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18 Attorneys for Plaintiffs

19
20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 COUNTY OF SAN DIEGO

22 RINCON BAND OF LUISENO
MISSION INDIANS OF THE
23 RINCON RESERVATION,
CALIFORNIA, a federally recognized
24 Indian tribe; SANTA YNEZ BAND OF
CHUMASH MISSION INDIANS OF
25 THE SANTA YNEZ RESERVATION,
CALIFORNIA, a federally recognized
26 Indian tribe; BO MAZZETTI, an
individual; TRACEY ANN
27 BARQUIST, an individual; GAREN
CALAC, an individual; ALFONSO
28 KOLB, an individual; BARBARA
KOLB, an individual; KRIS KOLB, an

CASE NO. 37-2018-00058170-CU-NP-NTL

**FIRST AMENDED COMPLAINT FOR
INJUNCTION AND RESTITUTION
WITH COUNTS FOR NUISANCE,
UNFAIR COMPETITION, CIVIL
CONSPIRACY, CONSTITUTIONAL
VIOLATION, DECLARATORY
RELIEF, AND TORTIOUS
INTERFERENCE WITH
CONTRACTUAL RELATIONS AND
ECONOMIC ADVANTAGE**

1 individual; LAWRENCE KOLB, an
individual; TERESA KOLB, an
2 individual; STEVE SHERILL, an
individual; STEVE STALLINGS, an
3 individual; JEFF STERLING, an
individual; RUTH ANN THORN, an
4 individual; TISHMALL TURNER, an
individual; RINCON ECONOMIC
5 DEVELOPMENT CORPORATION, a
federally-chartered corporation; FIRST
6 NATIONS ECONOMIC
DEVELOPMENT CORPORATION, a
7 federally-chartered corporation;
HARRAH'S RESORT SOUTHERN
8 CALIFORNIA, an unincorporated
entity; CHUMASH CASINO AND
9 RESORT ENTERPRISE, an
unincorporated entity; SYBCI
10 CALIFORNIA HOTEL NO. 2, LLC, a
California limited liability company;
11 CHUMASH CALIFORNIA HOTEL
NO. 1, LLC, a California limited
12 liability company; CHUMASH
CALIFORNIA GAS STATION NO. 1,
13 LLC, a California limited liability
company; CHUMASH CALIFORNIA
14 GAS STATION NO. 3, LLC, a
California limited liability company;
15 CHUMASH VINEYARDS, LLC, a
tribally chartered limited liability
16 company; CHUMASH CELLARS,
LLC, a California limited liability
17 company,

18 Plaintiffs,

19 v.

20 LARRY FLYNT, as individual and as
trustee of the LARRY FLYNT
21 REVOCABLE TRUST; CASINO,
LLC, a California limited liability
22 company; EL DORADO
ENTERPRISES, INC. dba HUSTLER
23 CASINO, a California corporation;
CALIFORNIA COMMERCE CLUB,
24 INC. dba COMMERCE CASINO, a
California corporation; THE BICYCLE
25 CASINO, L.P., a California limited
partnership; HAWAIIAN GARDENS
26 CASINO, a California corporation;
HOLLYWOOD PARK CASINO
27 COMPANY, INC., a California
corporation; OCEANS 11 CASINO,
28 INC., a California corporation;

1 PLAYERS POKER CLUB, INC., a
California corporation; STONES
2 SOUTH BAY CORP., a California
corporation; CELEBRITY CASINOS,
3 INC., a California corporation;
SAHARA DUNES CASINO, LP, a
4 California limited partnership;
BLACKSTONE GAMING, LLC, a
5 California limited liability company;
HALCYON GAMING, LLC, a
6 California limited liability company; PT
GAMING, LLC, a California limited
7 liability company; GLOBAL PLAYER
SERVICES, INC. a California
8 corporation; DRAGON PLAYER
SERVICES, LLC, a California limited
9 liability company; KNIGHTED
VENTURES, LLC, a California limited
10 liability company; MAJESTY
PARTNERS, LLC, a California limited
11 liability company; CERTIFIED
PLAYERS INC., a California
12 corporation; PACIFIC UNITED
SERVICE INC., a California
13 corporation; L.E. GAMING, INC., a
California corporation; QUALIFIED
14 PLAYER SERVICES, LLC, a
California limited liability company;
15 ACME PLAYER SERVICES, LLC, a
California limited liability company;
16 and METIS TPS, LLC, a California
limited liability company,

17
18 Defendants.

19
20 COMES NOW Plaintiffs Rincon Band of Luiseno Mission Indians of the Rincon
21 Reservation, California and Santa Ynez Band of Chumash Mission Indians of the Santa
22 Ynez Reservation, by and through their attorneys of record, and for causes of action
23 against Defendants Larry Flynt, both individually and as trustee of the Larry Flynt
24 Revocable Trust; Casino, LLC; El Dorado Enterprises, Inc. dba Hustler Casino; California
25 Commerce Club, Inc. dba Commerce Casino; The Bicycle Casino, L.P.; Hawaiian
26 Gardens Casino; Hollywood Park Casino Company, Inc.; Oceans 11 Casino, Inc.; Players
27 Poker Club, Inc.; Stones South Bay Corp.; Celebrity Casinos, Inc.; and Sahara Dunes
28 Casino, LP (collectively referred to as “Defendant Cardrooms”) and Blackstone Gaming,

1 LLC; Halcyon Gaming, LLC; PT Gaming, LLC; Global Player Services, Inc.; Dragon
2 Player Services, LLC; Knighted Ventures, LLC; Majesty Partners, LLC; Certified Players
3 Inc.; Pacific United Service Inc.; L.E. Gaming, Inc.; Qualified Player Services, LLC;
4 Acme Player Services, LLC; and Metis TPS, LLC (collectively referred to as “Defendant
5 TPPPs”) allege as follows:

6 **I. PARTIES, JURISDICTION AND VENUE.**

7 **PLAINTIFFS**

8 1. Plaintiffs identified in ¶¶ 2-26 below (“Plaintiffs”) are each of them
9 comprised of natural persons, corporations, associations and/or other organizations of
10 persons.

11 2. Plaintiff Rincon Band of Luiseno Mission Indians of the Rincon
12 Reservation, California, a/k/a the Rincon Band of Luiseno Indians (the “Rincon Band”), is
13 a federally recognized Indian tribe, a separate organized community of persons of Indian
14 descent, with its reservation located within San Diego County. It legally operates a Class
15 III casino offering (banked) games in San Diego County, California originally pursuant to
16 a Tribal-State Gaming Compact and currently pursuant to Secretarial Procedures issued
17 by the United States Department of Interior.

18 3. Plaintiff Santa Ynez Band of Chumash Mission Indians of the Santa Ynez
19 Reservation, a/k/a the Santa Ynez Band of Chumash Indians (the “Chumash Band”), is a
20 federally recognized Indian tribe, a separate organized community of persons of Indian
21 descent, with its reservation located within Santa Barbara County. It legally operates a
22 Class III casino offering (banked) games in Santa Barbara County California pursuant to a
23 compact with the State of California. The Rincon Band and the Chumash Band are
24 referred to collectively herein as the “Plaintiff Tribes.”

