

SLOTE, LINKS & BOREMAN, LLP

Robert D. Links (SBN 61914) (bo@slotelaw.com)
Adam G. Slote, Esq. (SBN 137465) (adam@slotelaw.com)
Marglyn E. Paseka (SBN 276054) (margie@slotelaw.com)
1 Embarcadero Center, Suite 400
San Francisco, CA 94111
Phone: 415-393-8001
Fax: 415-294-4545
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

CAL-PAC RANCHO CORDOVA, LLC, dba
PARKWEST CORDOVA CASINO;
CAPITOL CASINO, INC.; LODI
CARDROOM, INC. dba PARKWEST
CASINO LODI; and ROGELIO’S INC.,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF THE
INTERIOR; SALLY JEWELL, in her official
capacity as Secretary of the Interior; and
LAWRENCE S. ROBERTS in his official
capacity as Acting Assistant Secretary of the
Interior – Indian Affairs,

Defendants.

No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF PURSUANT
TO THE ADMINISTRATIVE
PROCEDURE ACT**

1 **INTRODUCTION**

2 1. This case involves a challenge under the Administrative Procedure Act to the
3 federal defendants’ issuance of “Secretarial Procedures” purporting to allow an Indian tribe, the
4 Estom Yumeka Maidu Tribe of the Enterprise Rancheria (the Tribe), to conduct casino gaming
5 on a parcel of newly acquired off-reservation land in Yuba County. Plaintiffs contend that
6 defendants’ purported authorization violates the law in three respects:

7 2. First, the Indian Gaming Regulatory Act (“IGRA,” 25 U.S.C. §§ 2701, *et seq.*)
8 allows the Secretary of the Interior to issue procedures regarding the operation of casino
9 gaming—Class III gaming under IGRA—*only* if the gaming will be on Indian lands “over which
10 the tribe has jurisdiction.” In this case, the land in question is off-reservation and the Tribe lacks
11 territorial jurisdiction over it. Because title to the subject parcel historically has been vested in
12 private parties and was only recently transferred to the federal government without any cession
13 of jurisdiction on behalf of the State of California, territorial jurisdiction over the property
14 remains with the state and not the United States or any Indian tribe. There is a common
15 misperception that state jurisdiction diminishes when the federal government obtains title to
16 land, but that has never been the law. In fact, precedent establishes that the federal government
17 cannot unilaterally appropriate territorial jurisdiction from a sovereign state, nor can an Indian
18 tribe. See *Ft. Leavenworth RR v. Lowe*, 114 U.S. 525 (1885). In the instant case, because the
19 Tribe does not have the required jurisdiction over this off-reservation land, IGRA does not
20 authorize casino gaming there. Furthermore, if the Indian Reorganization Act (“IRA,” 25 U.S.C.
21 § 465) were somehow construed to shift jurisdiction and therefore allow casino gaming on the
22 subject site without the state’s cession of territorial jurisdiction, IRA would violate the Tenth
23 Amendment.

1 3. Second, IGRA allows the federal defendants to issue “Secretarial Procedures” for
2 tribal gaming only if they are “consistent with ... the relevant provisions of the laws of the State.”
3 See 25 U.S.C. § 2710(d)(7)(B)(vii)(I). In this instance, the Secretarial Procedures are not
4 consistent with state law. California does not allow anyone to operate slot machines on lands
5 governed by California laws. Further, under state law, federally-recognized Indian tribes can
6 conduct Class III gaming *only* pursuant to a compact negotiated by the Governor and ratified by
7 the Legislature, and the Tribe does not have such a compact.

8 4. Third, in issuing the challenged Secretarial Procedures, defendants have
9 misinterpreted IGRA and not acted in accord with that statute. The portion of IGRA that
10 provides for the prescription of procedures by the Secretary —25 U.S.C. § 2710(d)(7)(B)(vii)—
11 does not authorize the Secretary of the Interior to allow a tribe to conduct Class III gaming
12 without a Tribal-State compact. Rather, section 2710(d)(7)(B)(vii) allows the Secretary merely
13 to prescribe “procedures” for a tribe to follow in order to obtain a Tribal-State compact. If this
14 section were construed otherwise, it would conflict with at least two other sections of IGRA and
15 a separate federal statute, the Johnson Act (15 U.S.C. §§ 1171-1178), that limits tribal gambling.
16 None of these laws allows a tribe to engage in Class III gaming if the tribe lacks a Tribal-State
17 compact. Stated another way, these provisions do not allow Class III tribal gaming pursuant to
18 Secretarial Procedures.

