusa's last, best offer of the terms of a new Compact to replace
17 Colusa's Compact, and requested that Colusa agree that the State could have until August 31,
18 2020 to respond to that offer.

19 24. On or about July 17, 2020, Colusa responded by letter to the State's request for
20 additional time to respond to Colusa's last, best offer of a new Compact to replace Colusa's 1999
21 Compact by declining to accede to the State's request for additional time to respond due to the
22 short time remaining on the term of Colusa's existing Compact, unless the State would agree to
23 extend the term of Colusa's 1999 Compact by two years and amend Colusa's 1999 Compact to
24 obligate Colusa to pay into the SDF only Colusa's pro rata share of the State's regulatory costs, in
25 which event Colusa would agree to extend the State's time to respond to Colusa's last, best offer
26 of a new Compact by sixty days, rather than the thirty days the State had requested.

27 25. By letter dated July 31, 2020, the State rejected Colusa's last, best offer of the
28 terms of a new Compact, and also rejected Colusa's proposal for a two-year extension of Colusa's

1999 Compact.

26. At no time during the five years of negotiations in which Colusa participated as part of the CTSC did the State offer any meaningful consideration in the form of a substantial concession on an issue about which the State is not obligated to negotiate in good faith, in exchange for any of the concessions the State demanded of Colusa as enumerated in Paragraph 21 above.

FIRST CLAIM FOR RELIEF

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

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

COUNT ONE

State's Insistence That The Colusa Make Excessive Payments Into The Indian Gaming Special Distribution Fund

28. Throughout Colusa's negotiations for a new Compact, the State insisted that Colusa pay more into the SDF than is necessary to reimburse the State for its actual and reasonable costs that are directly related to regulation of Colusa's Gaming Activities.

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

COUNT TWO

State's Insistence That Colusa Make Excessive Payments Into The Indian Gaming Revenue Sharing Trust Fund

30. Throughout Colusa's negotiations for a new Compact, the State insisted that Colusa pay into the RSTF more than would be needed to distribute \$1.1 Million per year to each California Colusa operating fewer than 350 Gaming Devices when Colusa's payments are

1 combined with other Tribes' payments into the RSTF.

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

6 **COUNT THREE**

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

8 32. Throughout Colusa's negotiations for a new Compact, the State insisted, over
9 Colusa's continuing objections, that a new Compact must include the State-created Tribal Nations
10 Grant Fund ("TNGF") from which a State-created administrative body, without input from
11 Colusa but using funds provided in part by Colusa, would award grants on a competitive basis to
12 Tribes with small or no gaming operations, subject to various restrictions, and a provision
13 allowing for the transfer of any surplus in the RSTF to the TNGF.

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

15 34. The State's insistence that Colusa agree to include the TNGF in a new Compact
16 and that Colusa's payments into the RSTF could be allocated to that fund if the RSTF contained
17 more money than necessary to distribute \$1.1 million per year to each RSTF-eligible Colusa,
18 constituted a demand for direct taxation of Colusa, and thus constituted a failure by the State to
19 negotiate in good faith.

20 35. Although Colusa objected throughout the negotiations that the TNGF is not a
21 proper subject of negotiation under IGRA unless the State were to offer meaningful consideration
22 in the form of a substantial concession on an issue about which the State is not otherwise
23 obligated to negotiate in good faith, Colusa joined in a counter-proposal to the State to create a
24 second fund ("Revenue Sharing Trust Fund II") that would accomplish the objective of making
25 more money available for distribution to RSTF-eligible Tribes, but without involving the TNGF.
26 The State never provided a formal response to that proposal.

27 **COUNT FOUR**

28 **State's Insistence That "Gaming Facility" Be Defined To Include Structures And Other**

Areas Of The Reservation In Which No Gaming Activities Occur

1
2 36. Throughout Colusa's negotiations for a new Compact, the State insisted upon
3 defining "Gaming Facility" to include not only structures in which Gaming Activities are
4 conducted, but also structures and other improvements on the Reservation in which no Gaming
5 Activities occur.

