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San Pasqual Band of Mission Indians

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

FEB 09 2010

John A. Clarke, Executive Officer/Clerk  
By A.E. LaFleur-Clayton Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

SAN PASQUAL BAND OF MISSION  
INDIANS, a federally recognized Indian Tribe

Plaintiff.

STATE OF CALIFORNIA; GOVERNOR  
ARNOLD SCHWARZENEGGER, in his  
official capacity; CALIFORNIA GAMBLING  
CONTROL COMMISSION, an agency of the  
State of California.

Defendants.

CASE NO.: **BC 431469**

COMPLAINT FOR DAMAGES FOR:

1. Breach of Contract
2. Breach of Covenant of Good Faith and Fair Dealing
3. Intentional Interference with Prospective Economic Relations
4. Negligent Interference with Prospective Economic Relations

Plaintiff, the SAN PASQUAL BAND OF MISSION INDIANS, hereby complains and alleges as follows:

1. Plaintiff, SAN PASQUAL BAND OF MISSION INDIANS ("SAN PASQUAL") is a federally recognized Indian Tribe within the meaning of federal Indian Law and § 2703(5) of IGRA, and operates a gaming casino under the name Valley View Casino. For all times alleged herein, San Pasqual is a signatory to a Tribal-State Gaming Compact (hereinafter referred to as the "Contract") with Defendant-State of California that is in effect.

1 The Contract was executed on September 10, 1999, and took effect upon the publication in  
2 the Federal Register on or about May 16, 2000.

3 2. Defendant-STATE OF CALIFORNIA is a sovereign state of the United States.  
4 The STATE OF CALIFORNIA is a signatory to the Contract with Plaintiff-San Pasqual.

5 3. Defendant-CALIFORNIA GAMBLING CONTROL COMMISSION  
6 (hereinafter "CGCC") is an agency of the State that, pursuant to Executive Order D-31-01,  
7 administers the gaming device license draw process under Section 4.3.2.2(a)(3), and controls,  
8 collects and accounts for all license fees under Section 4.3.2.2(a)(2); enforces the rights of the  
9 State of California to enforce the provisions of Sections 4.3.2.2(a)(1) through (3) and (e), and  
10 all subparagraphs thereunder, of the Contract; and ensures that the allocation of machines  
11 among California Indian Tribes does not exceed the allowable number of machines as  
12 provided in the Contract and shall determine whether the machine license draw(s) complies  
13 with the limitations of the Contract. At all times relevant to the facts and claims alleged in  
14 this Complaint, the CGCC was acting or purporting to act as an agent of the State and the  
15 Governor of California.

16 4. Defendant-ARNOLD SCHWARZENEGGER is the current Governor of the  
17 State of California, and in that capacity is responsible for, *inter alia*, fulfilling the State's  
18 obligations and exercising the State's rights under the Contract, ensuring the State and the  
19 CGCC do not exceed their authority under the Contract, negotiating in good faith with San  
20 Pasqual concerning its Contract, and appointing and overseeing the activities of fellow  
21 Defendant-CGCC. Defendant-SCHWARZENEGGER is sued in his official capacity, and at  
22 all times relevant to the facts and claims alleged in this Complaint was acting or purporting to  
23 act as an agent of the State of California. (Defendants STATE OF CALIFORNIA, the CGCC  
24 and Governor SCHWARZENEGGER are hereinafter collectively referred to as the  
25 "STATE.").

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1                   **III.     FACTUAL ALLEGATIONS FOR CAUSE OF ACTION**

2     **A.     The Public Policy Objectives Of the Indian Gaming Regulatory Act**

3             5. This action seeks to protect a delicate, and now threatened, balance of Tribal and  
4 State Governmental interests embodied within the Contract, which was executed in 1999  
5 pursuant to IGRA.

6             6. Congress enacted IGRA in 1988 in response to the United States Supreme Court  
7 decision in *California v Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), which  
8 recognized the rights of Indian tribes to engage in certain kinds of gaming within California.

9             7. IGRA recognized that “numerous Indian tribes have become engaged in or have  
10 licensed gaming activities on Indian lands as a means of generating tribal governmental  
11 revenue,” 25 U.S.C. § 2701 (1), and set forth “a statutory basis for the operation of gaming by  
12 Indian tribes as a means of promoting tribal economic development, self-sufficiency, and  
13 strong tribal governments.” 25 U.S.C. §2702(1). Congress found that “Indian tribes have the  
14 exclusive right to regulate gaming activity on Indian lands if the gaming activity is not  
15 specifically prohibited by Federal law and is conducted within a State which does not, as a  
16 matter of criminal law and public policy, prohibit such gaming activity.” 25 U.S.C. § 2701(5).

17            8. IGRA divides gaming into three classifications: Class I, comprising of social or  
18 traditional forms of gaming connected with tribal ceremonies or celebrations; Class II,  
19 encompassing bingo and similar or associated games, and non-banking card games (e.g.,  
20 poker); and Class III, encompassing all other forms of gaming, including slot machines,  
21 banked card games (e.g. blackjack), lottery, horse racing, and the like, provided such gaming  
22 is permitted within the State. 25 U.S.C. § 2703. At issue in this Action is SAN PASQUAL’s  
23 rights to operate Class III Gaming Devices and the damages SAN PASQUAL suffered  
24 because of the STATE’s failure to issue SAN PASQUAL all available Gaming Device  
25 Licenses.

