SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

25CV000001: AGUA CALIENTE BAND OF CAHUILLA INDIANS, et al. vs PARKWEST BICYCLE CASINO, et al.
10/10/2025 Hearing on Demurrer /Motion to Strike in Department 22

Tentative Ruling

Defendants Parkwest Bicycle Casino, LLC (d/b/a Parkwest Bicycle Casino); ABA Properties LLC (d/b/a The Aviator Casino); Acme Player Services, LLC; Arise, LLC; Blackstone Gaming, LLC; BVK Gaming, Inc. (d/b/a Napa Valley Casino); California Commerce Club, Inc. (d/b/a The Commerce Casino & Hotel); California Grand Casino; Cal-Pac Rancho Cordova, LLC (d/b/a Parkwest Casino Cordova); Cal-Pac Sonoma, LLC (d/b/a Parkwest Casino Sonoma); CalProp Services, LLC; Capitol Casino, a California corporation (d/b/a Capitol Casino a.k.a Capitol Casino, Inc.); Casino 580, LLC (d/b/a Parkwest Casino 580); Casino 99, LLC (d/b/a Casino 99); Casino Merced, Inc. (d/b/a Casino Merced); Casino Poker Club, Inc. (d/b/a Casino Club); Casino, LLC (d/b/a Larry Flynt's Lucky Lady Casino); Celebrity Casinos, Inc. (d/b/a Crystal Casino); Central Coast Casino Grover Beach, Inc. (d/b/a Central Coast Casino); Central Valley Gaming, LLC (d/b/a Turlock Poker Room); Certified Network M, Inc.; Club One Casino, Inc. (d/b/a Club One Casino); Delta C, LP (d/b/a Cameo Club; d/b/a Kings Card Club; d/b/a Westlane Card Room); El Dorado LF, LLC (d/b/a Hustler Casino); Empire Sportsmen's Association; EMZE LLC (d/b/a Casino Marysville); Epoch Casino, Inc. (d/b/a Epoch Casino); F2 TPS, LLC; Faros Unlimited, Inc.; Fortune Gaming Associates; Fortune Players Group, Inc.; Full Rack Entertainment, Inc. (d/b/a Towers Casino); Garden City, Inc. (d/b/a Casino M8trix); GLCR, Inc. (d/b/a The Deuce Lounge & Casino; d/b/a Tres Lounge and Casino); Global Player Services, Inc.; Golden Valley Casino, LLC (d/b/a Golden Valley Casino); Hacienda LF, LLC (d/b/a Hacienda Casino); Halcyon Gaming, LLC; Hawaiian Gardens Casino Inc. (d/b/a The Gardens Casino); Hollywood Park Casino Company, LLC (d/b/a Hollywood Park Casino); Joseph Anthony Melech (d/b/a Hotel Del Rio & Casino); K & M Casinos, Inc. (d/b/a 500 Club Casino a.k.a 500 Club); KB Ventures; KBCH Consultants, Inc.; Keith Chan Hoang (d/b/a Golden State Casino); Kern County Associates, L.P. (d/b/a Golden West Casino); King's Casino Management Corporation (d/b/a The Saloon at Stones Gambling Hall; d/b/a The Tavern at Stones Gambling Hall); Knighted Ventures, LLC; Ky Phuon (d/b/a Garlic City Club); L.E. Gaming, Inc.; Lamar V. Wilkinson (d/b/a California Club Casino); LEB Holdings, Inc. (d/b/a Oceana Cardroom); Limelight Cardroom Trust (d/b/a Limelight Card Room); Lodi Cardroom, Inc. (d/b/a Parkwest Casino Lodi); Lucky Chances, Inc. (d/b/a Lucky Chances Casino); Lucky Tree Entertainment, Inc. (d/b/a La Primavera Pool Hall & Cafe); Marina Club Casino, LLC (d/b/a Marina Club); Michael G. Lincoln (d/b/a Racxx); Network Management Group, Inc.; Oakdale LLC (d/b/a Mike's Card Casino); Oaks Club Room Limited Partnership (d/b/a Oaks Card Club); Ocean's 11 Casino, LLC (d/b/a Ocean's Eleven Casino); Old Town Investments, Inc. (d/b/a Bankers Casino); Outlaws 101 LLC (d/b/a Outlaws Card Parlour); Pacific Gaming Services, LLC; Palace Poker Casino, LLC (d/b/a Palace Poker Casino); Parkwest Casino Manteca, LLC (d/b/a Parkwest Casino Manteca); Phuong-Anh Kim Do (d/b/a The Independent); Pinnacle Casino, LLC (d/b/a Pinnacle Casino); Player's Poker Club, Inc. (d/b/a Player's Casino a.k.a Players Casino); Players Edge Services; Polvora, Inc. (d/b/a Ace & Vine); Progressive Gaming, LLC; Qualified Player Services, LLC; Randy A. Yaple (d/b/a Blacksheep Casino Company); Richard Scott (d/b/a Casino Chico); Rogelio's Inc.; Sacramento Casino Royale, LLC

(d/b/a Casino Royale); Sahara Dunes Casino, LP (d/b/a Lake Elsinore Hotel and Casino); Sidjon Corporation (d/b/a Livermore Casino); Stars Gaming Inc. (d/b/a Stars Casino); Stones South Bay Corporation (d/b/a Seven Mile Casino); Sutter's Place, Inc. (d/b/a Bay 101); The Nineteenth Hole, General Partnership (d/b/a Nineteenth Hole a.k.a The Nineteenth Hole Casino and Lounge); The River Cardroom, Inc. (d/b/a The River Card Room); The Silver F, Inc. (d/b/a Parkwest Casino Lotuys); Veronica S. Chohrach (d/b/a Oceanview Casino); Wahba, LLC; Waldemar Dreher (d/b/a Lake Bowl Cardroom); and Wizard Gaming, Inc. (d/b/a Diamond Jim's Casino) (collectively, the "Cardroom Defendants") demur to each and every cause of action in the First Amended Complaint ("FAC") filed by Agua Caliente Band of Cahuilla Indians, *et al.*[1] on February 18, 2025 (the "*Agua Caliente* FAC"), and the FAC filed by Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California, *et al.*[2] on April 23, 2025 (the "*Rincon Band* FAC").

The Cardroom Defendants demurrer on the following grounds:

(1) This Court lacks jurisdiction over this action, and both FACs (all causes of action) fail to state a claim because the action under SB 549 is preempted by the Federal Indian Gaming Regulatory Act ("IGRA").
(2) Both FACs (all causes of action) fail to state a claim because the action under SB 549 is invalid under article IV, section 19, subdivision (f) of the California Constitution.
(3) Both FACs (all causes of action) fail to state a claim because the action under SB 549 violates Defendants' rights to an unbiased prosecutor under the California and federal Due Process Clauses.
(4) Both FACs (all causes of action) fail to state a claim because the action under SB 549 is invalid under article V, section 13 of the California Constitution.
(5) Both FACs (all causes of action) fail to state a claim because the action under SB 549 is void under article II, section 10, subdivision (c) of the California Constitution.

(Notice.)

The Court SUSTAINS the Cardroom Defendants' demurrer because this action is preempted by IGRA. The Court further concludes that severance cannot resolve IGRA preemption.

BACKGROUND

On January 2, 2025, the *Agua Caliente* Plaintiffs filed this action under the Tribal Nations Access to Justice Act ("SB 549") against cardrooms and third-party providers of proposition player services ("TPPPPS"). On February 18, 2025, the *Agua Caliente* Plaintiffs filed a FAC alleging the following causes of action: (1) declaration that blackjack-style games are illegal banked games in violation of the California Constitution; (2) declaration that blackjack-style games are illegal banked games in violation of the California Penal Code; (3) declaration that

baccarat-style games are illegal banked games in violation of the California Constitution; (4) declaration that baccarat-style games are illegal banked games in violation of the California Penal Code; (5) declaration that any games with Offer-Only rules are illegal banked games; (6) declaration that any games with Two-Hand-Limit rules are illegal banked games; (7) declaration that any games with Break rules are illegal banked games; and (8) declaration that California TPPPPS provide card rooms an illegal interest in games. (*Agua Caliente* FAC, pp. 148-157.)

On April 1, 2025, the *Rincon* Plaintiffs filed a separate action against the same Defendants. (*Rincon* Complaint.) On April 3, 2025, the Court consolidated the *Rincon* action with the *Agua Caliente* action, designating the *Agua Caliente* action as the lead case. (4-3-25 Minute Order.) On April 23, 2025, the *Rincon* Plaintiffs filed a FAC that essentially incorporated the first four causes of action alleged in the *Agua Caliente* FAC as well as the following: (5) declaration that pai gow poker-style games are illegal banked games in violation of the California Constitution; (6) declaration that pai gow poker-style games are illegal banked games in violation of the California Penal Code; and (7) declaration that contractual relationships between TPPPPS Defendants and Cardroom Defendants creates an illegal interest in games. (*Rincon* FAC, pp. 27-34.)

Plaintiffs allege that "[u]nder tribal-state compacts, California Indian tribes have bargained with the State (and pay) for a gaming system that facilitates their exclusive right to offer such banked games [such as blackjack, baccarat, and pai gow] within California." (*Agua Caliente* FAC, ¶ 1.) They generally assert that the challenged games are illegal games that violate California's criminal laws and deny Plaintiffs "the benefit of the bargain" under their respective tribal-state compacts. (*Agua Caliente* FAC, ¶¶ 1-2, 127-136, 144-162; *Rincon* FAC, ¶¶ 122-128, 135-145.)

On August 22, 2025, the Court granted the motion to intervene filed by the Santa Rosa Rancheria Tachi Yokut Tribe ("Tachi Tribe"). (8-22-25 Minute Order.) The Parties agreed in a related Stipulation that the pending demurrers and motion to strike will apply to Tachi Tribe, and Defendants are not required to separately respond; Tachi Tribe will not file separate briefs in opposition to the pending demurrers and motion to strike; Tachi Tribe will be bound by any ruling on the pending demurrers and motion to strike; and Tachi Tribe may participate in any appellate briefing and will be bound by any ruling on appeal. (See Mot. to Intervene, Exh. B.)

