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

10 SOBOBA BAND OF LUISEÑO INDIANS, a
11 federally recognized Indian Tribe,

12 Plaintiff,

13 vs.

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

16 Defendant
17
18

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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

21 **JURISDICTION**

22 1. Plaintiff, the Soboba Band of Luiseño Indians ("Soboba") alleges that the State of
23 California ("State") has failed to negotiate in good faith under the Indian Gaming Regulatory Act
24 ("IGRA"), 25 U.S.C. § 2701, *et seq.*, in response to Soboba's request for a new Class III Gaming
25 Compact to replace Soboba's current Class III Gaming Compact, and that the State has violated
26 Soboba's current Compact by making unauthorized transfers of money that Soboba has paid into
27 the Indian Gaming Revenue Sharing Trust Fund into a separate Tribal Nations Grant Fund.
28 Therefore, this Court has original jurisdiction over the subject matter of Soboba's action pursuant

1 to 28 U.S.C. §§ 1331 and 1362, in that Soboba's claims arise under, *inter alia*, 25 U.S.C.
2 § 2710(d)(7)(A) and § 9.1(d) of Soboba's Class III Gaming Compact. *See generally Cabazon*
3 *Band of Mission Indians v. Wilson*, 124 F.3d 1050, 1056 (9th Cir. 1997) (holding that a Tribe's
4 "claim to enforce the Compacts arises under federal law and thus that we have jurisdiction
5 pursuant to 28 U.S.C. §§ 1331 and 1362").

6 2. Defendant State of California affirmatively has waived its sovereign immunity to
7 this suit pursuant to Calif. Gov't. Code § 98005, as well as in § 9.1(d) of Soboba's Compact,
8 which was ratified by the California Legislature in California Government Code § 12012.25.

9 VENUE

10 3. Venue in this action lies in this District pursuant to 28 U.S.C. § 1391(b), in that
11 California's seat of government is located within the Eastern District of California, the State
12 committed the alleged violation of Soboba's Compact within the Eastern District of California,
13 and pursuant to Calif. Code of Civ. Proc. § 401, the State of California can be sued in any County
14 in which the Attorney General of California maintains an office, and the Attorney General of
15 California maintains offices in the Counties of Sacramento and Fresno, within the Eastern
16 District of California.

17 PARTIES

18 4. Plaintiff Soboba is a sovereign, federally-recognized Indian Tribe that maintains
19 government-to-government relations with the United States.

20 5. Defendant is the State of California.

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

23 FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

24 7. Soboba is the beneficial owner of and exercises governmental authority over the
25 Soboba Indian Reservation ("Reservation") in Riverside County, California, the lands of which
26 the federal government holds in trust for Soboba. The Soboba Reservation is "Indian country"
27 within the meaning of 18 U.S.C. § 1151, and the lands of the Soboba Reservation are "Indian
28 lands" as defined in 25 U.S.C. § 2703(4).

1 8. In 1999, Soboba and the State executed a Compact ("1999 Compact") pursuant to
2 IGRA that took effect on or about May 16, 2000. Soboba's 1999 Compact's term automatically
3 will be extended until June 30, 2022, unless the parties renegotiate or replace the Compact by
4 December 31, 2020.

5 9. Soboba owns the Soboba Casino Resort and Hotel on the Reservation, and
6 operates the Casino pursuant to its 1999 Compact.

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

14 11. IGRA, 25 U.S.C. § 2710(d)(3)(A), provides that if a Tribe wants to conduct
15 Class III gaming on its Indian lands, the Tribe must request that the State enter into negotiations
16 for a compact setting forth the terms and conditions under which the Tribe may conduct Gaming
17 Activities. In response to a Tribe's request to negotiate (or renegotiate) the terms of a compact,
18 the State is obligated to negotiate in good faith about the Tribe's request. (*Id.*).

19 12. IGRA does not specifically define the term "Gaming Activities," but the U.S.
20 Supreme Court has: "what goes on in a casino — each roll of the dice and spin of the wheel."
21 *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 783 (2014). Consistent with *Bay Mills*,
22 in this Complaint the term "Gaming Activities" shall refer to the Class III gaming that is
23 authorized in the current and any future Compact between the State and Soboba.