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1 **B. San Pasqual's Contract With The State of California**

2 9. On September 10, 1999, SAN PASQUAL executed its Contract with the State of  
3 California that permits the operation of Class III gaming on Indian Lands. The Contract at  
4 issue herein is a valid, binding agreement, in effect as a matter of tribal, federal and state law.  
5 SAN PASQUAL has performed all its material obligations thereunder. The Contract became  
6 valid upon approval by the Secretary of the Interior and being published in the Federal  
7 Register on May 16, 2000. The Contract is set to expire on December 31, 2020. Not sooner  
8 than eighteen months of that termination date either party may request the other party to  
9 negotiate an extension of this Contract or to enter into a new contract. If the parties have not  
10 agreed to extend the termination date of the Contract or entered into a new contract by the  
11 termination date, then the termination date of the Contract shall be June 30, 2022, unless the  
12 parties agreed to an earlier termination date.

13 10. The State entered into the Contract with SAN PASQUAL "out of respect for the  
14 sovereignty of the Tribe; in recognition of the historical fact that Indian gaming has become  
15 the single largest revenue-producing activity for Indian tribes in the United States; out of a  
16 desire to terminate pending 'bad faith' litigation between the Tribe and the State; to initiate a  
17 new era of tribal-state cooperation in areas of mutual concern; out of a respect for the  
18 sentiment of the voters of California who, in approving Proposition 5, expressed their belief  
19 that the forms of gaming authorized herein should be allowed; and in anticipation of voter  
20 approval of SCA 11 [Prop. 1A] as passed by the California Legislature." (Contract, Preamble  
21 ¶ D.)

22 11. Section 1.0(a) of the Contract states its terms are designed and intended, among  
23 other things, to "[e]vidence the goodwill and cooperation of the Tribe and the State in  
24 fostering a mutually respectful government-to-government relationship that will serve the  
25 mutual interests of the parties."

26 12. The Contract provides in relevant part, as follows:

- 27 a. Section 2.6 of the Contract defines the term "Gaming Device" to mean a slot  
28 machine.

- 1           b. Section 4.3.1(b) of the Contract authorizes SAN PASQUAL to operate 350  
2           Gaming Devices as a matter of right.
- 3           c. Section 4.3.2.2 of the Contract provides that SAN PASQUAL may acquire  
4           Gaming Device licenses to operate Gaming Devices in excess of 350. For  
5           each Gaming Device license obtained, San Pasqual must pay the applicable  
6           fees to be deposited into the Revenue Sharing Trust Fund.
- 7           d. Contract § 4.3.2.2(a) limits San Pasqual to operate no more than 2,000 Gaming  
8           Devices. In order for San Pasqual to operate 2,000 Gaming Devices, it must  
9           obtain 1,650 Gaming Device Licenses since it is permitted to operate 350  
10          Gaming Devices as a matter of right and without the need to obtain a Gaming  
11          Device License.
- 12          e. Contract § 4.3.2.2(a)(1) states that the number of Gaming Device Licenses  
13          available for all Compact Tribes in the aggregate is at least 42,700 Gaming  
14          Device Licenses.
- 15          f. The Contract provides in § 4.3.2.2(a)(3) that Gaming Device Licenses are to be  
16          “awarded” through a draw process. The STATE conducts this draw process in  
17          which Gaming Device Licenses are awarded.
- 18          g. Prior to October 5, 2009, the STATE refused to issue more than 32,151  
19          Gaming Device Licenses despite the Contract requiring the STATE to issue at  
20          least 42,700 Gaming Device Licenses.
- 21          13. The STATE held a Gaming Device License Draw on December 11, 2008. Prior  
22          to that Gaming Device License Draw, SAN PASQUAL requested 428 Gaming Device  
23          Licenses be issued to it in that Gaming Device License Draw. (A true and accurate copy of  
24          SAN PASQUAL’s Gaming Device License Application submitted for the December 11, 2008  
25          License Draw is attached hereto as Exhibit 1 and incorporated herein by this reference). The  
26          STATE incorrectly asserted on December 11, 2008 that only 32,151 Gaming Device Licenses  
27          were available. Thus, because the STATE unjustifiably asserted that only 32,151 Gaming  
28          Device Licenses were available, the State asserted that it had issued all available Gaming

1 Device Licenses and therefore did not issue SAN PASQUAL any of the 428 Gaming Device  
2 Licenses that were requested.

3 14. Because the STATE refused to issue all available Gaming Device Licenses, SAN  
4 PASQUAL was authorized to operate only 1,572 Gaming Devices instead of the 2,000  
5 Gaming Devices that it was authorized to operate under the Contract but for the STATE's  
6 refusal to issue all available Gaming Device Licenses.