The Cardroom Defendants now demur to the FACs. The Cardroom Defendants also moved to strike certain causes of action and allegations, and other Defendants separately demurred to the FACs. Given the Court's conclusions that SB 549 is preempted by IGRA and severance cannot resolve IGRA preemption, the Court does not reach the Cardroom Defendants' motion to strike or the other pending demurrers.

MEET AND CONFER

Moving counsel establishes that the Parties met and conferred regarding the alleged pleading deficiencies as required by Code of Civil Procedure ("CCP") section 430.41(a) and could not resolve the issues raised in the Cardroom Defendants' demurrer. (Schwab Decl., ¶ 3.)

REQUEST FOR JUDICIAL NOTICE

The Cardroom Defendants request the Court take judicial notice of the following documents attached to the declaration of Oliver L. Brown as numbered exhibits:

- Exhibit 1: Aug. 4, 2016 Tribal-State Compact Between the State of California and the Agua Caliente Band of Cahuilla Indians.
- Exhibit 2: June 22, 2016 Tribal-State Compact Between the State of California and the Barona Band of Mission Indians.
- Exhibit 3: Aug. 4, 2016 Tribal-State Compact Between the State of California and the Pechanga Band of Luiseño Indians.
- Exhibit 4: Sept. 2, 2015 Tribal-State Compact Between the State of California and the Sycuan Band of the Kumeyaay Nation.
- Exhibit 5: June 28, 2016 Tribal-State Compact Between the State of California and the Viejas Band of Kumeyaay Indians.
- Exhibit 6: Aug. 4, 2016 Tribal-State Compact Between the State of California and the Yocha Dehe Wintun Nation.
- Exhibit 7: Aug. 15, 2016 Tribal-State Compact between the State of California and the San Manuel Band of Mission Indians.
- Exhibit 8: Aug. 8, 2017 Amendment to the Tribal-State Compact between the State of California and the San Manuel Band of Mission Indians.
- Exhibit 9: Jan. 8, 2025 Amended and Restated Secretarial Procedures for the Rincon Band of Luiseno Indians.
- Exhibit 10: Aug. 26, 2015 Tribal-State Compact between the State of California and the Santa Ynez Band of Mission Indians.
- Exhibit 11: Aug. 1, 2018 First Amendment to the Tribal-State Gaming Compact between the State of California and the Santa Ynez Band of Mission Indians.
- Exhibit 12: June 21, 2004 Amendment to Tribal-State Compact Between the State of California and the Viejas Band of Kumeyaay Indians.
- Exhibit 13: Sept. 10, 1999 Compact Between the State of California and the Viejas Band of Kumeyaay Indians.
- Exhibit 14: June 21, 2004 Amendment to the Tribal-State Compact Between the State of California and the Rumsey Band of Wintun Indians.
- Exhibit 15: Sept. 10, 1999 Compact Between the State of California and the Rumsey Indian Rancheria.

- Exhibit 16: Excerpts of Record of Negotiations, *Chicken Ranch Rancheria of Me-Wuk Indians v. Newsom*, No. 1:19-CV-00024 (E.D. Cal. Nov. 4, 2019), Dkt No. 34.
- Exhibit 17: Senate Indian Affairs Committee, Report on Senate Bill No. 555 (1988 2d Sess.) Aug. 3, 1988.
- Exhibit 18: Assembly Committee on Judiciary, Analysis of Senate Bill No. 549 (2023-2024 Reg. Sess.) as amended June 19, 2023.

(Cardroom Defendants' RJN.) The Cardroom Defendants assert that these materials are judicially noticeable under Evidence Code section 452, subdivisions (a), (c), and (d). (*Id.*, pp. 6:7-9:14.)

Plaintiffs request the Court take judicial notice[3] of the following exhibits, which are attached to the accompanying declaration of Julia L. Allen:

- Exhibit 1: a copy of Senate Bill No. 549 ("SB 549"), as approved by the Governor and filed with the Secretary of State on September 28, 2024, as provided on the California Legislative Information website, available for download here: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB549.
- Exhibit 2: copies of the draft versions of SB 549 as provided to Ms. Allen, at her law firm's request, by Legislative Intent Services, Inc.
- Exhibit 3: a copy of the activity history of SB 549 as provided on the California Legislative Information website, available here: https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202320240SB549 (accessed on June 5, 2025).
- Exhibit 4: a copy of the voting history for SB 549 as provided on the California Legislative Information website, available here: https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=202320240SB549 (accessed on June 5, 2025).
- Exhibit 5: a copy of a press release, titled "Governor Newsom issues legislative updated 9.28.24," provided on California Governor Gavin Newsom's official government website, available here: https://www.gov.ca.gov/2024/09/28/governor-newsom-issues-legislative-update-9-28-24/
- Exhibit 6: a copy of the analysis of SB 549, as amended on June 19, 2023, by the Assembly Committee on the Judiciary as provided on the California Legislative Information website, available for download here: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB549 (accessed on June 5, 2025).
- Exhibit 7: a copy of the analysis of SB 549, as amended on June 12, 2024, by the

Assembly Committee on Government Organization provided on the California Legislative Information website, available for download here: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB549 (accessed on June 5, 2025).

- Exhibit 8: a copy of the analysis of SB 549, as amended on June 12, 2024, by the Assembly Committee on Appropriations provided on the California Legislative Information website, available for download here: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB549 (accessed on June 5, 2025).
- Exhibit 9: a copy of the analysis of SB 549, as amended on August 19, 2024, for the Senate Third Reading provided on the California Legislative Information website, available for download here: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB549 (accessed on June 5, 2025).
- Exhibit 10: a copy of the "Unfinished Business" analysis of SB 549, as amended on August 19, 2024, by the Office of Senate Floor Analyses provided on the California Legislative Information website, available for download here: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB549 (accessed on June 5, 2025).
- Exhibit 11: excerpts of the "Official Voter Information Guide," dated November 2, 2004, as provided to Ms. Allen, at her firm's request, by Legislative Intent Services, Inc. The excerpts include the pages of the "Official Voter Information Guide" that relate to Proposition 64, including the voter proposition itself.

(Plaintiffs' RJN.) Plaintiff argues that these materials are judicially noticeable under Evidence Code section 452, subdivisions (a) and (c). (*Id.*, pp. 5:16-7:10.)

The Parties' initial requests are UNOPPOSED and GRANTED.

In support of their supplemental briefing, the Cardroom Defendants also ask the Court to take judicial notice of the following exhibits:

- Exhibit 1: Testimony and argument from the July 2, 2024 California Assembly Standing Committee on Governmental Organization hearing concerning SB 549.
- Exhibit 2: Exhibit G to the Complaint in *Yocha Dehe Wintun Nation v. Newsom* (E.D. Cal., Jan. 3, 2019, No. 2:19-CV-00025-JAM-AC), Docket No. 1.
- Exhibit 3: Exhibit H to the Complaint in *Yocha Dehe Wintun Nation v. Newsom* (E.D. Cal., Jan. 3, 2019, No. 2:19-CV-00025-JAM-AC), Docket No. 1.
- Exhibit 4: August 31, 2024 press release by the California Nations Indian Gaming

Association regarding the legislative passage of SB 549.

- Exhibit 5: September 28, 2024 press release by the California Nations Indian Gaming Association regarding the enactment of SB 549.

(Cardroom Defendants' RJN ISO Supp. Brief.) Plaintiffs oppose this request, arguing that the materials are irrelevant to the Court's consideration of the severability question and because the Cardroom Defendants rely on the truth of the matters asserted in the exhibits. (Plaintiffs' Opp., p. 3:20-22.) The Cardroom Defendants' supplemental request for judicial notice is DENIED. The Legislature's intent is well-established in statutory text and the legislative history judicially noticed above. These additional materials are unnecessary for the Court's analysis.

LEGAL STANDARD

A defendant may demur to a complaint where the complaint or any cause of action therein "does not state facts sufficient to constitute a cause of action" under any possible legal theory. (CCP, § 430.10(e); see *Gutkin v. University of Southern California* (2002) 101 Cal.App.4th 967, 976.) A demurrer may only challenge defects on the face of the complaint or from matters that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) Moreover, a general demurrer does not lie to only part of a cause of action. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682.) "Plaintiff need only plead facts showing that he may be entitled to some relief…, we are not concerned with plaintiff's possible inability or difficulty in proving the allegations of the complaint." (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 696-697.) "[Courts] are required to construe the complaint liberally to determine whether a cause of action has been stated, given the assumed truth of the facts pleaded." (*Picton v. Anderson Union High School Dist.* (1996) 50 Cal.App.4th 726, 733 [citation omitted].) A demurrer admits the truth of all material facts properly pled, and the sole issue raised by a general demurrer is whether the facts pled state a valid cause of action – not whether they are true. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) That said, while the Court will "accept as true the properly pleaded allegations of fact in the complaint," it will not consider "the contentions, deductions or conclusions of fact or law." (*Canton Poultry & Deli, Inc. v. Stockwell, Harris, Widom & Woolverton* (2003) 109 Cal.App.4th 1219, 1225.)

ANALYSIS

By passing SB 549, the Legislature aimed to resolve a decades-long dispute over whether certain games operated by licensed California cardrooms are illegal banking games that violate tribal gaming rights under the California Constitution. The law empowers specific Tribes, including Plaintiffs, to sue cardrooms and TPPPPS for a binding court decision addressing this issue.

The Cardroom Defendants maintain that SB 549 is preempted by IGRA, which they contend

governs "all facets of tribal-state gaming relations." (Demurrer, p. 16:21.) Plaintiffs disagree, asserting that SB 549 pertains only to games operated by non-tribal entities (cardrooms and TPPPPS) on non-tribal lands, placing it outside IGRA's scope. (Opp., pp. 9:19-10:2.)