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

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

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

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

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

7 (v) remedies for breach of contract;

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

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

12 14. IGRA further provides that except for assessments that a Tribe and the State may
13 agree to defray a State's costs of regulating the Tribe's Class III gaming activities, IGRA shall not
14 "be interpreted as conferring upon a State or any of its political subdivisions authority to impose
15 any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity
16 authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into
17 the negotiations . . . based upon the lack of authority in such State, or its political subdivisions, to
18 impose such a tax, fee, charge, or other assessment." 25 U.S.C. §2710(d)(4).

19 15. IGRA does not authorize the State or any of its political subdivisions to impose a
20 tax on a Tribe via a Class III gaming compact, and instructs, a Court "to consider any demand by
21 the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State
22 has not negotiated in good faith." 25 U.S.C. §2710(d)(7)(B)(iii)(II).

23 16. Section 4 of Soboba's 1999 Compact with the State of California authorizes
24 Soboba to operate up to two Gaming Facilities, up to 2,000 Gaming Devices (*i.e.*, slot machines),
25 banked and percentage card games, and games and devices that State law authorizes to the
26 California State Lottery.

27 17. Section 5.1 of Soboba's Compact obligates Soboba to pay between 7% and 13% of
28 the Net Win from 791 of its Gaming Devices into the Indian Gaming Special Distribution Fund

1 ("SDF") that the California Legislature created in the State Treasury.

2 18. Section 4.3.2.2(a) of Soboba's 1999 Compact provides that in order to operate
3 more Gaming Devices than the 991 that Soboba operated on September 1, 1999, Soboba must
4 draw a license (one for each additional Device) from the State-administered Gaming Device
5 license pool. (Soboba does not need Gaming Device licenses for the 991 Gaming Devices that
6 Soboba operated on September 1, 1999.) For each license drawn, Soboba must pay into the
7 Indian Gaming Revenue Sharing Trust Fund ("RSTF") a non-refundable, one-time pre-payment
8 fee of \$1,250. For licenses in excess of the first 350 drawn, Soboba must pay into the RSTF an
9 annual license fee of between \$900 and \$4,350 for each Gaming Device license maintained.
10 Soboba currently operates 2,000 Gaming Devices, of which 1,009 are operated pursuant to
11 Gaming Device licenses. Soboba has paid more than \$17 million into the RSTF since its 1999
12 Compact took effect.

13 19. On or about July 22, 2014, Soboba formally requested that the State enter into
14 negotiations for a new Compact to replace Soboba's 1999 Compact on or before that Compact
15 expires. To facilitate those negotiations, Soboba joined with a group of other Tribes with
16 materially identical 1999 Compacts to form the 1999 Compact Tribes Steering Committee
17 ("CTSC") and participate as a group in negotiating new compacts to replace their 1999 Compacts
18 that are due to expire no later than June 30, 2022.

19 20. Formal negotiations between the CTSC Tribes, including Soboba, and the State
20 commenced in or about December, 2014. The last negotiating session between the CTSC Tribes
21 and the State's negotiating team in which Soboba participated occurred on April 23, 2020.

22 21. The negotiations with the State in which Soboba participated failed to culminate in
23 agreement on the terms of a new Compact to replace Soboba's 1999 Compact. Soboba could not
24 reach an agreement with the State due to the State's insistence on including the following
25 provisions that Soboba consistently has contended are not directly related to or necessary for the
26 licensing and regulation of Gaming Activities, do not establish standards for the operation of
27 Gaming Activities or maintenance of a facility in which Gaming Activities are conducted, or are
28 not otherwise directly related to the operation of Gaming Activities, and thus are not proper

1 subjects of negotiation under IGRA:

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

1 Activities;

2 j. Requiring Soboba to withhold and pay over to the State California income
3 taxes from the wages of all Gaming Operation employees except for enrolled Soboba Tribal
4 members residing on the Reservation;

5 k. Requiring Soboba to enact an ordinance requiring Soboba to honor
6 California state court spousal and child support orders directed at all Gaming Operation
7 employees; and

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

12 22. On or about July 13, 2020, Soboba presented the State with Soboba's last, best
13 offer of the terms of a new Compact to replace Soboba's 1999 Compact. Soboba gave the State
14 until July 31, 2020 to respond, and informed the State, *inter alia*, that if the State did not timely
15 accept the offer, Soboba would sue the State for failure to negotiate in good faith. As an
16 alternative to initiating litigation, Soboba proposed that the State agree to extend the term of its
17 1999 Compact by two years (until June 30, 2024), and to amend the Compact to require that
18 Soboba pay into the SDF based on Soboba's pro rata share of the State's regulatory costs, rather
19 than having to pay a disproportionate share of the State's regulatory costs.