6 37. By insisting on including in the definition of "Gaming Facility" structures or areas
7 of the Reservation within or upon which no Gaming Activities or activities directly related to
8 Gaming Activities are conducted, the State's proposed definition of "Gaming Facility" neither is
9 directly related to or necessary for the regulation and licensing of Gaming Activities, nor
10 establishes a standard for operation of Gaming Activities or maintenance of Colusa's Gaming
11 Facilities, nor is otherwise directly related to the operation of Gaming Activities, and thus is not a
12 proper subject of negotiation under IGRA. Therefore, the State's insistence on including such a
13 provision constituted a failure by the State to negotiate in good faith.

14 **COUNT FIVE**

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

19 38. Throughout Colusa's negotiations for a new Compact, the State insisted upon
20 defining "Gaming Operation" to include not only the actual operation of Gaming Activities and
21 activities directly related to the operation of Gaming Activities and maintenance of Colusa's
22 Gaming Facility, but also activities and areas of the Reservation that are not directly related to or
23 necessary for the regulation and licensing of Gaming Activities, or the operation of Gaming
24 Activities or maintenance of Gaming Facilities.

25 39. By insisting on defining "Gaming Operation" to include activities and areas of the
26 Reservation that are not directly related to or necessary for the regulation and licensing of
27 Gaming Activities or that establish standards for the operation of Gaming Activities or
28 maintenance of Colusa's Gaming Facilities, the State insisted upon including in a new Compact a
provision that is not a proper subject of negotiation under IGRA, which insistence constituted a
COMPLAINT

1 failure by the State to negotiate in good faith.

2 **COUNT SIX**

3 **State's Insistence That Colusa Create Remedies In Money Damages For Workplace**
4 **Discrimination, Harassment And Retaliation**

5 40. As a federally recognized Indian Colusa, Colusa is expressly excluded from the
6 definition of "employer" under Title VII of the Civil Rights Act of 1964, and the Americans with
7 Disabilities Act, and federal courts have held that federally recognized Indian Tribes are not
8 subject to private lawsuits for money damages under various other federal statutes dealing with
9 workplace discrimination.

10 41. Notwithstanding federal statutes that exclude Colusa from the definition of
11 "employer," and federal court decisions holding that Tribes are not subject to private suit for
12 money damages under those statutes, the State insisted on including in a new Compact with
13 Colusa the requirement that Colusa carry \$3 million in employment practices liability insurance,
14 and enact a tribal ordinance that not only prohibits workplace discrimination, harassment and
15 retaliation, but also creates remedies in money damages for all Gaming Operation employees,
16 including employees not directly involved in the operation of Gaming Activities or maintenance
17 of a Gaming Facility.

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

27 **COUNT SEVEN**

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

1 43. Throughout Colusa's negotiations for a new Compact, the State insisted on
2 including a provision prohibiting Colusa's Gaming Operation from cashing, except for Colusa's
3 tribal members, any check drawn against a federal, state, county, or city fund, including, but not
4 limited to, Social Security, unemployment insurance, disability payments, or public assistance
5 payments.

6 44. Cashing checks is not directly related to and necessary for the regulation and
7 licensing of Gaming Activities, nor is it a standard for the operation of Gaming Activities or
8 maintenance of Colusa's Gaming Facility, nor is it otherwise directly related to the operation of
9 Gaming Activities, and thus is not a proper subject of negotiation under IGRA, and the State's
10 insistence on including such a provision in a new Compact constituted a failure by the State to
11 negotiate in good faith.

