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5 **UNITED STATES DISTRICT COURT**  
6 **EASTERN DISTRICT OF CALIFORNIA**  
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8 **CHICKEN RANCH RANCHERIA OF**  
9 **ME-WUK INDIANS, BLUE LAKE**  
10 **RANCHERIA, CHEMEHUEVI INDIAN**  
11 **TRIBE, HOPLAND BAND OF POMO**  
12 **INDIANS, and ROBINSON**  
13 **RANCHERIA**

14 **Plaintiffs,**

15 **v.**

16 **GAVIN NEWSOM, Governor of**  
17 **California, and STATE OF**  
18 **CALIFORNIA,**

19 **Defendants.**

**CASE NO. 1:19-CV-0024 AWI SKO**

**ORDER RE: CROSS MOTIONS FOR**  
**SUMMARY JUDGMENT**

**(Docs. 35 and 38)**

20 **I. Background**

21 The Indian Gaming Regulatory Act (“IGRA”) set up a statutory basis for the operation and  
22 regulation of gaming by Indian tribes. Three classes of gaming were defined. Class I and II  
23 consist of social games, bingo, and non-banking card games. Class III is the residual category and  
24 consists of what is common thought of as Nevada style gambling. In order for an Indian tribe to  
25 conduct class III gaming it must, among other things, enter into a compact with the state in which  
26 they are located.

27 The State of California entered into class III gaming compacts with a number of Indian  
28 tribes in 1999 (“1999 Compacts”). The 1999 Compacts are set to end on December 31, 2020 with  
an automatic extension to June 30, 2022. Plaintiffs Chicken Ranch Rancheria of Me-Wuk Indians,  
Blue Lake Rancheria, Chemehuevi Indian Tribe, Hopland Band of Pomo Indians, and Robinson  
Rancheria (“Tribal Plaintiffs”) have 1999 Compacts with California. In 2014, the Tribal Plaintiffs

1 joined several other Indian tribes who have 1999 Compacts to form the Compact Tribes Steering  
2 Committee (“CTSC”). In 2015, the CTSC and California started to negotiate the terms of a new  
3 agreement on class III gaming to replace the 1999 Compacts which were coming to the end of  
4 their terms. Negotiations took place over the next few years. Dissatisfied with the negotiations,  
5 Tribal Plaintiffs filed suit against The State of California and Governor Gavin Newsom (“State  
6 Defendants”) on January 4, 2019. The Tribal Defendants withdrew from the CTSC on September  
7 26, 2019.

8 The Tribal Plaintiffs and State Defendants have filed cross motions for summary judgment  
9 which cover the same subject matter. The parties agree on the nature of the dispute. The State  
10 Defendants summarize it as: “The Plaintiff Tribes allege in their Second Amended Complaint for  
11 Declaratory and Injunctive Relief (SAC) that the State Defendants violated the Indian Gaming  
12 Regulatory Act (IGRA), 25 U.S.C. §§ 2710-2712, 18 U.S.C. §§ 1166-1167. Specifically, the  
13 Plaintiff Tribes allege that during class III gaming compact negotiations the State Defendants  
14 insisted that they agree to include subjects in their new compacts that violate IGRA.” Doc. 38-1,  
15 1:6-8. The Tribal Plaintiffs agree that their claim is that “the State’s take it or leave it offer, which  
16 included improper subjects of negotiation and an illegal tax” constituted a failure on the part of the  
17 State Defendants to “negotiate[e] in good faith” under IGRA. Doc. 35-1, 1:24-26. For evidence,  
18 the parties have provided a record of negotiations (“RON”). Docs. 34-1 through 34-24.

## 19 20 **II. Legal Standard**

21 Summary judgment is appropriate when it is demonstrated that there exists no genuine  
22 issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.  
23 Fed. R. Civ. P. 56(c); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Fortyone v.  
24 American Multi-Cinema, Inc., 364 F.3d 1075, 1080 (9th Cir. 2004).

## 25 26 **III. Discussion**

### 27 **A. IGRA**

28 IGRA states that “Any Indian tribe having jurisdiction over the Indian lands upon which a

1 class III gaming activity is being conducted, or is to be conducted, shall request the State in which  
2 such lands are located to enter into negotiations for the purpose of entering into a Tribal-State  
3 compact governing the conduct of gaming activities. Upon receiving such a request, the State shall  
4 negotiate with the Indian tribe in good faith to enter into such a compact.” 25 U.S.C. §  
5 2710(d)(3)(A). The good faith negotiation requirement of IGRA is not without teeth. Sections  
6 2710(d)(7)(B)(i)-(vii) provide a detailed remedial scheme designed to prevent a State from seeking  
7 to wrongfully inhibit an Indian tribe from engaging in class III gaming activity. Under that  
8 procedure, 180 days after an Indian tribe requests the opening of negotiations with the state, that  
9 Indian tribe may bring suit to (1) compel a state to enter into negotiations with the tribe for the  
10 purpose of entering into a compact, or (2) to compel a state to negotiate in good faith. 25 U.S.C. §  
11 2710(d)(7)(B)(i); 25 U.S.C. § 2710(d)(7)(A)(i). In such an action, an Indian tribe must first  
12 introduce evidence that (1) a compact has not been entered, and (2) the state (a) did not respond to  
13 the request to negotiate, or (b) did not respond to the request in good faith. 25 U.S.C. §  
14 2710(d)(7)(B)(ii). Thereafter, the burden shifts to the State to prove that it negotiated in good faith  
15 to conclude a compact. 25 U.S.C. § 2710(d)(7)(B)(ii).

16 Importantly for the case at hand, IGRA sets out the provisions that may be contained in a  
17 compact governing class III gaming (25 U.S.C. § 2710(d)(3)(C)(i-vii)) and what courts may  
18 consider in determining whether the a state negotiated in good faith (25 U.S.C. §  
19 2710(d)(7)(B)(iii)(I) and (II)). A compact may contain provisions relating to:

- 20 (i) the application of the criminal and civil laws and regulations of the Indian tribe  
21 or the State that are directly related to, and necessary for, the licensing and  
regulation of such activity;
- 22 (ii) the allocation of criminal and civil jurisdiction between the State and the Indian  
23 tribe necessary for the enforcement of such laws and regulations;
- 24 (iii) the assessment by the State of such activities in such amounts as are necessary  
to defray the costs of regulating such activity;
- 25 (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts  
26 assessed by the State for comparable activities;
- 27 (v) remedies for breach of contract;
- 28 (vi) standards for the operation of such activity and maintenance of the gaming  
facility, including licensing; and

1 (vii) any other subjects that are directly related to the operation of gaming  
2 activities.