19 5. For these reasons, the federal defendant’s issuance of the Secretarial Procedures
20 is contrary to federal law and, under the Administrative Procedure Act, the court should issue
21 declaratory relief that the instant Secretarial Procedures are invalid, as well as injunctive relief
22 ordering defendants to withdraw them. Such relief is expressly authorized by the APA. See 5
23 U.S.C. §§ 703 and 706(2).

1 **JURISDICTION**

2 6. The court has jurisdiction over the subject matter of this action pursuant to 28
3 U.S.C. §1331 (federal question) and the APA, 5 U.S.C. § 703.

4 7. This action arises under the Constitution of the United States, including the
5 Tenth Amendment, and under statutory law, including IGRA (25 U.S.C. §§ 2701, *et seq.*), the
6 APA, and the Declaratory Judgments Act (28 U.S.C. §§ 2201 and 2202) as well as under federal
7 common law.

8 8. The sovereign immunity of the United States has been waived with respect to the
9 subject matter of this action and the relief requested herein by the APA. See 5 U.S.C. § 702.

10 9. Defendants' action in issuing the challenged Secretarial Procedures constitutes
11 final agency action for purposes of APA jurisdiction and plaintiffs have no other adequate
12 judicial remedy. See 5 U.S.C. § 704.

13 **VENUE**

14 10. Venue is properly vested in this judicial district pursuant to 28 U.S.C. § 1391(e)
15 because a substantial part of the events giving rise to the claims occurred in this judicial district
16 and the subject real property is located here, in Yuba County, California. Moreover, plaintiffs
17 reside in this judicial district.

18 **NO ADEQUATE REMEDY AT LAW**

19 11. Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of
20 law, other than the relief sought in this complaint, because there is no other mechanism for
21 compelling the federal defendants' compliance with IGRA and the APA.

22 **THE SUBJECT PARCEL**

23 12. The subject off-reservation parcel consists of 40 acres of land located in Yuba
24 County, California, approximately four miles southeast of the Community of Olivehurst, near

1 the intersection of Forty Mile Road and State Route 65 (the “Yuba Parcel”). A legal description
2 of the Yuba Parcel and a map depicting it are attached hereto as Exhibit A.

3 **PARTIES**

4 13. Plaintiff CAL-PAC RANCHO CORDOVA, LLC, dba PARKWEST
5 CORDOVA CASINO (the RANCHO CORDOVA CARDROOM) is a cardroom licensed by
6 the State of California having its principal place of business in the City of Rancho Cordova,
7 which is within Sacramento County, California. Plaintiff RANCHO CORDOVA CARDROOM
8 has been in operation at its present location since February 2010. Plaintiff RANCHO
9 CORDOVA CARDROOM conducts various card and tile games approved by the California
10 Bureau of Gambling Control, including variants of poker, baccarat, blackjack, and other popular
11 table games such as pai gow and ultimate Texas Hold ‘Em in which players wager against one
12 another on the outcome.

13 14. The Secretarial Procedures challenged in this case purport to allow the Tribe to
14 conduct Nevada-style banking and percentage card games and to utilize slot machines, which
15 would be illegal if conducted/or operated by plaintiff RANCHO CORDOVA CARDROOM,
16 and to conduct them on the Yuba parcel, which is off-reservation land in Yuba County, which is
17 approximately 42 miles and a 45-55 minute drive from plaintiff’s cardroom. The market area
18 for the Tribe’s casino will overlap in substantial part with plaintiff’s market area, and the
19 Tribe’s games under the Secretarial Procedures would be in direct competition with games
20 offered by plaintiff. Further, the games authorized by the Secretarial Procedures are more
21 popular with players than the restricted games plaintiff is allowed to offer under state law, and
22 they would naturally have a strong negative impact on plaintiff’s business. Moreover, if the
23 Secretarial Procedures are implemented, plaintiffs will face increased competition for qualified
24 and competent employees to staff their existing cardrooms. In short, plaintiff would suffer

1 serious economic injury if the Secretarial Procedures are allowed to stand, including a loss of
2 taxable revenue, loss of employees/employment, and a corresponding diminishment of profits.