12 **COUNT EIGHT**

13 **State's Insistence That Colusa Comply With California's Minimum Wage Law
14 And Regulations**

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

19 46. California's minimum wage law and implementing regulations are not directly
20 related to and necessary for the regulation and licensing of Colusa's Gaming Activities, are not
21 standards for the operation of Gaming Activities or maintenance of Colusa's Gaming Facilities, or
22 are not otherwise directly related to the operation of Gaming Activities, and thus are not proper
23 subjects of negotiation under IGRA, and the State's insistence on including such a provision
24 constituted a failure by the State to negotiate in good faith.

25 **COUNT NINE**

26 **State's Insistence That Colusa Enact A New Tort Liability Ordinance And Procedures For
27 Remedies For Injuries Unrelated To Colusa's Gaming Activities**

28 47. Throughout Colusa's negotiations for a new Compact, the State insisted on

1 including provisions requiring Colusa to obtain \$10 million in liability insurance and enact an
2 ordinance creating procedures for awarding money damages to persons claiming to have
3 sustained bodily injury, personal injury or property damage on or near Colusa's Gaming Facility,
4 whether or not under circumstances involving participation in or operation of Colusa's Gaming
5 Activities.

6 48. Requiring creation of remedies in money damages for bodily injury, personal
7 injury and property damage other than that sustained while participating in Gaming Activities or
8 caused by equipment used in conducting Gaming Activities is not a proper subject of negotiation
9 under 25 U.S.C. § 2710(d)(3)(C), and thus the State's insistence on including such a provision
10 constituted a failure to negotiate in good faith.

11 **COUNT TEN**

12 **State's Insistence That Colusa Collect And Remit State Taxes On Gaming Operation**
13 **Employees**

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

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

27 **COUNT ELEVEN**

28 **State's Insistence That Colusa Recognize And Enforce State And Federal Court Child Or**
COMPLAINT

Spousal Support Orders Or Judgments Involving Gaming Operation Employees

1
2 51. Throughout Colusa's negotiations for a new Compact, the State insisted in various
3 formulations that a new Compact must include provisions requiring Colusa to recognize and
4 enforce California and federal court orders or judgments and earnings withholding orders for
5 child or spousal support directed at all Gaming Operation employees.

6 52. Enforcement of spousal and child support obligations is not directly related to and
7 necessary for regulation and licensing of Colusa's Gaming Activities, is not a standard for the
8 operation of Gaming Activities or maintenance of Colusa's Gaming Facility, and is not otherwise
9 directly related to the operation of Gaming Activities, and thus is not a proper subject of
10 negotiation under IGRA, 25 U.S.C. § 2710(d)(3)(C), and the State's insistence on including such
11 a provision in a new Compact constituted a failure by the State to negotiate in good faith.

12 **COUNT TWELVE**

13 **State's Insistence That Colusa Enact A New, State-Dictated Tribal Labor Relations**
14 **Ordinance**

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

17 54. One of the concessions that the State demanded as a condition to the State's entry
18 into Colusa's 1999 Compact was that on or before October 13, 1999, Colusa had to provide the
19 State with an,

20
21 "agreement or other procedure acceptable to the State for
22 addressing organizational and representational rights of Class III
23 Gaming Employees and other employees associated with Colusa's
24 Class III gaming enterprise, such as food and beverage,
25 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."

26 55. The only "agreement or other procedure acceptable to the State" under § 10.7 of
27 Colusa's 1999 Compact was a model Tribal Labor Relations Ordinance ("TLRO") appended to
28 the Compact, the terms of which were negotiated directly between a group of California gaming

1 Tribes, including Colusa, and representatives of Organized Labor, including the California Labor
2 Federation and a number of its constituent labor unions, and facilitated through the Director of
3 the State's Office of Personnel Management and the then President Pro Tem of the State Senate,
4 John Burton.

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

11 57. As required by § 10.7 of its Compact, Colusa enacted the required TLRO, timely
12 submitted it to the State, and has maintained it in effect ever since.

