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9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA
 12

13
 14 **AUGUSTINE BAND OF CAHUILLA**
INDIANS, a federally recognized Indian
 15 **Tribe,**
 16 Plaintiff,
 17
 18 v.
 19 **STATE OF CALIFORNIA, and GAVIN**
NEWSOM IN HIS OFFICIAL CAPACITY
 20 **AS GOVERNOR OF CALIFORNIA,**
 21 Defendants.

Case No. 1:21-cv-01509-NONE-SAB

**DEFENDANTS' ANSWER TO
 COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

Action Filed: October 12, 2021

INTRODUCTION

22
 23
 24 On August 24, 2021, Governor Newsom announced that he had signed class III gaming
 25 compacts between the State of California (State) and six federally recognized Indian tribes under
 26 the Indian Gaming Regulatory Act (IGRA). [https://www.gov.ca.gov/2021/08/24/governor-](https://www.gov.ca.gov/2021/08/24/governor-newsom-signs-tribal-compacts-august-2021/)
 27 [newsom-signs-tribal-compacts-august-2021/](https://www.gov.ca.gov/2021/08/24/governor-newsom-signs-tribal-compacts-august-2021/). These gaming compacts demonstrate both the
 28 State's commitment to respectful government-to-government negotiations with California tribes,

1 and the belief that California tribal gaming serves the important goals of promoting tribal
2 economic development, self-sufficiency, and strong tribal governments. In addition to supporting
3 these objectives, the recent compacts also greatly benefit the tribes' local communities by
4 providing for enhanced fire and law enforcement, improved public transit and education, and
5 increased job opportunities. In short, these six new gaming compacts represent reflect the shared
6 goals of the State and each of the tribes to promote economic growth, a vision of mutual respect
7 between the sovereign governments of California Indian tribes and the State, and a means to
8 ensure honest and fair class III gaming.

9 Unfortunately, the State has not been able to successfully conclude a new gaming compact
10 with Plaintiff Augustine Band of Cahuilla Indians (Augustine). Although the State remains
11 willing to continue compact negotiations under IGRA, unlike the six tribes that recently
12 concluded compacts with the State, Augustine has chosen litigation over negotiation. The State
13 remains committed to further engage Augustine in good-faith negotiations under IGRA if the
14 Tribe is willing to resume those negotiations.

15 **ANSWER**

16 Defendants Gavin Newsom in his official capacity as Governor of the State of California
17 and the State of California (collectively State Defendants) answer the Complaint for Declaratory
18 and Injunctive Relief (Complaint), ECF No. 1, filed by Augustine on October 12, 2021, as
19 follows:

20 1. In answer to paragraph 1 of the Complaint, State Defendants admit that pursuant to
21 28 U.S.C. §§ 1331 and 1362, the District Court has jurisdiction over this matter. State
22 Defendants further admit that Augustine is an Indian tribe with a governing body duly recognized
23 by the Secretary of the Interior. State Defendants further admit that Augustine has a class III
24 gaming compact with the State (2000 Compact) and operates class III gaming activities on the
25 Augustine Indian Reservation in Riverside County, California. Defendants further admit that
26 Augustine requested a new class III gaming compact to replace its 2000 Compact, which expires
27 on June 30, 2022. Except as expressly admitted, State Defendants deny each and every allegation
28 contained in paragraph 1 of the Complaint.

1 2. In answer to paragraph 2 of the Complaint, State Defendants admit that the State
2 has waived its sovereign immunity to this action. State Defendants aver that section 9.4 of the
3 2000 Compact waives the State's sovereign immunity to this action and that section 9.4 and
4 Government Code section 98005 speak for themselves. Except as expressly admitted or averred
5 herein, State Defendants deny each and every remaining allegation set forth in paragraph 2 of the
6 Complaint.

7 3. In answer to paragraph 3 of the Complaint, State Defendants aver that the State
8 Capitol is in Sacramento and that the California Department of Justice, Office of the Attorney
9 General maintains an office in Fresno County. Except as expressly averred herein, State
10 Defendants deny each and every allegation contained in paragraph 3 of the Complaint.

11 4. State Defendants admit the allegation contained in paragraph 4 of the Complaint.

12 5. State Defendants admit the allegation contained in paragraph 5 of the Complaint.

13 6. In answer to paragraph 6 of the Complaint, State Defendants admit that Defendant
14 Gavin Newsom is the governor of the State of California and that he is authorized by law to enter
15 into tribal-state class III gaming compact negotiations, reach agreement, and execute compacts
16 with tribes pursuant to IGRA. Defendants aver that compacts must be ratified by the California
17 Legislature.

18 7. In answer to paragraph 7 of the Complaint, State Defendants incorporate by this
19 reference their answers to paragraphs 1 through 6 above, as though set forth here in full.

20 8. In answer to paragraph 8 of the Complaint, State Defendants admit that Augustine
21 possesses Indian lands held in trust located in Riverside County, California. State Defendants
22 aver that 18 U.S.C. § 1151 and 25 U.S.C. § 2703(4) speak for themselves. Except as expressly
23 admitted and averred herein, State Defendants lack sufficient information or belief to either admit
24 or deny the remaining allegations set forth in paragraph 8 of the Complaint and, on that basis,
25 deny each and every such allegation.