7  
8 **C. Defendants Do Not Possess Government Immunity From a Breach of Contract**  
9 **Cause of Action and Defendants Waived Their Immunity for the Tort Causes of**  
10 **Action and Therefore San Pasqual is Permitted to File This Action in State Court**  
11 **and Seek Monetary Damages**

12 15. The STATE does not have Government Immunity from a Breach of Contract  
13 Cause of Action. No statute creates immunity for the STATE from a Breach of Contract  
14 Cause of Action. No case has ever held that the State of California has immunity from a  
15 Breach of Contract Cause of Action.

16 16. This court therefore has jurisdiction over this Action and San Pasqual's cause of  
17 action for breach of the Contract because a compact is a contract, *Texas v. New Mexico*, 482  
18 U.S. 124, 128 (1987), and therefore the STATE does not have immunity from this Action  
19 alleging the STATE breached the Contract.

20 17. While the Contract contains a waiver of immunity by both the STATE and SAN  
21 PASQUAL, SAN PASQUAL is not relying upon that waiver to file this lawsuit.

22 18. The waiver of immunity in the Contract is limited only to an action arising under  
23 the Contract that seeks no monetary damages and requires that action to be filed in federal  
24 court. The STATE has immunity from an action in a federal court under the Eleventh  
25 Amendment. Therefore, the waiver of immunity in the Contract waived the STATE's  
26 Eleventh Amendment immunity for an action in federal court that does not seek monetary  
27 damages.

1           19. However, the waiver of immunity in the Contract is not the exclusive remedy  
2 SAN PASQUAL to enforce the terms of the Contract. Because the STATE does not have  
3 immunity from a breach of contract cause of action filed in state court, San Pasqual may file  
4 this Action in state court on that basis and without relying upon the waiver of immunity in the  
5 Contract.

6           20. In fact, Contract Section 9.3 explicitly permits SAN PASQUAL to file this  
7 Action for breach of the Contract in state court as it states "This Section 9.0 may not be  
8 construed to waive, limit or restrict any remedy that is otherwise available to either party."  
9 Because the STATE does not have immunity from a breach of contract cause of action, SAN  
10 PASQUAL has and always had available to it the right to file this Action for breach of the  
11 Contract in state court and seek monetary damages. Therefore, Contract Section 9.3 explicitly  
12 permits SAN PASQUAL to file this Action in state court and seek monetary damages.

13           21. On June 1, 2009, SAN PASQUAL filed its Government Claim with the  
14 California Victim Compensation and Government Claim Board regarding the wrongful  
15 conduct of the STATE alleged herein. (A true and accurate copy of the June 1, 2009  
16 Government Claim is attached hereto as Exhibit 2 and incorporated herein by this reference).  
17 On August 20, 2009, the California Victim Compensation and Government Claim Board  
18 mailed to SAN PASQUAL notice that the STATE rejected SAN PASQUAL's Government  
19 Claim on August 13, 2009. (A true and accurate copy of the August 20, 2009 Rejection  
20 Notice is attached hereto as Exhibit 3 and incorporated herein by this reference).

21  
22 **D. VENUE**

23           22. C.C.P. §395 states that venue is proper for a breach of contract cause of action in  
24 "the superior court in the county where the obligation is to be performed, where the contract  
25 in fact was entered into, or where the defendant or any defendant resides at the  
26 commencement of the action." The State conducts Gaming Device License Draws in the  
27 County of Sacramento, the Contract was entered into in the County of Sacramento, the  
28 Governor is required to keep his office in the County of Sacramento per Government Code

1 §1060 and the CGCC's office is in Sacramento County. Therefore, this action could be  
2 commenced or tried in Sacramento County under C.C.P. §395.

3 23. C.C.P. §401 states that "[w]hensoever it is provided by any law of this State that an  
4 action or proceeding against the State ... shall or may be commenced in, tried in, or removed  
5 to the County of Sacramento, the same may be commenced and tried in any city or city and  
6 county of this State in which the Attorney General has an office."

7 24. The Attorney General has an office in Los Angeles County. Therefore, this  
8 Action may be commenced in Los Angeles County pursuant to C.C.P. §401 because it could  
9 have been commenced in Sacramento County.

10  
11 **FIRST CAUSE OF ACTION**

12 (Breach of Contract against All Defendants)

13 25. SAN PASQUAL realleges all the allegations contained in paragraphs 1 through  
14 24, inclusive, and hereby incorporate each of them by this reference.

15 26. SAN PASQUAL and the STATE OF CALIFORNIA entered into the Contract  
16 on or about September 10, 1999.

17 27. SAN PASQUAL has done everything that the Contract requires SAN  
18 PASQUAL to do.

19 28. All conditions required by this Contract for the STATE's performance had  
20 occurred including, but not limited to, SAN PASQUAL timely submitting its Gaming Device  
21 License Application for 428 Gaming Device Licenses and tendering to the STATE a  
22 prepayment of \$535,000 for the 428 requested Gaming Device Licenses. Therefore, STATE  
23 was required to issue SAN PASQUAL the additional 428 Gaming Device Licenses requested  
24 by SAN PASQUAL at the December 11, 2008 Gaming Device License Draw.