3 15. Plaintiff LODI CARDROOM, INC. dba PARKWEST CASINO LODI (LODI
4 CARDROOM) is a cardroom licensed by the State of California having its principal place of
5 business in the City of Lodi, which is within San Joaquin County, California. Plaintiff LODI
6 CARDROOM has been in operation at its present location since May 2007. Plaintiff LODI
7 CARDROOM conducts various card and tile games approved by the California Bureau of
8 Gambling Control, including variants of poker, baccarat, blackjack, and other popular table
9 games such as pai gow and ultimate Texas Hold 'Em in which players wager against one
10 another on the outcome.

11 16. The Secretarial Procedures challenged in this case purport to allow the Tribe to
12 conduct Nevada-style banking and percentage card games and to utilize slot machines, which
13 would be illegal if conducted/or operated by plaintiff LODI CARDROOM, and to conduct them
14 on the Yuba parcel, which is off-reservation land in Yuba County, which is approximately 75
15 miles and a 80 minute drive from plaintiff's cardroom. The market area for the Tribe's casino
16 will overlap in substantial part with plaintiff's market area, and the Tribe's games under the
17 Secretarial Procedures would be in direct competition with games offered by plaintiff. Further,
18 the games authorized by the Secretarial Procedures are more popular with players than the
19 restricted games plaintiff is allowed to offer under state law, and they would naturally have a
20 strong negative impact on plaintiff's business. Moreover, if the Secretarial Procedures are
21 implemented, plaintiffs will face increased competition for qualified and competent employees
22 to staff their existing cardrooms. In short, plaintiff would suffer serious economic injury if the
23 Secretarial Procedures are allowed to stand, including a loss of taxable revenue, loss of
24 employees/employment, and a corresponding diminishment of profits.

1 17. Plaintiff CAPITOL CASINO, INC. (CAPITOL CASINO) is a cardroom licensed
2 by the State of California having its principal place of business in the City of Sacramento,
3 which is within Sacramento County, California. Plaintiff CAPITOL CASINO has been in
4 operation at its present location since May 2000. Plaintiff CAPITOL CASINO conducts
5 various card and tile games approved by the California Bureau of Gambling Control, including
6 variants of poker, baccarat, blackjack, and other popular table games such as pai gow and
7 ultimate Texas Hold ‘Em in which players wager against one another on the outcome.

8 18. The Secretarial Procedures challenged in this case purport to allow the Tribe to
9 conduct Nevada-style banking and percentage card games and to utilize slot machines, which
10 would be illegal if conducted/or operated by plaintiff CAPITOL CASINO, and to conduct them
11 on the Yuba parcel, which is off-reservation land in Yuba County, which is approximately 35
12 miles and a 41 minute drive from plaintiff’s cardroom. The market area for the Tribe’s casino
13 will overlap in substantial part with plaintiff’s market area, and the Tribe’s games under the
14 Secretarial Procedures would be in direct competition with games offered by plaintiff. Further,
15 the games authorized by the Secretarial Procedures are more popular with players than the
16 restricted games plaintiff is allowed to offer under state law, and they would naturally have a
17 strong negative impact on plaintiff’s business. Moreover, if the Secretarial Procedures are
18 implemented, plaintiffs will face increased competition for qualified and competent employees
19 to staff their existing cardrooms. In short, plaintiff would suffer serious economic injury if the
20 Secretarial Procedures are allowed to stand, including a loss of taxable revenue, loss of
21 employees/employment, and a corresponding diminishment of profits.