25 4. Plaintiff Bo Mazzetti is the chairperson of the Rincon Band, and resides on
26 the Rincon Reservation.

27 5. Plaintiff Tracey Ann Barquist is a member of the Rincon Band who resides
28 in Temecula, California.

1 6. Plaintiff Garen Calac is a member of the Rincon Band who resides in West
2 Hollywood, California.

3 7. Plaintiff Alfonso Kolb is a member of the Rincon Band Tribal Council who
4 resides on the Rincon Reservation.

5 8. Plaintiff Barbara Kolb is a member of the Rincon Band who resides in
6 Downey, California.

7 9. Plaintiff Kris Kolb is a member of the Rincon Band who resides in Beverly
8 Hills, California.

9 10. Plaintiff Lawrence Kolb is a member of the Rincon Band who resides in
10 Santa Monica, California.

11 11. Plaintiff Teresa Kolb is a member of the Rincon Band who resides in Los
12 Angeles, California.

13 12. Plaintiff Steve Sherill is a member of the Rincon Band who resides in
14 Torrance, California.

15 13. Plaintiff Steve Stallings is a member of the Rincon Band who resides in
16 Pacific Beach, California.

17 14. Plaintiff Jeff Sterling is a member of the Rincon Band who resides in Santa
18 Ana, California.

19 15. Plaintiff Ruth Ann Thorn is a member of the Rincon Band who resides in
20 San Diego, California.

21 16. Plaintiff Tishmall Turner is a member of the Rincon Band who resides in
22 Encinitas, California.¹

23 17. Plaintiff Rincon Economic Development Corporation (“REDCO”) is a
24 federally-chartered corporation doing business on the Rincon Band Reservation in San
25 Diego County, California.

26 18. Plaintiff First Nations Economic Development Corporation is a federally-
27

28 ¹ The individual Rincon Band members set forth in ¶¶ 4-16 are referred to collectively herein as the “Tribe Members.”

1 chartered corporation doing business in Azusa, Ontario, Paso Robles, California and the
2 Rincon Band Reservation in San Diego County, California.

3 19. Plaintiff Harrah’s Resort Southern California is an unincorporated entity of
4 the Rincon Band doing business on the Rincon Band Reservation in San Diego County,
5 California.²

6 20. Plaintiff Chumash Casino and Resort Enterprise is an unincorporated entity
7 of the Chumash Band doing business on the Chumash Band Reservation in Santa Barbara
8 County, California.

9 21. Plaintiff SYBCI California Hotel No. 2, LLC is a California limited liability
10 company doing business in the City of Solvang in Santa Barbara County, California.

11 22. Plaintiff Chumash California Hotel No. 1, LLC is a California limited
12 liability company doing business in the City of Solvang in Santa Barbara County,
13 California.

14 23. Plaintiff Chumash California Gas Station No. 1, LLC is a California limited
15 liability company doing business in Santa Barbara County, California.

16 24. Plaintiff Chumash California Gas Station No. 3, LLC is a California limited
17 liability company doing business in Santa Barbara County, California.

18 25. Plaintiff Chumash Vineyards, LLC is a tribally chartered limited liability
19 company doing business in Santa Barbara County, California.

20 26. Plaintiff Chumash Cellars, LLC is a California limited liability company
21 doing business in the City of Lompoc in Santa Barbara County, California.³

22 **DEFENDANT CARDROOMS**

23 27. Defendants identified in ¶¶ 28-38 (“Defendant Cardrooms”) below are each
24 and all, the owners and operators of commercial cardrooms which offer banked card
25 games, more fully described at §§ V - VIII below.

26 28. On information and belief, Defendant Larry Flynt is an individual residing
27

28 ² The business entities set forth in ¶¶ 17-19 are referred to collectively herein as the “Rincon Entities.”

³ The business entities set forth in ¶¶ 20-26 are referred to collectively herein as the “Chumash Entities.”

1 in Los Angeles, California. On information and belief, Defendant Larry Flynt Revocable
2 Trust is a trust organized under the laws of California and is controlled by Larry Flynt.
3 On information and belief, Larry Flynt is the Trustee, Trustor, and Beneficiary of the
4 Trust. Defendant Casino, LLC is a California limited liability company with its gaming
5 operations in Los Angeles County and is owned and controlled by Larry Flynt. Records
6 of the California Gambling Control Commission indicate that each of the three foregoing
7 Defendants is licensed as an owner of Larry Flynt's Lucky Lady Casino.

8 29. Defendant El Dorado Enterprises, Inc., doing business as Hustler Casino, is
9 a California corporation with its gaming operations in Los Angeles County.

10 30. Defendant California Commerce Club, Inc., doing business as Commerce
11 Casino, is a California corporation with its gaming operations in Los Angeles County.

12 31. Defendant The Bicycle Casino, L.P. is a California limited partnership with
13 its gaming operations in Los Angeles County.

14 32. Defendant Hawaiian Gardens Casino is a California corporation with its
15 gaming operations in Los Angeles County.

16 33. Defendant Hollywood Park Casino Company, Inc. is a California
17 corporation with its gaming operations in Los Angeles County.

18 34. Defendant Oceans 11 Casino, Inc. is a California corporation with its
19 gaming operations in San Diego County.

20 35. Defendant Players Poker Club, Inc. is a California corporation with its
21 gaming operations in Ventura County.

22 36. Defendant Stones South Bay Corp, which owns Seven Mile Casino, is a
23 California corporation with its gaming operations in San Diego County.

24 37. Defendant Celebrity Casinos, Inc., which owns Crystal Casino, is a
25 California corporation with its gaming operations in Los Angeles County.

26 38. Defendant Sahara Dunes Casino, L.P., sole owner of, and doing business as
27 Lake Elsinore Hotel and Casino, is a California limited partnership with its gaming
28 operations in Riverside County.

1 **DEFENDANT THIRD-PARTY PROPOSITION PLAYERS**

2 39. Defendants identified in ¶¶ 40-52 below are Third-Party Proposition Players
3 (“TPPP”), individuals and companies that contract with Defendant Cardrooms to bank
4 card games offered in Defendant Cardrooms’ establishments, and as set forth more fully
5 below in Sections VI – VIII, hire, train and utilize individuals to facilitate illegal gaming
6 at Defendant Cardrooms. Defendant TPPPs were the agents and principals of the other
7 Defendant Cardrooms and each of them and at all relevant times alleged in this action,
8 and, as set forth in more detail herein, were acting in the course and scope of the
9 Defendant Cardrooms’ authority.

10 40. Defendant Blackstone Gaming, LLC, is a California limited liability
11 company operating out of Los Angeles County.

12 41. Halcyon Gaming, LLC, is a California limited liability company operating
13 out of Los Angeles County.

14 42. Defendant PT Gaming, LLC, is a California limited liability company
15 operating out of Los Angeles County.

16 43. Defendant Global Player Services, Inc., is a California corporation operating
17 out of Monterey County.

