24	Club One Casino, Inc., et al. v. United States Department of the Case No.	he Interior, et al.
23		
22	Defendants.	
21	Interior – Indian Affairs,	
20	LAWRENCE S. ROBERTS in his official capacity as Acting Assistant Secretary of the	
19	INTERIOR; SALLY JEWELL, in her official capacity as Secretary of the Interior; and	
18	UNITED STATES DEPARTMENT OF THE	PROCEDURE ACT
17	vs.	AND INJUNCTIVE RELIEF PURSUANT TO THE ADMINISTRATIVE
16	Plaintiffs,	COMPLAINT FOR DECLARATORY
15	DEUCE LOUNGE AND CASINO,	
14	CLUB ONE CASINO, INC., dba CLUB ONE CASINO; GLCR, INC., dba THE	No
13	FRESNO	DIVISION
12	EASTERN DISTRIC	CT OF CALIFORNIA
11	UNITED STATES	DISTRICT COURT
10		
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## **INTRODUCTION**

1. This case involves a challenge under the Administrative Procedure Act to the

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federal defendants' issuance of "Secretarial Procedures" purporting to allow an Indian tribe, the North Fork Rancheria Mono Indians of California (the Tribe), to conduct casino gaming on a parcel of newly acquired off-reservation land in Madera County. Plaintiffs contend that defendants' purported authorization violates the law in three respects:

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

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- 3. Second, IGRA allows the federal defendants to issue "Secretarial Procedures" for tribal gaming only if they are "consistent with ... the relevant provisions of the laws of the State." See 25 U.S.C. § 2710(d)(7)(B)(vii)(I). In this instance, the Secretarial Procedures are not consistent with state law. California does not allow anyone to operate slot machines on lands governed by California laws. Further, under state law, federally-recognized Indian tribes can conduct Class III gaming *only* pursuant to a compact negotiated by the Governor and ratified by the Legislature, and the Tribe does not have such a compact.
- 4. Third, in issuing the challenged Secretarial Procedures, defendants have misinterpreted IGRA and not acted in accord with that statute. The portion of IGRA that provides for the prescription of procedures by the Secretary —25 U.S.C. § 2710(d)(7)(B)(vii)—does not authorize the Secretary of the Interior to allow a tribe to conduct Class III gaming without a Tribal-State compact. Rather, section 2710(d)(7)(B)(vii) allows the Secretary merely to prescribe "procedures" for a tribe to follow in order to obtain a Tribal-State compact. If this section were construed otherwise, it would conflict with at least two other sections of IGRA and a separate federal statute, the Johnson Act (15 U.S.C. §§ 1171-1178), that limits tribal gambling. None of these laws allows a tribe to engage in Class III gaming if the tribe lacks a Tribal-State compact. Stated another way, these provisions do not allow Class III tribal gaming pursuant to Secretarial Procedures.
- 5. For these reasons, the federal defendants' issuance of the Secretarial Procedures is contrary to federal law, and under the Administrative Procedure Act, the court should issue declaratory relief that the instant Secretarial Procedures are invalid, as well as injunctive relief ordering defendants to withdraw them. Such relief is expressly authorized by the APA. See 5 U.S.C. §§ 703 and 706(2).

#### **JURISDICTION**

- 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16
  - 6. The court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 (federal question), and the APA, 5 U.S.C. § 703.
  - 7. This action arises under the Constitution of the United States, including the Tenth Amendment, and under statutory law, including IGRA (25 U.S.C. §§ 2701, et seq.), the APA, and the Declaratory Judgments Act (28 U.S.C. §§ 2201 and 2202) as well as under federal common law.
  - 8. The sovereign immunity of the United States has been waived with respect to the subject matter of this action and the relief requested herein by the APA. See 5 U.S.C. § 702.
  - 9. Defendants' action in issuing the challenged Secretarial Procedures constitutes final agency action for purposes of APA jurisdiction and plaintiffs have no other adequate judicial remedy. See 5 U.S.C. § 704.

**VENUE** 

because a substantial part of the events giving rise to the claims occurred in this judicial district

and the subject real property is located in Madera County, California. Moreover, plaintiffs reside

10. Venue is properly vested in this judicial district pursuant to 28 U.S.C. § 1391(e)

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in this judicial district.

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## NO ADEQUATE REMEDY AT LAW

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11. Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of

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law, other than the relief sought in this complaint, because there is no other mechanism for

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compelling the federal defendants' compliance with IGRA and the APA.