The Cardroom Defendants challenge this narrow interpretation, emphasizing that the tribal gaming rights central to this dispute are the product of the tribal-state contracting process established by IGRA. They argue that while Plaintiffs claim SB 549 merely facilitates state regulation of California cardrooms, they overlook key features of the law: it grants a cause of action exclusively to gaming Tribes, allows those Tribes to vindicate tribal gaming rights, and mirrors remedial provisions previously found in tribal-state compacts. (Reply, p. 7:4-9.) They maintain that the IGRA compacting process is the exclusive means for defining tribal gaming rights, including the right to enjoin non-tribal entities from operating banking games that are legally reserved to Tribes. (*Id.*, at pp. 8:16-13:14.)

Plaintiffs' interpretation of SB 549 is compelling at first blush. However, it requires divorcing SB 549 from its own language and legislative history, the history of this longstanding dispute, the gravamen of Plaintiffs' complaints, and Congress's intent behind IGRA. Notwithstanding the Legislature's attempt to resolve this issue, this Court is bound by federal preemption and lacks jurisdiction to resolve this dispute. Moreover, having considered the Parties' supplemental briefing, the Court is persuaded that severance cannot resolve IGRA preemption or be harmonized with the Legislature's intent.

History of SB 549

The Court begins with a history of the dispute that culminated in passing SB 549, as it provides critical context and informs its decision regarding preemption.

Banked Games

Since the 1800s, the Penal Code has prohibited "any banking ... game." (Pen. Code, § 330.) State law has permitted California cardrooms to offer "nonprohibited card games" for over a century. (*Hotel Employees and Restaurant Employees Internat. Union v. Davis* (1999) 21 Cal.4th 585, 593 (*HERE*); Bus. & Prof. Code, § 19801(b).) The California Supreme Court defines a "banking" or "banked" game as one "in which there is a person or entity that participates in the action as the one against the many, taking on all comers, paying all winners, and collecting from all losers, doing so through a fund generally called the bank." (*HERE*, *supra*, 21 Cal.4th at p. 592 [internal quotations and citations omitted].)

In 1983, the Legislature enacted the Gaming Registration Act to establish "uniform minimum regulation of the operation of [gaming] establishments" by requiring all cardrooms to obtain a state operating license. (Bus. & Prof. Code, § 19800; see *Fendrich v. Van De Kamp* (1986) 182

Cal.App.3d 246, 253-257.) Shortly thereafter, the Constitution was amended to provide that "[t]he Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey." (Cal. Const., art. IV, § 19(e); see *HERE*, *supra*, 21 Cal.4th at p. 594.) As the *Agua Caliente* Plaintiffs explain, "[i]n Nevada and New Jersey casinos, banked table games such as blackjack, baccarat, and pai gow are common, with players either winning money from or losing money to the 'house,' which operates the bank." (*Agua Caliente* FAC, ¶ 123.) By directing the Legislature to prohibit "'the type' of casino 'operating in Nevada and New Jersey,'" the amendment "presumably refers to a gambling facility that did not legally operate in California" at that time – that is, "something other" than cardrooms, "[t]he type of casino then operating in California." (*HERE*, *supra*, 21 Cal.4th at p. 605.) The Gambling Control Act replaced the Gaming Registration Act in 1998, and provides for "comprehensive regulation of all persons, locations, practices, associations, and activities related to the operation of lawful gambling establishments." (Bus. & Prof. Code, § 19801(h).)

Tribal Gaming

As Plaintiffs acknowledge, the "history of tribal gaming in California is inextricably intertwined with the history of tribal sovereignty and self-reliance." (*Agua Caliente* FAC, ¶ 127.) "Gaming is a significant enterprise for Indian tribes – it 'cannot be understood as … wholly separate from the Tribes' core governmental functions.' [Citation.] Gambling operations serve as a means for tribes 'to assert their sovereign status and achieve economic independence.' [Citation.]" (*United Auburn Indian Community of Auburn Rancheria v. Newsom* (2020) 10 Cal.5th 538, 545 (*United Auburn*).) "Yet from the start, federal and state governments sought to curtail gaming on Indian land." (*Ibid.*) "Because of Congress's plenary power over Indian affairs, states initially lacked the authority to regulate tribal gaming. But in 1953, Congress enacted Public Law 280, which empowered six states – including California – to exercise criminal jurisdiction over Indian land." (*Ibid*.) However, in *California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202 (*Cabazon*), the U.S. Supreme Court held that, under that statute, California could not "restrict or otherwise regulate Indian gaming operations unless [California] prohibited all gaming" throughout the State. (*Id.*, at p. 546 [discussing *Cabazon*].) "Although Congress had allowed states to enforce prohibitions on gambling against Indian tribes, it [had not] bestowed states with 'civil regulatory power over Indian reservations.'" (*Id*., at pp. 545-546, citing *Cabazon*, *supra*, 480 U.S. at pp. 208, 210.)

IGRA and Tribal-State Compacts

Congress responded by enacting IGRA to resolve "centuries of conflict over gaming between tribes, states, and the federal government." (*United Auburn*, *supra*, 10 Cal.5th at p. 546.) IGRA describes its purpose as follows: "(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; (2) to provide a statutory basis for the regulation of gaming by an Indian

tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and (3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue." (25 U.S.C. § 2702.)

IGRA divides gaming into three categories: class I, class II, and class III. (See 25 U.S.C. § 2703 (6)-(8).) Tribes may offer "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations" (class I gaming) without restriction, and they may offer bingo and non-banking card games (class II gaming) subject to the provisions of IGRA. (See *id.* §§ 2703(6)-(7), 2710(a)-(b).) Class III gaming includes all forms of gaming that are not in class I or class II. (*Id.* § 2703(8).) No Tribe may offer class III gaming unless, among other things, those games are "conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State." (*Id.* §§ 2703(6)-(8), 2710(d)(1)(C).)

The tribal-state compact enables "the tribe and the state [to] agree on issues surrounding tribal gaming operations" (*United Auburn*, *supra*, 10 Cal.5th at p. 546), and to "negotiate…regarding aspects of tribal gaming that might affect legitimate State interests" (*In re Indian Gaming Related Cases* (9th Cir. 2003) 331 F.3d 1094, 1097). To that end, IGRA provides an exhaustive list of the permissible subjects of compact negotiations: "(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity; (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations; (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity; (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities; (v) remedies for breach of contract; (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and (vii) any other subjects that are directly related to the operation of gaming activities." (25 U.S.C. § 2710(d)(3)(C); see also *Chicken Ranch Rancheria of Me-Wuk Indians v. Cal.* (9th Cir. 2022) 42 F.4th 1024, 1034 (*Chicken Ranch*) [holding this list is "exhaustive"].)

A tribal-state compact becomes effective only when approved by the Secretary of the Interior after publication in the Federal Register, and only if it is validly entered into under state law. (*HERE*, *supra*, 21 Cal.4th at pp. 596, 611-612; see 25 U.S.C. § 2710(d)(3)(B).) There is only one exception to this negotiate-and-ratify procedure: If a federal court finds that a State failed to negotiate in good faith with a Tribe seeking a compact, the Secretary of the Interior may establish federal procedures for the Tribe to conduct class III gaming on tribal lands. (See 25

U.S.C. § 2710(d)(3)(A), (7)(A), (7)(B)(vii).) Absent a valid tribal-state compact or secretarial procedures, all state laws regarding the licensing, regulation, or prohibition of gambling – including applicable criminal sanctions – apply in Indian country as a matter of federal law. (18 U.S.C. §§ 1166(a), (c).)

The IGRA compacting process was designed, in part, to enable separate sovereigns – tribes and states – to address their competing economic interests through a process of mutual negotiation overseen by the Secretary of the Interior. While Congress prohibited states from using the compacting process to protect non-tribal gaming or exclude tribes from the market, it also recognized that states have legitimate economic interests in compact negotiations. (*In re Indian Gaming Related Cases, supra*, 331 F.3d at p. 1115.)

Through compact negotiations, the State may seek revenue sharing or other terms that address its financial and regulatory interests in exchange for offering the Tribe expanded gaming rights and economic opportunity. IGRA does not authorize general taxation of tribes, but it permits compact provisions that address "the allocation of criminal and civil jurisdiction" to enforce laws and regulations related to tribal gaming and the "assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity." (25 U.S.C. § 2710(d)(3)(C), (D).) Beyond regulatory costs, revenue sharing is permissible only if the State provides the Tribe with a meaningful concession (such as exclusivity or market access) that is more than what the Tribe already possesses under IGRA. (25 C.F.R. § 293.27.) The Secretary of the Interior is tasked with reviewing revenue-sharing provisions to determine whether they are lawful under IGRA. (*Ibid.*) Such provisions are considered with elevated scrutiny, beginning with the presumption that any payment – beyond a regulatory fee – is prohibited unless justified by meaningful concessions. (*Id.*, § 293.27(b).) A "meaningful concession" is (1) something of value to the Tribe; (2) directly related to gaming activity; (3) something that carries out the purposes of IGRA; and (4) not a subject over which a State is otherwise obligated to negotiate under IGRA. (*Id.*, § 293.2(h).) Market exclusivity is a meaningful concession offered by the State in exchange for revenue sharing. (See *In re Indian Gaming Related Cases*, *supra*, 331 F.3d 1094 at p. 1112 [finding that offering exclusivity in the form of a constitutional amendment "to grant a monopoly to tribal gaming establishments or to offer tribes the right to operate Las Vegas-style slot machines and house-banked blackjack" were real concessions offered in IGRA compact negotiations].) This is reflected in the Plaintiffs' compacts, as summarized below.

Plaintiffs' Compacts

In 1998, California voters passed Proposition 5 ("Prop 5"), which authorized the State and California Indian tribes to enter into a model tribal-state gaming compact that permitted the Tribes to engage in class III gaming activities. (*Agua Caliente* FAC, ¶ 129; *HERE*, *supra*, 21 Cal.4th at pp. 598-601.) Prop 5 was quickly challenged, and the California Supreme Court concluded that the casino gaming it authorized was prohibited by article IV, section 19,

subdivision (e) of the California Constitution. (*Id.*, at p. 589.)