18 44. Defendant Dragon Player Services, LLC, is a California limited liability
19 company operating out of Los Angeles County.

20 45. Defendant Knighted Ventures, LLC, is a California limited liability
21 company operating out of Alameda County.

22 46. Defendant Majesty Partners, LLC, is a California limited liability company
23 operating out of Los Angeles County.

24 47. Defendant Certified Players Inc., is a California corporation operating out of
25 Orange County.

26 48. Defendant Pacific United Service Inc., is a California corporation operating
27 out of Los Angeles County.

28 49. Defendant L.E. Gaming, Inc., is a California corporation operating out of

1 Orange County.

2 50. Defendant Qualified Player Services, LLC, is a California limited liability
3 company operating out of Riverside County.

4 51. Defendant Acme Player Services, LLC, is a California limited liability
5 company operating out of Los Angeles County.

6 52. Defendant Metis TPS, LLC, is a California limited liability company
7 operating out of Los Angeles County.

8 53. Defendant TPPPs are individuals and companies that, as set forth more fully
9 below in Sections VI – VIII, hire, train and utilize individuals to facilitate illegal gaming
10 at Defendant Cardrooms. Defendant TPPPs were the agents and principals of the other
11 defendants and each of them and at all relevant times alleged in this action, and, as set
12 forth in more detail herein, were acting in the course and scope of the Defendant
13 Cardrooms' authority.

14 54. This Court has jurisdiction over Defendant Cardrooms and Defendant
15 TPPPs because both sets of Defendants either reside in California and/or have their
16 principal places of business in California and each operates gaming that offers illegal
17 "banked" games in California. In addition, both sets of Defendants engaged in violative
18 conduct, as described in greater detail herein, in California, and such conduct resulted in
19 injury occurring in this judicial district.

20 55. Venue is proper in this judicial district pursuant to California Code of Civil
21 Procedure § 395(a) because some of the Defendants reside in this judicial district, and
22 both sets of Defendants' violative conduct, as described in greater detail herein, resulted
23 in injury occurring in this judicial district.

24 **II. GAMING RESTRICTIONS UNDER THE CALIFORNIA CONSTITUTION**
25 **AND THE PASSAGE OF IGRA.**

26 56. On November 6, 1984, California's Constitution was amended to add the
27 following: "The Legislature has no power to authorize, and shall prohibit casinos of the
28 type currently operating in Nevada and New Jersey." ("Casino Prohibition Amendment")

1 Cal. Const., Art. IV, § 19(e).

2 57. In 1987, the United States Supreme Court rejected an attempt by California
3 to prohibit tribes from operating bingo halls and card games. *California v. Cabazon Band*
4 *of Mission Indians*, 480 U.S. 202, 107 S. Ct. 1083 (1987).

5 58. In response to the *Cabazon* decision, Congress enacted the Indian Gaming
6 Regulatory Act (“IGRA”) in 1988 to delineate the roles of tribes, the federal government,
7 and state governments in regulating Indian gaming.

8 59. IGRA was enacted, among other reasons, to provide “a statutory basis for
9 the operation of gaming by Indian tribes as a means of promoting tribal economic
10 development, self-sufficiency, and strong tribal governments” and “to ensure that the
11 Indian tribe is the primary beneficiary of the gaming operation.” 25 U.S.C. § 2702(1), (2).

12 60. IGRA offers three classes of gaming, with each subject to differing levels of
13 regulation. Banked card games at issue here fall within IGRA’s definition of Class III
14 gaming, which includes all casino-style games except traditional games of minimal value,
15 bingo and non-banked card games.

16 61. “In banked or percentage card games, players bet against the ‘house’ or the
17 casino. In ‘nonbanked’ or ‘nonpercentage’ card games, the ‘house’ has no monetary stake
18 in the game itself, and players bet against one another.” *Artichoke Joe's v. Norton*, 216
19 F.Supp.2d, 1084, 1092 n. 3 (E.D. Cal., 2002).

20 **III. INVALIDATING PROPOSITION 5 AND THE CALIFORNIA SUPREME**
21 **COURT’S INTERPRETATION OF BANKED GAMES.**

22 62. A coalition of California tribes drafted Proposition 5, a statutory initiative
23 (as opposed to a constitutional initiative), which required California to enter into gaming
24 compacts allowing, among others, Class III banked card games and slot machines on
25 Indian reservations pursuant to IGRA.

26 63. After Proposition 5 passed on California’s November 1998 ballot, the Hotel
27 Employees and Restaurant Employees International Union (the “Union”) filed a petition
28 with the California Supreme Court for a writ of mandate prohibiting the Governor from

1 entering gaming compacts in accordance with Proposition 5.

2 64. In defending Proposition 5, the Real Parties in Interest, which included
3 Frank Lawrence, the named proponent of Proposition 5, and a supporting entity called
4 Californians for Indian Self-Reliance (collectively, “Real Parties”), contended the card
5 games being offered were not banked games because, among other things, they relied on a
6 “players’ pool prize system.” *Hotel Employees and Restaurant Employees International*
7 *Union v. Davis*, 21 Cal. 4th 585, 606, 981 P.2d 990, 1005 (1999).

8 65. The California Supreme Court rejected this rationale, noting that tribes did
9 not “distribute to a winner or winners with no interest in the outcome of the play a prize or
10 prizes fixed in advance or determined by the total amount of fees paid. Rather, as in other
11 banking games, the tribe, through the prize pool, simply pays off all winning wagers and
12 keeps all losing wagers, which are variable because the amount of money it will have to
13 pay out, or be able to take in, depends upon whether each of the individual bets is won or
14 lost.” *Id.* (internal citations and quotation marks omitted).

15 66. The Court further reasoned “[t]hat the tribe must pay all winners and collect
16 from all losers through a fund that is styled a ‘players’ pool’ is immaterial: the players’
17 pool is a bank in nature if not in name. It is a fund against which everybody has a right to
18 bet, the bank taking all that is won, and paying out all that is lost.” *Id.*, 21 Cal. 4th at 607,
19 981 P.2d at 1005 (internal quotation marks omitted).

20 67. The Court also rejected the Real Parties’ contention that the card games
21 were not banked because the casino’s tribal owner/operator could not profit from
22 surpluses in the player’s pool, observing that a banking game may be banked by someone
23 other than the owner of the gambling facility. *Id.*, 21 Cal. 4th at 607-608, 981 P.2d at
24 1006.

25 68. Ultimately, the Court agreed with the Union’s argument that Proposition 5
26 violated the Casino Prohibition Amendment and issued a peremptory writ of mandate to
27 prevent the Governor from acting on Proposition 5. *Id.*, 21 Cal.4th at 585, 981 P.2d at
28 1011.

1 **IV. AMENDING THE CALIFORNIA CONSTITUTION WITH PROPOSITION**
2 **1A; EXCEPTION TO CONSTITUTIONAL PROHIBITION OF BANKED**
3 **CARD GAMES APPLIES ONLY TO GAMING ON TRIBAL LANDS.**

4 69. In response, Governor Gray Davis proposed a constitutional initiative to
5 amend the California Constitution that would carve out an exception for Indian tribes
6 from the State's prohibition of Class III gaming.