26 9. State Defendants admit each and every allegation contained in paragraph 9 of the
27 Complaint.

28 10. In answer to paragraph 10 of the Complaint, State Defendants admit that

1 Augustine operates the Augustine Casino (Casino) pursuant to its class III gaming compact with
2 the State (2000 Compact). State Defendants lack sufficient information or belief to either admit
3 or deny the remaining allegation set forth in paragraph 10 of the Complaint and, on that basis,
4 deny the remaining allegations.

5 11. In answer to paragraph 11 of the Complaint, State Defendants aver that IGRA
6 speaks for itself. Except as expressly averred herein, State Defendants deny each and every
7 allegation contained in paragraph 11 of the Complaint.

8 12. In answer to paragraph 12 of the Complaint, State Defendants aver that IGRA
9 speaks for itself. State Defendants aver that the allegations regarding IGRA and 25 U.S.C. §
10 2710(d)(3)(A) constitute legal conclusions and argument that, as such, require neither admission
11 nor denial. Except as expressly averred herein, State Defendants deny each and every allegation
12 contained in paragraph 12 of the Complaint.

13 13. In answer to paragraph 13 of the Complaint, State Defendants aver that 25 U.S.C.
14 § 2710(d)(3)(C) speaks for itself. Except as expressly averred herein, State Defendants deny each
15 and every allegation contained in paragraph 13 of the Complaint.

16 14. In answer to paragraph 14 of the Complaint, State Defendants aver that IGRA and
17 25 U.S.C. § 2710(d)(4) speak for themselves. State Defendants aver that the allegations
18 regarding IGRA and 25 U.S.C. § 2710(d)(4) constitute legal conclusions and argument that, as
19 such, require neither admission nor denial. Except as expressly averred herein, State Defendants
20 deny each and every allegation contained in paragraph 14 of the Complaint.

21 15. In answer to paragraph 15 of the Complaint, State Defendants aver that
22 Augustine's 2000 Compact with the State speaks for itself. Except as expressly averred herein,
23 State Defendants deny each and every allegation contained in paragraph 15 of the Complaint.

24 16. In answer to paragraph 16 of the Complaint, State Defendants aver that
25 Augustine's 2000 Compact speaks for itself. Except as expressly averred herein, State
26 Defendants lack sufficient information or belief to either admit or deny the remaining allegations
27 set forth in paragraph 16 of the Complaint, and on that basis deny each and every such allegation.

28 17. In answer to paragraph 17 of the Complaint, State Defendants admit that

1 Augustine sent a letter to the State dated August 9, 2019 and the State sent a letter to Augustine
2 dated September 23, 2019. State Defendants aver that the August 9, 2019 letter and the
3 September 23, 2019 letter speak for themselves. Except as expressly admitted and averred herein,
4 State Defendants deny the remaining allegations contained in paragraph 17 of the Complaint.

5 18. In answer to paragraph 18 of the Complaint, State Defendants admit that, on
6 December 30, 2019, Augustine sent a draft compact to the State. State Defendants aver that
7 between February 2020 and September 2, 2021, Augustine and the State conducted at least nine
8 formal compact negotiation sessions, either in-person or by video conference, with the last formal
9 negotiation session between Augustine and the State's negotiating team being held on August 25,
10 2021. State Defendants aver that the State and Augustine exchanged written compact proposals
11 between October 2015 and September 23, 2021. Except as expressly admitted and averred
12 herein, State Defendants deny the remaining allegations contained in paragraph 18 of the
13 Complaint.

14 19. In answer to paragraph 19 of the Complaint, State Defendants aver that the State
15 and the Tribe have not concluded a new class III gaming compact to replace Augustine's 2000
16 Compact. State Defendants aver that the multiple negotiation proposals by each party that
17 constitute the record of negotiations between Augustine and the State (Record of Negotiations)
18 speaks for itself. State Defendants further aver that the allegations concerning IGRA and what
19 compact provisions, and the characterizations of those provisions, that the State proposed
20 throughout the compact negotiations between Augustine and the State constitute legal conclusions
21 and argument that, as such, require neither admission nor denial. State Defendants deny that they
22 insisted on negotiating subjects outside the scope of IGRA, failed to negotiate in good faith, or
23 otherwise violated IGRA. Except as expressly admitted, averred, and denied herein, State
24 Defendants deny the remaining allegations contained in paragraph 19 of the Complaint.

25 20. In answer to paragraph 20 of the Complaint, State Defendants aver that the State
26 and the Tribe have not concluded a new class III gaming compact to replace Augustine's 2000
27 Compact. State Defendants admit that Augustine made certain objections during compact
28 negotiations with the State relating to a proposed Tribal Labor Relations Ordinance (TLRO).

1 State Defendants aver that the Record of Negotiations speaks for itself. Except as expressly
2 admitted or averred herein, State Defendants deny the remaining allegations contained in
3 paragraph 20 of the Complaint.