3 25 U.S.C. § 2710(d)(3)(C). In determining whether the State has negotiated (regarding the  
4 permissible § 2710(d)(3)(C) topics) in good faith, a court

5 (I) may take into account the public interest, public safety, criminality, financial  
6 integrity, and adverse economic impacts on existing gaming activities, and

7 (II) shall consider any demand by the State for direct taxation of the Indian tribe or  
8 of any Indian lands as evidence that the State has not negotiated in good faith.

8 25 U.S.C. § 2710(d)(7)(B)(iii).

9 The Ninth Circuit has found that Section 2710(d)(3)(C) provides an exhaustive list of  
10 provisions that may be contained in a compact, specifically noting that “IGRA limits [the]  
11 permissible subjects of negotiation” to those topics. Rincon Band of Luiseno Mission Indians of  
12 the Rincon Reservation v. Schwarzenegger, 602 F.3d 1019, 1028-29 n.9 (9th Cir. 2010). The  
13 Ninth Circuit reasoned that “it is clear from the legislative history that by limiting the proper  
14 topics for compact negotiations to those that bear a direct relationship to the operation of gaming  
15 activities, Congress intended to prevent compacts from being used as subterfuge for imposing  
16 State jurisdiction on tribes concerning issues unrelated to gaming.” Coyote Valley Band of Pomo  
17 Indians v. Cal. (In re Indian Gaming Related Cases Chemehuevi Indian Tribe), 331 F.3d 1094,  
18 1111 (9th Cir. 2003) (“Coyote Valley II”).

19 An attempt to negotiate (or refusal to negotiate based on) topics not enumerated in Section  
20 2710(d)(3)(C) violates a state’s duty to negotiate in good faith. Fort Independence Indian  
21 Community v. California, 679 F. Supp. 2d 1159, 1172 (E.D. Cal. 2009). “[G]ood faith should be  
22 evaluated objectively based on the record of negotiations, and that a state’s subjective belief in the  
23 legality of its requests is not sufficient to rebut the inference of bad faith created by objectively  
24 improper demands.” Rincon, 602 F.3d at 1041, citing Mashantucket Pequot Tribe v. Connecticut,  
25 913 F.2d 1024, 1033 (2d Cir. 1990).

26 The sixth and seventh of the enumerated categories act as a catch-all: “The phrases  
27 ‘standards for the operation of [gaming] activity’ and ‘any other subjects . . . directly related to the  
28 operation of gaming activities’ are naturally read as catch-all categories. Viewed in context, those

1 terms are broader than the more specific topics enumerated in paragraphs (3)(C)(i)-(v).”  
2 Chemehuevi Indian Tribe v. Newsom, 919 F.3d 1148, 1152 (9th Cir. 2019) (“Chemehuevi Indian  
3 Tribe”). The general subject of negotiation is a “compact governing the conduct of gaming  
4 activities.” 25 U.S.C. § 2710(d)(3)(A). The U.S. Supreme Court has stated that “‘class III gaming  
5 activity’ is what goes on in a casino—each roll of the dice and spin of the wheel.” Michigan v.  
6 Bay Mills Indian Cmty., 572 U.S. 782, 792 (2014). Sections 2710(d)(3)(C)(i)-(v) permit  
7 negotiations on topics tied “directly related to, and necessary for, the licensing and regulation of  
8 such activity.” 25 U.S.C. § 2710(d)(3)(C)(i). Sections 2710(d)(3)(C)(vi) and (vii) then allow a  
9 broader discussion of topics “directly related to the operation of gaming activities.” 25 U.S.C. §  
10 2710(d)(3)(C)(vii). These operations encompass not only class III gaming itself but also the  
11 surrounding cluster of activity that allows the gaming to take place.

12         Against this legal backdrop, the parties disagree as to whether the topics the State  
13 Defendants tried to negotiate over were permitted by IGRA. The State Defendants argue “the  
14 Record shows that the State Defendants are not in bad faith because they have never demanded  
15 that either the CTSC or the Plaintiff Tribes include in their new compacts topics that are  
16 unlawful....These subjects, which include provisions for revenue sharing with non-gaming tribes,  
17 mitigation payments to local governments, and protections for basic labor rights, are all proper  
18 IGRA negotiation topics. Moreover, even if any of the topics exceeded IGRA’s scope, the State  
19 could lawfully negotiate and offer the Plaintiff Tribes meaningful concessions to include them in  
20 new compacts.” Doc. 38-1, 1:16-23. The Tribal Plaintiffs have identified (1) state tort laws, (2)  
21 state environmental laws, (3) subjecting the Tribal Plaintiffs to the jurisdiction of local  
22 governments, (4) recognition and enforcement of state spousal and child support orders, (5) state  
23 minimum wage laws, (6) anti-discrimination laws, and (7) labor laws as the topics the State  
24 Defendants tried to negotiate over that were not permitted by IGRA. See, Doc. 35-1, page i.  
25 Additionally, the Tribal Plaintiffs disagree with the State Defendants’ second point and assert that  
26 “A meaningful concession cannot, however, be exchanged for the inclusion of provisions that fall  
27 outside of the scope of the seven permissible compact subjects identified in 25 U.S.C. §  
28 2710(d)(3)(C).” Doc. 35-1, 32:21-24.

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**B. Topics of Negotiation**

The State Defendants argue that there is no IGRA violation because these seven issues were only topics of negotiation and never insisted upon: “none of the so-called *demands* identified in the Plaintiffs’ Motion constitute either hard-line or take-it-or-leave-it mandates by State Defendants. The Newsom Administration remains willing to negotiate with both CTSC and the Plaintiff Tribes, either individually or collectively, regarding all of these compact topics.” Doc. 42, 14:10-13, emphasis in the original. However, a hard demand is not required for a problem under IGRA standards. “[A] ‘hard line’ stance is not inappropriate so long as the conditions insisted upon are related to legitimate state interests regarding gaming and the purposes of IGRA.” Rincon, 602 F.3d at 1039. “IGRA limits permissible subjects of *negotiation* in order to ensure that tribal-state compacts cover only those topics that are related to gaming and are consistent with IGRA’s stated purpose.” Id. at 1028-29, emphasis added. Raising issues outside the scope of Section 2710(d)(3)(C) is “strong, if not determinative, evidence of bad faith.” Fort Independence Indian Community, 679 F. Supp. 2d at 1172 (“topics other than those enumerated by section 2710(d)(3)(C) are prohibited topics of negotiation”). However, offering meaningful concessions may rebut the suggestion of bad faith arising from improper demands. Rincon, 602 F.3d at 1036.