20 23. On or about July 15, 2020, the State sent Soboba a letter acknowledging receipt of
21 Soboba's last, best offer, and requesting that Soboba give the State until August 31, 2020 to
22 respond.

23 24. By letter dated July 17, 2020, Soboba rejected the State's request for additional
24 time to respond to Soboba's last, best offer of a new Compact to replace Soboba's existing
25 Compact due to the short time remaining on the term of Soboba's existing Compact, unless the
26 State would agree to amend Soboba's 1999 Compact by extending its term by two years from
27 June 30, 2022 and reducing Soboba's obligation to pay into the SDF to Soboba's *pro rata* share of
28 the State's legitimate regulatory and other costs incurred in connection with Soboba's Gaming

1 Activities, and submit the amended Compact to the Legislature for ratification during its current
2 session, in which event Soboba would agree to extend the State's time to respond to Soboba's last,
3 best offer of a new Compact by sixty days, rather than the thirty days the State had requested.

4 25. By letter dated July 31, 2020, the State rejected both Soboba's last, best offer of
5 the terms of a new Compact, and Soboba's proposal to submit for legislative ratification a
6 Compact amendment that would extend the term of its current Compact for two years from June
7 30, 2022 and revise the method by which to calculate Soboba's payments into the SDF so as to
8 relieve Soboba of the burden of bearing a disproportionate share of the State's regulatory costs.

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

14 **FIRST CLAIM FOR RELIEF**

15 **State's Failure To Negotiate In Good Faith By Insisting On Inclusion In Compact Of**
16 **Provisions That Are Not Proper Subjects Of Negotiation Under IGRA**

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

19 **COUNT ONE**

20 **State's Insistence That Soboba Make Excessive Payments Into**
21 **The Indian Gaming Special Distribution Fund**

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

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

COUNT TWO

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

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

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

COUNT THREE

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

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

33. Because the TNGF is not directly related to and necessary for the regulation and licensing of Gaming Activities, is not a standard for the operation of Gaming Activities or maintenance of Gaming Facilities, and is not otherwise directly related to the operation of Gaming Activities, the TNGF is not a proper subject of negotiation under 25 U.S.C. § 2710(d)(3)(C).

34. By insisting that Soboba agree to include the Tribal Nations Grant Fund in a new Compact and that Soboba's payments into the RSTF could be allocated to that fund in years in which the RSTF contains more money than necessary to distribute \$1.1 million per year to each RSTF-eligible Tribe, the State demanded direct taxation of Soboba without offering meaningful

1 consideration in return, and thus constituted a failure by the State to negotiate in good faith.

2 35. Although the CTSC Tribes, including Soboba, objected throughout the
3 negotiations that the TNGF is not a proper subject of negotiation under IGRA unless the State
4 were to offer meaningful consideration in the form of a substantial concession on an issue about
5 which the State is not otherwise obligated to negotiate in good faith, in mid-2019 Soboba joined
6 in a counter-proposal to the State to create a second RSTF ("RSTF II") that would accomplish the
7 objective of making more money available for distribution to RSTF-eligible Tribes, but without
8 involving the TNGF. Other than asking questions about the proposed RSTF II and saying that
9 the State might be willing to consider it, the State's negotiating team never provided a formal
10 response to that proposal.

11 **COUNT FOUR**

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

14 36. Throughout Soboba's negotiations for a new Compact, the State insisted upon
15 defining "Gaming Facility" to include not only structures in which Gaming Activities are
16 conducted, but also structures and other improvements on the Reservation in which no Gaming
17 Activities occur.

18 37. By insisting on including in the definition of "Gaming Facility" structures or areas
19 of the Reservation within or upon which no Gaming Activities or activities directly related to
20 Gaming Activities are conducted, the State's proposed definition of "Gaming Facility" neither is
21 directly related to or necessary for the regulation and licensing of Gaming Activities, nor
22 establishes a standard for operation of Gaming Activities or maintenance of Soboba's Gaming
23 Facilities, nor is otherwise directly related to the operation of Gaming Activities, and thus is not a
24 proper subject of negotiation under IGRA. Therefore, the State's insistence on including such a
25 provision constitutes a failure by the State to negotiate in good faith.