22 19. Plaintiff ROGELIO’S, INC. dba ROGELIO’S CASINO (ROGELIO’S) is a
23 cardroom licensed by the State of California having its principal place of business in the City of
24 Isleton, which is within Sacramento County, California. Plaintiff ROGELIO’S has been in

1 operation at its present location since August 1985. Plaintiff ROGELIO'S conducts various
2 card and tile games approved by the California Bureau of Gambling Control, including variants
3 of poker including Texas Hold 'Em, in which players wager against one another on the
4 outcome.

5 20. The Secretarial Procedures challenged in this case purport to allow the Tribe to
6 conduct Nevada-style banking and percentage card games and to utilize slot machines, which
7 would be illegal if conducted/or operated by plaintiff ROGELIO'S, and to conduct them on the
8 Yuba parcel, which is off-reservation land in Yuba County, which is approximately 74 miles
9 and a 78 minute drive from plaintiff's cardroom. The market area for the Tribe's casino will
10 overlap in substantial part with plaintiff's market area, and Tribe's games under the Secretarial
11 Procedures would be in direct competition with games offered by plaintiff. Further, the games
12 authorized by the Secretarial Procedures are more popular with players than the restricted games
13 plaintiff is allowed to offer under state law, and they would naturally have a strong negative
14 impact on plaintiff's business. Moreover, if the Secretarial Procedures are implemented,
15 plaintiffs will face increased competition for qualified and competent employees to staff their
16 existing cardrooms. In short, plaintiff would suffer serious economic injury if the Secretarial
17 Procedures are allowed to stand, including a loss of taxable revenue, loss of
18 employees/employment, and a corresponding diminishment of profits.

19 21. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR (DOI) is an
20 agency of the United States government. Congress has delegated authority over Indian affairs
21 to the DOI and the Secretary. See 43 U.S.C. §1457(10).

22 22. Defendant SALLY JEWELL is the Secretary of the Interior (Secretary). She is
23 the highest ranking official with the DOI and is being sued in her official capacity.

1 Compact is available on the Governor's website ([https://www.gov.ca.gov/docs/Final_Compact_-](https://www.gov.ca.gov/docs/Final_Compact_-_Enterprise.pdf)
2 [_Enterprise.pdf](https://www.gov.ca.gov/docs/Final_Compact_-_Enterprise.pdf)).

3 27. The Legislature was not in session during the remainder of 2012 after the
4 Enterprise Compact was negotiated and therefore did not consider ratification of the compact
5 during that time frame. In 2013, although the Legislature ratified a companion compact with the
6 North Fork Rancheria authorizing California's first off-reservation casino (to be located in
7 Madera County), the Legislature did not ratify the Enterprise Compact.

8 28. On July 29, 2013, just weeks after the Legislature had ratified the North Fork
9 compact, California State Senator Kevin de Leon, sent a letter to the Governor of California,
10 informing him of plans to convene a working group to examine implications of off-reservation
11 gaming and asking the Governor not to approve or submit for ratification any compacts for off-
12 reservation until the working group had completed its task. A copy of this letter is attached as
13 Exhibit B. At the time the letter was sent, the Enterprise Compact was the only one to which it
14 could pertain.

15 29. On May 27, 2014, almost 21 months after the Enterprise Compact had been
16 negotiated, and just a few weeks before the compact would expire under its own terms, a
17 legislative bill was introduced in the California State Assembly to ratify the Enterprise Compact.
18 See AB 1098 (available at [http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1051-](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1051-1100/ab_1098_bill_20140527_amended_sen_v94.htm)
19 [1100/ab_1098_bill_20140527_amended_sen_v94.htm](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1051-1100/ab_1098_bill_20140527_amended_sen_v94.htm)). The bill was held in the Assembly
20 Rules Committee, and not assigned by the Rules Committee to a policy committee for
21 consideration before July 1, 2014. AB 1098 was never considered in committee or on the floor
22 of either house of the Legislature.

23 30. The State and the Tribe never extended the date for the Enterprise Compact to
24 take effect, and on July 1, 2014, the compact became null and void by its own terms.