**1. Labor, Minimum Wage, and Anti-Discrimination Law**

The State Defendants sought to include several provisions dealing with employment standards, namely anti-discrimination, minimum wage, and a labor relations ordinance:

(f) Adopt and comply with tribal law no less stringent than federal laws forbidding harassment, including sexual harassment, in the workplace, forbidding employers from discrimination in connection with the employment of persons to work or working for the Gaming Operation or in the Gaming Facility on the basis of race, color, religion, ancestry, national origin, gender, marital status, medical condition, sexual orientation, age, disability, gender identity, genetic information, military or veteran status, and any other protected groups under California law, and forbidding employers from retaliation against persons who oppose discrimination or participate in employment discrimination proceedings...

....

(j) Adopt and comply with the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.,

1 the United States Department of Labor regulations implementing the Fair Labor  
Standards Act, 29 C.F.R. § 500 et seq., the State's minimum wage law set forth in  
2 California Labor Code section 1182.12 and the State Department of Industrial  
Relations regulations implementing the State's minimum wage law, Cal. Code  
3 Regs. tit. 8, § 11000 et seq. Notwithstanding the foregoing, only the federal  
minimum wage laws set forth in the Fair Labor Standards Act, 29 Code of Federal  
4 Regulations, part 500 et seq., shall apply to tipped employees.

5 ....

6 Sec. 12.10 Labor Relations. Notwithstanding any other provision of this Compact,  
and except as otherwise provided by applicable federal law, this Compact shall be  
7 null and void if, on or before its effective date, the Tribe has not confirmed the  
enactment or continuing effect of the Tribal Labor Relations Ordinance set forth in  
Appendix G to this Compact, and the Gaming Activities may continue only as long  
8 as the Tribe maintains the ordinance. The Tribe shall provide written notice to the  
State that it has adopted the ordinance, along with a copy of the ordinance as  
9 adopted.

10 Doc. 34-17, RON Vol 16, 9130-31, 9137, and 9145.

11 The Tribal Plaintiffs assert that all of these topics are “unrelated to the regulation of class  
12 III gaming and do not promote the purposes of the IGRA.” Doc. 36-1, 24:12-13. The Tribal  
13 Plaintiffs also argue that the minimum wage language exceeded that scope because it “would  
14 apply with equal force to all persons employed in the Gaming Operation, not just to those  
15 employees responsible for the playing of class III games and for the counting and accounting of  
16 gaming revenue generated therefrom.” Doc. 35-1, 23:1-5. This appears to make it roughly  
17 consistent with the anti-discrimination provision which would apply to persons “working for the  
18 Gaming Operation or in the Gaming Facility.” Doc. 34-17, RON Vol 16, 9130.

19 The catch-all provision of Section 2710(d)(3)(C)(vii) permits negotiation over “any other  
20 subjects that are directly related to the operation of gaming activities.” 25 U.S.C. §  
21 2710(d)(3)(C)(vii). The Ninth Circuit has interpreted that provision to cover negotiation over “a  
22 labor ordinance addressing only organizational and representational rights and applicable only to  
23 employees at tribal casinos and related facilities.... this provision is ‘directly related to the  
24 operation of gaming activities’ and thus permissible pursuant to 25 U.S.C. § 2710(d)(3)(C)(vii).  
25 Without the ‘operation of gaming activities,’ the jobs this provision covers would not exist; nor,  
26 conversely, could Indian gaming activities operate without someone performing these jobs.”  
27 These proposed provisions which cover employment standards fall squarely within the holding of  
28 Coyote Valley II, whose reasoning was not limited to employees directly working on class II

1 gaming but rather explicitly to “employees at tribal casinos and related facilities.” Id.

2       Additionally, the Tribal Plaintiffs state that the labor relations provision has been  
3 superseded by new case law in Casino Pauma v. NLRB, 888 F.3d 1066 (9th Cir. 2018) which  
4 found that the National Labor Relations Act applies to Indian tribes operating casinos. This makes  
5 the “inclusion of the [labor relations provision] in their compacts superfluous, unenforceable and  
6 needlessly confusing.” Doc. 35-1, 26:12-13. However, this does not render it a subject unfit to  
7 bring up in negotiation.

8       These topics are within the scope of 25 U.S.C. § 2710(d)(3)(C)(vii) and the State  
9 Defendants’ attempts to negotiate are not per se evidence of bad faith. But because these topics  
10 are not at the heart of the gaming activity and only somewhat connected (they are not directly  
11 related to the class III gaming itself but related to the overall operation of the facilities in which  
12 the gaming take place), the state should also provide “meaningful concessions” in exchange for  
13 making demands on these topics. See Big Lagoon Rancheria v. California, 759 F. Supp. 2d 1149,  
14 1162 (N.D. Cal. 2010); Coyote Valley II, 331 F.3d at 1111. In Coyote Valley II, the Ninth Circuit  
15 concluded that the labor representation provision “falls within the scope of § 2710(d)(3)(C)(vii)  
16 and that, under the circumstances of this case, the State did not act in bad faith in requiring that  
17 Coyote Valley adopt it or forgo entering a compact.... Given that the State offered numerous  
18 concessions to the tribes in return for the Labor Relations provision (including the right to  
19 exclusive operation of Las Vegas-style class III gaming in California), it did not constitute bad  
20 faith for the State to insist that this interest be addressed in the limited way provided in the  
21 provision.” Id. at 1115-6.<sup>1</sup>

## 23 **2. Tort Law**

24       In the negotiations, the State Defendants sought to include the provision:

25       The Tribe shall adopt, and at all times hereinafter shall maintain in continuous  
26       force, an ordinance that provides for all of the following:

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27 <sup>1</sup> The Ninth Circuit has only discussed “meaningful concessions” in the context of fee demands. See Coyote Valley II,  
28 331 F.3d at 1111; Rincon, 602 F.3d at 1036. The expansion of the requirement to other topics of negotiation relies on  
the precedent of Big Lagoon Rancheria, 759 F. Supp. 2d at 1162.

1 (1) The ordinance shall provide that the Tribe shall adopt as tribal law, provisions  
2 that are the same as California tort law to govern all claims of bodily injury,  
3 personal injury, or property damage directly arising out of, connected with, or  
4 relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming  
5 Activities, including but not limited to injuries resulting from entry onto the Tribe's  
6 land for purposes of patronizing the Gaming Facility or providing goods or services  
7 to the Gaming Facility, provided that such injury occurs at the Gaming Facility or  
8 on a road accessing the Facility exclusively. California law governing punitive  
9 damages and attorney's fees need not be a part of the ordinance. Further, the Tribe  
10 may include in the ordinance required by this subdivision a requirement that a  
11 person asserting any claim(s) for money damages against the Tribe for bodily  
12 injury, personal injury, or property damage file those claims within the time periods  
13 applicable for the filing of claims for money damages against public entities under  
14 California Government Code section 810 et seq. Under no circumstances shall  
15 there be any awards of punitive damages or attorney's fees or costs.