25 29. The STATE failed to issue SAN PASQUAL any of the additional 428 Gaming  
26 Device Licenses requested by SAN PASQUAL at the December 11, 2008 Gaming Device  
27 License Draw.



30. SAN PASQUAL was harmed by the STATE's failure to issue SAN PASQUAL the additional 428 Gaming Device Licenses requested by SAN PASQUAL at the December 11, 2008 Gaming Device License Draw.

31. . . . As a direct and proximate result of such wrongful conduct by the STATE, SAN PASQUAL suffered and will continue to suffer in the future direct, incidental and consequential economic compensatory damages in an amount to be determined at trial, but at least one hundred fifteen million dollars (\$115,000,000); and other damages in an amount subject to proof at trial.

## SECOND CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing against All Defendants)

32. SAN PASQUAL realleges all the allegations contained in paragraphs 1 through 31, inclusive, and hereby incorporate each of them by this reference.

33. SAN PASQUAL SAN PASQUAL and the STATE OF CALIFORNIA entered into the Contract on or about September 10, 1999.

34. SAN PASQUAL has done everything that the Contract requires SAN PASQUAL to do.

35. All conditions required by this Contract for the STATE's performance had occurred including, but not limited to, SAN PASQUAL timely submitting its Gaming Device License Application for 428 Gaming Device Licenses and tendering to the STATE a prepayment of \$535,000 for the 428 requested Gaming Device Licenses. Therefore, STATE was required to issue SAN PASQUAL the additional 428 Gaming Device Licenses requested by SAN PASQUAL at the December 11, 2008 Gaming Device License Draw.

36. The STATE unfairly interfered with SAN PASQUAL's right to receive benefits of the Contract when the STATE failed to issue SAN PASQUAL any of the additional 428 Gaming Device Licenses requested by SAN PASQUAL at the December 11, 2008 Gaming Device License Draw.

1           37.     The STATE intentionally chose not to issue SAN PASQUAL the 428 Gaming  
2 Device Licenses it requested in order to attempt to coerce SAN PASQUAL into amending the  
3 Contract to require SAN PASQUAL to pay substantially more money to the STATE in order  
4 for SAN PASQUAL to operate an additional 428 Gaming Devices.

5           38.     The Contract is a contract of adhesion in that the STATE utilized its unequal  
6 bargaining power to force SAN PASQUAL into the terms and conditions of the Contract in  
7 exchange for what the Contract states is the "single largest revenue-producing activity for  
8 Indian tribes." (Contract, Preamble ¶ D.) Under IGRA, SAN PASQUAL cannot operate even  
9 a single Gaming Device if it does not have a compact with the STATE and the STATE is not  
10 required to enter into a compact with SAN PASQUAL. Recognizing the unequal bargaining  
11 power between the governments within the United States and Indian tribes, the law requires  
12 all statutes concerning Indian tribes to be interpreted in an Indian tribe's favor.

13           39.     An example of the unequal bargaining power between the parties was that on  
14 the evening of September 9, 1999, the State's negotiators presented San Pasqual with a final  
15 draft of the Contract on a "take-it-or-leave-it" basis. In that final draft, the State drafted the  
16 Contract and appointed itself the administrator of the Gaming Device License Draw.

17           40.     A special relationship exists between the STATE and SAN PASQUAL because of  
18 the unequal bargaining power between the parties and the fact the STATE appointed itself the  
19 administrator of the Gaming Device License Draw.

20           41.     The STATE abused its position as administrator of the Gaming Device License  
21 Draw by intentionally not issuing all available Gaming Device Licenses in order to attempt to  
22 coerce SAN PASQUAL into amending its contract with the STATE. The STATE's proposed  
23 amendment to the Contract would require SAN PASQUAL to pay a substantially higher  
24 amount to the STATE in order to operate the 428 Gaming Device Licenses that SAN  
25 PASQUAL was authorized to operate under the terms it bargained for when it signed the  
26 Contract in 1999.

27           42.     The STATE abused its power to administer the Gaming Device License Draw by  
28 refusing to issue SAN PASQUAL the 428 Gaming Device Licenses it requested at the

1 December 11, 2008 Gaming Device License Draw, and thereby the STATE abused its special  
2 relationship to the detriment of SAN PASQUAL.

3 43. SAN PASQUAL was harmed by the STATE'S conduct.

4 44. As a direct and proximate result of such wrongful conduct by the STATE,  
5 SAN PASQUAL suffered and will continue to suffer in the future, direct, incidental and  
6 consequential economic compensatory damages in an amount to be determined at trial, but at  
7 least one hundred fifteen million dollars (\$115,000,000); and other damages in an amount  
8 subject to proof at trial.

9 45. In order to compel the STATE to comply with the Contract and issue SAN  
10 PASQUAL the 428 Gaming Device Licenses it requested and was entitled to obtain, SAN  
11 PASQUAL was compelled to obtain legal counsel in order to require the STATE to issue SAN  
12 PASQUAL the 428 Gaming Device Licenses the Contract allowed SAN PASQUAL to obtain.  
13 Therefore, because the STATE's tortious conduct reasonably compelled SAN PASQUAL to  
14 retain an attorney to obtain the benefits due under the Contract, the STATE is liable for that  
15 expense and SAN PASQUAL seeks those legal counsel fees incurred to require the STATE to  
16 issue SAN PASQUAL the 428 Gaming Device Licenses in an amount to be determined at trial.