4 21. In answer to paragraph 21 of the Complaint, State Defendants admit that the State
5 and Augustine conducted a negotiation session on February 11, 2021. State Defendants further
6 admit that the non-bracketed, quoted language in paragraph 21 is accurately quoted from the
7 transcript of the February 11, 2021 negotiation session. State Defendants aver that the Record of
8 Negotiations speaks for itself. State Defendants further aver that the allegations concerning
9 IGRA and what compact provisions, and the characterizations of those provisions, that the State
10 proposed throughout the compact negotiations between Augustine and the State constitute legal
11 conclusions and argument that, as such, require neither admission nor denial. Except as expressly
12 admitted, averred, and denied herein, State Defendants deny the remaining allegations contained
13 in paragraph 21 of the Complaint.

14 22. In answer to paragraph 22 of the Complaint, State Defendants admit that, on
15 March 11, 2021, the State presented Augustine with, *inter alia*, a revised draft Tribal Labor
16 Relations Ordinance. State Defendants aver that the Record of Negotiations, including the March
17 11, 2021 revised draft Tribal Labor Relations Ordinance, speaks for itself. Except as expressly
18 admitted or averred herein, State Defendants deny the remaining allegations contained in
19 paragraph 22 of the Complaint.

20 23. In answer to paragraph 23 of the Complaint, State Defendants admit that
21 Augustine and the State held a formal negotiation session on May 6, 2021. State Defendants
22 deny that Augustine and the State held a formal negotiation session on June 7, 2021. State
23 Defendants aver that the Record of Negotiations speaks for itself. Except as expressly admitted
24 and averred herein, State Defendants deny the remaining allegations contained in paragraph 23 of
25 the Complaint.

26 24. In answer to paragraph 24, State Defendants aver that on July 2, 2021, Augustine
27 transmitted a draft tribal-state class III gaming compact offer, without Appendix A, to the State as
28 part of the negotiation process. State Defendants aver that the Record of Negotiations, including

1 Augustine's transmittal to the State on July 2, 2021, speaks for itself. Except as expressly averred
2 herein, State Defendants deny the remaining allegations contained in paragraph 24 of the
3 Complaint.

4 25. In answer to paragraph 25 of the Complaint, State Defendants admit that the State
5 and Augustine held a formal negotiation session on August 2, 2021. State Defendants further
6 admit that the quoted language in paragraph 25 is accurately quoted from the transcript of the
7 August 2, 2021 negotiation session. State Defendants aver that the Record of Negotiations,
8 including discussions at the August 2, 2021 negotiating session, speaks for itself. Except as
9 expressly admitted or averred herein, State Defendants deny the remaining allegations contained
10 in paragraph 25 of the Complaint.

11 26. In answer to paragraph 26 of the Complaint, State Defendants admit that the State
12 and Augustine held a formal negotiation session on August 2, 2021. State Defendants aver that
13 the Record of Negotiations, including discussions at the August 2, 2021 negotiating session,
14 speaks for itself. Except as expressly admitted and averred herein, State Defendants deny the
15 remaining allegations contained in paragraph 26 of the Complaint.

16 27. In answer to paragraph 27 of the Complaint, State Defendants admit that the State
17 and Augustine held a formal negotiation session on August 25, 2021. State Defendants aver that
18 the Record of Negotiations, including during discussions at the August 25, 2021 negotiating
19 session, speaks for itself. Except as expressly admitted and averred herein, State Defendants deny
20 the remaining allegations contained in paragraph 27 of the Complaint.

21 28. In answer to paragraph 28 of the Complaint, State Defendants admit that
22 Augustine's counsel sent a letter to the State's principal negotiator on September 2, 2021. State
23 Defendants aver that the Record of Negotiations, including the September 2, 2021 letter, speaks
24 for itself. Except as expressly admitted and averred herein, State Defendants deny the remaining
25 allegations contained in paragraph 28 of the Complaint.

26 29. In answer to paragraph 29 of the Complaint, State Defendants aver that on July 2,
27 2021, Augustine transmitted a draft tribal-state class III gaming compact offer to the State as part
28 of the negotiation process. State Defendants aver that the Record of Negotiations speaks for itself.

1 Except as expressly averred herein, State Defendants deny the remaining allegations contained in
2 paragraph 29 of the Complaint.

3 30. In answer to paragraph 30 of the Complaint, State Defendants admit that the State
4 and Augustine held a formal negotiation session on August 2, 2021. State Defendants aver that
5 the Record of Negotiations, including discussions at the August 2, 2021 negotiating session and
6 communications prior to that negotiating session, speaks for itself. Except as expressly admitted
7 or averred herein, State Defendants deny the remaining allegations contained in paragraph 30 of
8 the Complaint.

9 31. In answer to paragraph 31 of the Complaint, State Defendants admit that the State
10 and Augustine held a formal negotiation session on August 2, 2021. State Defendants aver that
11 the Record of Negotiations, including discussions at the August 2, 2021 negotiating session and
12 communications prior to that negotiating session, speaks for itself. Except as expressly admitted
13 or averred herein, State Defendants deny the remaining allegations contained in paragraph 31 of
14 the Complaint.