16 (2) The ordinance shall also expressly provide for waiver of the Tribe's sovereign  
17 immunity and its right to assert sovereign immunity with respect to resolution of  
18 such claims in the Tribe's tribal court system with jurisdiction over the subject  
19 matter, or if there is no tribal court system, by a three-member tribal claims  
20 commission with jurisdiction over the subject matter, but only up to the ten million  
21 dollar (\$10,000,000) Policy limit; provided, however, such waiver shall not be  
22 deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion  
23 of the claim that exceeds the ten million dollar (\$10,000,000) Policy limit,  
24 whichever is greater, or for punitive damages or attorneys' fees.

25 (3) The ordinance shall allow for the claim to be resolved in the Tribe's tribal court  
26 system (Tribal Court), or if there is no Tribal Court with jurisdiction over the  
27 subject matter, by the three (3)-member Claims Commission). No member of the  
28 Claims Commission may be employed by the Gaming Facility or Gaming  
Operation. Resolution of the dispute before the Tribal Court or Claims  
Commission shall be at no cost to the Claimant (excluding Claimant's own  
attorney's fees and expenses). The Tribal Court or Claims Commission must afford  
the Claimant with a fair dispute resolution process that incorporates the essential  
elements of due process.

19 Doc. 34-17. RON Vol. 16, 9139-40. The Tribal Plaintiffs argue that "the inclusion of these  
20 provisions conflicts with a number of federal court decisions that have held that a state cannot use  
21 the compacting process to impose state tort law upon tribal gaming operations." Doc. 35-1, 10:6-9.  
22 In support, the Tribal Plaintiffs cite to Pueblo of Santa Ana v. Nash, 972 F. Supp. 2d 1254  
23 (D.N.M. 2013) and Navajo Nation v. Dalley, 896 F.3d 1196 (10th Cir. 2018).

24 In Pueblo of Santa Ana, the gaming compact included the provision:

25 A. Policy Concerning Protection of Visitors. The safety and protection of visitors to  
26 a Gaming Facility is a priority of the Tribe, and it is the purpose of this Section to  
27 assure that any such persons who suffer bodily injury or property damage  
28 proximately caused by the conduct of the Gaming Enterprise have an effective  
remedy for obtaining fair and just compensation. To that end, in this Section, and  
subject to its terms, the Tribe agrees to carry insurance that covers such injury or  
loss, agrees to a limited waiver of its immunity from suit, and agrees to proceed

1 either in binding arbitration proceedings or in a court of competent jurisdiction, at  
2 the visitor's election, with respect to claims for bodily injury or property damage  
3 proximately caused by the conduct of the Gaming Enterprise. For purposes of this  
4 Section, any such claim may be brought in state district court, including claims  
arising on tribal land, unless it is finally determined by a state or federal court that  
IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits  
to state court.

5 Pueblo of Santa Ana, 972 F. Supp. 2d at 1256-57. The court concluded IGRA did not permit  
6 shifting the jurisdiction of these types of tort claims to state courts, reasoning “[Section  
7 2710(d)(3)(C)](ii), the only subparagraph in this section of the statute that mentions jurisdiction,  
8 permits an allocation of jurisdiction between the State and the Indian tribe, only as necessary for  
9 the enforcement of laws and regulations of the State or Indian tribe, that are directly related to, and  
10 *necessary for, licensing and regulation* of class III gaming activities. The Court finds no  
11 justification for concluding that the IGRA intends the extension of state court jurisdiction for any  
12 other purpose than resolution of issues involving the licensing and regulation of class III gaming.  
13 A personal injury claim arising from the negligent serving of alcohol has no bearing whatsoever  
14 on the licensing or regulation of class III gaming activities.” Pueblo of Santa Ana, 972 F. Supp. 2d  
15 at 1264, emphasis in original. Similarly, in Navajo Nation, the Tenth Circuit was faced with a  
16 similar jurisdiction shifting provision for personal injury claims arising from inside casino  
17 facilities and interpreted the language of Section 2710(d)(3)(C)(i) and (ii) as insufficient to permit  
18 that kind of agreement under IGRA. See Navajo Nation, 896 F.3d at 1209-10.

19 The State Defendants point out that the language they sought to add to the gaming compact  
20 did not try to shift jurisdiction from tribal to state courts but only required the Tribal Plaintiffs to  
21 adopt “a state-law legal standard for tribal courts to apply when adjudicating personal injury  
22 claims relating to the operation of their Gaming Operation, Gaming Facility, or Gaming  
23 Activities.” Doc. 42, 20:8-10. The State Defendants argument has merit as Pueblo of Santa Ana  
24 and Navajo Nation held that shifting jurisdiction of such claims from tribal courts to state courts  
25 was not a permitted topic of negotiation under IGRA but did not speak to the question of  
26 importing state legal standards into tribal law.

27 The Tribal Plaintiffs also argue, in the alternative, that this demand for conforming tribal  
28 law to state law violated IGRA because it is too broad as it covered “all claims of bodily injury,

1 personal injury, or property damage directly arising out of, connected with, or relating to the  
2 operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including but not  
3 limited to injuries resulting from entry onto the Tribe’s land for purposes of patronizing the  
4 Gaming Facility or providing goods or services to the Gaming Facility, provided that such injury  
5 occurs at the Gaming Facility or on a road accessing the Facility exclusively.” Doc. 34-17. RON  
6 Vol. 16, 9139.

7 As the Ninth Circuit has described it, the question is whether the topic “is so attenuated  
8 from gameplay that it falls outside of paragraph (3)(C)(vii).” Chemehuevi Indian Tribe, 919 F.3d  
9 at 1153, citing 25 U.S.C. § 2710(d)(3)(C)(vii). Turning again to Coyote Valley II, the Ninth  
10 Circuit reasoned that “Without the ‘operation of gaming activities,’ the jobs this provision covers  
11 would not exist; nor, conversely, could Indian gaming activities operate without someone  
12 performing these jobs.” Coyote Valley II, 331 F.3d at 1116. As discussed above, Coyote Valley II  
13 permitted the negotiation of labor representation over support staff jobs in addition to workers  
14 directly performing gaming functions; the language covered “Class III Gaming Employees and  
15 other employees associated with the Tribe’s Class III gaming enterprise, such as food and  
16 beverage, housekeeping, cleaning, bell and door services, and laundry employees at the Gaming  
17 Facility or any related facility, the only significant purpose of which is to facilitate patronage at  
18 the Gaming Facility.” Id.

