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26 Band of Chumash Indians of the Santa Ynez  
27 Reservation

28  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

RINCON BAND OF LUISENO  
MISSION INDIANS OF THE  
RINCON RESERVATION,  
CALIFORNIA, a federally-recognized  
Indian tribe; and SANTA YNEZ BAND  
OF CHUMASH MISSION INDIANS  
OF THE SANTA YNEZ  
RESERVATION, CALIFORNIA, a  
federally-recognized Indian tribe,

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

**COMPLAINT FOR DAMAGES AND  
INJUNCTION FOR NUISANCE,  
UNFAIR COMPETITION AND CIVIL  
CONSPIRACY**

Plaintiffs,

v.

LARRY FLYNT, individually and as  
trustee of the LARRY FLYNT  
REVOCABLE TRUST: CASINO,  
LLC, a California limited liability

1 company; EL DORADO  
2 ENTERPRISES, INC. dba HUSTLER  
3 CASINO, a California corporation;  
4 CALIFORNIA COMMERCE CLUB,  
5 INC. dba COMMERCE CASINO, a  
6 California corporation; THE BICYCLE  
7 CASINO, L.P., a California limited  
8 partnership; HAWAIIAN GARDENS  
9 CASINO, a California corporation;  
10 HOLLYWOOD PARK CASINO  
11 COMPANY, INC., a California  
12 corporation; OCEANS 11 CASINO,  
13 INC., a California corporation;  
14 PLAYERS POKER CLUB, INC., a  
15 California corporation; STONES  
16 SOUTH BAY CORP., a California  
17 corporation; CELEBRITY CASINOS,  
18 INC., a California corporation;  
19 SAHARA DUNES CASINO, LP, a  
20 California limited partnership; JOHN  
21 DOES 1-25; GREEN AND RED  
22 COMPANIES I – XXV,

Defendants.

14 COMES NOW Plaintiffs Rincon Band of Luiseno Mission Indians of the Rincon  
15 Reservation, California and Santa Ynez Band of Chumash Mission Indians of the Santa  
16 Ynez Reservation, California (collectively referred to as “Plaintiff Tribes”), by and  
17 through their attorneys of record, and for causes of action against Defendants Larry Flynt,  
18 both individually and as trustee of the Larry Flynt Revocable Trust; Casino, LLC; El  
19 Dorado Enterprises, Inc. dba Hustler Casino; California Commerce Club, Inc. dba  
20 Commerce Casino; The Bicycle Casino, L.P.; Hawaiian Gardens Casino; Hollywood Park  
21 Casino Company, Inc.; Oceans 11 Casino, Inc.; Players Poker Club, Inc.; Stones South  
22 Bay Corp.; Celebrity Casinos, Inc.; and Sahara Dunes Casino, LP (collectively referred to  
23 as “Defendant Cardrooms”) and John Does 1-25 and Green and Red Companies I - XXV  
24 (collectively referred to as “Defendant TPPs”) allege as follows:

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

26 1. Plaintiff Rincon Band of Luiseno Mission Indians of the Rincon Indian  
27 Reservation, California, a/k/a the Rincon Band of Luiseno Indians, is a federally-  
28 recognized Indian tribe with its reservation located within San Diego County. It legally

1 operates a Class III casino offering (banked) games in San Diego County, California  
2 pursuant to an agreement with the State of California.

3 2. Plaintiff Santa Ynez Band of Chumash Mission Indians of the Santa Ynez  
4 Reservation, California a/k/a the Santa Ynez Band of Chumash Indians, is a federally-  
5 recognized Indian tribe with its reservation located within Santa Barbara County. It  
6 legally operates a Class III casino offering (banked) games in Santa Barbara County,  
7 California pursuant to a compact with the State of California.

8 3. On information and belief, Defendant Larry Flynt is an individual residing  
9 in Los Angeles, California. On information and belief, Defendant Larry Flynt Revocable  
10 Trust is a trust organized under the laws of California and is controlled by Larry Flynt.  
11 On information and belief, Larry Flynt is the Trustee, Trustor, and Beneficiary of the  
12 Trust. Defendant Casino, LLC is a California limited liability company with its gaming  
13 operations in Los Angeles County and is owned and controlled by Larry Flynt. Records  
14 of the California Gambling Control Commission indicate that each of the three foregoing  
15 Defendants is licensed as an owner of Larry Flynt's Lucky Lady Casino.