1 31. The Legislature has not ceded jurisdiction over the Yuba Parcel to the federal
2 government or the Tribe. The failure of the Legislature to pass AB 1098 or any other bill
3 concerning the Yuba Parcel or the Enterprise Compact means that the Legislature never even
4 impliedly ceded jurisdiction over the Yuba Parcel.

5 32. IGRA section 2710(d)(7) provides a procedure for a tribe to follow when a state
6 refuses to negotiate with an Indian tribe for the purpose of entering into a Tribal-State compact,
7 or fails to negotiate in good faith. See 25 U.S.C. § 2710(d)(7). Pursuant to this procedure, a
8 tribe can sue a consenting state in federal court to obtain a compact pursuant to specific
9 procedures, including a court order to negotiate pursuant to section 2710(d)(7)(B)(iii).

10 33. On August 20, 2014, the Tribe filed suit in this court pursuant to 25 U.S.C. §
11 2710(d)(7) for a determination that the State of California did not negotiate in good faith. *The*
12 *Estom Yumeka Maidu Tribe of the Enterprise Rancheria, California v. State of California*, No.
13 14-CV-01939 (ECF 1 [Complaint]).

14 34. On February 17, 2016, the court concluded that the State had violated the IGRA
15 requirement to negotiate in good faith and ordered the parties to conclude a compact within 60
16 days pursuant to 25 U.S.C. § 2710(d)(7)(B)(iii). See *the Estom Yumeka Maidu Tribe of the*
17 *Enterprise Rancheria, California v. State of California*, No. 14-CV-01939 (ECF 27
18 [Memorandum and Order]).

19 35. In the litigation referred to immediately above, the State of California failed to
20 raise as an affirmative defense or otherwise that the State retained territorial jurisdiction over
21 the proposed casino site and that, as a result, the Tribe did not have territorial jurisdiction over it
22 as required by IGRA.

23 36. The Tribe and the State did not conclude a compact within the 60-day period set
24 forth in 25 U.S.C. § 2710(d)(7)(B)(iii).

1 37. IGRA provides that if no compact is reached within the statutory time-frame, the
2 parties shall each submit a proposed compact to a court-appointed mediator that represents their
3 “last best offer” for a compact. Pursuant to the statutory framework, the mediator then selects
4 the proposal that best comports with IGRA. See 25 U.S.C. § 2701(d)(7)(B)(iv).

5 38. The court-appointed mediator determined that the Tribe’s proposed compact best
6 comported with IGRA and submitted that compact to the State of California for the State’s
7 consent.

8 39. The State of California failed to consent within the required time-frame and the
9 Tribe’s proposed compact was then submitted to the Secretary of the Interior to prescribe
10 procedures under which Class III gaming may be conducted pursuant to 25 U.S.C. §
11 2701(d)(7)(B)(vii).

12 40. On August 12, 2016, the federal defendants issued a document entitled
13 “Secretarial Procedures” which purports to authorize the Tribe to engage in Class III gaming on
14 the Yuba parcel. A true and correct copy of the Secretarial Procedures is attached hereto as
15 Exhibit C.

16 41. The Secretarial Procedures violate the law in at least three respects as set forth
17 below in paragraphs 42-71, inclusive.

18 **FIRST CLAIM FOR RELIEF**
19 **Declaratory Relief**
20 **(Violation of IGRA’s Jurisdictional Requirement)**

21 42. Plaintiffs reallege and incorporate by reference each of the allegations contained
22 in the preceding paragraphs as though fully set forth herein.

23 43. IGRA allows the Secretary to prescribe procedures for the conduct of Class III
24 gaming only if the gaming will occur on Indian lands “over which the Indian tribe has

1 jurisdiction.” 25 U.S.C. § 2710(d)(7)(B)(vii)(II). As alleged below, the Tribe does not have
2 jurisdiction over the Yuba parcel.

3 44. On August 13, 2002, the Tribe submitted an application to the BIA to have the
4 Yuba Parcel taken into trust for the Tribe for the purpose of developing a casino. The Tribe’s
5 application was made under the Indian Reorganization Act (IRA), 25 U.S.C. § 479. At the time
6 the application was submitted to the BIA, the Yuba Parcel was owned by Yuba County
7 Entertainment, LLC, a Delaware limited liability company, a privately owned business entity
8 (hereinafter referred to as YCE), and was governed by state land use and regulatory laws.