15 32. In answer to paragraph 32 of the Complaint, State Defendants aver that the Record
16 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
17 remaining allegations contained in paragraph 32 of the Complaint.

18 33. In answer to paragraph 33 of the Complaint, State Defendants aver that two
19 attorneys from the State's negotiating team conferred with attorneys for Augustine's negotiating
20 team on August 30, 2021 and September 2, 2021, for the purpose of identifying and, if necessary,
21 clarifying the language of provisions about which Augustine and the State had achieved
22 consensus, and identifying those provisions about which consensus had not been attained. State
23 Defendants further aver that the Record of Negotiations speaks for itself. Except as expressly
24 averred herein, State Defendants deny the remaining allegations contained in paragraph 33 of the
25 Complaint.

26 34. In answer to paragraph 34 of the Complaint, State Defendants aver that the Record
27 of Negotiations speaks for itself. Except as expressly averred or denied herein, State Defendants
28 deny the remaining allegations contained in paragraph 34 of the Complaint.

1 35. In answer to paragraph 35 of the Complaint, State Defendants aver that Record of
2 Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
3 remaining allegations contained in paragraph 35 of the Complaint.

4 36. In answer to paragraph 36 of the Complaint, State Defendants aver that the Record
5 of Negotiations speaks for itself. Except as expressly averred or denied herein, State Defendants
6 deny the remaining allegations contained in paragraph 36 of the Complaint.

7 37. In answer to paragraph 37 of the Complaint, State Defendants aver that the Record
8 of Negotiations speaks for itself. State Defendants further aver that the allegations concerning
9 IGRA and what compact provisions, and the characterizations of those provisions, that the State
10 proposed throughout the compact negotiations between Augustine and the State constitute legal
11 conclusions and argument that, as such, require neither admission nor denial. Except as expressly
12 averred herein, State Defendants deny the remaining allegations contained in paragraph 37 of the
13 Complaint.

14 38. In answer to paragraph 38 of the Complaint, State Defendants admit that the State
15 and Augustine have not concluded a new class III gaming compact to replace Augustine's 2000
16 Compact. State Defendants aver that the Record of Negotiations speaks for itself. State
17 Defendants further aver that the allegations concerning IGRA and what compact provisions, and
18 the characterizations of those provisions, that the State proposed throughout the compact
19 negotiations between Augustine and the State constitute legal conclusions and argument that, as
20 such, require neither admission nor denial. Except as expressly admitted or averred herein, State
21 Defendants deny the remaining allegations contained in paragraph 38 of the Complaint.

22 39. In answer to paragraph 39 of the Complaint, State Defendants admit that
23 Augustine proposed to the State extending the term of Augustine's 2000 Compact beyond June
24 30, 2022. State Defendants aver that the Record of Negotiations between Augustine and the State
25 speaks for itself. State Defendants further aver that the scope of the formal negotiations between
26 the Augustine and the State was limited to the negotiation of a new compact and the State never
27 agreed to formally negotiate with Augustine regarding an extension to the 2000 Compact. State
28 Defendants further aver that the allegations concerning IGRA and what compact provisions, and

1 the characterizations of those provisions, that the State proposed throughout the compact
2 negotiations between Augustine and the State constitute legal conclusions and argument that, as
3 such, require neither admission nor denial. State Defendants deny that they insisted on
4 negotiating subjects outside the scope of IGRA, failed to negotiate in good faith, or otherwise
5 violated IGRA. Except as expressly admitted, averred, or denied herein, State Defendants deny
6 the remaining allegations contained in paragraph 39 of the Complaint.

7 40. In answer to paragraph 40 of the Complaint, State Defendants admit that the State
8 has not agreed to extend the term of Augustine's 2000 Compact beyond June 30, 2022. State
9 Defendants aver that the Record of Negotiations speaks for itself. State Defendants further aver
10 that the scope of the formal negotiations between the Augustine and the State was limited to the
11 negotiation of a new compact and the State never agreed to formally negotiate with Augustine
12 regarding an extension to the 2000 Compact. State Defendants further aver that the allegations
13 concerning IGRA and what compact provisions, and the characterizations of those provisions,
14 that the State proposed throughout the compact negotiations between Augustine and the State
15 constitute legal conclusions and argument that, as such, require neither admission nor denial.
16 Except as expressly admitted or averred herein, State Defendants deny the remaining allegations
17 contained in paragraph 40 of the Complaint.

18 41. In answer to paragraph 41 of the Complaint, State Defendants aver that the Record
19 of Negotiations speaks for itself. State Defendants further aver that the allegations concerning
20 IGRA and what compact provisions, and the characterizations of those provisions, that the State
21 proposed throughout the compact negotiations between Augustine and the State constitute legal
22 conclusions and argument that, as such, require neither admission nor denial. Except as expressly
23 averred herein, State Defendants deny the remaining allegations set forth in paragraph 41 of the
24 Complaint.

25 42. In answer to paragraph 42 of the Complaint, State Defendants incorporate by this
26 reference their answers to paragraphs 1 through 41 above, as though set forth here in full.