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

18 5. Defendant California Commerce Club, Inc., doing business as Commerce  
19 Casino, is a California corporation with its gaming operations in Los Angeles County.

20 6. Defendant The Bicycle Casino, L.P. is a California limited partnership with  
21 its gaming operations in Los Angeles County.

22 7. Defendant Hawaiian Gardens Casino is a California corporation with its  
23 gaming operations in Los Angeles County.

24 8. Defendant Hollywood Park Casino Company, Inc. is a California  
25 corporation with its gaming operations in Los Angeles County.

26 9. Defendant Oceans 11 Casino, Inc. is a California corporation with its  
27 gaming operations in San Diego County.

28 10. Defendant Players Poker Club, Inc. is a California corporation with its

1 gaming operations in Ventura County.

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

4 12. Defendant Celebrity Casinos, Inc., which owns Crystal Casino, is a  
5 California corporation with its gaming operations in Los Angeles County.

6 13. Defendant Sahara Dunes Casino, L.P., sole owner of, and doing business as  
7 Lake Elsinore Hotel and Casino, is a California limited partnership with its gaming  
8 operations in Riverside County.

9 14. John Does 1-25 and Green and Red Companies I – XXV (“Defendant TPPs”  
10 collectively) are individuals and companies that, as set forth more fully below, hire, train  
11 and utilize individuals to facilitate illegal gaming at Defendant Cardrooms. The true  
12 names and capacities of the Defendant TPPs named herein as John Does 1-25 and Green  
13 and Red Companies I - XXV are unknown to Plaintiff Tribes, who therefore sue them  
14 under these fictitious names. Plaintiff Tribes will amend this complaint to add their true  
15 names and capacities when they become known.

16 15. Defendant TPPs were the agents and principals of the other defendants and  
17 each of them and at all relevant times alleged in this action, and, as set forth in more detail  
18 herein, were acting in the course and scope of the Defendant Cardrooms’ authority.

19 16. This Court has jurisdiction over Defendant Cardrooms and Defendant TPPs  
20 because both sets of Defendants either reside in California and/or have their principal  
21 places of business in California and each operates gaming that offers illegal “banked”  
22 games in California. In addition, both sets of Defendants engaged in violative conduct, as  
23 described in greater detail herein, in California, and such conduct resulted in injury  
24 occurring in this judicial district.

25 17. Venue is proper in this judicial district pursuant to California Code of Civil  
26 Procedure § 395(a) because some of the Defendants reside in this judicial district, and  
27 both sets of Defendants’ violative conduct, as described in greater detail herein, resulted  
28 in injury occurring in this judicial district.

1 **II. GAMING RESTRICTIONS UNDER THE CALIFORNIA CONSTITUTION**  
2 **AND THE PASSAGE OF IGRA**

3 18. On November 6, 1984, California's Constitution was amended to add the  
4 following: "The Legislature has no power to authorize, and shall prohibit casinos of the  
5 type currently operating in Nevada and New Jersey." ("Casino Prohibition Amendment")  
6 Cal. Const., Art. IV, § 19(e).

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

10 20. In response to the *Cabazon* decision, Congress enacted the Indian Gaming  
11 Regulatory Act ("IGRA") in 1988 to delineate the roles of tribes, the federal government,  
12 and state governments in regulating Indian gaming.

13 21. IGRA was enacted, among other reasons, to provide "a statutory basis for  
14 the operation of gaming by Indian tribes as a means of promoting tribal economic  
15 development, self-sufficiency, and strong tribal governments" and "to ensure that the  
16 Indian tribe is the primary beneficiary of the gaming operation." 25 U.S.C. § 2702(1), (2).

17 22. IGRA offers three classes of gaming, with each subject to differing levels of  
18 regulation. Banked card games at issue here fall within IGRA's definition of Class III  
19 gaming, which includes all casino-style games except traditional games of minimal value,  
20 bingo and non-banked card games.