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

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

24 60. Although Colusa consistently objected to the State's proposed new TLRO as not
25 being a proper subject for negotiation under IGRA, given that Colusa's gaming operation is
26 subject to the NLRB's jurisdiction, in an effort to reach an agreement, and contingent upon the
27 State's offer of material consideration in the form of a substantial concession on an issue about
28 which the State is not otherwise obligated to negotiate in good faith, Colusa joined in presenting

1 the State with a revised TLRO as a counterproposal to the State's new proposed TLRO.

2 61. Since first proposing its new TLRO, and despite repeated requests to negotiate
3 about the content of a new TLRO, the State consistently refused to engage in substantive
4 negotiations about the State's new proposed TLRO, and never formally responded to or was
5 willing to negotiate about Colusa's counterproposal for a revised TLRO. Moreover, despite
6 repeated requests, the State never explained why the model TLRO enacted pursuant to § 10.7 of
7 Tribes' respective 1999 Compacts is deficient in any way, and the State never offered any
8 material consideration in the form of a substantial concession of unique value to Colusa and
9 about which the State is not otherwise obligated to negotiate in good faith, in return for Colusa's
10 acceptance of either the State's proposed new TLRO or the tribal counter-proposal.

11 62. The State's insistence on imposing upon Colusa a labor-management relations
12 regime unlike that applicable to any other California employer subject to the NLRB's jurisdiction,
13 and that would deprive Colusa of rights it would otherwise enjoy under the National Labor
14 Relations Act, is not necessary for and directly related to the regulation and licensing of Colusa's
15 Gaming Activities, does not establish a standard for operation of Colusa's Gaming Activities or
16 maintenance of Colusa's Gaming Facilities, and is not otherwise directly related to the operation
17 of Gaming Activities, and thus is not a proper subject of negotiation under IGRA. The State's
18 insistence on including such a provision in a new Compact constituted a failure by the State to
19 negotiate in good faith.

20
21 **COUNT THIRTEEN**

22 **State's Insistence On Extending The State's Environmental Laws To Colusa's Reservation**

23 63. In enacting IGRA, Congress did not intend that the compacting process be used by
24 States to extend their jurisdiction into matters such as taxation, water rights or environmental
25 regulation.

26 64. Section 10.8.1 of Colusa's 1999 Compact requires Colusa to adopt an ordinance,
27 providing for the preparation, circulation and consideration by
28 Colusa of environmental impact reports concerning potential off-
Reservation environmental impacts of any and all Projects to be

1 commenced on or after the effective date of this Compact. In
2 fashioning the environmental protection ordinance, Colusa will
3 make a good faith effort to incorporate the policies and purposes of
4 the National Environmental Policy Act ["NEPA"] and the
5 California Environmental Quality Act ["CEQA"] consistent with
6 Colusa's governmental interests.

7
8 65. In return for Colusa's agreement to include the above-quoted language in its
9 Compact, the State offered Colusa a material concession of unique value on an issue about which
10 the State was not otherwise obligated to negotiate in good faith: to wit, an amendment to the
11 California Constitution allowing the Governor to negotiate and the Legislature to ratify Tribal-
12 State Compacts authorizing federally-recognized California Indian Tribes the right, exclusive of
13 all other persons and entities, to operate on their Indian lands slot machines, banked and
14 percentage card games, and games and devices authorized to the California State Lottery.

15
16 66. Since its Compact took effect twenty (20) years ago, the State has never alleged
17 that Colusa has not fully complied with § 10.8.1 or any other provision of Colusa's 1999
18 Compact, or that § 10.8 is inadequate to protect the off-Reservation environment from significant
19 adverse impacts resulting from Projects undertaken by Colusa, or that renegotiation is necessary
20 to ensure adequate mitigation by Colusa of significant adverse off-Reservation impacts.