19 In the present case, the proposed language appears to only cover individuals who travel to  
20 the casino for the purpose of taking part in gaming activities and without whom the gaming  
21 activities would not prosper. The State Defendants sought to set legal standards for personal  
22 injury claims that would not have arisen but for the gaming activity and for which there is a  
23 connection to the gaming activity. The provision governs claims persons might have against the  
24 Tribal Plaintiffs on the grounds of the gaming facilities. While this is at the very edge of  
25 relevance, it can be reasonably argued that the topic is still within the scope of 25 U.S.C. §  
26 2710(d)(3)(C)(vii). The State Defendants’ attempt to negotiate the issue is not per se evidence of  
27 bad faith. However, this is a subject for which the State Defendants need to provide meaningful  
28 concessions. See Big Lagoon Rancheria, 759 F. Supp. 2d at 1162.

1  
2 **3. Spousal and Child Support**

3 The State Defendants initially sought to have the Tribal Plaintiffs directly recognize and  
4 provide automatic compliance with state spousal and child support orders:

5 (e) As a matter of comity, the Tribe shall, with respect to the earnings of any person  
6 employed at the Gaming Operation or Gaming Facility, comply with all earnings  
7 withholding orders for support of a child, or spouse or former spouse, and all other  
8 orders by which the earnings of an employee are required to be withheld by an  
9 employer pursuant to chapter 5 (commencing with section 706.010) of division 1 of  
title 9 of part 2 of the California Code of Civil Procedure, and with all earnings  
assignment orders for support made pursuant to chapter 8 (commencing with  
section 5200) of part 5 of division 9 of the California Family Code or section 3088  
of the California Probate Code.

10 Doc. 34-5, RON Vol. 4, 1592. Through negotiation, this was changed to:

11 (d) Under principles of comity, the Tribe shall enact an ordinance granting its tribal  
12 court, or if it has no tribal court, a hearing officer appointed by the Tribe,  
13 jurisdiction and authority to recognize and enforce tribal or state court child or  
14 spousal support judgments entered against any person employed at the Gaming  
15 Operation or Gaming Facility (Family Support Ordinance). The failure of the Tribe  
to comply with the Family Support Ordinance shall not constitute a material breach  
of this Compact. The Tribe shall promulgate the Family Support Ordinance within  
sixty (60) days after the effective date of this Compact. The Family Support  
Ordinance must incorporate the following provisions:

16 (1) At a hearing at which the employee is given personal notice, the tribal court or  
17 hearing officer shall recognize and enforce any state court child or spousal order  
18 presented to the tribal court or hearing officer, unless the employee can prove by a  
19 preponderance of evidence presented, any of the following: (i) that the state court  
20 that entered the judgment did not have personal jurisdiction over the employee; (ii)  
21 the state court did not have jurisdiction over the subject matter; (iii) the judgment  
was obtained by fraud that deprived the employee of an adequate opportunity to  
present his/her case; (iv) the judgment conflicts with another final conclusive  
judgment of a court of competent jurisdiction; or (v) the state court judgment was  
biased against the employee.

22 (2) The Gaming Facility shall, upon being presented with a tribal court judgment or  
23 hearing officer decision that recognizes the state court judgment: (i) withhold from  
24 the employee's work check any amount awarded by the tribal court or hearing  
25 officer against the employee and necessary to satisfy all or a portion of the state  
26 court judgement recognized by the tribal court or hearing officer, and (ii) remit the  
amount withheld to the party in whose favor the judgment was entered. The Tribe's  
grant of jurisdiction to the tribal court or hearing officer shall include a procedure  
allowing the employee to apply for a claim of exemption from all or a portion of  
the judgment to pay for the employee's necessities of life as defined in the  
Ordinance.

27 Doc. 35-17, RON Vol 16, 9144-45. The Tribal Plaintiffs argue that "the recognition and  
28 enforcement of state spousal and child support orders is not related in any way to the operation of

1 ‘gaming activities’ at the Tribes’ gaming facilities.” Doc. 35-1, 21:17-19. The State Defendants  
2 do not provide an argument specifically addressed at spousal and child support.

3 This is a topic that falls beyond the permitted scope. Again, the standard is whether the  
4 topic “is so attenuated from gameplay that it falls outside of paragraph (3)(C)(vii).” Chemehuevi  
5 Indian Tribe, 919 F.3d at 1153, citing 25 U.S.C. § 2710(d)(3)(C)(vii). The State Defendants were  
6 seeking to include regulations on legal rights that exist independently of any gaming operations.  
7 Spousal and child support obligations are affected by employment and income but would still exist  
8 even in the absence of the gaming related job. The Ninth Circuit found employment regulations  
9 directly related to the operation of gaming activities because “Without the ‘operation of gaming  
10 activities,’ the jobs this provision covers would not exist; nor, conversely, could Indian gaming  
11 activities operate without someone performing these jobs.” Coyote Valley II, 331 F.3d at 1116.  
12 With employment and personal injury regulations, the State Defendants were trying to regulate the  
13 relationship between the Tribal Plaintiffs and persons working at or enjoying the services of the  
14 gaming facilities; the nexus of those relationships was the gaming activity. With spousal and child  
15 support, the State Defendants were arguably trying to regulate the relationship between the  
16 employees and third party family members who have no connection with the gaming activity; the  
17 nexus of those relationships was not the gaming activity. This is a topic which pulled the  
18 negotiations into a field wholly collateral to the operation of gaming facilities.

19 Even if such payments were proper topics of negotiation, the mechanism by which the  
20 State Defendants sought to enforce those claims were improper. The original language sought to  
21 have the Tribal Plaintiffs directly enforce state court orders. Instead of having the issue resolved  
22 by tribal courts, the execution was meant to be automatic. That is, the relevant court making  
23 decisions was to be a state court. In that way, this is akin to the jurisdiction shifting which was  
24 prohibited by Pueblo of Santa Ana v. Nash, 972 F. Supp. 2d 1254 (D.N.M. 2013) and Navajo  
25 Nation v. Dalley, 896 F.3d 1196 (10th Cir. 2018).