27 43. In answer to paragraph 43 of the Complaint, State Defendants aver that the
28 California Legislature created through legislation the Special Distribution Fund (SDF), found at

1 California Government Code section 12012.85. State Defendants aver that Government Code
2 section 12012.85 and the Record of Negotiations speak for themselves. State Defendants further
3 aver that the allegations concerning the SDF and the State's negotiation proposals regarding the
4 SDF constitute legal conclusions and argument that, as such, require neither admission nor denial.
5 State Defendants deny that they insisted on negotiating subjects outside the scope of IGRA, failed
6 to negotiate in good faith, or otherwise violated IGRA. Except as expressly averred or denied
7 herein, State Defendants deny the remaining allegations set forth in paragraph 43 of the
8 Complaint.

9 44. In answer to paragraph 44 of the Complaint, State Defendants aver that the Record
10 of Negotiations speaks for itself. State Defendants further aver that the allegations concerning the
11 SDF and the State's negotiation proposals regarding the SDF and meaningful concessions
12 constitute legal conclusions and argument that, as such, require neither admission nor denial.
13 Except as expressly averred herein, State Defendants deny the remaining allegations set forth in
14 paragraph 44 of the Complaint.

15 45. In answer to paragraph 45 of the Complaint, State Defendants aver that the
16 California Legislature created through legislation the Revenue Sharing Trust Fund (RSTF), found
17 at California Government Code section 12012.75. State Defendants aver that Government Code
18 section 12012.75 and the Record of Negotiations speak for themselves. State Defendants further
19 aver that class III gaming compacts between the State and other California tribes speak for
20 themselves. State Defendants further aver that the allegations concerning the State's negotiation
21 proposals regarding the RSTF and offsets or credits constitute legal conclusions and argument
22 that, as such, require neither admission nor denial. Except as expressly averred herein, State
23 Defendants deny the remaining allegations set forth in paragraph 45 of the Complaint.

24 46. In answer to paragraph 46 of the Complaint, State Defendants aver that IGRA, the
25 RSTF, and the Record of Negotiations speak for themselves. State Defendants further aver that
26 the allegations concerning IGRA and the State's negotiation proposals regarding the RSTF
27 constitute legal conclusions and argument that, as such, require neither admission nor denial.
28 Except as expressly averred herein, State Defendants deny the remaining allegations set forth in

1 paragraph 46 of the Complaint.

2 47. In answer to paragraph 47 of the Complaint, State Defendants aver that IGRA, the
3 RSTF, and the Record of Negotiations speak for themselves. State Defendants further aver that
4 the allegations concerning IGRA, the RSTF and the State's negotiation proposals regarding the
5 RSTF and meaningful concessions constitute legal conclusions and argument that, as such,
6 require neither admission nor denial. Except as expressly averred herein, State Defendants deny
7 the remaining allegations set forth in paragraph 47 of the Complaint.

8 48. In answer to paragraph 48 of the Complaint, State Defendants aver that the
9 California Legislature created through legislation the Tribal Nation Grant Fund (TNGF), found at
10 California Government Code sections 12019.30 through 12019.90. State Defendants aver that ,
11 California Government Code sections 12019.30 through 12019.90 and the Record of Negotiations
12 speak for themselves. Except as expressly admitted or averred herein, State Defendants deny the
13 remaining allegations set forth in paragraph 48 of the Complaint.

14 49. In answer to paragraph 49 of the Complaint, State Defendants aver that the 25
15 U.S.C. § 2710(d)(3)(C) and the Record of Negotiations speak for themselves. Except as
16 expressly averred herein, State Defendants deny each and every allegation remaining set forth in
17 paragraph 49 of the Complaint.

18 50. In answer to paragraph 50 of the Complaint, State Defendants admit that
19 Augustine proposed a so-called "Revenue Sharing Trust Fund II" (RSTF II) during compact
20 negotiations with the State in February 2020. State Defendants aver that the Record of
21 Negotiations speaks for itself. State Defendants aver that the allegations concerning IGRA, the
22 TNGF, the RSTF, the RSTF II, the State's proposed compact drafts, and the Record of
23 Negotiations constitute legal conclusions and argument that, as such, require neither admission
24 nor denial. Except as expressly averred herein, State Defendants deny the remaining allegations
25 set forth in paragraph 50 of the Complaint.

26 51. In answer to paragraph 51 of the Complaint, State Defendants aver that the Record
27 of Negotiations speaks for itself. State Defendants aver that the allegations concerning IGRA, the
28 TNGF, the RSTF, the RSTF II, the State's proposed compact drafts, and the Record of

1 Negotiations constitute legal conclusions and argument that, as such, require neither admission
2 nor denial. Except as expressly averred herein, State Defendants deny the remaining allegations
3 set forth in paragraph 51 of the Complaint.

4 52. In answer to paragraph 52 of the Complaint, State Defendants aver that the Record
5 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
6 remaining allegations set forth in paragraph 52 of the Complaint.

7 53. In answer to paragraph 53 of the Complaint, State Defendants aver that the Record
8 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
9 remaining allegations set forth in paragraph 53 of the Complaint.