21 23. "In banked or percentage card games, players bet against the 'house' or the  
22 casino. In 'nonbanked' or 'nonpercentage' card games, the 'house' has no monetary stake  
23 in the game itself, and players bet against one another." *Artichoke Joe's v. Norton*, 216  
24 F.Supp.2d, 1084, 1092 n. 3 (E.D. Cal., 2002).

25 **III. INVALIDATING PROPOSITION 5 AND THE CALIFORNIA SUPREME**  
26 **COURT'S INTERPRETATION OF BANKED GAMES**

27 24. A coalition of California tribes drafted Proposition 5, a statutory initiative  
28 (as opposed to a constitutional initiative), which required California to enter into gaming

1 compacts allowing, among others, Class III banked card games and slot machines on  
2 Indian reservations pursuant to IGRA.

3 25. After Proposition 5 passed on California's November 1998 ballot, the Hotel  
4 Employees and Restaurant Employees International Union (the "Union") filed a petition  
5 with the California Supreme Court for a writ of mandate prohibiting the Governor from  
6 entering gaming compacts in accordance with Proposition 5.

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

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

20 28. The Court further reasoned "[t]hat the tribe must pay all winners and collect  
21 from all losers through a fund that is styled a 'players' pool' is immaterial: the players'  
22 pool is a bank in nature if not in name. It is a fund against which everybody has a right to  
23 bet, the bank taking all that is won, and paying out all that is lost." *Id.*, 21 Cal. 4<sup>th</sup> at 607,  
24 981 P.2d at 1005 (internal quotation marks omitted).

25 29. The Court also rejected the Real Parties' contention that the card games  
26 were not banked because the casino's tribal owner/operator could not profit from  
27 surpluses in the players' pool, observing that a banking game may be banked by someone  
28 other than the owner of the gambling facility. *Id.*, 21 Cal. 4<sup>th</sup> at 607-608, 981 P.2d at

1 1006.

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

6 **IV. AMENDING THE CALIFORNIA CONSTITUTION WITH PROPOSITION**  
7 **1A: EXCEPTION TO CONSTITUTIONAL PROHIBITION OF BANKED**  
8 **CARD GAMES APPLIES ONLY TO GAMING ON TRIBAL LANDS**

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

12 32. The proposed amendment, Proposition 1A, was ratified by California voters  
13 in March of 2000, amending the California Constitution as follows:

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

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

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

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

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

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

4    **V.    TRADITIONAL GAMING AT CALIFORNIA CARDROOMS**

5           37.    Cardrooms have existed in California for many years.  Traditionally,  
6 cardrooms made money by charging each player a per-hand fee – called a “collection” –  
7 for the privilege of using the cardroom’s facilities, playing “round” games such as poker,  
8 where there is no bank or house against which players bet.  The deal would continuously  
9 rotate among the players, with the cardroom having no interest in the results of any hand  
10 or the winnings of any player dealer or other participant.

11          38.    To bolster their business, the cardrooms developed the concept of a skill  
12 called euphemistically a “proposition player” (“TPP” herein), an individual paid by the  
13 cardroom to sit at the tables and reinvigorate games with dwindling action and thereby  
14 stimulate additional revenue for the cardroom in the form of per-hand fees collected from  
15 every player, as well as increased food and beverage sales.  While the proposition players  
16 were paid to sit at the tables, they were required to gamble with their own money – a key  
17 point.

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

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



1 **VI. DEFENDANT CARDROOMS IMPROPERLY APPLY CALIFORNIA**  
2 **STATUTES AND REGULATIONS IN A MANNER THAT CONVERTS**  
3 **TRADITIONAL GAMING TO ILLEGAL BANKED GAMES.**

4 41. In 1997, the Legislature enacted the Gambling Control Act, which, among  
5 other things, created the California Gambling Control Commission (the "Commission"),  
6 Bus. & Prof. Code § 19811. The Gambling Control Act also required regulation by the  
7 Division of Gambling Control, an agency within the Attorney General's Office, which is  
8 now known as the Bureau of Gambling Control (the "Bureau"). The Bureau regulates the  
9 gambling industry in California, in cooperation with the Commission.