26 The State Defendants’ attempt to negotiate the issue of spousal and child support is per se  
27 evidence of bad faith. The State Defendants have to make a strong demonstration of good faith to  
28 rebut this conclusion. See Rincon, 602 F.3d at 1036 (“Because we hold above that general fund

1 revenue sharing is neither authorized by IGRA nor reconcilable with its purposes, it is difficult to  
2 imagine what concessions the State could offer to rebut the strong suggestion of bad faith arising  
3 from such demands.”).

#### 4 5 **4. Environmental Laws and Local Authorities**

6 The State Defendants sought to include provisions that set up a system of environmental  
7 review:

##### 8 **Sec. 11.1. Off-Reservation Environmental Impact Requirement Procedures.**

9 The Tribe shall not commence construction on any Project until the requirements of  
10 section 11.0 and any dispute resolution procedures related to the Project initiated  
pursuant to sections 11.0 or 13.0 are completed.

11 (a) If the scope of a Project would allow the Tribe to operate no more than a  
12 cumulative total of three-hundred forty-nine (349) Gaming Devices and upon the  
completion of the Project the Tribe will operate no more than a cumulative total of  
13 three hundred forty-nine (349) Gaming Devices in all of its Gaming Facilities, the  
procedures specified in sections 11.3 through 11.5 and, if required under section  
14 11.5, subdivision (g), the Tribal Environmental Impact Document (TEID)  
procedures of sections 11.6 through 11.10, shall apply to the Project.

15 (b) If, upon the completion of a Project, the Tribe will operate a cumulative total of  
16 three hundred fifty (350) Gaming Devices or more in all its Gaming Facilities, the  
procedures specified in sections 11.3 through 11.5 and, if required under section  
17 11.5, subdivision (g), the Tribal Environmental Impact Report (TEIR) procedures  
of sections 11.10 through 11.17 shall apply to the Project.

18 (c) Nothing herein shall preclude the Tribe from undertaking multiple activities that  
19 may constitute Projects.

20 (d) To the extent any terms in this section 11.0 are not defined in this Compact,  
they will be interpreted and applied consistent with the policies and purposes of the  
21 California Environmental Quality Act, California Public Resources Code section  
21000 et seq. (CEQA) and the National Environmental Policy Act of 1969, 42  
22 U.S.C. § 4332 et seq. (NEPA).

##### 23 **Sec. 11.2. Tribal Environmental Protection Ordinance.**

24 The Tribe shall adopt an ordinance incorporating the processes and procedures  
required under section 11.0 (Tribal Environmental Protection Ordinance). In  
25 fashioning the Tribal Environmental Protection Ordinance, the Tribe will  
incorporate the relevant policies and purposes of NEPA and CEQA consistent with  
26 legitimate governmental interests of the Tribe and the State, as reflected in section  
11.0. No later than one hundred and twenty (120) days before starting the  
27 environmental review process required by section 11.0 for a Project, the Tribe will  
submit its Tribal Environmental Protection Ordinance to the State for review. If  
28 within sixty (60) days after receiving it, which time shall be extended up to an  
additional thirty (30) days upon the State’s request, the State identifies aspects of

1 the Tribal Environmental Protection Ordinance that it believes are inconsistent with  
2 section 11.0, the matter will be resolved in accordance with the dispute resolution  
provisions of section 13.0 and the Project may not commence until that dispute is  
resolved.

3 Doc. 34-17. RON Vol. 16, 9102-103. Of note, the State Defendants are asking for compliance  
4 with CEQA and NEPA in these provisions. This language would apply to “Projects”:

5 Sec. 2.25. “Project” means (i) the construction of a new Gaming Facility, (ii) a  
6 renovation, expansion or modification of an existing Gaming Facility, or (iii) other  
7 activity involving a physical change to the reservation environment, provided the  
8 principal purpose of which is directly related to the activities of the Gaming  
9 Operation, and any one of which may cause a Significant Effect on the Off-  
Reservation Environment. For purposes of this definition, section 11.0, and  
Appendix B, “reservation” refers to the Tribe’s Indian lands within the meaning of  
IGRA or lands otherwise held in trust for the Tribe by the United States.

10 which further references “Gaming Facilities” and “Gaming Operations”:

11 Sec. 2.13. “Gaming Facility” or “Facility” means any building in which Gaming  
12 Activities or any Gaming Operations occur, or in which the business records,  
13 receipts, or funds of the Gaming Operation are maintained (but excluding off-site  
14 facilities primarily dedicated to storage of those records, and financial institutions),  
15 which may include parking lots, walkways, rooms, buildings, and areas that  
16 provide amenities to Gaming Activity patrons, if and only if, the principal purpose  
17 of which is to serve the activities of the Gaming Operation, provided that nothing  
herein prevents the conduct of class II gaming (as defined under IGRA) therein.

16 Sec. 2.14. “Gaming Operation” means the business enterprise that offers and  
operates Gaming Activities, whether exclusively or otherwise, but does not include  
the Tribe’s governmental or other business activities unrelated to the operation of  
the Gaming Facility.

18 Doc. 34-17. RON Vol. 16, 9035 and 9032. The Tribal Plaintiffs argue that this level of  
19 environmental regulation is not permitted. Doc. 35-1, 14:24.

20 Further, the Tribal Plaintiffs particularly object to a push by the State Defendants to require  
21 them to negotiate environmental mitigation with local governments:

22 **Sec. 11.15. Intergovernmental Agreement.**

23 (a) Before the commencement of a Project, and no later than the issuance of the  
24 Final TEIR to the County and/or the City, the Tribe shall offer to commence  
25 government-to-government negotiations with the County and/or the City, and upon  
26 the County’s and/or the City’s acceptance of the Tribe’s offer, the parties shall  
negotiate on a government-to-government basis and shall enter into enforceable  
written agreements (hereinafter “intergovernmental agreement”) with the County  
and/or the City with respect to the matters set forth below:

27 (1) The timely mitigation of any Significant Effect on the Off-Reservation  
28 Environment (which effects, consistent with the policies and purposes of NEPA  
and CEQA as described in Appendix B, Off-Reservation Environmental Impact

1 Analysis Checklist), where such effect is attributable, in whole or in part, to the  
2 Project, unless the parties agree, based upon the information required by section  
3 11.14, subdivision (e), that the particular mitigation is infeasible, taking into  
4 account economic, environmental, social, technological, or other considerations.