10 54. In answer to paragraph 54 of the Complaint, State Defendants aver that the State's
11 negotiation proposals regarding the definition of "Gaming Facility" and the Record of
12 Negotiations speak for themselves. Except as expressly averred herein, State Defendants deny
13 the remaining allegations set forth in paragraph 54 of the Complaint.

14 55. In answer to paragraph 55 of the Complaint, State Defendants aver that IGRA and
15 the Record of Negotiations speak for themselves. Except as expressly averred herein, State
16 Defendants deny the remaining allegations set forth in paragraph 55 of the Complaint.

17 56. In answer to paragraph 56 of the Complaint, State Defendants aver that the Record
18 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
19 remaining allegations set forth in paragraph 56 of the Complaint.

20 57. In answer to paragraph 57 of the Complaint, State Defendants aver that the Record
21 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
22 remaining allegations set forth in paragraph 57 of the Complaint.

23 58. In answer to paragraph 58 of the Complaint, State Defendants aver that the Record
24 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
25 remaining allegations set forth in paragraph 58 of the Complaint.

26 59. In answer to paragraph 59 of the Complaint, State Defendants aver that the Record
27 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
28 remaining allegations set forth in paragraph 59 of the Complaint.

1 60. In answer to paragraph 60 of the Complaint, State Defendants admit that
2 Augustine is a federally recognized Indian Tribe. State Defendants aver that Title VII of the Civil
3 Rights Act of 1964 and the Americans with Disabilities Act speak for themselves. State
4 Defendants aver that the allegations concerning Title VII of the Civil Rights Act of 1964 and the
5 Americans with Disabilities Act constitute legal conclusions and argument that, as such, require
6 neither admission nor denial. Except as expressly averred herein, State Defendants deny the
7 remaining allegations set forth in paragraph 60 of the Complaint.

8 61. In answer to paragraph 61 of the Complaint, State Defendants aver that the State's
9 negotiation proposals regarding provisions for employment practices liability insurance, a tribal
10 ordinance regarding the prohibition of workplace discrimination, harassment and retaliation, and
11 remedies in money damages for employment-related matters, as well as the Record of
12 Negotiations, speak for themselves. State Defendants aver that the allegations concerning the
13 State's negotiation proposals regarding provisions for employment practices liability insurance,
14 the Record of Negotiations, a tribal ordinance regarding the prohibition of workplace
15 discrimination, harassment and retaliation, and remedies in money damages for employment-
16 related matters constitute legal conclusions and argument that, as such, require neither admission
17 nor denial. Except as expressly averred herein, State Defendants deny the remaining allegations
18 set forth in paragraph 61 of the Complaint.

19 62. In answer to paragraph 62 of the Complaint, State Defendants aver that 25 U.S.C.
20 § 2710(d)(3)(C) and the Record of Negotiations speak for themselves. Except as expressly
21 averred herein, State Defendants deny the remaining allegations set forth in paragraph 62 of the
22 Complaint.

23 63. In answer to paragraph 63 of the Complaint, State Defendants aver that the Record
24 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
25 remaining allegations set forth in paragraph 63 of the Complaint.

26 64. In answer to paragraph 64 of the Complaint, State Defendants aver that the Record
27 of Negotiations, and the State's negotiation proposals regarding check cashing at Augustine's
28 Gaming Operation speak for themselves. Except as expressly averred herein, State Defendants

1 deny the remaining allegations set forth in paragraph 64 of the Complaint.

2 65. In answer to paragraph 65 of the Complaint, State Defendants aver that IGRA and
3 the Record of Negotiations speak for themselves. Except as expressly averred herein, State
4 Defendants deny the remaining allegations set forth in paragraph 65 of the Complaint.

5 66. In answer to paragraph 66 of the Complaint, State Defendants aver that the Record
6 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
7 remaining allegations set forth in paragraph 66 of the Complaint.

8 67. In answer to paragraph 67 of the Complaint, State Defendants aver that the federal
9 Fair Labor Standards Act, the State's negotiation proposals regarding the federal Fair Labor
10 Standards Act and California's minimum wage law and implementing regulations, and the Record
11 of Negotiations speak for themselves. Except as expressly averred herein, State Defendants deny
12 the remaining allegations set forth in paragraph 67 of the Complaint.

13 68. In answer to paragraph 68 of the Complaint, State Defendants aver that IGRA and
14 the Record of Negotiations speak for themselves. Except as expressly averred herein, State
15 Defendants deny the remaining allegations set forth in paragraph 68 of the Complaint.

16 69. In answer to paragraph 69 of the Complaint, State Defendants aver that the Record
17 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
18 remaining allegations set forth in paragraph 69 of the Complaint.

19 70. In answer to paragraph 70 of the Complaint, State Defendants aver that the Record
20 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
21 remaining allegations set forth in paragraph 70 of the Complaint.

22 71. In answer to paragraph 71 of the Complaint, State Defendants aver that 25 U.S.C.
23 § 2710(d)(3)(C) and the Record of Negotiations speak for themselves. Except as expressly
24 averred herein, State Defendants deny the remaining allegations set forth in paragraph 71 of the
25 Complaint.

26 72. In answer to paragraph 72 of the Complaint, State Defendants aver that the Record
27 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
28 remaining allegations set forth in paragraph 72 of the Complaint.