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#### THE SUBJECT PARCEL

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12. The subject off-reservation parcel consists of 305 acres of land located in Madera

County, California, approximately 15 miles north of the border of the City of Fresno on Avenue

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17 just west of the intersection with State Route 99 (the "Madera Parcel"). A legal description of the Madera Parcel and a map depicting it are attached hereto as Exhibit A.

#### **PARTIES**

13. Plaintiff CLUB ONE CASINO, INC., dba CLUB ONE CASINO (CLUB ONE) is a cardroom licensed by the State of California having its principal place of business in the City of Fresno, which is within Fresno County, California. Plaintiff CLUB ONE has been in continuous operation at its present location for more than 21 years. Plaintiff CLUB ONE conducts various card and tile games approved by the California Bureau of Gambling Control, including variants of poker, baccarat, blackjack, and other popular table games in which players wager against one another on the outcome.

14. The Secretarial Procedures challenged in this case purport to allow the Tribe to conduct Nevada-style banking and percentage card games and to utilize slot machines, which would be illegal if conducted and/or operated by plaintiff CLUB ONE, and to engage in such activities on off-reservation lands in Madera County, which is approximately 25 miles and less than a 30-minute drive from plaintiff CLUB ONE'S cardroom. The market area for the Tribe's casino will overlap in substantial part with plaintiff's market area, and the Tribe's games under the Secretarial Procedures would be in direct competition with games offered by plaintiff. Further, the games authorized by the Secretarial Procedures are more popular with players than the restricted games plaintiff is allowed to offer under state law, and they would have a strong negative impact on plaintiff's business. Moreover, if the Secretarial Procedures are implemented, plaintiff will face increased competition for qualified and competent employees to staff its existing cardroom. Plaintiff and its host jurisdiction (the City of Fresno) would suffer serious economic injury if the Secretarial Procedures were allowed to stand, including a loss of

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taxable revenue, loss of employees and/or employment, and a corresponding diminishment of profits.

15. Plaintiff GLCR, INC., dba THE DEUCE LOUNGE AND CASINO (GLCR), is a cardroom licensed by the State of California having its principal place of business in Goshen, a census-designated place, near the City of Visalia, which is within Tulare County, California. Plaintiff GLCR has been in operation at its present location for more than five (5) years. Plaintiff GLCR conducts various card and tile games approved by the California Bureau of Gambling Control, including variants of poker, blackjack, and other popular table games, whereby players wager with one another on the outcome.

16. The Secretarial Procedures challenged in this case purport to allow the Tribe to conduct Nevada-style banking and percentage card games that would be illegal if conducted by plaintiff GLCR, and to conduct them on off-reservation lands in Madera County, which is fewer than 65 miles and less than a 60-minute drive from plaintiff's cardroom. The market area for the Tribe's casino will overlap with plaintiff's market area, and the Tribe's games under the Secretarial Procedures would be in direct competition with games offered by plaintiff. Further, the games authorized by the Secretarial Procedures are more popular with players than the restricted games plaintiff is allowed to offer under state law, and they would have a strong negative impact on plaintiff GLCR's business. Moreover, if the Secretarial Procedures are implemented, plaintiff will face increased competition for qualified and competent employees to staff its existing cardroom. Plaintiff would suffer significant economic injury if the Secretarial Procedures were allowed to stand, including a loss of taxable revenue, loss of employees and or employment, and a corresponding diminishment of profits.

1	17. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR (DOI) is an
2	agency of the United States government. Congress has delegated authority over Indian affairs
3	to the DOI and the Secretary. See 43 U.S.C. §1457(10).
4	18. Defendant SALLY JEWELL is the Secretary of the Interior (Secretary). She is
5	the highest ranking official with the DOI and is being sued in her official capacity.
6	19. Defendant LAWRENCE S. ROBERTS is the Acting Assistant Secretary of the
7	Interior for Indian Affairs (Assistant Secretary). With certain exceptions not relevant to the
8	instant action, the Assistant Secretary is authorized to exercise all of the authority of the
9	Secretary with respect to Indian Affairs. The Assistant Secretary is the specific official
10	responsible for issuance of the Secretarial Procedures at issue; his signature is affixed to the
11	Secretarial Procedures. The Assistant Secretary is sued in his official capacity.
12	20. The NORTH FORK RANCHERIA OF MONO INDIANS OF CALIFORNIA is
13	a federally acknowledged Indian tribe located in the Community of North Fork, County of
14	Madera, State of California. The Tribe is not joined in this litigation because it enjoys
15	sovereign immunity. However, the federal defendants can adequately protect the Tribe's
16	interests. See, e.g., Artichoke Joe's v. Norton, 216 F.Supp.2d 1084, 1118-1120 (E.D. Cal.
17	2002).
18	GENERAL ALLEGATIONS
19	21. Defendants' issuance of Secretarial Procedures to the Tribe was preceded by a
20	lengthy process. The first part of the process involved the negotiation of a compact by the
21	Governor of California and the Tribe. A contentious process whereby the voters of California
22	rejected the compact followed. The second part of the process was a lawsuit by the Tribe against
23	the State of California for failing to negotiate in good faith pursuant to IGRA. See 25 U.S.C. §