9 45. On or about November 21, 2012, the Assistant Secretary for Indian Affairs Kevin
10 K. Washburn issued a Record of Decision (ROD) to acquire title to the Yuba Parcel in trust for
11 the Tribe. The ROD stated, “The Tribe will assert civil/regulatory jurisdiction,” but the state had
12 not ceded its jurisdiction to the Federal government and the Tribe. On December 3, 2012, Notice
13 of the ROD was published in the Federal Register (see 77 FR 71612-01). However, the Notice
14 contained an error and on January 2, 2013, a Correction was published in the Federal Register
15 (see 78 FR 114-01).

16 46. On or about May 16, 2013, YCE transferred the Yuba parcel to “the United
17 States of America in Trust for the Enterprise Rancheria of Maidu Indians of California.” A true
18 and correct copy of the deed effecting this transfer is attached hereto as Exhibit D. The State of
19 California did not participate in the transfer of the Yuba parcel.

20 47. Although the federal government obtained *title* to the Yuba parcel pursuant to the
21 foregoing transaction, it did not obtain territorial *jurisdiction* over the site by virtue of the
22 transfer deed.

23 48. The State of California has had territorial jurisdiction over the Yuba parcel since
24 the state was formed in 1850.

1 49. Under the law, there are only three ways in which the federal government can
2 obtain general territorial jurisdiction over lands within a sovereign state:

- 3 1) By a reservation of such jurisdiction when admitting the state into the Union;
4 2) By obtaining state consent to exclusive federal jurisdiction pursuant to the
5 Enclaves Clause of the United States Constitution (U.S. Const., Art I, § 8, cl.
6 17); and
7 3) By obtaining a formal cession of some or all of the state's jurisdiction.

8 None of these things have happened here.

9 50. The federal government did not reserve jurisdiction over the Yuba parcel when
10 the State of California was admitted into the Union. See 9 Stat. 452 (California Admission
11 Act). Nor did the state consent to the federal government's exercise of exclusive jurisdiction
12 over the Yuba parcel when the federal government obtained title to it. As noted above (see
13 paragraph 46, *supra*) the state was not a party to the transfer of the Yuba parcel to the United
14 States. Nor has the state subsequently ceded any portion of its territorial jurisdiction over the
15 Yuba parcel to the federal government.

16 51. A specific statute provides that the Federal government will be conclusively
17 presumed not to have accepted jurisdiction over land until the federal government formally
18 accepts jurisdiction by filing notice of acceptance with the Governor. See 40 U.S.C. § 3112. The
19 federal government has filed no such notice.

20 52. Because the state has not ceded its jurisdiction, and because the federal
21 government has not accepted or otherwise acquired territorial jurisdiction, the State of California
22 still exercises full general territorial jurisdiction over the Yuba parcel. Because the Yuba parcel
23 is off-reservation and still under the state's territorial jurisdiction, it is not governed by IGRA
24 and IGRA does not authorize Class III gambling at that location. The Secretary is only

1 authorized to issue Secretarial Procedures for Class III gaming to be conducted on Indian lands
2 over which the Indian tribe has acquired territorial jurisdiction.

3 53. For the reasons stated, defendants' issuance of the Secretarial Procedures
4 exceeded their statutory authority under IGRA and, pursuant to the APA, the court should issue
5 appropriate declaratory and injunctive relief.

6 WHEREFORE, plaintiffs request relief as set forth below.

7 **SECOND CLAIM FOR RELIEF**
8 **Declaratory Relief**
9 **(Unconstitutionality of IRA)**

10 54. Plaintiffs reallege and incorporate by reference each of the allegations contained
11 in the preceding paragraphs as though fully set forth herein.

12 55. If the Federal government's acquisition of land in trust for an Indian tribe under
13 the IRA is construed to unilaterally divest a state of its jurisdiction over the site in the absence of
14 the state's consent and cession, the IRA violates the Tenth Amendment to the United States
15 Constitution.