7 70. The proposed amendment, Proposition 1A, was ratified by California voters
8 in March of 2000, amending the California Constitution as follows:

9 Notwithstanding subdivisions (a) and (e), and any other provision of state
10 law, the Governor is authorized to negotiate and conclude compacts, subject
11 to ratification by the Legislature, for the operation of slot machines and for
12 the conduct of lottery games and banking and percentage card games by
13 federally recognized Indian tribes on Indian lands in California in
14 accordance with federal law. Accordingly, slot machines, lottery games,
15 and banking and percentage card games are hereby permitted to be
16 conducted and operated on tribal lands subject to those compacts.

17 Cal. Const., Art. IV, § 19(f) (referred to subsequently as "Proposition 1A").

18 71. Some California cardrooms and charities prohibited from engaging in,
19 among others, banked games (the "Prior Cardroom Plaintiffs"), subsequently filed an
20 action asserting Proposition 1A violated IGRA and their rights to equal protection under
21 the Fifth and Fourteenth Amendments to the U.S. Constitution.

22 72. The district court granted summary judgment against the Prior Cardroom
23 Plaintiffs after determining that Proposition 1A satisfied IGRA and that granting Indian
24 tribes a monopoly on Class III gaming did not violate any rights to equal protection.
25 *Artichoke Joe's v. Norton*, 216 F.Supp.2d at 1128, 1132-33.

26 73. The Ninth Circuit ultimately upheld and affirmed the district court's
27 decision. *Artichoke Joe California Grand Casino v. Norton*, 353 F.3d 712 (9th Cir. 2003).

28 74. Thus, although California continues to permit only non-banked games in
cardrooms, under Proposition 1A, Indian tribes are the only entities allowed to offer
banked card games.

V. TRADITIONAL GAMING AT CALIFORNIA CARDROOMS.

75. Cardrooms have existed in California for many years. Traditionally,

1 cardrooms made money by charging each player a per-hand fee – called a “collection” –
2 for the privilege of using the cardroom’s facilities, playing “round” games such as poker,
3 where there is no bank or house against which players bet. The deal would continuously
4 rotate among the players, with the cardroom having no interest in the results of any hand
5 or the winnings of any player-dealer or other participant.

6 76. To bolster their business, the cardrooms developed the concept of a skill
7 called euphemistically a “third-party proposition player” (“TPPP” herein), an individual
8 paid by the cardroom to sit at the tables and reinvigorate games with dwindling action and
9 thereby stimulate additional revenue for the cardroom in the form of per-hand fees
10 collected from every player, as well as increased food and beverage sales. While the
11 TPPPs were paid to sit at the tables, they were required to gamble with their own money –
12 a key point.

13 77. While nothing in California law requires a collection in the first place, the
14 cardrooms had no choice but to impose it. The collection was the primary way the
15 cardrooms made money from the gambling at their establishments. Thus, in the context of
16 traditional cardroom play, not charging a collection would be akin to running a non-profit
17 business.

18 78. Over time, the California Legislature has developed various statutory
19 schemes to regulate gaming in cardrooms. These statutes and regulations address
20 components of traditional gaming at California cardrooms, including the role
21 of proposition players, player-dealers, dealer rotation, fee collection, and game
22 advertisement. Such Legislative schemes, however, must be in harmony with the
23 Constitutional prohibition on the play of casino-style games including banked card games.

24 **VI. DEFENDANT CARDROOMS IMPROPERLY APPLY CALIFORNIA**
25 **STATUTES AND REGULATIONS IN A MANNER THAT CONVERTS**
26 **TRADITIONAL GAMING TO ILLEGAL BANKED GAMES.**

27 79. In 1997, the Legislature enacted the Gambling Control Act, which, among
28 other things, created the California Gambling Control Commission (the “Commission”),
Bus. & Prof. Code § 19811. The Gambling Control Act also required regulation by the

1 Division of Gambling Control, an agency within the Attorney General’s Office, which is
2 now known as the Bureau of Gambling Control (the “Bureau”). The Bureau regulates the
3 gambling industry in California, in cooperation with the Commission.

4 80. There was an inescapable problem for cardroom operators using the time-
5 tested business model described above: they wanted to make more money. In short, they
6 wanted what the tribes had – the ability to play popular and prohibited (to the cardrooms)
7 banked card games. To that end, beginning around the early 2000s, California cardrooms
8 dramatically restructured how they operated card games. There are four inter-connected
9 aspects to this restructuring: (1) card rooms fail to rotate the “banker” position at their
10 tables, (2) they routinely waive per-hand collection fees for all but the third-party
11 proposition players (known in short hand as “TPPPs”), (3) they obtain an improper
12 interest in the funds wagered in their establishments through the use of TPPPs, and (4)
13 they play (and boldly advertise the play of) expressly prohibited banked card games.

14 81. The Gambling Control Act addressed regulation of proposition players,
15 including licensing and contracting. One example is Business & Professions Code section
16 19984, which specifically allows cardrooms to “contract with a third party for the purpose
17 of providing proposition player services,” subject to certain conditions. A principal
18 condition is that the contracts with these so-called TPPPs may not give the cardroom “any
19 interest, whether direct or indirect, in funds wagered, lost, or won.” Bus & Prof. Code
20 § 19984(a).

21 82. Defendant Cardrooms unlawfully contract with and conspire with TPPPs for
22 the purpose of providing proposition player services in a manner that allows the TPPPs to
23 function as the bank of a banked card game, which converts traditional gaming to illegal
24 banked games. Defendant Cardrooms and TPPPs each had actual knowledge that illegal
25 banked card games were being offered at Defendant Cardrooms and each concurred in the
26 scheme regarding the manner in which the banked card games were to be offered and each
27 participated in the scheme.

28 83. Defendant Cardrooms unlawfully contract with TPPPs for the purpose of

1 providing proposition player services in a manner that provides Defendant cardrooms an
2 interest, either or both direct or indirect, in funds wagered, lost, or won” in violation of
3 Bus & Prof. Code § 19984(a).

4 84. Defendant Cardrooms provide for a “player-dealer” position. Any player at
5 a table, including the TPPP, can be the player-dealer, that is, the person who is dealing the
6 hand. The player-dealer, however, cannot, by law, serve as the bank against whom the
7 other players bet. Defendant Cardrooms unlawfully allow TPPPs to act as player-dealers
8 to effectively “bank” the game in violation of the California Constitution, Penal Code
9 Section 330 and Proposition 1A.

10 85. In 1999 the Legislature enacted Penal Code Section 330.11 (“Section
11 330.11”), defining a banking game for purposes of Section 330. As the statute explains:

12 “Banking game” or “banked game” does not include a
13 controlled game if the published rules of the game feature a
14 player-dealer position and provide that this position must be
15 continuously and systematically rotated amongst each of the
16 participants during the play of the game, ensure that the
17 player-dealer is able to win or lose only a fixed and limited
18 wager during the play of the game, and preclude the house,
19 another entity, a player, or an observer from maintaining or
operating as a bank during the course of the game. For
purposes of this section it is not the intent of the Legislature to
mandate acceptance of the deal by every player if the division
finds that the rules of the game render the maintenance of or
operation of a bank impossible by other means. The house
shall not occupy the player-dealer position.