### 17 18 THIRD CAUSE OF ACTION

19 (Intentional Interference with Prospective Economic Relations against All Defendants)

20 46. SAN PASQUAL realleges all the allegations contained in paragraphs 1 through  
21 45, inclusive, and hereby incorporate each of them by this reference.

22 47. SAN PASQUAL and its customers including, but not limited to, the loyal  
23 "repeat customers" that routinely play the Gaming Devices at the Valley View Casino and prior  
24 customers living in close proximity to the Valley View Casino, were in an economic  
25 relationship that probably would have resulted in an economic benefit to SAN PASQUAL.

26 48. Because SAN PASQUAL operates a casino in conjunction with the Contract,  
27 the STATE knew of the relationship between SAN PASQUAL and its customers.  
28

1           49.     The STATE intended to disrupt this relationship and engaged in wrongful  
2 conduct because the STATE intentionally chose not to issue SAN PASQUAL the 428 Gaming  
3 Device Licenses it requested in order to attempt to coerce SAN PASQUAL into amending the  
4 Contract to require SAN PASQUAL to pay substantially more money to the STATE in order  
5 for SAN PASQUAL to operate an additional 428 Gaming Devices.

6           50.     The relationship between SAN PASQUAL and its customers was disrupted in  
7 that SAN PASQUAL was unable to have in operation all 2,000 Gaming Devices demanded by  
8 its customers and would have been utilized by its customers due to the STATE's failure to issue  
9 all available Gaming Device Licenses.

10          51.     SAN PASQUAL was harmed.

11          52.     The STATE's wrongful conduct was a substantial factor in causing SAN  
12 PASQUAL's harm.

13          53.     As a direct and proximate result of such wrongful conduct by the STATE,  
14 SAN PASQUAL suffered and will continue to suffer in the future, direct, incidental and  
15 consequential economic compensatory damages in an amount to be determined at trial, but at  
16 least one hundred fifteen million dollars (\$115,000,000); and other damages in an amount  
17 subject to proof at trial.

18  
19                                   **FOURTH CAUSE OF ACTION**

20           (Negligent Interference with Prospective Economic Relations against All Defendants)

21          54.     SAN PASQUAL realleges all the allegations contained in paragraphs 1 through  
22 53, inclusive, and hereby incorporate each of them by this reference.

23          55.     SAN PASQUAL and its customers including, but not limited to, the loyal  
24 "repeat customers" that routinely play the Gaming Devices at the Valley View Casino and prior  
25 customers living in close proximity to the Valley View Casino, were in an economic  
26 relationship that probably would have resulted in an economic benefit to SAN PASQUAL.

27          56.     Because SAN PASQUAL operates a casino in conjunction with the Contract,  
28 the STATE knew of the relationship between SAN PASQUAL and its customers.

1           57.    The STATE knew or reasonably should have known it would disrupt this  
2 relationship when the STATE failed to act with reasonable care and engaged in wrongful  
3 conduct when it chose not to issue SAN PASQUAL the 428 Gaming Device Licenses it  
4 requested in order to attempt to coerce SAN PASQUAL into amending the Contract to require  
5 SAN PASQUAL to pay substantially more money to the STATE in order for SAN PASQUAL  
6 to operate an additional 428 Gaming Devices.

7           58.    The relationship between SAN PASQUAL and its customers was disrupted in  
8 that SAN PASQUAL was unable to have in operation all 2,000 Gaming Devices demanded by  
9 its customers and would have been utilized by its customers due to the STATE's failure to issue  
10 all available Gaming Device Licenses.

11           59.    SAN PASQUAL was harmed.

12           60.    The STATE's wrongful conduct was a substantial factor in causing SAN  
13 PASQUAL's harm.

14           61.    As a direct and proximate result of such wrongful conduct by the STATE,  
15 SAN PASQUAL suffered and will continue to suffer in the future, direct, incidental and  
16 consequential economic compensatory damages in an amount to be determined at trial, but at  
17 least one hundred fifteen million dollars (\$115,000,000); and other damages in an amount  
18 subject to proof at trial.

19  
20 WHEREFORE, SAN PASQUAL prays as follows:

21 **For the First Cause of Action Against All Defendants (Breach of Contract):**

- 22       1. For all general, special damages, direct damages, incidental damages, and  
23 consequential damages, in an amount exceeding the jurisdictional minimum of this  
24 court, which amount is to be adduced according to proof at trial, but which shall not  
25 be less than one hundred fifteen million dollars (\$115,000,000); and,  
26       2. For such other and future special and/or general damages in an amount subject to  
27 proof at trial.