16 56. For the reasons stated, defendants' issuance of the Secretarial Procedures
17 exceeded their legal authority under the United States Constitution and, pursuant to the APA, the
18 court should issue appropriate declaratory and injunctive relief.

19 WHEREFORE, plaintiffs request relief as set forth below.

20 **THIRD CLAIM FOR RELIEF**
21 **Declaratory Relief**
22 **(Violation of IGRA Due to Inconsistency of**
23 **Secretarial Procedures with State law)**

24 57. Plaintiffs reallege and incorporate by reference each of the allegations contained
in the preceding paragraphs as though fully set forth herein.

1 58. IGRA allows the Secretary to prescribe procedures for the conduct of Class III
2 gaming only if the procedures are consistent with “the relevant provisions of the laws of the
3 State.” 25 U.S.C. §2710(d)(7)(B)(vii)(I).

4 59. California law prohibits the operation of slot machines on all lands under state
5 jurisdiction. See Cal. Penal Code §§ 330a, 330b, 330c, 330.1 to 330.6. California law also
6 prohibits all banked and percentage card games on lands under its jurisdiction. See Cal. Penal
7 Code §330. These prohibitions are without exception and they were elevated to the
8 constitutional level in 1986 when Article IV, § 19(e) was added to the California Constitution
9 banning the type of gambling conducted in Nevada and New Jersey.

10 60. In 1999, the voters adopted Proposition 1A, which added Article IV, § 19(f) to the
11 California Constitution. That enactment authorizes the Governor is to negotiate and conclude
12 compacts, subject to ratification by the Legislature, for the operation of slot machines and for the
13 conduct of lottery games and banking and percentage card games by federally recognized Indian
14 tribes on Indian lands in California in accordance with federal law. Article IV, §19(f), by its own
15 terms does not authorize Indian tribes to engage in Class III gaming without a Tribal-State
16 compact.

17 61. The Secretarial Procedures at issue are inconsistent with state law, and
18 specifically violate the California Constitution because they purport to allow the Tribe to operate
19 slot machines on the Yuba parcel and to conduct banking and percentage card games there
20 without a negotiated compact that has been duly ratified under California law.

21 62. For the reasons stated, defendants’ issuance of the Secretarial Procedures
22 exceeded their statutory authority under IGRA and, pursuant to the APA, the court should issue
23 appropriate declaratory and injunctive relief.

24 WHEREFORE, plaintiffs request relief as set forth below.

FOURTH CLAIM FOR RELIEF
Declaratory Relief
(Erroneous Interpretation of IGRA)

63. Plaintiffs reallege and incorporate by reference each of the allegations contained in the preceding paragraphs as though fully set forth herein.

64. Section 2710(d)(7)(B)(vii) of IGRA provides as follows:

If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures—

- (I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this chapter, and the relevant provisions of the laws of the State, and
- (II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

65. In issuing the Secretarial Procedures, defendants have misinterpreted IGRA as quoted above. Defendants interpret section 2710(d)(7)(B)(vii) to allow the Secretary of the Interior to prescribe “procedures” as a substitute for a Tribal-State compact and to allow class III gaming without a Tribal-State compact. However, section 2710(d)(7)(B)(vii) does not give such authority to defendants. Rather, the language quoted above in paragraph 64 allows the Secretary to prescribe further procedures for the Tribe to follow in order to obtain a Tribal-State compact in the first instance.

66. If IGRA were interpreted to allow the Secretary to prescribe and impose “procedures” as a substitute for a Tribal-State compact, IGRA would be internally inconsistent and would directly conflict with at least one other federal statute. As set forth below in paragraphs 67-70, federal law specifically prohibits Indian tribes from engaging in Nevada-style gaming on lands governed by federal law; the only exception is where there is a duly ratified

1 Tribal-State compact. Stated another way, there is no statutory exception that permits Class III
2 gaming under Secretarial Procedures instead of a Tribal-State compact.