20 86. The legislative history of Section 330.11 confirms its narrow scope:

21 This bill attempts to clarify that card clubs may offer games
22 that feature a player-dealer position, so long as the rules of the
23 game require a continuous and systematic rotation of the
24 player-dealer position. This bill clarifies that these games are
not “banked games.” Moreover, this bill does not legalize 21
or any other new card game.

25 Chapter 1023, AB1416 (1999-2000 Session), Author’s Senate floor sponsor’s statement
26 and notes, Feb. 26, 1999 (Assembly Member Herb Wesson).

27 87. Defendant Cardrooms operate games in a manner that falls outside of the
28 exception set for in Section 330.11, by allowing the player-dealer to bank the game, and

1 by failing to ensure that the player-dealer position is continuously and systematically
2 rotated amongst each of the participants in direct violation of the law.

3 88. Even if Defendant Cardrooms offer games within the exception set forth in
4 Section 330.11 by allowing the player-dealer to bank the game, and/or where the player-
5 dealer position is continuously and systematically rotated amongst each of the
6 participants, such gaming is nonetheless in violation of Proposition 1A and the California
7 Constitution.

8 89. Defendant Cardrooms waive the collection fees for all players other than the
9 TPPPs. Although a collection fee is not legally required, if collection fees are imposed,
10 section 12200.7(b)(12) of the Commission's regulations prohibit a differential in
11 collection fees charged to players at a table. Thus, the Commission's regulations do not
12 allow the cardrooms to charge the TPPPs (who act only as player-dealers in cardrooms) a
13 different rate than the rest of the players in the game, though that is what they are doing.

14 **VII. DEFENDANT CARDROOMS CONSPIRE WITH TPPPs TO OFFER**
15 **BANKED CARD GAMES.**

16 90. If the Defendant Cardrooms abandoned their traditional form of income, a
17 natural question arises as to how the Defendant Cardrooms make money now. The
18 answer is through the TPPPs.

19 91. A by-product of the Defendant Cardrooms reshaping their games to illegally
20 match those played in Indian casinos, is the redefinition of the TPPP role in very
21 fundamental ways. Whereas the Defendant Cardrooms used to pay the TPPPs to maintain
22 interest in their poker games, the TPPPs now unlawfully pay the Defendant Cardrooms for
23 the privilege of banking the games, and the TPPPs make the money for those payments by
24 permanently and unlawfully occupying the lucrative banker position (which explains the
25 failure to rotate the bank, as the TPPPs need to maximize the inherent advantage that
26 results from acting as the "house"). Because the TPPPs make 100% of their revenue from
27 the "funds wagered, lost, or won," paying any of that money back to the Defendant
28 Cardrooms necessarily means the Defendant Cardrooms have an "interest" in those funds

1 in violation of Business & Professions Code section 19984.

2 92. While the Defendant Cardrooms may claim the illegal contracts between
3 them and the TPPPs allow the latter to pay only for the goods and services the TPPP
4 employees use while on the property, this contention is patently misleading, because those
5 goods and services are for such things as equipment (surveillance cameras and monitors,
6 cards, and shuffling machines), rent and advertising. These items are all among the
7 customary incidents of running a business. The TPPPs, then, have become a *de facto*
8 partner with the Defendant Cardrooms and thus, the “house.” In any event, because the
9 TPPPs’ income and the TPPPs’ payments to the Defendant Cardrooms is derived solely
10 from “funds wagered, lost, or won,” paying a portion of those funds to the card rooms is
11 illegal.

12 93. The payment by the TPPPs to the Defendant Cardrooms also exceed mere
13 payment or reimbursement for goods and services the TPPP employees use while on the
14 property in violation of Section 19984.

15 **VIII. A ROSE BY ANY OTHER NAME: RENAMING THE GAME DOES NOT**
16 **CONVERT A BANKED CARD GAME INTO A LAWFUL GAME.**

17 94. A critical aspect of the Defendant Cardrooms’ scheme is the play of games
18 such as blackjack and baccarat. To compete with tribal casinos, the Defendant Cardrooms
19 unlawfully offered the same games offered there, as well as Nevada and New Jersey. The
20 games of blackjack and baccarat are constitutionally impermissible for anyone other than
21 an Indian tribe to play in California.

22 95. As for baccarat, the game does not have a “player-dealer position.” Rather,
23 the players at the table simply make wagers based on a single shared set of cards. The
24 dealer, who has no hand in the game, acts as nothing but a bank. Consequently, Section
25 330.11’s exception for games where the player-dealer position rotates cannot apply to this
26 game. By definition, baccarat cannot be played other than as a “house-banked” game.

27 96. Defendant Cardrooms have offered games that they attempt to distinguish
28 from blackjack. For example, they offer a game known as Pure 21.5 Blackjack. The sole

1 difference between this game and standard blackjack is that the face and ten cards have a
2 value of 10.5 when dealt with an ace, rather than the standard value of 10. Thus, when
3 paired with an ace, these cards add up to 21.5, rather than 21. Not surprisingly, when card
4 room patrons ask a dealer how to play the game, they are told it plays just the same as
5 regular blackjack. Similarly, Defendant Cardrooms have offered another game called
6 “21st Century Blackjack,” the object of which, as Defendant Cardrooms explain, is “the
7 same as standard Blackjack – to get as close to 21 as possible without going over.
8 Further, Defendant Cardrooms have advertised this game on their websites as “Vegas
9 style Blackjack.” That is exactly the problem.

10 97. The Defendant Cardrooms also recognized that by luring customers to their
11 cardrooms (and away from tribal casinos) to engage in unlawful gambling, they needed to
12 advertise on their websites and on billboards on the side of major freeways the play of
13 these illegal games. For example, Defendant Cardrooms have advertised blackjack and
14 baccarat on their websites.

15 98. There is an important, and ironic, point to note with respect to the Defendant
16 Cardrooms’ illegal gaming. The Indian tribes, such as Plaintiff Tribes, can provide such
17 gaming only on their reservations, the land of which are in many cases, including the
18 Plaintiff Tribes further away than Defendant Cardrooms from the urban centers from
19 which both the Tribes and the Defendant Cardrooms draw their customers. The
20 Defendant Cardrooms, by contrast, are not limited geographically. Thus, they violate the
21 tribes’ exclusivity established in Proposition 1A and IGRA by offering their illegal games
22 in dense population centers, and get to do so much closer to where Plaintiffs’ gaming
23 customers live.

24 **IX. DEFENDANT CARDROOMS’ ILLEGAL BANKED GAMING HAS**
25 **RESULTED IN SIGNIFICANT PUBLIC HARM.**

26 99. The banked card games offered by Defendant Cardrooms constitute
27 unregulated gambling. Attempts by the State to regulate illegal card games in a manner
28 that does not prohibit the illegal card games does not morph such unregulated gaming into

1 regulated gaming. Such unregulated gambling enterprises are inimical to the public health,
2 safety, welfare, and good order.