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2710(d)(7)(A)(i).

1	22. As to the first part of the process, IGRA requires that a tribe have a "Tribal-state"
2	compact entered into by the Indian tribe and the State" in order to be able to offer Class III
3	gaming. See 25 U.S.C. § 2710(d)(1). The process to obtain a compact is set forth in section
4	2710(d)(3). On August 31, 2012, California's Governor concluded a compact with the Tribe to
5	govern Class III gaming on the Madera Parcel.
6	23. On June 27, 2013, the California Legislature passed Assembly Bill 277, which
7	ratified the compact, and on July 3, 2013, Governor Brown signed the legislation into law.
8	24. Promptly thereafter, a petition was circulated among the electorate to submit AB
9	277 and its approval of an off-reservation casino to the voters via a statewide referendum
10	measure. Sufficient signatures were gathered, and AB 277 was placed on the November 2014
11	ballot as Proposition 48–Referendum on Indian Gaming Compacts.
12	25. The referendum measure went before the electorate in November 2014, and the
13	voters overwhelmingly rejected the North Fork Compact with a vote of 39.0% in favor and
14	61.0% against. See http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf
15	(at pages 91-93). As a result of this vote, there is no Tribal-State compact in place with respect
16	to the North Fork Casino.
17	26. On January 2, 2015, less than two months after the vote on Proposition 48, the
18	Tribe requested that the State of California enter into negotiations for a new compact for Class
19	III gaming on the same off-reservation parcel rejected by the state's voters as a casino site. The
20	State responded to the request stating that negotiations for a compact with similar terms on the
21	same parcel would be futile given the decisive vote on the initiative.
22	27. IGRA section 2710(d)(7) provides a procedure for a tribe to follow when a state
23	refuses to negotiate for the purpose of entering into a Tribal-State compact or fails to negotiate
24	in good faith. See 25 U.S.C. § 2710(d)(7). Pursuant to this procedure, a tribe can sue a

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1	consenting state in federal court to obtain a compact pursuant to specific procedures, including a
2	court order to negotiate pursuant to section 2710(d)(7)(B)(iii).
3	28. On March 17, 2015, the Tribe filed suit in this court pursuant to 25 U.S.C. §
4	2710(d)(7) for a determination that the State of California did not negotiate in good faith. North
5	Fork Rancheria of Mono Indians of California v. State of California, No. 15-CV-419 (ECF 1
6	[Complaint]).
7	29. On November 13, 2015, the court concluded that the State of California's refusal
8	to negotiate with the tribe was in violation of IGRA and ordered the parties to conclude a
9	compact within 60 days pursuant to 25 U.S.C. § 2710(d)(7)(B)(iii). See North Fork Rancheria
10	of Mono Indians of California v. State of California, No. 15-CV-419 (ECF 25 [Order on Cross-
11	Motions for Judgment on the Pleadings]).
12	30. In the litigation referred to immediately above, the State of California failed to
13	raise as an affirmative defense or otherwise contend that the State retained territorial jurisdiction
14	over the proposed casino site and that, as a result, the Tribe did not have territorial jurisdiction
15	as required by IGRA.
16	31. The Tribe and the State did not conclude a compact within the 60-day period set
17	forth in 25 U.S.C. § 2710(d)(7)(B)(iii).
18	32. IGRA provides that if no compact is reached within the statutory time-frame, the
19	parties shall each submit a proposed compact to a court-appointed mediator that represents their
20	"last best offer" for a compact. Pursuant to the statutory framework, the mediator then selects
21	the proposal that best comports with IGRA. See 25 U.S.C. § 2701(d)(7)(B)(iv).
22	33. The court-appointed mediator determined that the Tribe's proposed compact best
23	comported with IGRA and other applicable law and submitted that compact to the State of
24	California for the State's consent.