5 Doc. 34-17, RON Vol. 16, 9125. A failure to come to an agreement would force the Tribal  
6 Plaintiffs to enter into arbitration with the local government entities:

7 **Sec. 11.16. Arbitration.**

8 To foster good government-to-government relationships and to assure that the  
9 Tribe is not unreasonably prevented from commencing a Project and benefiting  
10 therefrom, if an intergovernmental agreement with the County, the City, or Caltrans  
11 if required by section 11.15, subdivision (b), is not entered within seventy-five (75)  
12 days of the submission of the Final TEIR, or such further time as the Tribe and the  
13 County, the City, or Caltrans (for purposes of this section the “parties”) may agree  
14 in writing, any party may demand binding arbitration before a JAMS arbitrator  
15 pursuant to JAMS Comprehensive Arbitration Rules with respect to any remaining  
16 disputes arising from, connected with, or related to the negotiation.

17 Doc. 34-17, RON Vol. 16, 9127.

18 The Northern District has held that “the State may not impose its environmental and land  
19 use regulations on the Tribe absent authority from Congress. However, the State could negotiate  
20 for compliance with such regulations to the degree to which they are ‘directly related’ to the  
21 Tribe’s gaming activities or can be considered ‘standards’ for the operation of and maintenance of  
22 the Tribe’s gaming facility under 25 U.S.C. § 2710(d)(3)(C)(vi) and (vii)” with a key limitation  
23 that “the State may not in good faith insist upon a blanket provision in a tribal-State compact with  
24 Big Lagoon which requires future compliance with all State environmental and land use laws, or  
25 provides the State with unilateral authority to grant or withhold its approval of the gaming facility  
26 after the Compact is signed.” Big Lagoon Rancheria, 759 F. Supp. 2d at 1153-54 (describing an  
27 earlier ruling dealing with the same parties on the same issue). Ultimately, the Northern District  
28 held that “The State may request environmental mitigation measures so long as they (1) directly  
relate to gaming operations or can be considered standards for the operation and maintenance of  
the Tribe’s gaming facility, (2) are consistent with the purposes of IGRA and (3) are bargained for  
in exchange for a meaningful concession.” *Id.* at 1162; see also Rincon, 602 F.3d at 1033 (“(a) for  
uses ‘directly related to the operation of gaming activities’ in § 2710(d)(3)(C)(vii), (b) consistent  
with the purposes of IGRA, and (c) not ‘imposed’ because it is bargained for in exchange for a  
‘meaningful concession.’”).

1 The proposed language suggests that the State Defendants were seeking to impose chunks  
2 of environmental laws on the Tribal Plaintiffs' "Gaming Facilities." While it is not as broad as a  
3 blanket requirement to comply with all future environmental law, it is significant. The State  
4 Defendants argue that they "did not insist on any particular terms, including on a need for an  
5 agreement with the local county government regarding mitigation." Doc. 43, 9:1-3. The State  
6 Defendants point out that in February 2017, they changed the counterparty for the mitigation  
7 agreement, substituting the State of California in place of the local counties. Doc. 34-12, RON  
8 Vol. 11, 3716-18. But, the extensive language quoted above describing the requirement of having  
9 intergovernmental agreement with counties and/or cities was the "State's full draft compact for  
10 CTSC discussion October 15, 2018." Doc. 34-17, RON Vol. 16, 9125. And, as late as September  
11 2019, the State Defendants were still talking about "provisions that require intergovernmental  
12 agreements with affected local governments regarding mitigation and arbitration when the tribe  
13 and the locals cannot reach agreement." Doc. 34-23, RON Vol. 22, 9957. The record appears to  
14 show a consistent push to subject the Tribal Plaintiffs to a comprehensive environmental  
15 regulatory scheme and negotiation with local governmental entities.

16 Turning to the three part test, since all of the regulations appear tied to "Gaming  
17 Facilities," they are related to the operation of gaming activities. In part, IGRA was "intended to  
18 promote tribal development." Rincon, 602 F.3d at 1034, citing 25 U.S.C. § 2702. There is no  
19 suggestion that the environmental provisions were added as a hidden means to prevent the  
20 building, renovation, or expansion of gaming facilities by Tribal Plaintiffs. As part of the overall  
21 negotiation to renew the 1999 Compact, they can be said to be consistent with the promotion of  
22 tribal development. Thus, the State Defendants' attempt to negotiate the issue is not per se  
23 evidence of bad faith. However, this is a subject for which the State Defendants need to provide  
24 meaningful concessions.

## 25 26 **5. Tribal Nation Grant Fund**

27 The 1999 Compacts included provisions requiring the Tribal Plaintiffs to contribute to the  
28 Revenue Sharing Trust Fund ("RSTF") and the Special Distribution Fund ("SDF"). The RSTF

1 provides funding to Indian tribes in California that do not operate gaming facilities. The SDF  
2 creates an account to pay for programs designed to offset any negative effects of gaming activities.  
3 The Ninth Circuit ultimately ruled that requiring Indian tribes to fund the RSTF and SDF was  
4 within the scope of Section 2710(d)(3)(C)(vii) and that the state offered “meaningful concessions”  
5 in exchange for that funding. Coyote Valley II, 331 F.3d 1094, 1111-14. The Ninth Circuit said  
6 that the state’s concession to Indian tribes of an exclusive right to operate class III gaming  
7 throughout California was “exceptionally valuable and bargained for” but could not be considered  
8 a concession in any future negotiations. Rincon, 602 F.3d at 1037.

9 With renegotiation, the State Defendants sought to have the Tribal Plaintiffs contribute to a  
10 new Tribal Nation Grant Fund (“TNGF”). The TNGF would fund a program that provides grants  
11 to Indian tribes in California that do not operate gaming facilities or operate only limited gaming  
12 facilities. In negotiations, the Tribal Plaintiffs proposed a RSTF II instead of the TNGF in July  
13 2019; the State Defendants expressed openness to considering that alternative proposal. Doc. 34-  
14 24, RON Vol. 22, 9948. Soon thereafter, the Tribal Plaintiffs withdrew from the CTSC.

15 The Tribal Plaintiffs argue that this is a form of taxation that is not permitted by IGRA.  
16 Doc. 35-1, 28:4-9. From what is presented, the purpose of TNGF appears to be similar to the  
17 RSTF. There was negotiation over what form the fund should take. As the Ninth Circuit has  
18 found the RSTF appropriate under IGRA so long as there were meaningful concessions offered in  
19 exchange, the same result should hold true in this case. See Coyote Valley II, 331 F.3d at 1111.