1 73. In answer to paragraph 73 of the Complaint, State Defendants aver that the Record
2 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
3 remaining allegations set forth in paragraph 73 of the Complaint.

4 74. In answer to paragraph 74 of the Complaint, State Defendants aver that IGRA and
5 the Record of Negotiations speak for themselves. Except as expressly averred herein, State
6 Defendants deny the remaining allegations set forth in paragraph 74 of the Complaint.

7 75. In answer to paragraph 75 of the Complaint, State Defendants aver that the Record
8 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
9 remaining allegations set forth in paragraph 75 of the Complaint.

10 76. In answer to paragraph 76 of the Complaint, State Defendants admit that
11 Augustine's 2000 Compact contains section 10.7 and a model TLRO. State Defendants lack
12 sufficient information to admit or deny that Augustine has enacted, timely submitted, and
13 maintained the TLRO pursuant to its 2000 Compact and on that basis deny those allegations.
14 State Defendants aver that section 10.7 of Augustine's 2000 Compact and the TLRO speak for
15 themselves. State Defendants aver that the allegations concerning section 10.7 of Augustine's
16 2000 Compact and the TLRO constitute legal conclusions and argument that, as such, require
17 neither admission nor denial. Except as expressly admitted and averred herein, State Defendants
18 deny the remaining allegations set forth in paragraph 76 of the Complaint.

19 77. In answer to paragraph 77 of the Complaint, State Defendants aver that IGRA, the
20 National Labor Relations Act, 29 U.S.C. § 151, *et seq.* (NLRA), and the Record of Negotiations
21 speak for themselves. State Defendants further aver that the allegations concerning IGRA, the
22 NLRA, National Labor Relations Board (NLRB), Augustine's July 2, 2021 proposed TLRO, and
23 the Record of Negotiations constitute legal conclusions and argument that, as such, require
24 neither admission nor denial. Except as expressly admitted and averred herein, State Defendants
25 deny the remaining allegations set forth in paragraph 77 of the Complaint.

26 78. In answer to paragraph 78 of the Complaint, State Defendants aver that IGRA, the
27 NLRA, and the Record of Negotiations speak for themselves. State Defendants aver that the
28 allegations concerning IGRA, the NLRA, the NLRB, and the TLRO constitute legal conclusions

1 and argument that, as such, require neither admission nor denial. Except as expressly admitted
2 and averred herein, State Defendants deny the remaining allegations set forth in paragraph 78 of
3 the Complaint.

4 79. In answer to paragraph 79 of the Complaint, State Defendants aver that the Record
5 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
6 remaining allegations set forth in paragraph 79 of the Complaint.

7 80. In answer to paragraph 80 of the Complaint, State Defendants aver that IGRA and
8 the Record of Negotiations speak for themselves. Except as expressly averred herein, State
9 Defendants deny the remaining allegations set forth in paragraph 80 of the Complaint.

10 81. In answer to paragraph 80 of the Complaint, State Defendants aver that IGRA and
11 the Record of Negotiations speak for themselves. Except as expressly averred herein, State
12 Defendants deny the remaining allegations set forth in paragraph 81 of the Complaint.

13 82. In answer to paragraph 82 of the Complaint, State Defendants aver that IGRA
14 speaks for itself. State Defendants aver that the allegations concerning IGRA constitute legal
15 conclusions and argument that, as such, require neither admission nor denial. Except as expressly
16 averred herein, State Defendants deny the remaining allegations set forth in paragraph 82 of the
17 Complaint.

18 83. In answer to paragraph 83 of the Complaint, State Defendants admit that
19 Augustine's 2000 Compact contains section 10.8.1. State Defendants aver that section 10.8.1 of
20 Augustine's 2000 Compact speaks for itself. Except as expressly admitted and averred herein,
21 State Defendants deny the remaining allegations set forth in paragraph 83 of the Complaint.

22 84. State Defendants lack sufficient information to either admit or deny the allegations
23 and on that basis deny each and every allegation contained in paragraph 84 of the Complaint.

24 85. In answer to paragraph 85 of the Complaint, State Defendants aver that the Record
25 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
26 remaining allegations set forth in paragraph 85 of the Complaint.

27 86. In answer to paragraph 86 of the Complaint, State Defendants aver that IGRA and
28 the Record of Negotiations speak for themselves. State Defendants aver that the allegations

1 concerning IGRA, the State's negotiation proposals regarding identifying and mitigating adverse
2 impacts on the off-Reservation environment from proposed Projects and incorporating the
3 policies and purposes of the National Environmental Policy Act and the California Environmental
4 Quality Act, Augustine's proposal regarding adverse impacts on the off-Reservation environment
5 from proposed Projects, and the Record of Negotiations constitute legal conclusions and
6 argument that, as such, require neither admission nor denial. Except as expressly averred herein,
7 State Defendants deny the remaining allegations set forth in paragraph 86 of the Complaint.

8 87. In answer to paragraph 87 of the Complaint, State Defendants aver that the Record
9 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
10 remaining allegations set forth in paragraph 87 of the Complaint.