3 100. California public policy, as imbedded in the State Constitution, condones
4 well-regulated casino gaming, including banked card games on Indian lands. California
5 public policy, as imbedded in the State Constitution, condemns casino gaming, including
6 banked card games off of Indian lands. Such tribal gaming provides for a highly-
7 regulated environment adequate to shield it from organized crime and other corrupting
8 influences, to assure that gaming is conducted fairly and honestly by both the operator and
9 players; and to assure that the gaming revenue is used for tribal purposes, consistent with
10 IGRA.

11 101. Unregulated casino gaming off of Indian lands inflicts corrupt business
12 practices on the gaming patron, those doing business with the Defendant Cardrooms,
13 those local governments, which have come to rely on an illicit source of revenue, and the
14 general public.

15 102. The complexity of the manner in which Defendant Cardrooms offer banked
16 card games materially hinders effective regulation adequate to shield them from organized
17 crime and other corrupting influences, and to assure that gaming is conducted fairly and
18 honestly by both the operator and players, harming the general public.

19 103. The complexity of the manner in which Defendant Cardrooms offer banked
20 games materially hinders effective regulation resulting in material money laundering as
21 evidenced by material violations of Financial Crimes Enforcement Network (“FinCEN”)
22 compliance regulations, 31 C.F.R. Chapter X, harming the general public.

23 104. The complexity of the manner in which Defendant Cardrooms offer banked
24 games results in irresponsible response to and interaction with patrons who are
25 pathological gamblers, harming the general public.

26 105. The Defendant Cardrooms’ illegal banked game operations impose a
27 substantial hardship on their communities and significantly increase these communities’
28 economic costs, particularly with regard to public assistance programs, court systems, and

1 prison systems within those communities.

2 106. Each of these public harms caused by Defendants' illegal gaming, as set
3 forth in this section, individually and in the aggregate, has had a pervasive and
4 significantly negative impact on the communities in which they operate.

5 **X. DEFENDANT CARDROOMS' ILLEGAL GAMING HAS RESULTED IN**
6 **SERIOUS AND IRREPARABLE INJURY TO PLAINTIFFS.**

7 107. In comparing financial statistics for the legalized gaming operations owned
8 and operated by Plaintiffs with gaming financial statistics in multiple jurisdictions for
9 years covering 2013 through 2017, including, among others, Maryland, New Jersey, New
10 York, Pennsylvania, Illinois, Indiana, Colorado and Iowa, Plaintiffs underperformed and
11 have experienced comparatively little growth, despite, in many instances, having more
12 favorable demographics and population bases in appropriate proximity.

13 108. As a result of this illegal gaming, from 2013 to 2017 alone, Defendant
14 Cardrooms and Defendant TPPPs have illegally deprived the Rincon Band, the Rincon
15 Entities, and the Tribe Members of at least \$13.8 million per year in tribal revenue, and
16 likely more.

17 109. As a result of this illegal gaming, from 2013 to 2017 alone, Defendant
18 Cardrooms and Defendant TPPPs have illegally deprived the Chumash Band and the
19 Chumash Entities of at least \$4.42 million per year in tribal revenue, and likely more.

20 110. As the result of the Defendant Cardrooms' and Defendant TPPPs' violative
21 conduct, Plaintiffs have experienced a loss of business, tribal revenue, tribal employment
22 opportunity, competitive advantage, market share, and goodwill in the marketplace, which
23 are difficult to ascertain and for which monetary relief alone will not afford adequate
24 relief.

25 111. Additionally, monetary relief is insufficient (and may not be legally
26 available) because the Plaintiff Tribes are entitled by their inherent sovereign authority
27 and by Congress' enactment of IGRA, to have such gaming opportunity manifest tribal
28 economic development, self-sufficiency, and strong tribal government. 25 U.S. C. §

1 2702(1).

2 112. Pursuant to tribal and federal law, tribal revenue generated from tribal
3 gaming revenue cannot be used for purposes other than (i) to fund tribal government
4 operations or programs, (ii) to provide for the general welfare of the Indian tribe and its
5 members, (iii) to promote tribal economic development, (iv) to donate to charitable
6 organizations, or (v) to help fund operations of local government agencies. 25 USC §
7 2710(b)(2)(B). Accordingly, every dollar of lost gaming revenue is a dollar lost to
8 Plaintiffs and each of them, including the Plaintiff Tribes, the Rincon Entities, the
9 Chumash Entities, and the Tribe Members, in those tribal programs and services. In
10 contrast, Defendant Cardrooms and Defendant TPPPs are private, for-profit corporations.
11 Monetary relief alone is an insufficient remedy and not adequate to correct the illegal
12 diversion by these private, for-profit corporations of tribal revenue away from tribal
13 programs and services necessary for the economic health and well-being of the Plaintiff
14 tribes and tribal members.

15 **COUNT ONE**
16 **(PUBLIC NUISANCE)**
17 **(CARDROOM DEFENDANTS)**

18 113. Plaintiffs incorporate and re-allege the allegations of the preceding
19 paragraphs as if fully set forth herein.

20 114. The California Legislature previously found and declared:

21 State law prohibits commercially operated lotteries, *banked or*
22 *percentage games*, and gambling machines, and strictly
23 regulates pari-mutuel wagering on horse racing. To the extent
24 that state law categorically prohibits certain forms of gambling
25 and prohibits gambling devices, nothing herein shall be
26 construed, in any manner, to reflect a legislative intent to relax
27 those prohibitions.

28 *Unregulated gambling enterprises are inimical to the public*
health, safety, welfare, and good order. Accordingly, no
person in this state has a right to operate a gambling enterprise
except as may be expressly permitted by the laws of this state
and by the ordinances of local governmental bodies.

Bus. & Prof. Code § 19801 (a) & (d) (effective January 1, 2008)(emphasis provided).

1 115. As set forth in § IX above, Defendant Cardrooms, in unlawfully operating
2 banked card games expressly reserved for tribes, have created conditions in their
3 communities that are harmful to the public’s health, safety, welfare, and good order and
4 are likely to cause a significant invasion of public rights.

5 116. Plaintiffs, including the Tribe Members, are part of these communities and
6 also suffer from this public harm.

7 117. Defendant Cardrooms’ conduct, as set forth above, constitutes and has
8 created a nuisance.

9 118. This condition affects a substantial number of people at the same time.

10 119. Indeed, unless said conduct and nuisance is abated and brought into
11 conformity with the law, the surrounding communities and neighborhoods, as well as the
12 Plaintiffs, will suffer irreparable and continuous injury and damage, in that said
13 unregulated and unchecked illegal gaming activities will continue to be injurious to the
14 enjoyment and the free use of the life and property of said citizens and residents.

15 120. An ordinary person would be reasonably annoyed or disturbed by the
16 condition.