3 67. IGRA allows class III gaming on Indian lands only if three requirements are
4 fulfilled, one of which is that the gaming is “conducted in conformance with a Tribal-State
5 compact entered into by the Indian tribe and the State” See 25 U.S.C. § 2710(d)(1). In this
6 case, the Secretarial Procedures do not fulfill the prerequisite of a compact. For that reason
7 alone, the procedures violate the plain language of IGRA.

8 68. In addition to the conflict with section 2710(d)(1), the Secretarial Procedures run
9 afoul of the Johnson Act (15 U.S.C. §§ 1171-1178), which makes it unlawful to “possess or use
10 any gambling device ... within Indian County.” 15 U.S.C. § 1175(a). IGRA expressly provides
11 that the Johnson Act “shall not apply to any gaming conducted *under a Tribal-State compact....*”
12 See 25 U.S.C. § 2710(d)(6) (emphasis added.). This specific Johnson Act exemption, however,
13 does not apply if the gaming is conducted pursuant to “procedures” issued by the Secretary
14 instead of a Tribal-State compact.

15 69. A third infirmity with the Secretarial Procedures stems from 18 USC §1166,
16 which is part of the federal criminal code. Section 1166 makes state laws applicable to Indian
17 country. Subsection 1166(c)(2), which was adopted by Congress as part of IGRA, provides that
18 gambling does not include “class III gaming conducted under a Tribal-State compact approved
19 by the Secretary of the Interior” This exception does not apply to “procedures” issued by the
20 Secretary; by its express terms, it applies only to gaming conducted pursuant to a negotiated
21 compact. For this additional reason, state law still applies to the Yuba parcel even if it is
22 considered “Indian Country.”

23 ///

24 ///

1 70. Even if section 2710(d)(7)(B)(vii) in IGRA were determined to be ambiguous,
2 legislative history, especially debates on the floor of the House and Senate, make clear Congress'
3 intent not to allow Class III gaming without a Tribal-State compact.

4 71. For the reasons stated, defendants' issuance of the Secretarial Procedures
5 exceeded their statutory authority under IGRA and, pursuant to the APA, the court should issue
6 appropriate declaratory and injunctive relief.

7 WHEREFORE, plaintiffs request relief as set forth below.

8 **FIFTH CLAIM FOR RELIEF**
9 **Injunctive Relief**

10 72. Plaintiffs reallege and incorporate by reference each of the allegations contained
11 in the preceding paragraphs as though fully set forth herein.

12 73. Because defendants' actions are unlawful, the court should set them aside and
13 issue appropriate injunctive relief pursuant to 5 U.S.C. §706.

14 WHEREFORE, plaintiffs request relief as set forth below.

15 **PRAYER FOR RELIEF**

16 Plaintiffs request the following relief:

- 17 1. On the first claim, that the court issue a declaratory judgment establishing that
18 defendants, in issuing the challenged Secretarial Procedures, acted in excess of
19 their statutory authority because there has been no cession of jurisdiction and
20 therefore the Yuba parcel does not qualify for Class III gaming under IGRA;
- 21 2. On the second claim, that the court issue a declaratory judgment that the shift in
22 territorial jurisdiction under the IRA in this case, without state consent and/or a
23 cession of jurisdiction, violates the Tenth Amendment;
- 24

- 1 3. On the third claim, that the court issue a declaratory judgment that the
- 2 “Secretarial Procedures” contravene IGRA because they are inconsistent with
- 3 state law;
- 4 4. On the fourth claim, that the court issue a declaratory judgment that defendants
- 5 have erroneously interpreted IGRA to allow Class III gaming without a duly
- 6 negotiated and ratified Tribal-State compact;
- 7 5. On the fifth claim, for an injunction or other appropriate order setting aside
- 8 defendants’ Secretarial Procedures and requiring defendants to withdraw their
- 9 approval of Class III gaming on the Yuba parcel.
- 10 6. An award of attorneys’ fees and costs; and
- 11 7. Such other and further relief as this court deems just and proper.

12 Dated: December 20, 2016

13 **SLOTE LINKS & BOREMAN, LLP**

14 By: 
15 _____

16 Robert D. Links
17 Attorneys for Plaintiffs
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