21
22 67. Throughout Colusa's negotiations for a new Compact, and without offering any
23 Colusa-specific justification or material consideration in the form of a substantial concession of
24 unique value to Colusa on an issue about which the State is not otherwise required to negotiate in
25 good faith, the State insisted that a new Compact require Colusa to, *inter alia*: (a) enact a new
26 ordinance that incorporates "the relevant policies and purposes of NEPA [National
27 Environmental Policy Act] and CEQA [California Environmental Quality Act] consistent with
28 legitimate governmental interests of Colusa and the State" and requires a much more detailed and
comprehensive CEQA-based environmental review of the potential significant adverse impacts
on the off-Reservation environment of proposed "Projects," even if not directly related to and
necessary for the regulation and licensing of Colusa's Gaming Activities, or establishing
standards for the operation of Gaming Activities or maintenance of Gaming Facilities, or
otherwise directly related to the operation of Gaming Activities; (b) provide wide-ranging notice
to the public and State and local government agencies of the environmental review of proposed
COMPLAINT

1 "Projects"; (c) prior to commencing a Project, offer to negotiate, and if necessary arbitrate, with
2 surrounding local governments and the California Department of Transportation (if a State
3 highway would be impacted) for binding and enforceable agreements to mitigate a proposed
4 Project's off-Reservation environmental and other impacts; and (d) implement the mitigation
5 measures identified in Colusa's environmental document for the "Project."

6 68. Requiring Colusa to enact a new ordinance that incorporates both CEQA and
7 NEPA; to perform a detailed and public analysis of the potential significant effects of a proposed
8 Project on the off-Reservation environment; to negotiate, and if necessary arbitrate, the terms of
9 binding and enforceable mitigation agreements with surrounding local governments and the
10 California Department of Transportation; and thereafter to implement identified mitigation
11 measures, is not directly related to and necessary for the regulation and licensing of Colusa's
12 Gaming Activities, nor does it establish standards for the operation of Colusa's Gaming Activities
13 or maintenance of Colusa's Gaming Facility, nor is it otherwise directly related to the operation of
14 Colusa's Gaming Activities, and thus is not a proper subject of negotiation under IGRA. The
15 State's insistence on including such a provision in a new Compact constituted a failure by the
16 State to negotiate in good faith.

17
18 **COUNT FOURTEEN**

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

21 69. Throughout Colusa's negotiations with the State for a new Compact, the State
22 insisted on including within the definition of "Gaming Employee" personnel such as food and
23 beverage cooks and servers, hotel housekeeping employees, parking attendants and other
24 employees whose duties would not include direct or even indirect involvement in the actual
25 operation or regulation of Gaming Activities. By defining "Gaming Employees" so broadly, the
26 State would bring within the scope of the Compact personnel not directly related to and necessary
27 for the regulation and licensing of Colusa's Gaming Activities, or not otherwise directly related to
28 the operation of Gaming Activities, and thus the State's definition of "Gaming Employees" goes

beyond what is a proper subject of negotiation under IGRA. The State's insistence on including so broad a definition of "Gaming Employees" constituted a failure to negotiate in good faith.

WHEREFORE, Colusa prays as follows:

1. that the Court enter judgment declaring that as to each of Counts One through Fourteen of Colusa's First Claim for Relief, the State of California has failed to negotiate in good faith as required by IGRA by insisting upon including in a new Compact provisions that are not proper subjects of negotiation under IGRA;

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

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

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

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

6. in the event that a new Compact with the State or Class III gaming procedures prescribed by the Secretary of the Interior has not taken effect prior to June 30, 2022, Colusa may continue operating Gaming Activities pursuant to its 1999 Compact until the effective date of either a new Compact or procedures prescribed by the Secretary of the Interior.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 7. that the Court grant such other relief as it deems appropriate;
- 8. that Colusa be awarded its costs of suit and reasonable attorneys' fees; and
- 9. that the State reimburse the Indian Gaming Special Distribution Fund in an amount equal to what the State has charged that Fund for its defense of this action, plus interest accrued at the same rate as California law imposes on debts owed to the State.

Dated: August 7, 2020

Respectfully submitted,

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