10 42. There was an inescapable problem for cardroom operators using the time-  
11 tested business model described above: they wanted to make more money. In short, they  
12 wanted what the tribes have – the ability to play popular and prohibited (to the cardrooms)  
13 banked card games. To that end, beginning around the early 2000s, California cardrooms  
14 dramatically restructured how they operated card games. There are four inter-connected  
15 aspects to this restructuring: (1) card rooms fail to rotate the "banker" position at their  
16 tables, (2) they routinely waive per-hand collection fees for all but the "TPPs"), (3) they  
17 obtain an improper interest in the funds wagered in their establishments through the use of  
18 TPPs, and (4) they play (and boldly advertise the play of) expressly prohibited banked  
19 card games.

20 43. The Gambling Control Act addressed regulation of proposition players,  
21 including licensing and contracting. One example is Business & Professions Code section  
22 19984, which specifically allows cardrooms to "contract with a third party for the purpose  
23 of providing proposition player services," subject to certain conditions. A principal  
24 condition is that the contracts with these so-called TPPs may not give the cardroom "any  
25 interest, whether direct or indirect, in funds wagered, lost, or won." Bus & Prof. Code  
26 § 19984(a).

27 44. Defendant Cardrooms contract with and conspire with TPPs for the purpose  
28 of providing proposition player services in a manner that allows the TPPs to function as  
the bank of a banked card game, which converts traditional gaming to illegal banked

1 games.

2 45. Defendant Cardrooms contract with TPPs for the purpose of providing  
3 proposition player services in a manner that provides Defendant Cardrooms an interest,  
4 either or both direct or indirect, in funds wagered, lost, or won in violation of Bus & Prof.  
5 Code § 19984(a).

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

12 47. In 1999, the California Legislature enacted Penal Code section 330.11  
13 (“Section 330.11”), defining a banking game for purposes of Section 330. As the statute  
14 explains:

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

22 48. The legislative history of Section 330.11 confirms its narrow scope:

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

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

1           49. Defendant Cardrooms operate games in a manner that falls outside of the  
2 exception set forth in Section 330.11, by allowing the player-dealer to bank the game, and  
3 by failing to ensure that the player-dealer position is continuously and systematically  
4 rotated amongst each of the participants.

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

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

16           **VII. DEFENDANT CARDROOMS CONSPIRE WITH TPPs TO OFFER**  
17           **BANKED CARD GAMES.**

18           52. If the Defendant Cardrooms abandoned their traditional form of income, a  
19 natural question arises as to how the Defendant Cardrooms make money now. The  
20 answer is through the TPPs.

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

1 lost, or won,” paying any of that money back to the Defendant Cardrooms necessarily  
2 means the Defendant Cardrooms have an “interest” in those funds in violation of Business  
3 & Professions Code section 19984.

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

13 55. Pled in the alternative, payment by the TPPs to the Defendant Cardrooms  
14 exceeds mere payment or reimbursement for goods and services the TPP employees use  
15 while on the property, in violation of Section 19984.

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

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

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

28 58. Defendant Cardrooms have offered games that they attempt to distinguish

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

11 59. The Defendant Cardrooms also recognized that, to ensure bringing  
12 customers in their doors and away from tribal casinos, they needed to advertise on their  
13 websites and on billboards on the side of major freeways the play of these illegal games.  
14 For example, Defendant Cardrooms have advertised blackjack and baccarat on their  
15 websites.

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

24 **IX. DEFENDANT CARDROOMS’ ILLEGAL GAMING HAS RESULTED IN**  
25 **SERIOUS AND IRREPARABLE INJURY TO PLAINTIFF TRIBES.**

26 61. In comparing financial statistics for the Plaintiff Tribes with gaming  
27 financial statistics in multiple jurisdictions for years covering 2013 through 2017,  
28 including, among others, the states of Maryland, New Jersey, New York, Pennsylvania,

1 Illinois, Indiana, Colorado and Iowa, the Plaintiff Tribes underperformed and have  
2 experienced comparatively little growth, despite, in many instances, having more  
3 favorable demographics and population bases in appropriate proximity.