In 2000, California voters approved Proposition 1A ("Prop 1A"), which amended the California Constitution to authorize the "Governor…to negotiate and conclude compacts, subject to ratification by the Legislature," for the conduct of "banking…card games by federally recognized Indian tribes on Indian lands…in accordance with federal law." (Cal. Const., art. IV, § 19, subd. (f).) Thus, despite California's prohibition on house-banked games, our Constitution "permit[s]" banking games "to be conducted and operated on tribal lands" if "subject to [tribal-state] compacts." (*Ibid*.) Shortly after Prop 1A passed, California finalized – and the Secretary of the Interior approved – tribal-state compacts with approximately 60 Tribes, including Plaintiffs. (See *In re Indian Gaming Related Cases*, *supra*, 331 F.3d at p. 1107; Cal. Gambling Control Com., Tribal-State Class III Gaming Compacts, Secretarial Procedures for Class III Gaming, Casinos, and Payments[4].) Many of these compacts have since been revised.

Both the original compacts and the more recent revisions recognize the Tribes' exclusive right to offer class III gaming in California. For example, the September 14, 1999 Tribal-State Compact between the State of California and the Agua Caliente Band of Cahuilla Indians provides that the "exclusive rights that Indian tribes in California, including the Tribe, will enjoy under this Compact create a unique opportunity for the Tribe to operate its Gaming Facility in an economic environment free of competition from the Class III gaming referred to in Section 4.0 of this Compact on non-Indian lands in California. The parties are mindful that this unique environment is of great economic value to the Tribe and the fact that income from Gaming Devices represents a substantial portion of the tribes' gaming revenues. In consideration for the exclusive rights enjoyed by the tribes, and in further consideration for the State's willingness to enter into this Compact, the tribes have agreed to provide the State, on a sovereign-to-sovereign basis, a portion of its revenue from Gaming Devices." (Preamble, § E.) The original compact with the Yocha Dehe Winton Nation, which was formerly known as the Rumsey Indian Rancheria, included identical language. (See Cardroom Defendants' RJN, Exh. 15 [Sept. 10, 1999 Compact Between the State of California and the Rumsey Indian Rancheria], preamble, § E.)

The Agua Caliente Band of Cahuilla Indians executed a new compact on August 4, 2016, which provides that "the State and the Tribe recognize that the exclusive rights the Tribe enjoys under this Compact provide a unique opportunity for the Tribe to continue to engage in the Gaming Activities in an economic environment free of competition from the operation of slot machines and banked card games on non-Indian lands in California and that this unique economic environment is of great value to the Tribe" and "in consideration of the exclusive rights enjoyed by the Tribe pursuant to article IV, section 19, subdivision (f) of the California Constitution to engage in the Gaming Activities and to operate Gaming Devices as specified in this Compact for twenty-five years with a substantial reduction in payments, and the other meaningful concessions offered by the State in good faith negotiations, and pursuant to IGRA, the Tribe restates its intent, *inter alia*, to provide to the State, on a sovereign-to-sovereign basis, and to local

jurisdictions, fair cost reimbursement and mitigation measures for the direct impacts of its Gaming Operations from revenues generated from the Gaming Devices operated pursuant to this Compact on a payment schedule." (Cardroom Defendants' RJN, Exh. 1 [Aug. 4, 2016 Tribal-State Compact Between the State of California and the Agua Caliente Band of Cahuilla Indians], p. 3.)

Similarly, the Yocha Dehe Winton Nation executed a new compact on August 4, 2016, which provides that "the State and the Tribe recognize the exclusive rights the Tribe will enjoy under this Compact create a unique opportunity for the Tribe to operate a Gaming Facility in an economic environment free of competition from the operation of slot machines and banked card games on non-Indian lands in California and that this unique economic environment is of great value to the Tribe" and that "in consideration of the exclusive rights enjoyed by the Tribe to engage in the Gaming Activities and to operate the number of Gaming Devices specified herein, and the other meaningful concessions offered by the State in good faith negotiations, and pursuant to the Indian Gaming Regulatory Act, the Tribe reaffirms its commitment to provide to the State, on a sovereign-to-sovereign basis, and to local jurisdictions, fair cost reimbursement and mitigation from revenues from the Gaming Devices operated pursuant to this Compact on a payment schedule." (Cardroom Defendants' RJN, Exh. 6 [Aug. 4, 2016 Tribal-State Compact Between the State of California and the Yocha Dehe Wintun Nation], pp. 2-3.)

In 2019, several Tribes (including some Plaintiffs here) sued the Governor and State of California for "breach of compact," asserting that the State had failed to "enforc[e] the state's ban on 'banking and percentage card games' against cardrooms in California's non-tribal casinos." (*Yocha Dehe Wintun Nation v. Newsom* (E.D. Cal., June 18, 2019, No. 2:19-CV-00025) 2019 WL 2513788, at p. *1.) The district court dismissed the complaint and the Ninth Circuit affirmed, reasoning that the Tribes simply had not bargained in their compacts for a specific-performance remedy to vindicate their asserted rights: "Even assuming [exclusivity is a compact term]," "[n]othing in the compacts purports to impose on the State the obligation to enforce its laws against non-Indian cardrooms, and nothing in the contracts suggests the Tribes may seek that remedy based on an alleged breach of any exclusivity guarantee." (*Yocha Dehe Wintun Nation v. Newsom* (9th Cir. 2020) 830 Fed.Appx. 549, 551 (*Yocha Dehe*).)

Passage of SB 549

Recognizing this "simmering dispute [which] has lingered between California's Native American tribes that operate casinos and the cardroom industry, regarding the legality of various games offered by the cardrooms," the Legislature sought to create "a limited avenue for California tribes to utilize state courts to seek a declaratory judgment regarding the legality of specific games operated by cardrooms." (Plaintiffs' RJN, Exh. 6 [the analysis of SB 549, as amended on June 19, 2023, by the Assembly Committee on the Judiciary], p. 1.) Specifically, the Legislature stated the "purpose and intent" of the legislation was "to authorize a limited

declaratory and injunctive relief action … to determine whether certain controlled games operated by California card clubs are illegal banking card games or legal controlled games, thereby resolving a decade-long dispute between California tribes and California card clubs concerning the legality of those controlled games and whether they infringe upon exclusive tribal gaming rights." (*Id.*, p. 3.)

The Legislature passed SB 549 in September 2024. SB 549 provides that a "California Indian tribe that is party to a current ratified tribal-state gaming compact, or that is party to current secretarial procedures pursuant to Chapter 29 of Title 25 of the United States Code, may bring an action in superior court, filed solely against licensed gambling enterprises and third-party providers of proposition player services seeking a declaration as to whether a controlled game operated by a licensed gambling establishment and banked by a third-party provider of proposition player services constitutes a banking card game that violates state law, including tribal gaming rights under Section 19 of Article IV of the California Constitution, and may also request injunctive relief." (Gov. Code, § 98020(a).) SB 549 further authorizes tribal plaintiffs to request, and the Court to issue, "injunctive relief enjoining further operation of…controlled game[s]." (*Id.*, § 98020(b).)

Federal Preemption

There are four types of preemption: "(1) express preemption, which occurs when Congress defines the extent to which a federal law preempts state law; (2) conflict preemption, which occurs when it is impossible to comply with both state and federal laws; (3) obstacle preemption, which arises when a state law creates an obstacle to the full execution of an objective of federal law; and (4) field preemption, which applies where the scheme of federal regulation is sufficiently comprehensive to make [a] reasonable … inference that Congress left no room for supplementary state regulation." (*Sharp Image Gaming, Inc. v. Shingle Springs Band of Miwok Indians* (2017) 15 Cal.App.5th 391, 420 (*Sharp Image*) [internal quotations and citations omitted].)

The Cardroom Defendants argue that both field preemption and obstacle preemption apply. The Court focuses primarily on field preemption and considers whether Congress intended the claims asserted under SB 549 to fall within IGRA's regulatory scope.

IGRA establishes a "comprehensive scheme for regulating gaming on Indian lands" by requiring all facets of tribal-state gaming relations to be governed by federally approved tribal-state compacts. (*Great W. Casinos, Inc. v. Morongo Band of Mission Indians* (1999) 74 Cal.App.4th 1407, 1425 (*Great W. Casinos*).) In enacting IGRA, Congress "intended to expressly preempt the field in the governance of gaming activities on Indian lands" and "to [provide] a means by which tribal and State governments can realize their unique and individual governmental objectives, while at the same time, work together to develop a regulatory and jurisdictional pattern that will

foster a consistency and uniformity in the manner in which laws regulating the conduct of gaming activities are applied." (Cardroom Defendants' RJN, Exh. 17 [Sen. Indian Affairs Com., Rep. on Sen. Bill No. 555 (1988 2d Sess.) Aug. 3, 1988], p. 6.) "The regulatory scope of IGRA is … far reaching in its supervisory power over Indian gaming contracts." *Sharp Image*, *supra*, 15 Cal.App.5th at p. 420 [citing *Gaming World Internat., Ltd. v. White Earth Chippewa Indians* (8th Cir. 2003) 317 F.3d 840, 848].) Accordingly, courts routinely hold that IGRA "so dominates the field of regulating Indian gaming that it not only completely preempts the field of Indian gaming but is also incorporated into gaming contracts by operation of law." (*Ibid.*; see also *Great W. Casinos*, supra, 74 Cal.App.4th at p. 1428; *Worthington v. City Council of Rohnert Park* (2005) 130 Cal.App.4th 1132, 1145.) The California Supreme Court has also recognized Congress's intent to preempt: "In the structure and scope of IGRA, which comprehensively addresses all forms of gambling on Indian lands, Congress made clear its intent that IGRA preempt the field of regulation of Indian gambling." (*HERE*, *supra*, 21 Cal.4th at p. 618.)