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COUNT FIVE

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

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

39. By insisting on defining "Gaming Operation" to include activities and areas of the Reservation that are not directly related to or necessary for the regulation and licensing of Gaming Activities or that establish standards for the operation of Gaming Activities or maintenance of Soboba'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 constitutes a failure by the State to negotiate in good faith.

COUNT SIX

State's Insistence That Soboba Create Remedies In Money Damages For Workplace Discrimination, Harassment And Retaliation

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

41. Notwithstanding federal statutes that exclude Soboba from the definition of "employer," and federal court decisions holding that Tribes are not subject to private suit for money damages under those statutes, the State insisted on including in a new Compact with Soboba the requirement that Soboba carry \$3 million in employment practices liability insurance,

1 and enact a tribal ordinance that not only prohibits workplace discrimination, harassment and
2 retaliation, but also creates remedies in money damages for all Gaming Operation employees,
3 including employees not directly involved in the operation of Gaming Activities or maintenance
4 of a Gaming Facility.

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

14 **COUNT SEVEN**

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

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

21 44. Cashing checks is not directly related to and necessary for the regulation and
22 licensing of Gaming Activities, nor is it a standard for the operation of Gaming Activities or
23 maintenance of Soboba's Gaming Facility, nor is it otherwise directly related to the operation of
24 Gaming Activities, and thus restricting Soboba's Gaming Operation from cashing government
25 checks is not a proper subject of negotiation under IGRA, and the State's insistence on including
26 such a provision in a new Compact constituted a failure by the State to negotiate in good faith.

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COUNT EIGHT

State's Insistence That Soboba Comply With California's Minimum Wage Law And Regulations

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

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

COUNT NINE

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

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

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

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COUNT TEN

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

49. Throughout Soboba's negotiations for a new Compact, the State insisted on including provisions requiring Soboba to withhold and remit to the State from the wages of all persons employed at the Gaming Operation or Gaming Facility all amounts due to the State under the California Unemployment Insurance Code. With three exceptions (Soboba tribal members living on the Soboba Reservation, tribal members living on other tribes' reservations, and tribal members who request to opt out of tax withholding), the State also insisted that Soboba withhold from the wages of all Gaming Operation and Gaming Facility employees and remit to the State California income taxes, and file with the California Franchise Tax Board a copy of any information tax return filed with the Secretary of the Treasury, except for returns pertaining to Soboba tribal members living on the Soboba Reservation.

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

COUNT ELEVEN

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

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

52. Enforcement of spousal and child support obligations is not directly related to and necessary for regulation and licensing of Soboba's Gaming Activities, is not a standard for the

1 operation of Gaming Activities or maintenance of Soboba's Gaming Facility, and is not otherwise
2 directly related to the operation of Gaming Activities, and thus is not a proper subject of
3 negotiation under IGRA, 25 U.S.C. § 2710(d)(3)(C), and the State's insistence on including such
4 a provision in a new Compact constitutes a failure by the State to negotiate in good faith.

5 **COUNT TWELVE**

6 **State's Insistence That Soboba Enact A New, State-Dictated Tribal Labor Relations**
7 **Ordinance**

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

10 54. One of the concessions that the State demanded as a condition to the State's entry
11 into Soboba's 1999 Compact was that on or before October 13, 1999, Soboba had to provide the
12 State with an,

13 "agreement or other procedure acceptable to the State for
14 addressing organizational and representational rights of Class III
15 Gaming Employees and other employees associated with the
16 Tribe's Class III gaming enterprise, such as food and beverage,
17 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."

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

25 56. As consideration for Soboba's and other Tribes' agreement to adopt the model
26 TLRO, the State made a substantial concession of unique value to Soboba, to wit: an amendment
27 to Article IV, § 19 of the California Constitution that authorized the Governor to negotiate and
28 the Legislature to ratify tribal-state compacts authorizing California Indian Tribes, to the

1 exclusion of all other persons and entities, to operate on their Indian lands slot machines, banked
2 and percentage card games, and games and devices permitted by State law to the California
3 Lottery.

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

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

10 59. Although the organizational and representational rights of all of Soboba's Gaming
11 Operation employees are fully protected by the National Labor Relations Act and Soboba's own
12 TLRO, from the inception of negotiations for between Soboba and the State for a new Compact,
13 the State has insisted upon Soboba's enactment and maintenance in force of a new TLRO to be
14 appended to a new Compact, that would deprive Soboba of some of the rights it has as an
15 "employer" subject to the NLRB's jurisdiction, expand the rights of labor organizations beyond
16 those conferred by the National Labor Relations Act, potentially deprive individual Gaming
17 Operation employees of rights secured by the National Labor Relations Act, and subject Soboba
18 to a labor-management relations regime unlike that applicable to any other California employer
19 subject to the NLRB's jurisdiction, including State-licensed gambling establishments.