1 **For the Second Cause of Action Against All Defendants (Breach of Covenant of Good**  
2 **Faith and Fair Dealing):**

- 3 1. For all general, special damages, direct damages, incidental damages, and  
4 consequential damages, in an amount exceeding the jurisdictional minimum of this  
5 court, which amount is to be adduced according to proof at trial, but which shall not  
6 be less than one hundred fifteen million dollars (\$115,000,000);
- 7 2. For the reasonable legal counsel fees the STATE's tortious conduct reasonably  
8 compelled SAN PASQUAL to incur in an amount to be determined at trial; and,
- 9 3. For such other and future special and/or general damages in an amount subject to  
10 proof at trial.

11  
12 **For the Third Cause of Action Against All Defendants (Intentional Interference with**  
13 **Prospective Economic Relations):**

- 14 1. For all general, special damages, direct damages, incidental damages, and  
15 consequential damages, in an amount exceeding the jurisdictional minimum of this  
16 court, which amount is to be adduced according to proof at trial, but which shall not  
17 be less than one hundred fifteen million dollars (\$115,000,000); and,
- 18 2. For such other and future special and/or general damages in an amount subject to  
19 proof at trial.

20  
21 **For the Fourth Cause of Action Against All Defendants (Negligent Interference with**  
22 **Prospective Economic Relations):**

- 23 1. For all general, special damages, direct damages, incidental damages, and  
24 consequential damages, in an amount exceeding the jurisdictional minimum of this  
25 court, which amount is to be adduced according to proof at trial, but which shall not  
26 be less than one hundred fifteen million dollars (\$115,000,000); and,
- 27 2. For such other and future special and/or general damages in an amount subject to  
28 proof at trial.

1 As to ALL CAUSES OF ACTION:

- 2 1. For those Causes of Action allowing attorneys fees, reasonable attorneys fees; and  
3 2. For costs of suit; and,  
4 3. For such other further and further relief as the court may deem proper.

5  
6  
7  
8 DATED: February 8, 2010

SOLOMON, SALTSMAN & JAMIESON

9  
10  
11 By: 

Stephen Warren Solomon

Stephen Allen Jamieson

R. Bruce Evans

Ryan M. Kroll

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14 Attorneys for Plaintiff-SAN PASQUAL Band of  
15 Mission Indians  
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# EXHIBIT 1

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## CALIFORNIA GAMBLING CONTROL COMMISSION

2399 Gateway Oaks Drive, Suite 220 • Sacramento, CA 95833-4231  
Phone: (916) 263-0700 • Fax: (916) 263-0452

## GAMING DEVICE LICENSE APPLICATION

Please complete this application form and return it to the above address. The application must be received by the California Gambling Control Commission by 5:00 PM on or before November 12, 2008.

## Section 1 - General Information

Name of Tribe San Pasqual Band of Mission IndiansMailing Address P.O. Box 365City, State, Zip Code Valley Center, CA 92082

## Section 2 - Gaming Devices in Operation

Instructions: Enter the number of gaming devices in operation on September 1, 1999 on Line (1). Enter the difference between 350 and the amount on Line (1) or 0 (zero) whichever is greater on Line (2). Enter the number of gaming device licenses held on Line (3). Enter the number of gaming device licenses desired on Line (4). Enter the sum of Lines (1) through (4) on Line (5). Line (5) should not exceed 2,000. See Tribal-State Gaming Compact § 4.3.2.2(a).

Line (1)	Number of Authorized Gaming Devices operated on September 1, 1999	<u>0</u>
Line (2)	350 minus the number on Line (1), if less than 0 (zero) enter 0 (zero)	<u>350</u>
Line (3)	Number of Gaming Device Licenses Held	<u>1,222</u>
Line (4)	Number of Gaming Device Licenses Desired	<u>428</u> *please see attached Exhibit A
Line (5)	Total of Lines (1) through (4), (not to exceed 2,000)	<u>2,000</u>

## Section 3 - Deposit of License Fees

Deposit Amount (Multiply Line (4) above by \$1,250) \$ 535,000

## Section 4 - Certification and Acknowledgement

I certify that the information shown above is, to the best of my knowledge and belief, true, correct, and complete. Furthermore, I acknowledge that the Tribe may receive fewer gaming device licenses than desired based upon the allocation rules contained in the Tribal-State Gaming Compact § 4.3.2.2(a)(3)(i-vi).

Signature [Signature] Title Tribal Chairperson Date 11/5/08  
Print Name Allen Lawson Telephone Number 760-749-3200

This application must be accompanied by a certified or cashier's check made payable to the California Gambling Control Commission in order for the Tribe to participate in the draw. Please mail this application along with the deposit certified or cashier's check to the California Gambling Control Commission, 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833. This application and deposit must be received by the Commission by 5:00 PM on or before November 12, 2008.

## EXHIBIT 2

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**Government Claims Form**

California Victim Compensation and Government Claims Board  
P.O. Box 3035  
Sacramento, CA 95812-3035

1-800-955-0045 • www.governmentclaims.ca.gov

State of California

RECEIVED

Victim Compensation Board

For Office Use Only

Claim No.:

**Is your claim complete?**

- ☒ New! Include a check or money order for \$25 payable to the State of California.
- ☒ Complete all sections relating to this claim and sign the form. Please print or type all information.
- ☒ Attach receipts, bills, estimates or other documents that back up your claim.
- ☒ Include two copies of this form and all the attached documents with the original.