Plaintiffs maintain "[e]verything – literally everything – in IGRA affords tools (for either state or federal officials) to regulate gaming on Indian lands, *and nowhere else*," and "the claims authorized by SB 549 fall squarely in the realm of nowhere else and thus are not preempted." (Plaintiffs' Supp. Brief, p. 3:3-7, citing *Michigan v. Bay Mills Indian Cmty.* (2014) 572 U.S. 782, 795 (*Bay Mills*) [internal quotations omitted, emphasis added].) As discussed below, Plaintiffs' interpretation of IGRA preemption and *Bay Mills* is too narrow. No one here is arguing that SB 549 interferes with gaming on tribal lands or tribal governance over that activity; however, it does interfere with the ***compacting process*** set forth by Congress. As such, the Court is persuaded that SB 549 and the cause of action it grants the Tribes fall squarely within IGRA's preemptive scope.

First, the Court considers the express language of SB 549. Plaintiffs' standing depends explicitly on IGRA and its comprehensive regulation of Indian gaming: SB 549 creates a cause of action only for a "California Indian tribe that is party to a current ratified tribal-state gaming compact, or that is party to current secretarial procedures pursuant to Chapter 29 of Title 25 of the United States Code [IGRA]." (See Gov. Code, § 98020(a).) Moreover, SB 549 allows the Tribes to seek a declaration as to whether a particular game "constitutes a banking card game that violates state law, ***including tribal gaming rights*** under Section 19 of Article IV of the California Constitution…" (*Ibid.* [emphasis added].) Section 19 authorizes the Governor to "to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of … banking and percentage card games by federally recognized Indian tribes on Indian lands in California ***in accordance with federal law***." (Cal. Const., art. IV, § 19(f) [emphasis added].) It further provides that such games are "permitted to be conducted and operated on tribal lands subject to those compacts," even though the Constitution otherwise prohibits them. (*Id.*, §§ 19(e), 19(f).) Thus, SB 549 hinges on the rights afforded to Plaintiffs through IGRA's tribal-state compacting process.

Plaintiffs have argued that California Tribes "lacked the same rights as cardrooms and persons to obtain a determination from a court regarding whether a specific game operated by a licensed gambling establishment and banked by a [TPPPPS] was an illegal banked game" but that "SB 549 addresses that inequality by finally giving California Indian Tribes access to justice too." (Opp., p. 8:11-15.) However, California Tribes are not like persons or businesses in California - they are separate sovereigns with a unique legal status. IGRA exists, in part, because of the Tribe's unique sovereign status and provides the process for negotiating and enforcing their gaming-related rights.

Next, the Court considers the tribal-state compacting process established by IGRA. IGRA is so comprehensive that it "leaves the states without a significant role unless one is negotiated through a tribal-state compact." (*American Vantage Companies v. Table Mountain Rancheria* (2002) 103 Cal.App.4th 590, 595.) As noted above, IGRA provides an exhaustive list of permissible subjects for compact negotiations. (25 U.S.C. § 2710(d)(3)(C).) These subjects are "directly related to the operation of gaming activities," and do not include matters that are "attenuated[,] … tangential, incidental, or collateral." (*Chicken Ranch*, *supra*, 42 F.4th at pp. 1034-1035; see also *In re Indian Gaming Related Cases, supra,* 331 F.3d 1094 at p. 1111 [compact topics must have a "direct relationship to the operation of gaming activities."].) This ensures that compacts align with IGRA's purposes: promoting tribal economic development and self-sufficiency, ensuring that Tribes are the primary beneficiaries of gaming, and protecting gaming as a source of tribal revenue. (*Rincon Band of Luiseno Mission Indians of Rincon Reservation v. Schwarzenegger* (9th Cir. 2010) 602 F.3d 1019, 1028-1029 (*Rincon*).)

Among the subjects expressly permitted in compact negotiations is the inclusion of "remedies for breach of contract." (25 U.S.C. § 2710(d)(3)(C)(v); see also *Chicken Ranch*, *supra*, 42 F.4th at p. 1034; *Bay Mills*, *supra*, 572 U.S. at p. 785 [a "compact typically … provides remedies for breach of the agreement's terms."]; *Pasqual Band of Mission Indians v. California* (2015) 241 Cal.App.4th 746, 759-760 [IGRA "expressly identifies 'remedies for breach of contract'" as a valid subject for negotiation, and the compact at issue included detailed dispute resolution procedures].) A claim for breach of contract is, in essence, a claim to enforce the contract and the obligations it imposes. It is inseparable from the contract's terms – there can be no breach without a duty, and no duty without the contract itself. It makes sense, then, that IGRA expressly authorizes compact negotiations to include remedies for breach: such remedies are not only tethered to the compact, but exist solely to ensure its enforceability. Congress included the "breach of contract" provision to allow both tribes and states to waive their sovereign immunity and consent to federal jurisdiction to enforce compact terms. (*Cabazon Band of Mission Indians v. Wilson* (9th Cir. 1997) 124 F.3d 1050, 1056 (*Wilson*).)

Given this legal context, the United States Supreme Court has recognized that a tribal-state compact may, if the parties so negotiate, create a cause of action to enforce the compact's terms. In *Bay Mills*, the Court noted that "if a State really wants to sue a tribe for gaming outside Indian

lands, the State need only bargain for a waiver of immunity" because, under IGRA, such a waiver – and related remedies for breach of contract – are permissible components of a contract. (*Bay Mills*, *supra*, 572 U.S. at pp. 796-797.) Similarly, in *Yocha Dehe*, the Ninth Circuit implicitly recognized that a compact could include such enforcement mechanisms. The court emphasized that a compact must be "construed and applied in accordance with its terms" and found no provision in the compacts requiring the State to enforce its laws against non-Indian cardrooms or granting Tribes a right to such enforcement as a remedy for breach of exclusivity. (*Yocha Dehe*, *supra*, 830 Fed.Appx. at pp. 550-551.) Federal contract law governs these compacts because they are authorized under IGRA. (*Cachil Dehe Band of Wintun Indians v. California* (9th Cir. 2010) 618 F.3d 1066, 1073.)

As the Cardroom Defendants rightly note, Plaintiffs' compacts provide for specific remedies that the Tribes may pursue "in the event the exclusive right of Indian tribes to operate Gaming Devices … is abrogated," but they do not enumerate any specific remedies available if non-tribal entities begin offering banking games. For example, the 2016 Agua Caliente Compact provides that "[a]lthough the parties recognize that Indian tribes in California have the exclusive right to operate Gaming Devices and banking or percentage card games, the parties have agreed that in the event ***the exclusive right of Indian tribes to operate Gaming Devices in California*** is abrogated by the enactment, amendment, or repeal of a state statute or constitutional provision, or the conclusive and dispositive judicial construction of a statute or the state Constitution by a California appellate court after the effective date of this Compact that Gaming Devices may lawfully be operated by another person, organization, or entity (other than an Indian tribe) within California, the Tribe shall have the right to exercise one (1) of the following options: [¶] (a) Terminate this Compact, in which case the Tribe will lose the right to operate Gaming Devices and other Class III Gaming authorized by this Compact; or [¶] (b) Continue under this Compact with an entitlement to end payments to the State other than to provide for: (i) compensation to the State for the costs of regulation, as set forth in section 4.3; (ii) reasonable payments to local governments impacted by tribal government gaming, the amount to be determined based upon any intergovernmental agreement entered into pursuant to section 11.7; (iii) grants for programs designed to address and treat gambling addiction; and (iv) such assessments as may be permissible at such time under federal law." (Aug. 4, 2016 Tribal-State Compact Between the State of California and the Agua Caliente Band of Cahuilla Indians, § 4.8 [emphasis added].) Despite explicitly recognizing the "exclusive right to operate … banking or percentage card games," this remedy is explicitly limited to "Gaming Devices," which are defined as slot machines.[5]

In other compacts, Tribes secured the right to enjoin gaming by non-tribal entities. For example, the 2004 Amendment to Tribal-State Compact between the State of California and the Viejas Band of Kumeyaay Indians specifically provided that "[i]n the event that the State authorizes any person or entity other than an Indian tribe with a federally authorized compact to engage in Gaming Activities in violation of subdivision (a), ***the Tribe shall have the right to enjoin such***

gaming or the authorization of said gaming as a substantial impairment of the right specified in subdivision (a), which is necessary to assure the marketability of the bonds referenced in Section 4.3.3, subdivision (a), to protect the bondholders of said bonds, and to afford the Tribe the stability in its Gaming Operation bargained for in return for the issuance of the bonds; provided, however, that no remedy other than an injunction is available against the State or any of its political subdivisions for a violation of subdivision (a), and the parties agree that such substantial impairment of the right specified in subdivision (a) will cause irreparable harm that cannot be adequately remedied by damages." (Cardroom Defendants' RJN, Exh. 12 [June 21, 2004 Amendment to Tribal-State Compact Between the State of California and the Viejas Band of Kumeyaay Indians] § 3.2(c) [emphasis added].) The Yocha Dehe Winton Nation's 2004 Amendment included the same injunction remedy. (*Id.*, Exh. 14 [June 21, 2004 Amendment to the Tribal-State Compact Between the State of California and the Rumsey Band of Wintun Indians] § 3.2(c).)

Notably, other Tribes sought to address this longstanding dispute during compact negotiations, but the Governor rejected their proposed remedies. During the negotiations between the State and the Chicken Ranch Rancheria of Me-Wuk Indians, Blue Lake Rancheria, Chemehuevi Indian Tribe, Hopland Band of Pomo Indians, and Robinson Rancheria, the Tribes attempted to expand upon the exclusivity language included in the 2015-2016 compacts and proposed the following language:

> The parties recognize that under Article IV, § 19(f) of the California Constitution, Indian tribes in California have the exclusive statewide right to operate Gaming Devices and banking or percentage card games. Accordingly, the parties have agreed that in the event the exclusive statewide right of Indian tribes to operate Gaming Devices or banking or percentage card games in California is abrogated by the enactment, amendment, or repeal of a state statute or constitutional provision, the conclusive and dispositive judicial construction of a statute or the state Constitution by a California appellate court after the effective date of this Compact that Gaming Devices or banking or percentage card games may lawfully be operated by another person, organization, or entity (other than an Indian tribe pursuant to a Class III Gaming compact) within California, ***or if, after being notified that any person or entity other than an Indian Tribe lawfully operating such Gaming Activities or banking or percentage card games is operating Gaming Devices or banking or percentage card games, the State fails promptly to cause such person or entity to cease operating Gaming Devices or banking or percentage card games***, the Tribe shall have the right to

exercise one (1) of the following options …

(Cardroom Defendants' RJN, Exh. 16 [Excerpts of Record of Negotiations, *Chicken Ranch Rancheria of Me-Wuk Indians v. Newsom*, No. 1:19-CV-00024 (E.D. Cal. Nov. 4, 2019), Dkt No. 34], § 4.7(a) [internal pages 1669-1670] [emphasis added].) The options included terminating the compact or continuing the compact with the entitlement to be relieved of payment and other obligations under the compact. (*Ibid.*) The draft compact also provided that "[n]othing in this section precludes the Tribe from invoking the dispute resolution provisions of § 13.0 to address the issue of whether any person or entity (other than an Indian tribe with an approved Class III Gaming compact) is engaging in the Gaming Activities specified in subdivisions (a) or (b) of § 3.1 of this Compact." (*Id.*, § 4.7(c).) Finally, the draft compact contemplated monetary penalties with the State agreeing to share a portion of its revenues from non-tribal operation of class III gaming if exclusivity was lost. (*Id.*, § 4.7(d).)