4 62. As a result of their illegal gaming, from 2013 to 2017 alone, Defendant  
5 Cardrooms and Defendant TPPs have illegally deprived Plaintiff Rincon Band of Luiseno  
6 Indians of at least \$13.8 million per year in governmental revenue, and likely more.

7 63. As a result of their illegal gaming, from 2013 to 2017 alone, Defendant  
8 Cardrooms and Defendant TPPs have illegally deprived Plaintiff Santa Ynez Band of  
9 Chumash Indians of at least \$4.42 million per year in governmental revenue, and likely  
10 more.

11 64. As the result of the Defendant Cardrooms' and Defendant TPPs' violative  
12 conduct, Plaintiff Tribes have experienced losses of business, governmental revenue,  
13 tribal employment opportunity, competitive advantage, market share, and goodwill in the  
14 marketplace, which are difficult to ascertain and for which monetary relief alone will not  
15 afford adequate relief.

16 65. Additionally, monetary relief is insufficient because the Plaintiff Tribes are  
17 entitled by their inherent sovereign authority and by Congress' enactment of IGRA, to  
18 have such gaming opportunity manifest tribal economic development, self-sufficiency,  
19 and strong tribal government. 25 U.S. C. § 2702(1).

20 66. Pursuant to tribal and federal law, governmental revenue generated from  
21 tribal gaming revenue cannot be used for purposes other than (i) to fund tribal government  
22 operations or programs, (ii) to provide for the general welfare of the Indian tribe and its  
23 members, (iii) to promote tribal economic development, (iv) to donate to charitable  
24 organizations, or (v) to help fund operations of local government agencies. 25 USC §  
25 2710(b)(2)(B). Accordingly, every dollar of lost revenue is a dollar lost in those  
26 governmental programs and services. In contrast, Defendant Cardrooms and Defendant  
27 TPPs are individuals and private, for-profit entities. Monetary relief alone is insufficient to  
28 correct the illegal diversion of gaming revenue by these individuals and private, for-profit

1 entities away from tribal governmental revenue and tribal governmental programs and  
2 services.

3 **FIRST CAUSE OF ACTION**  
4 **(PUBLIC NUISANCE)**  
5 **(CARDROOM DEFENDANTS)**

6 67. Plaintiff Tribes incorporate and re-allege the allegations of the preceding  
7 paragraphs as if fully set forth herein.

8 68. The California Legislature previously found and declared:

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

13 *Unregulated gambling enterprises are inimical to the public*  
14 *health, safety, welfare, and good order.* Accordingly, no  
15 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.

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

17 69. Defendant Cardrooms, in operating banked card games expressly reserved  
18 for tribes, have created a condition that is harmful to the public's health, safety, welfare,  
19 and good order.

20 70. Plaintiff Tribes have suffered harm because Defendant Cardrooms' conduct,  
21 as set forth above, constitutes and has created a nuisance.

22 71. This condition affects a substantial number of people at the same time.

23 72. Indeed, unless said conduct and nuisance is abated, the surrounding  
24 community and neighborhoods, as well as Plaintiff Tribes, will suffer irreparable injury  
25 and damage, in that said conditions will continue to be injurious to the enjoyment and the  
26 free use of the life and property of said citizens and residents.

27 73. An ordinary person would be reasonably annoyed or disturbed by the  
28 condition.

1           74. The seriousness of the harm outweighs the social utility of Defendant  
2 Cardrooms' conduct.

3           75. Plaintiff Tribes did not consent to Defendant Cardrooms' conduct and,  
4 indeed, Defendant Cardrooms' conduct is violating current and existing law.

5           76. Plaintiff Tribes are suffering harm different from and in addition to the type  
6 of harm suffered by the general public in that the house banked games Defendant  
7 Cardrooms offer are expressly reserved under state and federal law to Indian tribes,  
8 including Plaintiff Tribes.