**Claimant Information**

1	San Pasqual Band of Diegueno Mission Lisians aka San Pasqual Band of Mission Indians	2	Tel: 760 291 5577
3	16300 Nyemii Pass Road	4	Valley Center
5	Mailing Address	6	CA 92082
7	City	8	State Zip
9	Best time and way to reach you: Through attorney stated below		
10	Is the claimant under 18? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, give date of birth: <input type="text"/> <input type="text"/> <input type="text"/>		
			MM DD YYYY

**Attorney or Representative Information**

1	Solomon, Stephen W	2	Tel: 310 822 9848
3	Last name First Name MI	4	Email: ssolomon@ssjlaw.com
5	426 Culver Blvd.	6	Playa del Rey
7	Mailing Address	8	CA 90293
9	City	10	State Zip
11	Relationship to claimant: Legal Counsel		

**Claim Information**

12	Is your claim for a state-dated warrant (uncashed check) or unredeemed bond? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	State agency that issued the warrant: _____ If NO, continue to Step 13	
	Dollar amount of warrant: _____	Date of issue: <input type="text"/> <input type="text"/> <input type="text"/>
	Proceed to Step 13	MM DD YYYY
13	Date of incident: December 10, 11 and 12, 2008	
	Was the incident more than six months ago? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	If YES, did you attach a separate sheet with an explanation for the late filing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
14	State agencies or employees against whom this claim is filed:	
	State of California; California Gambling Control Commission; Governor Arnold Schwarzenegger; Chairman Dean Shelton; Alexandra Vuksich; and Stephanie Shimazu	
15	Dollar amount of claim: At least \$566,297,500.00	
	If the amount is more than \$10,000, indicate the type of civil case: <input type="checkbox"/> Limited civil case (\$25,000 or less) <input checked="" type="checkbox"/> Non-limited civil case (over \$25,000)	
	Explain how you calculated the amount:	
	See attached	

15	Location of the incident:
	Offices of the California Gambling Control Commission in Sacramento and Valley View Casino were San Pasqual would operate the Gaming Devices
16	Describe the specific damage or injury:
	The State, by and through the above-listed agency and employees, breached its contract with San Pasqual by failing to issue San Pasqual the 428 Gaming Device Licenses it requested at the December 10, 11, and 12, 2008 Gaming Device License Draw despite at least 10,549 Gaming Device Licenses being available.
18	Explain the circumstances that led to the damage or injury:
	See attached.
19	Explain why you believe the state is responsible for the damage or injury:
	See attached.
20	Does the claim involve a state vehicle? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	If YES, provide the vehicle license number, if known:

### Auto Insurance Information

21				
	Name of Insurance Carrier			
	Mailing Address	City	State	Zip
	Policy Number:	Tel:		
	Are you the registered owner of the vehicle? <input type="checkbox"/> Yes <input type="checkbox"/> No			
	If NO, state name of owner:			
	Has a claim been filed with your insurance carrier, or will it be filed? <input type="checkbox"/> Yes <input type="checkbox"/> No			
	Have you received any payment for this damage or injury? <input type="checkbox"/> Yes <input type="checkbox"/> No			
	If yes, what amount did you receive?			
	Amount of deductible, if any:			
	Claimant's Drivers License Number:	Vehicle License Number:		
	Make of Vehicle:	Model:	Year:	
	Vehicle ID Number:			

### Notice and Signature

22	I declare under penalty of perjury under the laws of the State of California that all the information I have provided is true and correct to the best of my information and belief. I further understand that if I have provided information that is false, intentionally incomplete, or misleading I may be charged with a felony punishable by up to four years in state prison and/or a fine of up to \$10,000 (Penal Code section 72).	
	Signature of Claimant or Representative	Date
		May 29, 2009
23	Mail the original and two copies of this form and all attachments with the \$25 filing fee or the "Filing Fee Waiver Request" to: Government Claims Program, P.O. Box 3035, Sacramento, CA, 95812-3035. Forms can also be delivered to the Victim Compensation and Government Claims Board, 400 R St., 5th flr, Sacramento.	

### For State Agency Use Only

24		
	Name of State Agency	Fund or Budget Act Appropriation No.
	Name of Agency Budget Officer or Representative	Title
	Signature	Date

**Question 15:**

If the amount is more than \$10,000, indicate the type of civil case: Breach of Contract; Intentional Interference with Prospective Economic Advantage; Negligent Interference with Prospective Economic Advantage.

**Explain how you calculated the amount:** Because the State has unlawfully prevented San Pasqual from obtaining the income from 428 Gaming Devices that would allow San Pasqual to support its tribe members in the midst of a historic economic recession, San Pasqual damages are for the lost income caused by the State's unlawful actions in breaching its contract with San Pasqual. The damages are calculated by multiplying the amount of income San Pasqual loses every year due to the State's failure to issue San Pasqual the 428 Gaming Device Licenses it properly requested at the December 10, 11, and 12, 2008 Gaming Device License Draw and should have been issued times the remaining number of years the contract between San Pasqual and the State is in effect.