The State rejected the language highlighted in bold italics above, as well as the Tribes' ability to invoke the compact's dispute resolution provisions, instead providing that "[n]othing in this section precludes the Tribe from ***discussing with the State*** the issue of whether any person or entity (other than an Indian tribe pursuant to a Class III Gaming compact or Secretarial procedures prescribed by the Secretary of the Department of the Interior pursuant to 25 U.S.C. § 2710(d)(7)(B)(vii)) is engaging in the Gaming Activities specified in subdivision (a) or (b) of section 3.1 of this Compact." (Cardroom Defendants' RJN, Exh. 16 [Excerpts of Record of Negotiations, *Chicken Ranch Rancheria of Me-Wuk Indians v. Newsom*, No. 1:19-CV-00024 (E.D. Cal. Nov. 4, 2019), Dkt No. 34], § 4.7 [internal pages 1777-1778] [emphasis added].)

As the Cardroom Defendants point out, SB 549 provides Tribes with a breach of contract remedy that could have been negotiated in the tribal-state compacting process, but was not. Plaintiffs largely ignore the compacting process and the specific remedies that have previously been negotiated, regardless of whether they were ultimately included in a compact. Instead, Plaintiffs argue that, although the Cardroom Defendants "strain to refashion Plaintiffs' claims into ones for breach of a tribal-state compact, SB 549 does not permit (and Plaintiffs do not allege) such a claim." (Opp., p. 16:25-27.)

The Court disagrees. Plaintiffs construe SB 549 too narrowly by asserting it "only addresses non-Indian gaming on non-Indian lands" and that "IGRA and SB 549 do not overlap in the same fields." (See Opp., pp. 16:24-25, 18:4-5.) The exclusive rights Plaintiffs seek to enforce exist solely because of IGRA and the tribal-state compacting process. Determining whether a particular game violates "tribal gaming rights" under the California Constitution (Gov. Code, § 98020(a)) requires examining the Constitution itself, which grants only federally recognized Tribes the right to operate banked games – subject to tribal-state compacts negotiated "in accordance with federal law." (Cal. Const., art. IV, § 19(f).) Therefore, any such analysis necessarily implicates the compacts established under IGRA.

Moreover, if SB 549 were only intended to address non-Indian gaming on non-Indian lands, it would be redundant. The State already regulates such gaming through the Gambling Control Act, which establishes a comprehensive system for overseeing lawful gambling. (Bus. & Prof. Code, § 19801.) The California Gambling Control Commission handles licensing and permitting (*id*., §§ 19823(a), 19824), and the Bureau of Gambling Control reviews proposed game rules for legal compliance before they can be played in cardrooms (*id*., § 19826(g)). Thus, the only plausible purpose of SB 549 is to give Tribes a remedy to enforce their asserted exclusivity rights against the Cardroom Defendants – rights that they assert arise directly from the compacts. (Opp., pp. 11-13 [summarizing California's legal and regulatory framework and noting that SB 549 "provided California Indian Tribes with equal access to the courts to resolve the long-running dispute over the legality of certain of the cardrooms' games."]; see also, e.g., *Agua Caliente* FAC, ¶ 1 ["Under tribal-state compacts, California Indian tribes have bargained with the State (and pay) for a gaming system that facilitates their exclusive right to offer such banked games [such as blackjack, baccarat, and pai gow] within California."]; *id*., ¶¶ 2, 127-136, 144-162; *Rincon* FAC, ¶¶ 122-128, 135-145 [alleging that the challenged games are illegal and deprive Plaintiffs of "the benefit of the bargain" under their compacts].)[6] As discussed in more detail below in the Court's severance analysis, the Court is persuaded that this is true even if Plaintiffs only brought claims concerning the California Penal Code.

When analyzing whether a state law is preempted, courts look to the practical effect of the law, not simply its wording. (*Ariz. Dream Act Coalition v. Brewer* (9th Cir. 2014) 757 F.3d 1053, 1057, 1062-1063 [holding Arizona's policy of denying driver's licenses to DACA recipients is preempted because it effectively prevented DACA recipients from working, despite the federal government's determination that they are authorized to work].) Functionally, SB 549 provides Plaintiffs a breach of contract remedy to enforce their claimed exclusivity. And, because IGRA expressly allows negotiation of "remedies for breach of contract" and defines these remedies as "directly related to the operation of gaming," such remedies – like those provided in SB 549 – fall squarely within the field of Indian gaming regulation and are therefore subject to IGRA's federal preemption framework. (*Chicken Ranch*, *supra*, 42 F.4th at pp. 1034-1035 [analyzing the catch-all provision at 25 U.S.C. § 2710(d)(3)(C)(vii) and concluding that, unlike remedies for breach of contract and the other enumerated subjects for negotiation, provisions related to family law, environmental law, and tort law were not "directly related to the operation of gaming activities"]; *Sharp Image*, *supra*, 15 Cal.App.5th at pp. 420-422 [concluding that IGRA deprived the court of jurisdiction over a breach of contract action because the contracts at issue were, in substance, management and collateral contracts governed by IGRA; "The regulatory scope of IGRA is … far reaching in its supervisory power over Indian gaming contracts. […] In the structure and scope of IGRA, which comprehensively addresses all forms of gambling on Indian lands, Congress made clear its intent that IGRA preempt the field of regulation of Indian gambling."]; see also *Wilson*, *supra,* 124 F.3d at p. 1056 [holding Bands' claim to enforce tribal-state compacts arises under federal law: the "State's obligation to the Bands…originates in the

Compacts[; t]he Compacts quite clearly are a creation of federal law; [and] IGRA prescribes the permissible scope of the Compacts."].)

For these reasons, this action is clearly distinguishable from the examples cited by Plaintiffs, where courts concluded that preemption did not apply. For example, *County of Madera v. Picayune Rancheria of Chukchansi Indians* (C.D. Cal. 2006) 467 F.Supp.2d 993, concerned a nuisance claim arising from the Tribe's failure to obtain certain permits in connection with the construction of a hotel and spa. (*Id.*, at p. 1002.) The Tribe attempted to remove the case to federal court based on IGRA preemption. However, aside from noting that the hotel and spa would sit somewhere on the same plot of land as the casino, the Tribe could not explain how the construction of the hotel and spa was related to gaming operations in any way. (*Ibid.*) Accordingly, the Court held that the Tribe did not meet its heavy burden on removal to establish that IGRA completely preempted the nuisance abatement claim. (*Id.*, at p. 1003.)

Barona Band of Mission Indians v. Yee (9th Cir. 2008) 528 F.3d 1184, considered whether a non-Indian contractor who purchases construction materials from non-Indian vendors, which are later delivered to a construction site on Indian land, is exempt from state sales taxes. (*Id.*, at p. 1186.) The Ninth Circuit explained that, "[t]hrough IGRA, Congress comprehensively regulates Indian gaming; however, California's tax is not on Indian gaming activity or profits, but rather on construction materials purchased by a non-Indian electrical subcontractor, which could be used for a multitude of purposes unrelated to gaming. Simply put, IGRA is a gambling regulation statute, not a code governing construction contractors, the legalities of which are of paramount state and local concern." (*Id.*, at p. 1192.) The Ninth Circuit went on to state that "IGRA's comprehensive regulation of Indian gaming does not occupy the field with respect to sales taxes imposed on third-party purchases of equipment used to construct the gaming facilities" and "[e]xtending IGRA to preempt any commercial activity remotely related to Indian gaming – employment contracts, food service contracts, innkeeper codes – stretches the statute beyond its stated purpose." (*Id*., at p. 1193.)

Here, the Court must determine whether the Legislature can operate outside of IGRA to create a state-law cause of action for Tribes subject to IGRA to enforce exclusivity rights that purportedly flow from tribal-state compacts or secretarial procedures. The Court concludes the Legislature cannot do so. Unlike the cases cited by Plaintiffs, this case – by way of SB 549 – essentially invokes a breach of contract remedy that is "directly related to the operation of gaming," thereby encroaching upon IGRA's preemptive domain. (25 U.S.C. § 2710(d)(3)(C); *Chicken Ranch*, *supra*, 42 F.4th at p. 1034-1035.)

In this regard, SB 549 also serves as an obstacle to Congress's "carefully crafted" compact-based framework. (See *Bay Mills*, *supra*, 572 U.S. at p. 795, fn. 6.) IGRA was enacted to balance the interests of both States and Tribes, recognizing each as sovereigns within the federal system. This intent is evident in both IGRA's text and its legislative history, which identify tribal-state

compacts as the "best mechanism to assure that the interests of both sovereign entities are met." (*HERE*, *supra*, 21 Cal.4th at p. 612.) IGRA has been described as "an example of cooperative federalism," assigning distinct roles to the federal government, state governments, and the Indian tribes. (*Chicken Ranch*, *supra*, 42 F.4th at p. 1032.)