9           77. Defendant Cardrooms' conduct is a substantial factor in causing Plaintiff  
10 Tribes' harm.

11           78. Plaintiff Tribes have no adequate remedy at law in that monetary damages  
12 are insufficient to compensate them for their loss of business, governmental revenue,  
13 tribal employment opportunities, competitive advantage, market share, and goodwill in  
14 the marketplace and are difficult to ascertain, nor are monetary damages sufficient to  
15 protect the public from the present danger and harm caused by the conditions described  
16 above.

17           79. Defendant Cardrooms' conduct has caused and will continue to cause  
18 substantial injury to Plaintiff Tribes, including, but not limited to, loss of business,  
19 governmental revenue, tribal employment opportunities, competitive advantage, market  
20 share and goodwill in the marketplace, as to which monetary relief alone is insufficient.

21           80. Plaintiff Tribes are also entitled to incidental and consequential damages,  
22 subject to proof, as a result of the conduct of Defendant Cardrooms, and each of them.

23           81. Plaintiff Tribes are informed and believe that Defendant Cardrooms will  
24 continue to maintain, or permit to be maintained, the above-described conditions as a  
25 public nuisance.

26           82. Pursuant to Cal. Civ. Code § 526, this Court has inherent power and  
27 authority to grant injunctive relief when the applicant is entitled to the relief demanded  
28 and such relief is required to restrain some prejudicial act, or a party is doing some act in



1 violation of the rights of the applicant, or when the applicant is entitled to an injunction  
2 under the principles of equity.

3 83. Convincing evidence exists regarding Defendant Cardrooms' violative  
4 conduct and Plaintiff Tribes are, therefore, likely to succeed on the merits of their claims.

5 84. Because Defendant Cardrooms continue to harm the health, safety, welfare,  
6 and good order of the public in general and Plaintiff Tribes in particular, the Plaintiff  
7 Tribes will sustain irreparable harm if this Court does not intervene to protect their  
8 interests.

9 85. As set forth more fully above, Defendant Cardrooms are violating California  
10 and federal law in engaging in what constitutes banked gaming. The balance of equities,  
11 therefore, tips strongly in favor of Plaintiff Tribes.

12 86. Awarding Plaintiff Tribes the injunctive relief requested is also in the best  
13 interest of the public in that Defendant Cardrooms' conduct is harmful to the public's  
14 health, safety, welfare, and good order and to law. Bus. & Prof. Code § 19801 (d).

15 87. Plaintiff Tribes are therefore entitled to injunctive relief (of a preliminary  
16 and permanent nature) against Defendants, and each of them, for all present and future  
17 violations of Plaintiff Tribes' rights. Such injunctive relief should include, but not be  
18 limited to, an Order from this Court prohibiting Defendants, and each of them, from  
19 engaging in banked games as described more fully herein.

20 **SECOND CAUSE OF ACTION**  
21 **(UNFAIR COMPETITION IN VIOLATION OF BUS. & PROF. CODE § 17200)**  
22 **(CARDROOM DEFENDANTS)**

23 88. Plaintiff Tribes incorporate and re-allege the allegations of the preceding  
24 paragraphs as if fully set forth herein.

25 89. California Business and Professions Code Section 17203 creates a cause of  
26 action against "anyone who engages, has engaged, or proposes to engage in unfair  
27 competition" and includes the right to injunctive relief when a party has suffered actual  
28 harm.

1 90. Unfair competition includes “any unlawful, unfair or fraudulent business act  
2 or practice[.]” Bus. & Prof. Code § 17200.

3 91. “California courts have consistently interpreted the language of section  
4 17200 broadly. The statute imposes strict liability. It is not necessary to show that the  
5 defendant intended to injure anyone.” *Community Assisting Recovery, Inc. v. Aegis*  
6 *Security Ins. Co.*, 92 Cal. App. 4<sup>th</sup> 886, 891, 112 Cal. Rptr. 2d 304, 308 (Cal. App.  
7 2001)(internal citations and quotation marks omitted).

8 92. Defendant Cardrooms and Defendant TPPs are engaged in unfair  
9 competition by unlawfully, unfairly and fraudulently engaging in banked card games that  
10 are expressly reserved for Indian tribes under state and federal law.