11 88. In answer to paragraph 88 of the Complaint, State Defendants aver that the Record
12 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
13 remaining allegations set forth in paragraph 88 of the Complaint.

14 89. In answer to paragraph 89 of the Complaint, State Defendants aver that the Record
15 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
16 remaining allegations set forth in paragraph 89 of the Complaint, and on that basis denies each
17 and every such allegation.

18 90. In answer to paragraph 90 of the Complaint, State Defendants aver that the Record
19 of Negotiations speaks for itself. Except as expressly averred herein, State Defendants deny the
20 remaining allegations set forth in paragraph 90 of the Complaint, and on that basis denies each
21 and every such allegation.

22 **AUGUSTINE'S PRAYER FOR RELIEF**

23 91. In response to the prayer for relief, State Defendants deny the allegations and deny
24 that Augustine is entitled to any of the relief sought.

25 **STATE DEFENDANTS' AFFIRMATIVE DEFENSES**

26 As separate and distinct affirmative defenses, State Defendants state as follows:

27 1. Failure To State a Claim. As a first, full and complete defense to the Complaint
28 and each and every claim for relief therein, State Defendants allege that the Complaint fails to

1 state a claim upon which relief can be granted.

2 2. Good Faith. As a second, full and complete defense to the Complaint and each
3 and every claim for relief therein, State Defendants allege that Augustine is not entitled to any
4 relief because State Defendant's actions, as alleged in the Complaint, were undertaken in good
5 faith, with the absence of bad faith, and were the result of lawful conduct carried out in
6 furtherance of State Defendants' role as provided by IGRA and the 2000 Compact.

7 3. Waiver. As a third, full and complete defense to the Complaint and each and
8 every claim for relief therein, State Defendants allege that the Complaint is barred by the doctrine
9 of waiver.

10 4. Estoppel. As a fourth, full and complete defense to the Complaint and each and
11 every claim for relief therein, State Defendants allege that the Complaint is barred by the doctrine
12 of estoppel.

13 5. No Justiciable Case or Controversy. As a fifth, full and complete defense to the
14 Complaint and each and every claim for relief therein, State Defendants allege that the dispute
15 alleged by the Complaint is not a justiciable case or controversy. Augustine failed to complete
16 good-faith negotiations or to reach an impasse in IGRA negotiations with the State for a new
17 class III gaming compact.

18 6. Failure To Perform the Obligations To Be Performed. As a sixth, full and
19 complete defense to the Complaint and each and every claim for relief therein, State Defendants
20 allege that Augustine failed to perform each and every material obligation to be performed under
21 IGRA or the 2000 Compact including, without limitation, meeting and conferring and engaging in
22 substantive negotiations conducive to an amended, or new, compact.

23 7. Unclean Hands. As an eighth, full and complete defense to the Complaint and
24 each and every claim for relief therein, State Defendants allege that Augustine has acted
25 inequitably, and has unclean hands, in and about the matters alleged in the Complaint, including,
26 but not limited to, failing to negotiate under IGRA in good faith.

27 8. Other Available Affirmative Defenses. As a ninth, full and complete defense to
28 the Complaint and each and every claim for relief therein, State Defendants hereby give notice

1 that they intend to rely upon such other affirmative defenses as may become available or apparent
2 during the course of this litigation and thus reserve the right to amend this answer to assert such
3 defenses.

4 **STATE DEFENDANTS' PRAYER FOR RELIEF**

5 WHEREFORE, State Defendants pray for the entry of judgment in their favor and against
6 Augustine as follows:

- 7 1. That Augustine take nothing by way of its Complaint;
 - 8 2. That all prayed for declaratory relief be denied;
 - 9 3. That all prayed for injunctive relief be denied;
 - 10 4. That all prayed for relief under IGRA to operate a gaming facility without a class
11 III gaming compact be denied;
 - 12 5. That the prayed for demand for reimbursement by the State to the Indian Gaming
13 Special Distribution Fund in an amount equal to that the State allegedly charged that fund for its
14 defense of this action, plus interest accrued at the same rate as California law imposes on debts
15 owed to the State, be denied;
 - 16 6. That all prayed for costs of suit and attorney fees be denied;
 - 17 7. That all prayed for "other relief as [the Court] deems appropriate" be denied;
 - 18 8. That State Defendants recover their costs of suit herein; and
 - 19 9. For such remaining relief as the Court may deems just and proper.
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1 Dated: November 8, 2021

Respectfully submitted,

2 ROB BONTA
Attorney General of California
3 SARA J. DRAKE
Senior Assistant Attorney General
4 WILLIAM P. TORNGREN
Supervising Deputy Attorney General
5 JEREMY STEVENS
Deputy Attorney General

6
7 */s/ Colin A. Wood*

8 COLIN A. WOOD
9 Deputy Attorney General
Attorneys for Defendants

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CERTIFICATE OF SERVICE

Case Name: **Augustine Band v. State of California, et al.** No. **1:21-cv-01509-NONE-SAB**

I hereby certify that on November 8, 2021, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANTS’ ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 8, 2021, at Sacramento, California.

Colin A. Wood
Declarant

/s/ Colin A. Wood
Signature