20 60. Although Soboba consistently objected to the State's proposed new TLRO as both
21 unnecessary and not a proper subject for negotiation under IGRA, given that the Tribe's Gaming
22 Operation is subject to the NLRB's jurisdiction, in an effort to reach an agreement, and expressly
23 contingent upon the State's offer of material consideration in the form of a substantial concession
24 on an issue about which the State is not otherwise obligated to negotiate in good faith, Soboba
25 proposed to retain its existing TLRO in the event that the NLRB no longer were to have
26 jurisdiction over Soboba's Gaming Operation, and joined in presenting the State with a revised
27 TLRO as a counterproposal to the new TLRO demanded by the State.

28 61. Since first proposing its new TLRO, and despite repeated requests by Soboba and

1 other Tribes in the CTSC to negotiate about the content of the State's new TLRO and the revised
2 TLRO presented to the State as a counterproposal, the State consistently has refused to engage in
3 substantive negotiations about either the new TLRO demanded by the State or the revised TLRO
4 presented to the State as a counterproposal, and the State never presented a substantive response
5 to the tribal counterproposal. Moreover, despite repeated requests by Soboba and other Tribes in
6 the CTSC, the State never has provided a written or other formal explanation of why the State
7 considers the model TLRO enacted pursuant to § 10.7 of the Tribes' respective 1999 Compacts,
8 and which the State previously had accepted, as deficient in any way, and the State never offered
9 any material consideration in the form of substantial concessions of unique value to Soboba and
10 about which the State is not otherwise obligated to negotiate in good faith, in return for Soboba's
11 acceptance of either the new TLRO demanded by the State, the revised TLRO offered as a tribal
12 counter-proposal to the State's new TLRO, or Soboba's offer to retain its existing TLRO if the
13 NLRB no longer exercises jurisdiction over Soboba's Gaming Operation.

14 62. The State's demand that Soboba enact a State-dictated labor-management relations
15 regime unlike that applicable to any other California employer subject to the NLRB's jurisdiction,
16 including State-licensed gambling establishments; that deprives Soboba of rights it would
17 otherwise enjoy under the National Labor Relations Act; that grants to labor organizations rights
18 beyond those afforded under the National Labor Relations Act; and potentially deprives Gaming
19 Operation employees of certain rights protected by the National Labor Relations Act, is not
20 necessary for and directly related to the regulation and licensing of Soboba's Gaming Activities,
21 does not establish a standard for operation of Soboba's Gaming Activities or maintenance of
22 Soboba's Gaming Facilities, and is not otherwise directly related to the operation of Gaming
23 Activities, and thus is not a proper subject of negotiation under IGRA. The State's insistence on
24 including such a provision in a new Compact, and the State's refusal or failure, for more than five
25 years, to engage in substantive negotiations about either the new TLRO demanded by the State or
26 the revised TLRO proposed by Soboba and other CTSC Tribes, constituted a failure by the State
27 to negotiate in good faith.

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COUNT THIRTEEN

State's Insistence On Extending The State's Environmental Laws To Soboba's Reservation

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

64. Section 10.8.1 of Soboba's 1999 Compact requires Soboba to adopt an ordinance, providing for the preparation, circulation and consideration by the Tribe of environmental impact reports concerning potential off-Reservation environmental impacts of any and all Projects to be commenced on or after the effective date of this Compact. In fashioning the environmental protection ordinance, the Tribe will make a good faith effort to incorporate the policies and purposes of the National Environmental Policy Act ["NEPA"] and the California Environmental Quality Act ["CEQA"] consistent with the Tribe's governmental interests.

65. In return for Soboba's agreement to include the above-quoted language and other provisions in Section 10.8 of its 1999 Compact, the State offered Soboba a material concession of unique value on an issue about which the State was not otherwise obligated to negotiate in good faith, to wit: an amendment to the California Constitution allowing the Governor to negotiate and the Legislature to ratify Tribal-State Compacts authorizing federally-recognized California Indian Tribes, exclusive of all other persons and entities, to operate on their Indian lands slot machines, banked and percentage card games, and games and devices authorized to the California State Lottery.