17 121. The seriousness of the harm outweighs the social utility of Defendant
18 Cardrooms’ conduct.

19 122. Plaintiffs did not consent to Defendant Cardrooms’ conduct and, indeed,
20 Defendant Cardrooms’ conduct is violating current and existing law.

21 123. As set forth in § X above, Plaintiffs are suffering harm different from and in
22 addition to the type of harm suffered by the general public.

23 124. Defendant Cardrooms’ conduct is a substantial factor in causing Plaintiffs’
24 harm.

25 125. Plaintiffs have no adequate remedy at law in that damages are insufficient to
26 compensate them for the loss of business, tribal revenue, tribal employment opportunities,
27 competitive advantage, market share, and goodwill in the marketplace they have
28 experienced and are difficult to ascertain, nor are monetary damages sufficient to protect

1 the public from the present danger and harm caused by the conditions described above.

2 126. Defendant Cardrooms' conduct has caused and will continue to cause
3 substantial injury to Plaintiffs, including, but not limited to, loss of business, tribal
4 revenue, tribal employment opportunities, competitive advantage, market share and
5 goodwill in the marketplace and undermines the primary purpose of existing Gaming
6 Compacts and Secretarial Procedures held by the Plaintiff Tribes, for which monetary
7 relief alone is insufficient.

8 127. Plaintiffs are informed and believe that Defendant Cardrooms will continue
9 to maintain, or permit to be maintained, the above-described conditions as a public
10 nuisance.

11 128. Pursuant to Cal. Civ. Code § 526, this Court has inherent power and
12 authority to grant injunctive relief when the applicant is entitled to the relief demanded
13 and such relief is required to restrain some prejudicial act, or a party is doing some act in
14 violation of the rights of the applicant, or when the applicant is entitled to an injunction
15 under the principles of equity.

16 129. Convincing evidence exists regarding Defendant Cardrooms' violative
17 conduct and Plaintiffs are, therefore, likely to succeed on the merits of their claims.

18 130. Because Defendant Cardrooms continue to harm the health, safety, welfare,
19 and good order of the public in general and Plaintiffs in particular, they will sustain
20 irreparable harm if this Court does not intervene to protect their interests.

21 131. As set forth more fully above, Defendant Cardrooms are violating California
22 and federal law in engaging in what constitutes banked gaming. The balance of equities,
23 therefore, tips strongly in favor of Plaintiffs.

24 132. Awarding Plaintiffs the injunctive relief requested is also in the best interest
25 of the public in that Defendant Cardrooms' conduct is harmful to the public's health,
26 safety, welfare, and good order and to law. Bus. & Prof. Code § 19801 (d).

27 133. Plaintiffs are therefore entitled to injunctive relief (of a preliminary and
28 permanent nature) against Defendants, and each of them, for all present and future

1 violations of Plaintiffs’ rights. Such injunctive relief should include, but not be limited to,
2 an Order from this Court prohibiting Defendants, and each of them, from engaging in
3 banked games as described more fully herein.

4 **COUNT TWO**
5 **(UNFAIR COMPETITION IN VIOLATION OF BUS. & PROF. CODE § 17200)**
6 **(CARDROOM DEFENDANTS)**

7 134. Plaintiffs incorporate and re-allege the allegations of the preceding
8 paragraphs as if fully set forth herein.

9 135. California Business and Professions Code Section 17203 creates a cause of
10 action against “anyone who engages, has engaged, or proposes to engage in unfair
11 competition” and includes the right to injunctive relief when a party has suffered actual
12 harm.

13 136. Unfair competition includes “any unlawful, unfair or fraudulent business act
14 or practice[.]” Bus. & Prof. Code § 17200.

15 137. “California courts have consistently interpreted the language of section
16 17200 broadly. The statute imposes strict liability. It is not necessary to show that the
17 defendant intended to injure anyone.” *Community Assisting Recovery, Inc. v. Aegis*
18 *Security Ins. Co.*, 92 Cal. App. 4th 886, 891, 112 Cal. Rptr. 2d 304, 308 (Cal. App.
19 2001)(internal citations and quotation marks omitted).

20 138. Defendant Cardrooms are engaged in unfair competition by unlawfully,
21 unfairly and fraudulently engaging in banked card games that are expressly reserved for
22 Indian tribes under state and federal law.

23 139. The California Constitution Article IV, Section 19(e), California Penal Code
24 § 330.11, California Bus. & Prof. Code § 19801 and California Civil Code 3480, and
25 regulations promulgated thereunder serve as the predicate statutes and laws for Defendant
26 Cardrooms’ unlawful business acts and practices.

27 140. Defendant Cardrooms’ unlawful business acts and practices are tethered to
28 the underlying violation of The California Constitution Article IV, Section 19(e),
California Penal Code § 330.11, California Bus. & Prof. Code § 19801 and California

1 Civil Code 3480, and regulations promulgated thereunder.

2 141. Defendant Cardrooms' unlawful business acts and practices are likely to
3 deceive members of the general public regarding the integrity and lawfulness of the
4 banked games offered at Defendant Cardrooms.

5 142. Defendant Cardrooms' conduct has caused and will continue to cause
6 substantial injury to Plaintiffs, including, but not limited to, loss of business, loss of tribal
7 revenue, tribal employment opportunities, competitive advantage, market share and
8 goodwill in the marketplace, as to which monetary relief alone may be insufficient or
9 difficult to ascertain.

10 143. Defendant Cardrooms' conduct, as alleged herein, has caused and will
11 continue to cause irreparable injury to Plaintiffs and entitle them to injunctive relief as
12 well as restitution, according to proof.

13 **COUNT THREE**
14 **(PUBLIC NUISANCE)**
(TPPP DEFENDANTS)

15 144. Plaintiffs incorporate and re-allege the allegations of the preceding
16 paragraphs as if fully set forth herein.

17 145. The Defendant TPPPs are responsible for the aforementioned harm because
18 they were part of a conspiracy with Defendant Cardrooms to commit the aforementioned
19 public nuisance.

20 146. The Defendant TPPPs and Defendant Cardrooms have agreements to
21 commit this wrongful act.

22 147. The Defendant TPPPs were aware that Defendant Cardrooms planned to
23 commit these public nuisances.

24 148. The Defendant TPPPs, through the agreements with Defendant Cardrooms,
25 intended that this public nuisance be committed.

26 149. Plaintiffs have been injured, in fact, by Defendant TPPPs and Defendant
27 Cardrooms, actual performances of the acts contemplated and required by such
28 agreements.

1 160. Plaintiffs have no adequate remedy at law and are directly affected by this
2 illegal conduct.

3 161. Plaintiffs are therefore entitled to injunctive relief (of a preliminary and
4 permanent nature) against Defendants, and each of them, for all present and future
5 constitutional violations. Such injunctive relief should include, but not be limited to, an
6 Order from this Court prohibiting Defendants, and each of them, from engaging in banked
7 games as described more fully herein.

8 **COUNT SIX**
9 **(DECLARATORY JUDGMENT)**
10 **(ALL DEFENDANTS)**

11 162. Plaintiffs incorporate and re-allege the allegations of the preceding
12 paragraphs as if fully set forth herein.