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1	34. The State failed to consent to the mediator's selection within the required time-
2	frame and the Tribe's proposed compact was then submitted to the Secretary of the Interior to
3	prescribe procedures under which Class III gaming may be conducted pursuant to 25 U.S.C.
4	2701(d)(7)(B)(vii).
5	35. On July 29, 2016, the federal defendants issued a document entitled "Secretarial
6	Procedures" which purports to allow the Tribe to engage in Class III gaming on the subject
7	parcel. A true and correct copy of the Secretarial Procedures is attached hereto as Exhibit B.
8	On the same date, defendants notified the Tribe and the State that they had issued the Secretaria
9	Procedures. See Letter from Lawrence S. Roberts, Acting Assistant Secretary of the Interior –
10	Indian Affairs, dated July 29, 2016, a true and correct copy of which is attached as Exhibit C.
11	36. The Secretarial Procedures violate the law in at least three respects as set forth
12	below in paragraphs 37-71, inclusive.
13	<u>FIRST CLAIM FOR RELIEF</u> Declaratory Relief
14	Declaratory Relief
14 15	Declaratory Relief (Violation of IGRA's Jurisdictional Requirement)
14 15 16	Declaratory Relief (Violation of IGRA's Jurisdictional Requirement)  37. Plaintiffs reallege and incorporate by reference each of the allegations contained
14 15 16 17	Declaratory Relief (Violation of IGRA's Jurisdictional Requirement)  37. Plaintiffs reallege and incorporate by reference each of the allegations contained in the preceding paragraphs as though fully set forth herein.
14 15 16 17	Declaratory Relief (Violation of IGRA's Jurisdictional Requirement)  37. Plaintiffs reallege and incorporate by reference each of the allegations contained in the preceding paragraphs as though fully set forth herein.  38. IGRA allows the Secretary to prescribe procedures for the conduct of Class III
14 15 16 17 18	Declaratory Relief (Violation of IGRA's Jurisdictional Requirement)  37. Plaintiffs reallege and incorporate by reference each of the allegations contained in the preceding paragraphs as though fully set forth herein.  38. IGRA allows the Secretary to prescribe procedures for the conduct of Class III gaming only if the gaming will occur on Indian lands "over which the Indian tribe has
114 115 116 117 118 119 220	Declaratory Relief (Violation of IGRA's Jurisdictional Requirement)  37. Plaintiffs reallege and incorporate by reference each of the allegations contained in the preceding paragraphs as though fully set forth herein.  38. IGRA allows the Secretary to prescribe procedures for the conduct of Class III gaming only if the gaming will occur on Indian lands "over which the Indian tribe has jurisdiction." 25 U.S.C. § 2710(d)(7)(B)(vii)(II). As alleged below, the Tribe does not have
114 115 116 117 118 119 220 221	Declaratory Relief (Violation of IGRA's Jurisdictional Requirement)  37. Plaintiffs reallege and incorporate by reference each of the allegations contained in the preceding paragraphs as though fully set forth herein.  38. IGRA allows the Secretary to prescribe procedures for the conduct of Class III gaming only if the gaming will occur on Indian lands "over which the Indian tribe has jurisdiction." 25 U.S.C. § 2710(d)(7)(B)(vii)(II). As alleged below, the Tribe does not have jurisdiction over the Madera Parcel.
13 14 15 16 17 18 19 20 21 22 23	Declaratory Relief (Violation of IGRA's Jurisdictional Requirement)  37. Plaintiffs reallege and incorporate by reference each of the allegations contained in the preceding paragraphs as though fully set forth herein.  38. IGRA allows the Secretary to prescribe procedures for the conduct of Class III gaming only if the gaming will occur on Indian lands "over which the Indian tribe has jurisdiction." 25 U.S.C. § 2710(d)(7)(B)(vii)(II). As alleged below, the Tribe does not have jurisdiction over the Madera Parcel.  39. On March 5, 2005, the Tribe submitted an application to the BIA to have the