66. Since its Compact took effect twenty (20) years ago, the State has never alleged that Soboba has not fully complied with any portion of § 10.8 of Soboba's 1999 Compact; that § 10.8 is inadequate to protect the off-Reservation environment from significant adverse impacts resulting from Projects undertaken by Soboba; or that renegotiation of § 10.8 is necessary to ensure adequate mitigation by Soboba of significant adverse off-Reservation impacts of Projects related to Soboba's Gaming Activities.

67. Throughout Soboba's negotiations for a new Compact, and without offering any Soboba-specific justification or material consideration in the form of a substantial concession of unique value to Soboba on an issue about which the State is not otherwise required to negotiate in

1 good faith, the State insisted that a new Compact require Soboba to, *inter alia*: (a) enact a new
2 ordinance that incorporates "the relevant policies and purposes of NEPA [National
3 Environmental Policy Act] and CEQA [California Environmental Quality Act] consistent with
4 legitimate governmental interests of the Tribe and the State;" (b) perform a much more detailed
5 and comprehensive CEQA-based review of proposed "Projects" than is required by § 10.8 of
6 Soboba's 1999 Compact, even if a Project is not directly related to and necessary for the
7 regulation and licensing of Soboba's Gaming Activities, or otherwise directly related to the
8 operation of Gaming Activities; (c) provide wider-ranging notice to the public and State and local
9 government agencies of the environmental review of proposed "Projects" than is required by §
10 10.8 of Soboba's 1999 Compact; (d) prior to commencing a Project, offer to negotiate, enter into,
11 and if necessary arbitrate, with surrounding local governments and the California Department of
12 Transportation (if a State highway would be impacted) binding and enforceable agreements to
13 mitigate a proposed Project's off-Reservation environmental and other impacts; and (d)
14 implement the mitigation measures identified in the final environmental document for the
15 "Project."

16 68. Requiring Soboba to enact a new environmental protection ordinance that
17 incorporates both CEQA and NEPA; to perform a detailed public analysis of the potential
18 significant effects of a proposed Project on the off-Reservation environment; to negotiate, enter
19 into, and if necessary arbitrate, the terms of binding and enforceable mitigation agreements with
20 surrounding local governments and the California Department of Transportation; and thereafter
21 to implement identified mitigation measures, is not directly related to and necessary for the
22 regulation and licensing of Soboba's Gaming Activities, does not establish standards for the
23 operation of Soboba's Gaming Activities or maintenance of Soboba's Gaming Facility, and is not
24 otherwise directly related to the operation of Soboba's Gaming Activities, and thus is not a proper
25 subject of negotiation under IGRA. The State's insistence on including such a provision in a new
26 Compact constituted a failure by the State to negotiate in good faith.

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COUNT FOURTEEN

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

69. Throughout Soboba's participation in the CTSC's negotiations with the State for a new Compact, the State insisted on including within the definition of "Gaming Employee" personnel such as food and beverage cooks and servers, hotel housekeeping employees, parking attendants and other employees whose duties would not include direct or even indirect involvement in the actual operation or regulation of Gaming Activities. By defining "Gaming Employees" so broadly, the State would bring within the scope of the Compact personnel not directly related to and necessary for the regulation and licensing of Soboba's Gaming Activities, or not otherwise directly related to the operation of Gaming Activities, and thus the definition of "Gaming Employees" acceptable to the State 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, Soboba prays as hereinafter set forth.

SECOND CLAIM FOR RELIEF

State's Material Breach Of Compact § 4.3.2.1(a)

70. Soboba hereby realleges and incorporates herein each of the allegations set forth in Paragraphs 1-4, 7, 8, 14, 15, 17 and 18 above as if set forth in full.

71. Section 4.3.2.1(a) of Soboba's 1999 Compact provides that, "Monies in excess of the amount necessary to [pay] \$1.1 million per year to each Non-Compact Tribe shall remain in the Revenue Sharing Trust Fund available for disbursement in future years."

72. Notwithstanding the portion of § 4.3.2.1(a) quoted in ¶ 71 above, and without seeking or obtaining consent from Soboba or any other Tribe with a compact containing the same requirement that any funds in excess of those needed to disburse up to \$1.1 million per year to each RSTF-eligible Tribe must remain in the RSTF for disbursement in future years, in 2019 the State transferred approximately Forty Million Nine Hundred Thousand Dollars (\$40,900,000) from the RSTF to the TNGF.