13 163. An actual controversy exists between the parties as to the rights and/or
14 duties of Defendants with regard to whether they have the right to offer banked gaming
15 and whether they have the right to advertise banked gaming.

16 164. Pursuant to California Code of Civil Procedure § 1060, Plaintiffs desire
17 declarations of the rights and/or duties of Defendants.

18 165. Specifically, Plaintiffs desire declarations that:

- 19 • Defendants are violating the California Constitution's prohibition of
20 banked games.
- 21 • Defendants are violating Penal Code Section 330.11 (without regard to
22 its constitutionality).
- 23 • Defendants are advertising gaming prohibited by the California
24 Constitution and Penal Code Section 330.11.

25 **COUNT SEVEN**
26 **(TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS)**
27 **(THE CHUMASH BAND AGAINST ALL DEFENDANTS)**

28 166. The Chumash Band incorporates and re-alleges the allegations of the
preceding paragraphs as if fully set forth herein.

167. The Chumash Band entered a gaming compact with the State of California

1 on May 5, 2000 that has been amended, in its most recent iteration, on December 27, 2018
2 (the “Compact”).

3 168. The Compact constitutes a valid and binding contract. *Texas v. New*
4 *Mexico* (1987) 482 U.S. 124, 128, 107 S.Ct. 2279, 96 L.Ed.2d 105.

5 169. Defendants knew of the Compact.

6 170. Defendants’ conduct has made the Chumash Band’s performance of the
7 Compact more expensive or difficult in that, among other things, it has had to pay
8 disproportionate amounts for public assistance programs and other community economic
9 offsets necessary, at least in part, to combat public harms resulting from Defendants’
10 illegal banked gaming.

11 171. Defendants knew that this disruption of performance was certain or
12 substantially certain to occur.

13 172. The Chumash Band has been harmed.

14 173. Defendants’ conduct was a substantial factor in causing the Chumash
15 Band’s harm.

16 **COUNT EIGHT**
17 **(TORTIOUS INTERFERENCE WITH ECONOMIC ADVANTAGE)**
18 **(THE CHUMASH BAND AGAINST ALL DEFENDANTS)**
19 **(PLED IN THE ALTERNATIVE TO COUNT SEVEN)**

20 174. The Chumash Band incorporates and re-alleges the allegations of the
21 preceding paragraphs as if fully set forth herein.

22 175. The Chumash Band have been in an economic relationship with the State of
23 California that would have resulted in an economic benefit to the Chumash Band.

24 176. Defendants knew of the relationship.

25 177. Defendants have been engaged in illegal banked gaming.

26 178. By engaging in this conduct, Defendants knew that disruption of the
27 relationship was certain or substantially certain to occur.

28 179. The relationship between the Chumash Band and the State of California has
been disrupted.

1 180. The Chumash Band has been harmed.

2 181. Defendants' conduct was a substantial factor in causing the Chumash
3 Band's harm.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, as a result of Defendants' acts and omissions, Plaintiffs request the
6 Court grant the following relief:

7 a. Enter a judgment for Plaintiffs and against Defendants, and each of them, on
8 all Causes of Action;

9 b. Grant injunctive relief to preclude Defendants, and each of them, from
10 engaging in banked card games as described herein;

11 c. Award Plaintiffs restitution, in an amount to be proven at trial;

12 d. Award Plaintiffs their costs pursuant to applicable law;

13 e. Award Judgment in favor of the Chumash Band against Defendants in an
14 amount to be proven at trial;

15 f. Award Plaintiffs such other relief as this Court deems appropriate under the
16 circumstances.

17 DATED: May 9, 2019

RINCON BAND OF LUISENO INDIANS
DENISE TURNER WALSH

SCOTT CROWELL ESQ.

RICHARD I. WIDEMAN, ESQ.

AND

FENNEMORE CRAIG, P.C.

23 BY: /s/ Todd Kartchner
24 TODD KARTCHNER, ESQ.
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26 DENISE TURNER WALSH, ESQ.
27 RICHARD I. WIDEMAN, ESQ.
28 Attorneys For Plaintiffs

1 **PROOF OF SERVICE**

2 Rincon Bank of Luiseno Mission Indians et al. v. Larry Flynt, et al.
3 San Diego County Superior Court Case No. 37-2018-00058170-CU-NP-NTL

4 I am employed in the County of Maricopa, State of Arizona; I am a citizen of the
5 United States, over the age of 18 years and not a party to the within action; I am an
6 employee of Fennemore Craig, P.C. and my business address is 2394 E. Camelback Road,
7 Suite 600, Phoenix, Arizona 85016-3429.

8 On May 9, 2019, I served **PLAINTIFFS’ FIRST AMENDED COMPLAINT**
9 **FOR INJUNCTION AND RESTITUTION WITH COUNTS FOR NUISANCE,**
10 **UNFAIR COMPETITION, CIVIL CONSPIRACY, CONSTITUTIONAL**
11 **VIOLATION, DECLARATORY RELIEF, AND TORTIOUS INTERFERENCE**
12 **WITH CONTRACTUAL RELATIONS AND ECONOMIC ADVANTAGE** on the
13 interested parties in this action by electronic service at the email addresses listed on the
14 attached proof of service.

15 **SEE ATTACHED SERVICE LIST**

16 **BY FIRST CLASS MAIL.** I placed such envelope for deposit in the U.S. Mail
17 for service by the United States Postal Service, with first-class postage thereon
18 fully prepaid. I am readily familiar with my employer’s practice for the collection
19 and processing of mail. Under that practice, envelopes would be deposited with
20 the U.S. Postal Service that same day, with first class postage thereon fully prepaid,
21 in the ordinary course of business. I am aware that on motion of the party served,
22 service is presumed invalid if the postal cancellation date or postage meter date is
23 more than one day after the date of deposit for mailing shown in this proof of
24 service.

25 **BY FEDERAL EXPRESS.** I placed such envelope for deposit in a Federal
26 Express drop box for service by Federal Express delivery, with postage thereon
27 fully prepaid.

28 **BY PERSONAL SERVICE**

 I delivered such envelope by hand to the offices of the addressee(s).
 I caused such envelope to be delivered by hand to the offices of the
addressee(s).

XX **BY ELECTRONIC MAIL CCP § 1010.6(a)(4)(A))** Based on a court order
or an agreement of the parties to accept service by e-mail or electronic
transmission, I caused such documents described herein to be sent to the persons
at the e-mail addresses listed below. I did not receive, within a reasonable time
after the transmission, any electronic message or other indication that the
transmission was unsuccessful.

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I declare under penalty of perjury under the laws of the State of California and Arizona that the above is true and correct.

Executed on **May 9, 2019**, at Phoenix, Arizona.

/s/ Jennifer Fortner
Jennifer Fortner

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SERVICE LIST

***Rincon Band Of Luiseno Mission Indians of
The Rincon Reservation, California, et al.
v. Larry Flynt, et al.
Case No. 37-2018-00058170-CU-NP-CTL***

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