In enacting IGRA, Congress granted the Secretary of the Interior the authority to review tribal-state gaming compacts to ensure they comply with the Act. (25 C.F.R. §§ 293.1, 293.3, 293.15.) This review includes evaluating any revenue-sharing provisions and the corresponding concessions made in exchange. (*Id.* § 293.27.) The Department of Interior's regulations emphasize that a Tribe and a State cannot enter into any agreement regulating a Tribe's right to conduct gaming – whether labeled a "compact" or otherwise – without the Secretary's review and approval:

> All compacts and amendments, regardless of whether they are substantive or technical, must be submitted for review and approval by the Secretary.
>
> (b) If an ancillary agreement or document:
>
> (1) Modifies a term in a compact or an amendment, then it must be submitted for review and approval by the Secretary.
>
> (2) Implements or clarifies a provision within a compact or an amendment and is not inconsistent with an approved compact or amendment, it does not constitute a compact or an amendment and need not be submitted for review and approval by the Secretary.
>
> (3) Is expressly contemplated within an approved compact or amendment, such as internal controls or a memorandum of agreement between the Tribal and State regulators, then such agreement or document is not subject to review and approval so long as it is not inconsistent with the approved compact or amendment.
>
> (4) Interprets language in a compact or an amendment concerning a Tribe's revenue sharing to the State, its agencies, or political subdivisions under §?293.27 or includes any of the topics identified in §?293.23, then it may constitute an amendment subject to review and approval by the Secretary.
>
> * * *

> Subject to §§?293.4(b) and 293.8(d), any contract or other agreement between a Tribe and a State, its agencies, or its political subdivisions that seeks to regulate a Tribe's right to conduct gaming – as limited by IGRA – is a gaming compact that must comply with IGRA and be submitted for review and approval by the Secretary consistent with §?293.8. A Tribe may submit any other agreement between the Tribe and the State, its agencies, or its political subdivisions for a determination if the agreement is a compact or amendment under §?293.4(c). This includes agreements mandated or required by a compact or amendment, which contain provisions for the payment from a Tribe's gaming revenue or restricts or regulates a Tribe's use and enjoyment of its Indian lands, including a Tribe's conduct of gaming.

(25 C.F.R. §§ 293.4, 293.29.)

To properly assess whether a revenue-sharing provision complies with IGRA, the Secretary must understand the full scope of the State's concession, including any remedies available if that concession is breached or withdrawn. This information enables the Secretary to determine whether the State has overcome the presumption that payments beyond regulatory fees are unlawful. Accordingly, when a State grants a Tribe the exclusive right to conduct certain games free from state-licensed competition, the parties' compact should clearly articulate whether and to what extent the Tribe may enforce or protect that exclusivity in the event of a dispute. In fact, the Secretary has cautioned that the "inclusion of provisions addressing dispute resolution outside of Federal court in a manner that seeks to avoid the Secretary's review may be considered evidence of a violation of IGRA." (25 C.F.R. § 293.20.)

A determination under SB 549 bears directly on the meaning and value of Plaintiffs' compact-based rights. Nevertheless, SB 549 bypasses the federal government and federal courts entirely. It creates a new statutory cause of action – authorized by the Legislature rather than the Governor, outside of the compacting process, and without review or approval by the Secretary of the Interior – that allows Tribes to enforce their exclusivity rights during a limited three-month window in Sacramento Superior Court. (Gov. Code, § 98020(d).) In doing so, it circumvents the compacting process envisioned by Congress through IGRA (25 U.S.C. § 2710) and embedded in the state Constitution (Cal. Const., art. IV, § 19, subd. (f)).

For these reasons, SB 549 is preempted by federal law, and this Court lacks jurisdiction to resolve the Parties' dispute.

Severance

Following oral argument, the Court continued the hearing on this matter to address the following questions: (1) Whether severance could resolve IGRA preemption, and if so, what language would be severed; and (2) How severance can be harmonized with the California Legislature's intent stated in section 2 of SB 549 and its legislative history. (8-8-25 Minute Order [entered 8-15-25].)

"The concept of severability is an important tool in constitutional analysis." (*In re D.L*. (2023) 93 Cal.App.5th 144, 162-163.) An invalid part can be severed if, and only if, it is grammatically, functionally, and volitionally separable. (*HERE*, *supra*, 21 Cal.4th at p. 821.) It is "grammatically" separable if it is "distinct" and "separate" and, hence, "can be removed as a whole without affecting the wording of any" of the measure's other provisions. (*Id*., at p. 822.) It is "functionally" separable if it is not necessary to the measure's operation and purpose. (See *id*., at pp. 821, 822.) And it is "volitionally" separable if it was not critical to enacting the measure. (*Id*., at p. 822.) "All three criteria must be satisfied" before an invalid provision can be severed. (*McMahan v. City & County of San Francisco* (2005) 127 Cal.App.4th 1368, 1374.) As the Ninth Circuit explained, volitional separability is "the 'most important' factor in the severability analysis." (*Ohio House, LLC v. City of Costa Mesa* (9th Cir. 2025) 135 F.4th 645, 676.)

Focused on SB 549's references to "tribal gaming rights," Plaintiffs assert that "[a]ny preemption issue created by these three words may be cured by severance." (Plaintiffs' Supp. Brief, p. 3:20-22.) Plaintiffs argue that (1) the phrase is grammatically separable from the rest of SB 549; (2) SB 549 remains fully functional even if the phrase is severed; and (3) "the statutory language and legislative history make clear that the Legislature would have adopted SB 549 even if it had foreseen the severance of the 'tribal gaming rights' language" because its "plain language concerns the general legality of cardroom gaming, not simply how it relates to 'tribal gaming rights.'" (*Id.*, pp. 3:23-4:12.) Plaintiffs maintain that even if the Court severs this language, "Defendants' demurrer should be denied because Plaintiffs do not allege claims related to purported tribal gaming rights," arguing that their Penal Code and Constitutional claims exist wholly apart from any alleged tribal gaming rights. (*Id.*, p. 11:12-24.) Finally, Plaintiffs assert that the Court can strike any allegations in their complaints concerning "tribal gaming rights" because those allegations merely serve as "context" and are not necessary to prove their claims. (*Id.*, p. 12:10-14, fn 7.)

The Cardroom Defendants oppose, arguing that the phrase "tribal gaming rights" is not volitionally or functionally severable because the Tribes' alleged exclusive gaming rights are central to SB 549, with even Plaintiffs' standing tethered to their status as gaming Tribes under IGRA. (Cardroom Defendants' Supp. Brief, pp. 12:13-14:15.) More broadly, the Cardroom Defendants argue that severing "SB 549's 'tribal gaming rights' language would not fix the preemption problem [and] regardless, severing that language is impossible because tribal gaming rights are central to the statute's purpose and operation." (*Id.*, p. 5:22-24.) The Cardroom Defendants emphasize that, even without the words "tribal gaming rights," the effect of SB 549

would remain the same because it would still provide gaming Tribes a remedy that effectively enforces their alleged exclusivity while bypassing the process outlined in IGRA. (*Id.*, pp. 8:20-28, 11:11-14.)

SB 549 includes a general severance clause: "If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable. The Legislature declares that this act, and each section, subdivision, sentence, clause, phrase, part, or portion thereof, would have been passed irrespective of the fact that any one or more sections, subdivisions, sentences, clauses, phrases, parts, or portions are found to be invalid. If any provision of this act is held invalid as applied to any person or circumstance, that invalidity does not affect any application of this act that can be given effect without the invalid application." (Plaintiffs' RJN, Exh. 1 [SB 549 Bill Text], § 5.) Generally, the presence of a severability clause "establishes a presumption in favor of severance." (*Cal. Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 270.) Nonetheless, the Court is persuaded that the phrase "tribal gaming rights" is not volitionally severable because such rights were critical to enacting SB 549, and simply striking the words does not change the statute's central purpose or take it outside the preempted scope of IGRA.

"We begin by examining the statute's words, giving them a plain and commonsense meaning. [Citation.] We do not, however, consider the statutory language 'in isolation.' … [W]e construe the words in question '"in context, keeping in mind the nature and obvious purpose of the statute … ."'" (*Hohenshelt v. Superior Court* (2025) 18 Cal.5th 310, 330.) As Plaintiffs acknowledge, the goal of severance is "to ensure that the Legislature's intent and purpose is carried out." (See Plaintiffs' Supp. Brief, p. 3:12-13.) Here, SB 549 specifically provides that its "purpose and intent" "is to authorize a limited declaratory and injunctive relief action […] to determine whether certain controlled games operated by California card clubs are illegal banking card games or legal controlled games, thereby resolving a decade-long dispute between California tribes and California card clubs concerning the legality of those controlled claims and whether they violate state law, including tribal gaming rights under Section 19 of Article IV of the California Constitution." (Plaintiffs' RJN, Exh. 1 [SB 549 Bill Text], § 2.) This is further reflected in Section 4, which adds Government Code section 98020. (*Id.*, § 4.) Even the statute's name – the Tribal Nations Access to Justice Act – demonstrates its purpose and intent to provide gaming Tribes an opportunity to have a court decide the legality of games they claim infringe upon their exclusive gaming rights.