**Question 18:**

**Explain the circumstances that led to the damage or injury:** Despite a long history of financially oppressive government action against Native Americans, the State of California unlawfully refuses to issue Gaming Device Licenses to San Pasqual that would further San Pasqual's ability to support its tribe members in the midst of a historic economic recession. The State refuses to abide by the terms of the contract in order to force San Pasqual to renegotiate its contract that would require San Pasqual to pay unconscionable sums to operate Gaming Devices that San Pasqual already has the right to operate.

In September 1999, San Pasqual entered into a contract with the State of California regarding Gaming Device Licenses. The State of California is required by this contract to issue all gaming device licenses necessary to comply with its contractual obligations, and established the CGCC as the State entity that would perform and satisfy this contractual duty. The CGCC thus acted in its capacity as an agent of, and on behalf of, the State by holding a Gaming Device License Draw on December 10, 11, and 12. San Pasqual properly requested the State issue 428 Gaming Device Licenses to San Pasqual at this License Draw so that San Pasqual would operate the 2,000 Gaming Devices it bargained for in its contract with the State. The State failed to issue the 428 Gaming Devices to San Pasqual despite at least 10,549 Gaming Device Licenses being available for issuance by the State, and therefore the State breached its contract with San Pasqual.

Question 19:

Explain why you believe the state is responsible for the damage or injury: In September 1999, San Pasqual entered into a contract with the State of California regarding Gaming Device Licenses. Despite a long history of financially oppressive government action against Native Americans, the State of California unlawfully refuses to issue Gaming Device Licenses to San Pasqual that would further San Pasqual's ability to support its tribe members in the midst of a historic economic recession. The State refuses to abide by the terms of the contract in order to force San Pasqual to renegotiate its contract and thereby require San Pasqual to pay unconscionable sums to operate Gaming Devices that San Pasqual already has the right to operate.

The State of California is required by this contract to issue all gaming device licenses necessary to comply with its contractual obligations, and established the CGCC as the State entity that would perform and satisfy this contractual duty. The CGCC thus acted in its capacity as an agent of, and on behalf of, the State by holding a Gaming Device License Draw on December 10, 11, and 12. San Pasqual properly requested the State issue 428 Gaming Device Licenses to San Pasqual at this License Draw so that San Pasqual would operate the 2,000 Gaming Devices it bargained for in its contract with the State. The State failed to issue the 428 Gaming Devices to San Pasqual despite at least 10,549 Gaming Device Licenses being available for issuance by the State, and therefore the State breached its contract with San Pasqual.

# EXHIBIT 3

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GOVERNMENT CLAIMS PROGRAM  
400 R Street, 5<sup>th</sup> Floor • Sacramento, California 95811  
Mailing Address: P.O. Box 3035 • Sacramento, California 95812  
Toll Free Telephone Number 1-800-955-0045 • Fax Number: (916) 491-8443  
Internet: [www.vcgcb.ca.gov](http://www.vcgcb.ca.gov)

FRED AGUIAR  
Secretary  
State and Consumer Services Agency  
Chairperson  
JOHN CHIANG  
State Controller  
Board Member  
MICHAEL A. RAMOS  
San Bernardino County District Attorney  
Board Member  
JULIE NAUMAN  
Executive Officer

Stephen W Soloman  
426 Culver Blvd  
Play del Rey, CA 90293

August 20, 2009


RE: Claim G583219 for San Pasqual Band of Diqueno Mission, aka San Pasqual Band of Mission Indians

Dear Stephen Soloman,

The Victim Compensation and Government Claims Board rejected your claim at its hearing on August 13, 2009.

If you have questions about this matter, please mention letter reference 118 and claim number G583219 when you call or write your claim technician or analyst at (800) 955-0045.

Sincerely,

  
Jacqueline B. Tinetti, Program Manager  
Government Claims Program  
Victim Compensation and Government Claims Board

cc: D-8 Attorney Generals Office  
E-15 Governors Office, Attn: Janielle Desomer  
A-6 Gambling Control Commission, Attn: Cy Rickards, Chief Counsel

**Warning**

"Subject to certain exceptions, you have only six months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim." See Government Code Section 945.6. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately".

\*\*\*\*\*

It is not necessary or proper to include the Victims Compensation and Government Claims Board (Board) in your court action unless the Board was identified as a defendant in your original claim. Please consult Government Code section 955.4 regarding proper service of the summons.

Ltr 118 Board Claim Rejection



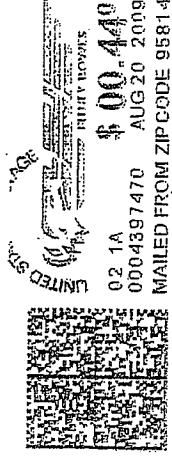
RECEIVED  
AUG 24 2009

BY: \_\_\_\_\_

State of California  
Government Claims Division  
PO Box 3035  
Sacramento CA 95812-3035

RECEIVED  
AUG 24 2009

BY: \_\_\_\_\_



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