### 20 21 **C. Meaningful Concessions**

22 State Defendants argue that, on the topics the Tribal Plaintiffs objected to, their negotiating  
23 positions were never inflexible or absolute but rather they were always open to discussion and  
24 compromise. Doc. 38-1, 12:18-25. They point out that it was ultimately the Tribal Plaintiffs who  
25 walked away from negotiations. Doc. 38-1, 14:12-13. However, given the nature of the topics the  
26 State Defendants raised, meaningful concessions are required to rebut the evidence the Tribal  
27 Plaintiffs have pointed to that suggest bad faith. What constitutes a meaningful concession is  
28 something beyond that which is negotiated as part of a standard IGRA compact that only covers

1 topics directly dealing with gaming activity. Rincon, 602 F.3d at 1039 (“gaming rights that tribes  
2 are entitled to negotiate for under IGRA, like device licensing and time, see § 2701(d)(3)(C)(vi),  
3 cannot serve as consideration for general fund revenue sharing; the consideration must be for  
4 something ‘separate’ than basic gaming rights.”).

5 To establish that meaningful concessions were made, the State Defendants need to argue  
6 specifically what concessions were offered in exchange for what topics: “the State argues that the  
7 value of its offers during compact negotiations should be analyzed as a whole, not piecemeal....we  
8 disagree that the State makes ‘meaningful concessions’ whenever it offers a bundle of rights more  
9 valuable than the status quo. As previously explained, IGRA endows states with limited  
10 negotiating authority over specific items. Accepting the State’s ‘holistic’ view of negotiations  
11 would permit states to lump together proposals for taxation, land use restrictions, and other  
12 subjects along with IGRA class III gaming rights. Such a construction of IGRA would violate the  
13 purposes and spirit of that law.” Rincon, 602 F.3d at 1040. “Although we do not inquire into the  
14 adequacy of consideration as a general rule, when the consideration must necessarily be divided  
15 into two parts--that which IGRA contemplates and that which is outside of IGRA--we cannot  
16 bundle the rights being negotiated and compare the whole to the status quo as our method for  
17 determining whether the concessions are meaningful. The consideration in exchange for the  
18 revenue sharing must be independently meaningful in comparison to the status quo, i.e. not  
19 illusory (or illegal) if standing alone.” Id. at 1040 n.23.

20 The State Defendants have not provided granular argument concerning meaningful  
21 concessions. They provide a list of concessions and then argue generally “Taken together, these  
22 concessions made throughout State Defendants’ proposed compacts are significant. They provide  
23 Plaintiff Tribes with a longer compact with no requirement to acquire or pay for Gaming Device  
24 licenses, and the ability to resolve all patron disputes, employee claims, and damage claims within  
25 their tribal court system. And potentially most notable, under the State’s proposed compact the  
26 Plaintiff Tribes could be eligible to pay no SDF, RSTF, or TNGF payments. This is a valuable  
27 proposal that greatly improves upon the Plaintiff Tribes’ existing 1999 Compacts. To the extent  
28 that any material concessions are required under IGRA, this proposal satisfies any such

1 obligations.” Doc. 43, 19:4-10.

2 First, the ability to resolve disputes within the tribal court system is the legal default  
3 position. Indeed, as discussed above, changing the venue of patron personal injury and employee  
4 claims from tribal court to state court is not a permitted topic of IGRA negotiation. See Pueblo of  
5 Santa Ana v. Nash, 972 F. Supp. 2d 1254 (D.N.M. 2013); Navajo Nation v. Dalley, 896 F.3d 1196  
6 (10th Cir. 2018). Second, this appears to be the type of holistic analysis Rincon disapproved of. It  
7 is the burden of State Defendants to link specific concessions as being offered in return for  
8 specific topics. See Big Lagoon Rancheria, 759 F. Supp. 2d at 1162 (“However, the record of  
9 negotiations does not show that either of these offers was related to the proposed environmental  
10 mitigation measures; instead, they appear to have been offered in exchange for general fund  
11 revenue sharing.”). The State Defendants also have to explain in detail how much a benefit the  
12 concessions actually would provide to the Tribal Plaintiffs. See Id. (the concessions listed by the  
13 state were “(1) the right to operate up to 349 gaming devices and (2) continued receipt of RSTF  
14 payments, even though Big Lagoon would no longer be a non-gaming tribe....Without any context  
15 or comparison, the State simply declares that they were valuable. This is not sufficient.”).

16 In this case, the record of negotiations is many thousands of pages long. “The district  
17 court need not examine the entire file for evidence establishing a genuine issue of fact, where the  
18 evidence is not set forth in the opposing papers with adequate references so that it could  
19 conveniently be found.” Carmen v. S.F. Unified Sch. Dist., 237 F.3d 1026, 1031 (9th Cir. 2001).  
20 While the State Defendants assert that they have negotiated in good faith in general, they have not  
21 provided citation to specific instances during the negotiation to support their assertion.

#### 22 23 **D. Conclusion**

24 The Tribal Plaintiffs have met their burden of producing evidence the State Defendants did  
25 not negotiate in good faith by raising topics in negotiations that were beyond the scope permitted  
26 by IGRA or which required some form of meaningful concession in return. The State Defendants  
27 have not met their burden of providing affirmative evidence that they did negotiate in good faith  
28 sufficient to rebut the Tribal Plaintiffs’ evidence. It is adjudicated the State Defendants did not

1 negotiate in good faith.

2 IGRA's remedial procedures are as follows:

3 (iii) If, in any action described in subparagraph (A)(i), the court finds that the State  
4 has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State  
5 compact governing the conduct of gaming activities, the court shall order the State  
6 and the Indian Tribe [tribe] to conclude such a compact within a 60-day period.

6 ....

7 (iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing  
8 the conduct of gaming activities on the Indian lands subject to the jurisdiction of  
9 such Indian tribe within the 60-day period provided in the order of a court issued  
10 under clause (iii), the Indian tribe and the State shall each submit to a mediator  
11 appointed by the court a proposed compact that represents their last best offer for a  
12 compact. The mediator shall select from the two proposed compacts the one which  
13 best comports with the terms of this Act and any other applicable Federal law and  
14 with the findings and order of the court.

11 25 U.S.C. § 2710(d)(7)(B).

#### 13 IV. Order

14 The Tribal Plaintiffs' motion for summary judgment is GRANTED.

15 The State Defendants' motion for summary judgment is DENIED.

16 Accordingly, the parties ARE HEREBY ORDERED to proceed pursuant to the remedial  
17 process set forth in the IGRA, 25 U.S.C. § 2710(d)(7)(B)(iii)-(vii). As the immediate remedy, the  
18 parties ARE HEREBY ORDERED to conclude a gaming compact within 60 days of the date of  
19 this order or to provide a proposed stipulation to extend the time for concluding the gaming  
20 compact.

21 IT IS SO ORDERED.

22 Dated: March 31, 2021

23   
24 SENIOR DISTRICT JUDGE