The legislative history is replete with references to the "simmering dispute" and/or feud between gaming Tribes and cardrooms stemming from the Tribe's alleged exclusivity and their objections to certain gaming activity in cardrooms. (Cardroom Defendants' RJN, Exh. 18 [Assembly Committee on Judiciary, Analysis of Senate Bill No. 549 (2023-2024 Reg. Sess.) as amended June 19, 2023], pp. 1, 5; Plaintiffs' RJN Exh. 6 [same], Exh. 7 [analysis of SB 549, as amended

on June 12, 2024, by the Assembly Committee on Government Organization], pp. 5, 13, 14; Exh. 8 [analysis of SB 549, as amended on June 12, 2024, by the Assembly Committee on Appropriations], pp. 2-3; Exh. 9 [analysis of SB 549, as amended on August 19, 2024, for the Senate Third Reading], p. 2-3; Exh. 10 ["Unfinished Business" analysis of SB 549, as amended on August 19, 2024, by the Office of Senate Floor Analyses], pp. 4-5.) The Legislature describes the bill as an effort "to resolve this dispute by creating a limited avenue for California tribes to utilize state courts to seek a declaratory judgment regarding the legality of specific games operated by cardrooms." (Cardroom Defendants' RJN, Exh. 18 [Assembly Committee on Judiciary, Analysis of Senate Bill No. 549 (2023-2024 Reg. Sess.) as amended June 19, 2023], pp. 1, 6; Plaintiffs' RJN Exh. 6 [same]; Exh. 7 [analysis of SB 549, as amended on June 12, 2024, by the Assembly Committee on Government Organization], p. 5; Exh. 8 [analysis of SB 549, as amended on June 12, 2024, by the Assembly Committee on Appropriations], pp. 2-3; Exh. 9 [analysis of SB 549, as amended on August 19, 2024, for the Senate Third Reading], p. 9; Exh. 10 ["Unfinished Business" analysis of SB 549, as amended on August 19, 2024, by the Office of Senate Floor Analyses].) This backdrop is not merely historical "context" – it is the very foundation of SB 549. As a practical matter, Plaintiffs care about the legality of certain cardroom gaming only because they believe it infringes on their alleged exclusivity rights. Plaintiffs' proposal to strike "tribal gaming rights" essentially attempts to remove the core conflict underlying SB 549.

However, striking "tribal gaming rights" would not solve the preemption issue. To the extent Plaintiffs suggest that "[n]o other language even conceivably implicates matters of tribal gaming," Plaintiffs are plainly mistaken. As written, only a "California Indian tribe that is party to a current ratified tribal-state gaming compact, or that is party to current secretarial procedures […] may bring an action in superior court…" (Gov. Code, § 98020(a).) Plaintiffs fail to meaningfully engage with SB 549's standing requirement in their supplemental briefing. Even if the Court only considered the Penal Code and/or the Constitution's prohibition on Nevada and New Jersey-style gaming – without regard to subdivision (f)'s exception for Tribes that enter into gaming compacts with the State – SB 549's operation is still tethered to IGRA and, therefore, the tribal gaming compacts.

Moreover, even a judgment on the narrower claims contemplated by Plaintiffs in their supplemental briefing "bears directly on the meaning and value" of Plaintiffs' compact-based rights. (Cardroom Defendants' Supp. Brief, pp. 9:24-10:6.) The Cardroom Defendants put it succinctly: "SB 549 exists to give ***gaming Tribes*** a mechanism to remedy perceived violations of their ***tribal gaming rights***." (*Id.*, p. 6:6-7.) "Whatever the purpose or purposes of the state law, pre-emption analysis cannot ignore the effect of the challenged state action on the pre-empted field." (*Gade v. National Solid Wastes Management Ass'n* (1992) 505 U.S. 88, 107.) Even if the Court were to strike "tribal gaming rights" from the statute (and Plaintiffs amended their complaints to remove any reference to the long-simmering dispute, their alleged exclusivity, or their stated desire to get the benefit of their bargain), SB 549 still runs afoul of IGRA by

providing gaming Tribes – and only gaming Tribes – a claim that vindicates the alleged exclusivity afforded to them through their tribal-state compacts without regard to IGRA's procedural requirements. In this regard, SB 549 still encroaches on IGRA's preempted field and serves as an obstacle to Congress's "carefully crafted" compact-based framework. (See *Bay Mills*, *supra*, 572 U.S. at p. 795, fn. 6.)

For these reasons, the Court concludes that severance cannot resolve IGRA preemption and cannot be harmonized with the Legislature's clear intent.

Having so concluded, the Court does not reach the Parties' remaining arguments in this demurrer or the concurrently filed motion to strike and demurrers by other Defendants.

CONCLUSION

The Court is mindful that previous efforts to resolve this longstanding dispute – whether through regulatory action, legislation, ballot initiatives, or litigation – have been unavailing. It recognizes the genuine desire, shared by many stakeholders, including the California Legislature, to reach the merits and achieve a final resolution. The Court does not take lightly the importance of the issues at stake and, were it within its authority to provide a definitive resolution, it would endeavor to do so. However, while the Legislature may create a cause of action and confer standing on the Tribes, such action does not, in itself, resolve the distinct and threshold question of preemption. The Court acknowledges that this may leave the Parties without a judicial remedy in this forum, though it expresses no view on whether alternative remedies may exist. Nonetheless, the Court is bound by the limits of federal law: "Although courts may be reluctant to conclude that Congress intended plaintiffs to be left without recourse, the intent of Congress is what controls." (*Gaming Corp. of America v. Dorsey & Whitney* (8th Cir. 1996) 88 F.3d 536, 547 [citations omitted].)

For the reasons stated above, the Cardroom Defendants' demurrer is SUSTAINED on the ground that SB 549 is wholly preempted by IGRA, severance cannot resolve preemption as to any of Plaintiffs' claims, and the Court lacks jurisdiction over this action.

Leave to amend is DENIED because no amendment could cure this defect.

The Cardroom Defendants shall prepare a judgment for the Court's signature.

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[1] Plaintiffs in the *Agua Caliente* matter are the Agua Caliente Band of Cahuilla Indians; Barona Band of Mission Indians; Pechanga Band of Indians; Sycuan Band of the Kumeyaay Nation; Viejas Band of Kumeyaay Indians; Yocha Dehe Wintun Nation; and Yuhaaviatam of San Manuel Nation (collectively, the "*Agua Caliente* Plaintiffs"). (*Agua Caliente* FAC.)
[2] Plaintiffs in the *Rincon* matter are the Rincon Band of Luiseno Indians and Santa Ynez Band

of Chumash Mission Indians of The Santa Ynez Reservation, California, aka Santa Ynez Band of Chumash Indians (collectively, the "*Rincon* Plaintiffs"). (*Rincon* FAC.)

[3] Plaintiffs' request for judicial notice is in support of their oppositions to the Cardroom Defendants' demurrer, the Cardroom Defendants' motion to strike, and Defendant Artichoke Joe's demurrer. (Plaintiff's RJN.)

[4] The Gaming Compacts are available at https://www.cgcc.ca.gov/?pageID=compacts. To the extent any particular compact is not encompassed in the Parties' requests for judicial notice but discussed herein, the Court, on its own motion, takes judicial notice of the compact(s). (See Evid. Code, § 452, Editor's Notes ["The court *may* take judicial notice of these matters, even when not requested to do so; it is *required* to notice them if a party requests it and satisfies the requirements of Section 453."].)

[5] Nearly identical language appears in the 2015 and 2016 compacts for the Barona Band of Mission Indians, the Pechanga Band of Luiseño Indians, the Sycuan Band of the Kumeyaay Nation, the Viejas Band of Kumeyaay Indians, the Yocha Dehe Wintun Nation, the San Manuel Band of Mission Indians, and the Santa Ynez Band of Mission Indians. (Cardroom Defendants' RJN, Exh. 2 [June 22, 2016 Tribal-State Compact Between the State of California and the Barona Band of Mission Indians] § 4.6; Exh. 3 [Aug. 4, 2016 Tribal-State Compact Between the State of California and the Pechanga Band of Luiseño Indians] § 4.8; Exh. 4 [Sept. 2, 2015 Tribal-State Compact Between the State of California and the Sycuan Band of the Kumeyaay Nation] § 4.6; Exh. 5 [June 28, 2016 Tribal-State Compact Between the State of California and the Viejas Band of Kumeyaay Indians] § 4.6; Exh. 6 [Aug. 4, 2016 Tribal-State Compact Between the State of California and the Yocha Dehe Wintun Nation] § 4.8; Exh. 7 [Aug. 15, 2016 Tribal-State Compact between the State of California and the San Manuel Band of Mission Indians] § 4.8; Exh. 10 [Aug. 26, 2015 Tribal-State Compact between the State of California and the Santa Ynez Band of Mission Indians] § 4.6.) While not every compact includes the language recognizing the right to operate banking games, each includes a remedy for a violation of the Tribes' exclusive right to operate slot machines.

[6] The Court agrees with the Parties that the existence, source, and scope of the Tribes' claimed exclusivity rights are not at issue in this case. (Demurrer, p. 16, fn. 1; Opp., p. 14:14-15.) But the Court need not resolve this issue to assess the nature of Plaintiffs' claims and whether IGRA preempts them. As discussed, Plaintiffs have framed their SB 549 action as one to enforce the benefit of their bargain: the exclusive right to offer banked games. The Legislature's intent aligns with this framing. (Plaintiffs' RJN, Exh. 6 [legislative analysis of SB 549 stating the bill's purpose was to resolve disputes over the legality of certain controlled games and whether they "infringe upon exclusive tribal gaming rights."].)

To request oral argument on this matter, you must call Department 22 at (916) 874-5762 by 4:00 p.m., the court day before this hearing and notification of oral argument must be made to the

opposing party/counsel. If no call is made, the tentative ruling becomes the order of the court. (Local Rule 1.06.)

Parties requesting services of a court reporter may arrange for private court reporter services at their own expense, pursuant to Government code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf. The list of Court Approved Official Reporters Pro Tempore is available at https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf.

If you are not using a reporter from the Court's Approved Official Reporter Pro Tempore list, a Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) must be signed by each party, the private court reporter, and the Judge. The signed form must be filed with the clerk prior to the hearing.

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211). The form must be filed with the clerk at least 10 days prior to the hearing or at the time the hearing is scheduled if less than 10 days away. Once approved, the clerk will forward the form to the Court Reporter's Office and an official reporter will be provided.

If oral argument is requested, the Parties are encouraged to appear via Zoom with the links below:

To join by Zoom link - https://saccourt-ca-gov.zoomgov.com/my/sscdept22
To join by phone dial (833) 568-8864 ID 16184738886

Counsel for the Cardroom Defendants is directed to notice all parties of this order.

Please note that the Complex Civil Case Department now provides information to assist you in managing your complex case on the Court website at https://www.saccourt.ca.gov/civil/complex-civil-cases.aspx. The Court strongly encourages parties to review this website regularly to stay abreast of the most recent complex civil case procedures. Please refer to the website before directly contacting the Court Clerk for information.