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 12 Tuolumne Band of Me-Wuk Indians

13 **UNITED STATES DISTRICT COURT**
 14 **EASTERN DISTRICT OF CALIFORNIA**

15 TUOLUMNE BAND OF ME-WUK
 16 INDIANS, a federally-recognized Indian
 17 Tribe,

18 Plaintiff,

19 vs.

20 STATE OF CALIFORNIA; CALIFORNIA
 21 GAMBLING CONTROL COMMISSION, an
 22 agency of the State of California; and
 23 ARNOLD SCHWARZENEGGER, as
 24 Governor of the State of California;

25 Defendants.

Case No.: 2:09-CV-02263 JAM KJN

**JOINT STIPULATION AND ORDER
 FOR DISMISSAL WITH PREJUDICE**

Judge: The Honorable John A.
 Mendez

Trial Date: None Set
 Action Filed: August 14, 2009

26 For the reasons stated herein, the parties to this action, by and through their attorneys of
 27 record, hereby stipulate to dismissal with prejudice under the following terms.

JOINT STIPULATION FOR DISMISSAL WITH PREJUDICE

28 Plaintiff Tuolumne Band of Me-Wuk Indians, a federally recognized Indian tribe
 (“Tribe”), and Defendants, the State of California, the California Gambling Control Commission
 (“Commission”), and the Governor of the State of California (collectively “State Defendants”),

1 being all the parties who have appeared herein, pursuant to Federal Rule of Civil Procedure
2 41(a)(1)(A)(ii), by and through their respective counsel of record, jointly stipulate as follows:

3 In this action the Tribe challenges the Commission's interpretation of particular provisions
4 of the class III Tribal-State gaming compact between the Tribe and the State ("Compact"). The
5 Compact at issue is a form compact that the State entered into with numerous tribes in California.
6 As determined by the Ninth Circuit Court of Appeals in *Cachil Dehe Band of Wintun Indians of*
7 *the Colusa Indian Community v. California*, 618 F.3d 1066 (9th Cir. 2010) (*Colusa*), the
8 statewide Gaming Device license pool provided by § 4.3.2.2(a)(1) of the Compact consists of
9 40,201 licenses. By virtue of the finality of the *Colusa* decision, the State is now bound by the
10 Ninth Circuit Court of Appeals' interpretation of Compact § 4.3.2.2(a)(1) as to the Tribe's
11 Compact, and the Tribe no longer has a need for declaratory relief regarding the meaning of
12 Compact § 4.3.2.2(a)(1). Thus, the Tribe's request for declaratory judgment as to its First Claim
13 for Relief is unnecessary.

14 The Tribe is presently entitled to draw future Gaming Device licenses pursuant to the
15 terms of Compact § 4.3.2.2, as a tier (iii) tribe, and will be entitled to draw in tier (iii) until the
16 Tribe has drawn an additional five hundred fifty (550) licenses at tier (iii).¹ The Tribe may
17 remain in any applicable tier until it has drawn the maximum number of licenses authorized by
18 that tier. Accordingly, the Tribe no longer has a need for declaratory judgment relief concerning
19 the Commission's interpretation of Compact § 4.3.2.2(a)(3) and method of assigning draw tier
20 rankings, and its request for declaratory judgment as to its Second Claim for Relief is moot.

21 The Tribe may notify the Commission that it wishes to acquire additional Gaming Device
22 licenses according to the terms of the Compact, including Compact § 4.3.2.2(a)(3)(vi). The
23 Commission shall then initiate and conduct the Gaming Device license draw process in
24 accordance with the terms of the Compact. Accordingly, the Tribe no longer has a need for the
25 injunctive relief sought in paragraph 2 of its prayer.²

26 ¹ Under the interpretation of Compact § 4.3.2.2(a)(3) sought by the Tribe in this action, the Tribe
27 has already acquired 200 of the 750 licenses that may be drawn in tier (iii), and therefore may
draw 550 additional licenses from that tier.

28 ² The prayer has two paragraphs numbered "2." The reference herein is to the second paragraph
two.

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THEREFORE, the parties stipulate that good cause exists for the Court to dismiss this action and all pending claims herein with prejudice. The parties shall be responsible for any and all of their respective attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of this action.

IT IS SO STIPULATED.

Dated: July 27, 2011

KAMALA D. HARRIS
Attorney General of California
SARA J. DRAKE
Senior Assistant Attorney General

/s/ Neil D. Houston
NEIL D. HOUSTON
Deputy Attorney General
Attorneys for State Defendants

Dated: July 27, 2011

ROSETTE, LLP
ATTORNEYS AT LAW
ROBERT A. ROSETTE

/s/ Robert A. Rosette
ROBERT A. ROSETTE
Attorneys for Plaintiff

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ORDER

The Court, having considered the Joint Stipulation and Order for Dismissal With Prejudice, filed on July 26, 2011, and being satisfied that good cause therefor exists:
Now, therefore, it is hereby ordered that the action be and the same is hereby dismissed with prejudice, and that each party shall bear its own costs and attorneys fees incurred herein.

IT IS SO ORDERED.

Dated: 7/27/2011

/s/ John A. Mendez
Honorable John A. Mendez
U.S. DISTRICT COURT JUDGE