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1	Garold C. Brown Family Limited Partnership.
2	40. On or about January 26, 2007, the Garold C. Brown Family Limited Partnership
3	transferred the Madera Parcel to the Fresno Land Acquisitions, LLC, a California Limited
4	Liability Company. A true and correct copy of the deed effecting this transfer is attached as
5	Exhibit D. Fresno Land Acquisitions, LLC was and is a wholly-owned subsidiary of Station
6	Casinos, LLC, a Nevada casino operator, also a private party.
7	41. Prior to and at the time of the land transfers the Madera Parcel was always
8	governed by state law and subject to the territorial jurisdiction of the State of California (see Cal
9	Gov't Code § 110).
10	42. On or about June 23, 2011, Fresno Land Acquisitions, LLC transferred the
11	Madera Parcel to NP Fresno Land Acquisitions, LLC, a California Limited Liability Company.
12	A true and correct copy of the transfer deed is attached as Exhibit E. NP Fresno Land
13	Acquisitions, LLC was another subsidiary of Station Casinos LLC.
14	43. On or about November 26, 2012, Assistant Secretary for Indian Affairs Kevin K.
15	Washburn issued a Record of Decision (ROD) to acquire title to the Madera Parcel in trust for
16	the Tribe. The ROD acknowledged that, prior to the transfer in trust, the Madera Parcel was
17	subject to the exclusive jurisdiction of state and local authorities; the ROD also stated that

44. On or about February 13, 2013, NP Fresno Land Acquisitions, LLC transferred
 the Madera Parcel to "the United States of America in trust for the Northfork Rancheria of Mono
 Indians of California." A true and correct copy of the deed effecting this transfer is attached

jurisdiction would be removed from State and local jurisdiction, but nowhere indicated that the

State of California ever ceded its jurisdiction to the Federal government and/or the Tribe. On

December 3, 2012, Notice of the ROD was published in the Federal Register (see 77 FR 71611-

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1	hereto as Exhibit F. The State of California did not participate in the transfer of the Madera
2	Parcel.
3	45. Although the federal government obtained title to the subject parcel pursuant to
4	the foregoing transaction, it did not obtain territorial jurisdiction over the site by virtue of the
5	transfer deed.
6	46. The State of California has had territorial jurisdiction over the site since the state
7	was formed in 1850.
8	47. Under the law, there are only three ways in which the federal government can
9	obtain general territorial jurisdiction over lands within a sovereign state:
10	1) By a reservation of such jurisdiction when admitting the state into the Union;
11	2) By obtaining state consent to exclusive federal jurisdiction pursuant to the
12	Enclaves Clause of the United States Constitution (U.S. Const., Art I, § 8, cl.
13	17); and
14	3) By obtaining a formal cession of some or all of the state's jurisdiction.
15	None of these things have happened here.
16	48. The federal government did not reserve jurisdiction over the Madera Parcel when
17	the State of California was admitted into the Union. See 9 Stat. 452 (California Admission Act)
18	Nor did the state consent to the federal government's exercise of exclusive jurisdiction over the
19	Madera Parcel when the federal government obtained title to the parcel. As noted above (see
20	paragraph 44, <i>supra</i> ) the state was not a party to the transfer of the parcel to the United States.
21	Nor has the state subsequently ceded any portion of its territorial jurisdiction over the Madera
22	Parcel to the federal government.
23	49. A specific statute provides that the Federal government will be conclusively
24	presumed not to have accepted jurisdiction over land until the federal government formally

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accepts jurisdiction by filing notice of acceptance with the Governor. See 40 U.S.C. § 3112. The
federal government has filed no such notice.
50. Because the state has not ceded its jurisdiction, and because the federal

government has not accepted territorial jurisdiction, the State of California still exercises full general territorial jurisdiction over the subject parcel. Because the subject parcel is off-reservation and still under the state's territorial jurisdiction, it is not governed by IGRA and IGRA does not authorize Class III gambling at that location. The Secretary is only authorized to issue Secretarial Procedures for Class III gaming to be conducted on Indian lands over which the Indian tribe has jurisdiction.

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

# SECOND CLAIM FOR RELIEF Declaratory Relief (Unconstitutionality of IRA)

- 52. Plaintiffs reallege and incorporate by reference each of the allegations contained in the preceding paragraphs as though fully set forth herein.
- 53. If the Federal government's acquisition of land in trust for an Indian tribe under the IRA is construed to unilaterally divest a state of its jurisdiction over the site, without obtaining the state's consent and cession, the IRA violates the Tenth Amendment to the United States Constitution.
- 54. For the reasons stated, defendants' issuance of the Secretarial Procedures exceeded their legal authority under the United States Constitution and, pursuant to the APA, the court should issue appropriate declaratory and injunctive relief.

WHEREFORE, plaintiffs request relief as set forth below.