11 93. Defendants’ conduct has caused and will continue to cause substantial injury  
12 to Plaintiff Tribes, including, but not limited to, loss of business, tribal governmental  
13 revenue, tribal employment opportunities, competitive advantage, market share and  
14 goodwill in the marketplace, as to which monetary relief alone may be insufficient or  
15 difficult to ascertain.

16 94. Defendants’ conduct, as alleged herein, has caused and will continue to  
17 cause irreparable injury to Plaintiff Tribes and entitle them to injunctive relief as well as  
18 consequential and actual damages, according to proof.

19 **THIRD CAUSE OF ACTION**  
20 **(PUBLIC NUISANCE)**  
21 **(TPP DEFENDANTS)**

22 95. Plaintiff Tribes incorporate and re-allege the allegations of the preceding  
23 paragraphs as if fully set forth herein.

24 96. The Defendant TPPs are responsible for the aforementioned harm because  
25 they are part of a conspiracy with Defendant Cardrooms to commit the aforementioned  
26 public nuisance.

27 97. The Defendant TPPs and Defendant Cardrooms have agreements to commit  
28 this wrongful act.

98. The Defendant TPPs are aware that Defendant Cardrooms planned to

1 commit these public nuisances.

2 99. The Defendant TPPs, through the agreements with Defendant Cardrooms,  
3 intend that this public nuisance be committed.

4 100. Plaintiff Tribes have been injured, in fact, by Defendant TPPs' and  
5 Defendant Cardrooms' actual performance of the acts contemplated and required by such  
6 agreements.

7 101. Applying the doctrine of conspiracy, Defendant TPPs are liable for the  
8 public nuisance in a manner co-equal to the liability of Defendant Cardrooms.

9 **FOURTH CAUSE OF ACTION**  
10 **(UNFAIR COMPETITION IN VIOLATION OF BUS. & PROF. CODE § 17200)**  
11 **(TPP DEFENDANTS)**

12 102. Plaintiff Tribes incorporate and re-allege the allegations of the preceding  
13 paragraphs as if fully set forth herein.

14 103. The Defendant TPPs are responsible for the aforementioned harm because  
15 they are part of a conspiracy with Defendant Cardrooms to engage in the aforementioned  
16 unfair competition.

17 104. The Defendant TPPs and Defendant Cardrooms have agreements to engage  
18 in this unfair competition.

19 105. The Defendant TPPs are aware that Defendant Cardrooms planned to  
20 engage in this unfair competition.

21 106. The Defendant TPPs, through the agreements with Defendant Cardrooms,  
22 intend that they engage in this unfair competition.

23 107. Plaintiff Tribes have been injured, in fact, by Defendant TPPs' and  
24 Defendant Cardrooms' actual performances of the acts contemplated and required by such  
25 agreements.

26 108. Applying the doctrine of conspiracy, Defendant TPPs are liable for the  
27 unfair competition in a manner co-equal to the liability of Defendant Cardrooms.

28 **PRAYER FOR RELIEF**

1           WHEREFORE, as a result of Defendants' acts and omissions, Plaintiff Tribes  
2 request the Court grant the following relief:

3           a.     Enter a judgment for Plaintiff Tribes and against Defendants, and each of  
4 them, on all Causes of Action;

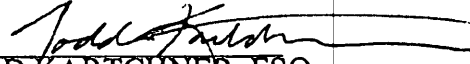
5           b.     Grant injunctive relief to preclude Defendants, and each of them, from  
6 engaging in banked card games as described herein;

7           c.     Award Plaintiff Tribes all recoverable damages, in an amount to be proven  
8 at trial;

9           d.     Award Plaintiff Tribes their costs pursuant to applicable law;

10          e.     Award Plaintiff Tribes such other relief as this Court deems appropriate  
11 under the circumstances.

12 DATED: November 16, 2018

13 BY:   
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15 SCOTT CROWELL, ESQ.  
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21 Santa Ynez Band of Chumash Indians of  
22 the Santa Ynez Reservation  
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