1 73. The State's transfer of funds from the RSTF to the TNGF constituted a material
2 breach of §4.3.2.1(a) of Soboba's Compact.

3 74. Pursuant to § 9.1 of its 1999 Compact, Soboba notified the State of the State's
4 material breach of the Compact, demanded that the State reimburse the RSTF for the wrongfully
5 transferred funds, and requested that the State meet and confer concerning the State's alleged
6 breach.

7 75. On July 15, 2020, Soboba and the State met and conferred about the State's
8 unauthorized transfer of funds. Meeting and conferring failed to resolve the dispute, in that the
9 Soboba continues to assert that the State has violated Soboba's Compact by transferring money
10 from the RSTF to the TNGF, while the State continues to deny that the aforementioned transfer
11 of money from the RSTF to the TNGF constituted a material breach of Soboba's Compact, and
12 has failed and refused to reimburse the RSTF for any of the money transferred from the RSTF to
13 the TNGF.

14 **WHEREFORE**, Soboba prays as follows:

15 Pursuant to its First Claim:

16 1. that the Court enter judgment declaring that as to each of Counts One through
17 Fourteen of Soboba's First Claim for Relief, the State of California has failed to negotiate in good
18 faith as required by IGRA by refusing to agree to enter into a new Compact unless that Compact
19 includes provisions proposed by the State that are not proper subjects of negotiation under IGRA;

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

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

1 submit that proposed Compact to the State;

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

6 5. that if the State does not consent to the proposed Compact submitted by the
7 mediator, pursuant to 25 U.S.C. § 2710(d)(7)(B)(iii) Soboba shall be entitled to obtain from the
8 Secretary of the Interior procedures under which Soboba may continue to conduct Gaming
9 Activities on its Indian lands; and

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

14 Pursuant to its Second Claim:

15 1. that the Court enter judgment declaring that the State's transfer of funds from the
16 Indian Gaming Revenue Sharing Trust Fund to the Tribal Nations Grant Fund constituted a
17 material breach of Soboba's Compact;

18 2. that the Court preliminarily and permanently enjoin the State from making further
19 transfers of funds from the Indian Gaming Revenue Sharing Trust Fund to the Tribal Nations
20 Grant Fund unless and until the State has obtained Soboba's prior written consent to the transfer
21 of any money from the Indian Gaming Revenue Sharing Trust Fund to the Tribal Nations Grant
22 Fund; and

23 3. that the Court require the State to reimburse the Indian Gaming Revenue Sharing
24 Trust Fund in an amount equal to all amounts transferred from the Indian Gaming Revenue
25 Sharing Trust Fund to the Tribal Nations Grant Fund, plus interest accrued at the same rate as
26 California law imposes on debts owed to the State.

27 Pursuant to all Claims:

28 1. that the Court grant such other relief as it deems appropriate;

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2. that Soboba be awarded its costs of suit and reasonable attorneys' fees; and

3. that the State reimburse the Indian Gaming Special Distribution Fund in an amount equal to what the State has charged the Indian Gaming Special Distribution 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 14, 2020

Respectfully submitted,

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

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Soboba Band of Luiseño Indians

(b) County of Residence of First Listed Plaintiff Riverside (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Forman & Associates, Attorneys at Law 4340 Redwood Highway, #E352 San Rafael, CA 94903 (see attached)

DEFENDANTS

State of California; Gavin Newsom, in his official capacity as Governor

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Xavier Becerra, Attorney General of California

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large grid table for Nature of Suit with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FOREFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATE RULES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 25 U.S.C. Sec. 2710(d)(7)(A)(i) Brief description of cause: Plaintiff alleges State of CA has failed to negotiate in good faith over the terms of a Tribal-State Gaming Compact.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 0 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE See Attached Related Cases DOCKET NUMBER

DATE 08/14/2020 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CIVIL CASE COVER SHEET ATTACHMENT

I. (c)

Forman & Associates - Attorneys of Record:

George Forman (Cal. Bar No. 47822)

Jay B. Shapiro (Cal. Bar No. 224100)

Margaret C. Rosenfeld (Cal. Bar No. 127309)

VII. RELATED CASES

Judge

Docket Number

Hon. Morris C. England

2:20-cv-01630-MCE-AC

Hon. Kimberly J. Mueller

2:20-cv-01585-KJM-AC

Hon. Anthony Ishii

1:19-cv-00024-AWI-SKO