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# THIRD CLAIM FOR RELIEF

## Declaratory Relief (Violation of IGRA Due to Inconsistency of Secretarial Procedures with State law)

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

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

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

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

59. The Secretarial Procedures at issue are inconsistent with state law, and specifically violate the California Constitution because they purport to allow the Tribe to operate

1	slot machines on the Madera parcel and to conduct banking and percentage card games there	
2	without a compact that has been duly ratified under California law.	
3	60. 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 8	FOURTH CLAIM FOR RELIEF  Declaratory Relief  (Erroneous Interpretation of IGRA)	
9	61. Plaintiffs reallege and incorporate by reference each of the allegations contained	
10	in the preceding paragraphs as though fully set forth herein.	
11	62. Section 2710(d)(7)(B)(vii) of IGRA provides as follows:	
12	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	
13	mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures—	
<ul><li>14</li><li>15</li></ul>	(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	
16 17	(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.	
18	63. In issuing the Secretarial Procedures, defendants have misinterpreted IGRA as	
19	quoted above. Defendants interpret section 2710(d)(7)(B)(vii) to allow the Secretary of the	
20	Interior to prescribe "procedures" as a substitute for a Tribal-State compact and to allow class II	
21	gaming without a Tribal-State compact. However, section 2710(d)(7)(B)(vii) does not give such	
22	authority to defendants. Rather, the language quoted above in paragraph 62 allows the Secretary	
23	to prescribe further procedures for the Tribe to follow in order to obtain a Tribal-State compact	
24	in the first instance.	
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64. 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 65-68, 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
Tribal-State compact. Stated another way, there is no statutory exception that permits Class III
gaming under Secretarial Procedures instead of a Tribal-State compact.

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

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

67. A third infirmity with the Secretarial Procedures stems from 18 USC §1166, which is part of the federal criminal code. Section 1166 makes state laws applicable to Indian country. Subsection 1166(c)(2), which was adopted by Congress as part of IGRA, provides that gambling does not include "class III gaming conducted under a Tribal-State compact approved by the Secretary of the Interior ...." This exception does not apply to "procedures" issued by the

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1	Secretary; by its express terms, it applies only to gaming conducted pursuant to a negotiated
2	compact. For this additional reason, state law still applies to the subject parcel even if it is
3	considered "Indian Country."
4	68. Even if section 2710(d)(7)(B)(vii) in IGRA were determined to be ambiguous,
5	legislative history, especially debates on the floor of the House and Senate, make clear Congress
6	intent not to allow Class III gaming without a Tribal-State compact.
7	69. For the reasons stated, defendants' issuance of the Secretarial Procedures
8	exceeded their statutory authority under IGRA and, pursuant to the APA, the court should issue
9	appropriate declaratory and injunctive relief.
10	WHEREFORE, plaintiffs request relief as set forth below.
11	FIFTH CLAIM FOR RELIEF Injunctive Relief
12	
13	70. Plaintiffs reallege and incorporate by reference each of the allegations contained
14	in the preceding paragraphs as though fully set forth herein.
15	71. Because the defendants' actions are unlawful, the court should set them aside and
16	issue appropriate injunctive relief pursuant to 5 U.S.C. §706.
17	WHEREFORE, plaintiffs request relief as set forth below.
18	PRAYER FOR RELIEF
19	Plaintiffs request the following relief:
20	1. On the first claim, that the court issue a declaratory judgment establishing that
21	defendants, in issuing the challenged Secretarial Procedures, acted in excess of
22	their statutory authority because there has been no cession of jurisdiction and
23	therefore the subject parcel does not qualify for Class III gaming under IGRA;
24	

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- On the second claim, that the court issue a declaratory judgment that the shift in territorial jurisdiction under the IRA in this case, without state consent and/or a cession of jurisdiction, violates the Tenth Amendment;
   On the third claim, that the court issue a declaratory judgment that the "Secretarial Procedures" contravene IGRA because they are inconsistent with
- 4. On the fourth claim, that the court issue a declaratory judgment that defendants have erroneously interpreted IGRA to allow Class III gaming without a duly negotiated and ratified Tribal-State compact;
- 5. On the fifth claim, for an injunction or other appropriate order setting aside defendants' Secretarial Procedures and requiring defendants to withdraw their approval of Class III gaming on the subject parcel.
- 6. An award of attorneys' fees and costs; and
- 7. Such other and further relief as this court deems just and proper.

Dated: December 20, 2016

state law;

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Co-counsel for Plaintiffs

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