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 Control Commission

11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
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14 **CALIFORNIA VALLEY MIWOK TRIBE,**

15 Plaintiff,

16 v.

17 **THE CALIFORNIA GAMBLING**
 18 **CONTROL COMMISSION; and DOES 1**
 19 **THROUGH 50, Inclusive,**

20 Defendants.

Case No. 08 CV 0120 BEN AJB

**DEFENDANT CALIFORNIA
 GAMBLING CONTROL
 COMMISSION'S MEMORANDUM
 OF POINTS AND AUTHORITIES IN
 SUPPORT OF MOTION FOR
 CHANGE OF VENUE TO THE
 EASTERN DISTRICT OF
 CALIFORNIA SACRAMENTO
 DIVISION**

28 U.S.C. § 1404 (a)

Date: March 10, 2008

Time: 10:30 a.m.

Courtroom: 3

Judge: The Hon. Roger T. Benitez

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 25 **INTRODUCTION**

26 This is a motion pursuant to 28 U.S.C. § 1404(a) to transfer the above-entitled action
 27 from this District to the Eastern District of California, Sacramento Division on grounds that the
 28 parties to this action all reside in the Eastern District and the compacts which form the basis for

1 agreement upon which the action is based establishes a preference for that district, the case
2 should be transferred to that district.

3 In this case, the Miwok allege in the complaint that the tribe is located in Stockton,
4 California. (Compl., at 2, 1:1.) The defendant Commission's offices are located in Sacramento,
5 California which is also the place where service was effected. Further, from the face of the
6 pleadings it is evident that the Doe defendants named in the Fifth Claim for Relief are all likely
7 residents of the same Stockton area as the tribe. Finally, the compacts that form the basis for this
8 suit plainly establish a preference that a breach of compact action such as this be tried in the
9 district in which the tribe alleging a breach is located. (Compl., at 40, § 11.2.1(c).)

10 While a plaintiff's choice of forum is often given substantial weight when there is a
11 choice regarding venue (*Securities Investor Protection Corp. v. Vigman*, 764 F.2d 1309, 1317
12 (9th Cir. 1985)), that is not the case where, as here, the plaintiff does not reside in the forum it
13 has selected (*Image, Inc. v. Travelers Indem. Co.*, 536 F. Supp. 58, 59 (Ed. Pa. 1981); *Bryant v.*
14 *ITT Corp.*, 48 F. Supp. 2d 829, 832 (ND Ill. 1999)) or where the forum selected by the plaintiff
15 lacks any significant contact with the activities alleged in the complaint (*Chrysler Capital Corp.*
16 *v. Woehling*, 633 F. Supp. 478, 482). In this case, the only connection between San Diego and
17 this case is the location of the office of Plaintiff's counsel. Convenience of counsel, however, is
18 irrelevant in a venue motion. *Solomon v. Continental American Life Ins. Co.*, 472 F.2d 1043,
19 1047 (3rd. Cir. 1973); *In re Horseshoe Entertainment*, 337 F.3d 429, 434 (5th Cir. 2003). What
20 is relevant is the fact that the compacts upon which Plaintiff's suit is based indicate a preference
21 that breach of compact suits be tried in the jurisdiction in which the tribe is located. Compact §
22 11.2.1(c) provides that in a breach of compact suit should a federal court lack jurisdiction "the
23 action may be brought in the superior court for the county in which the Tribe's Gaming Facility
24 is located." Though the Ninth Circuit ruled subsequently that federal courts have subject matter
25 over breach of compact actions (*Cabazon Band of Mission Indians v. Wilson*, 124 F.3d 1050,
26 1056 (9th Cir. 1997),) this language demonstrates that the intent of the parties was that such suits
27 be brought in the jurisdiction in which the tribe is located.

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CONCLUSION

For these reasons, the Commission respectfully requests that its motion for change of venue be granted and that this action be transferred to the United States District Court for the Eastern District of California, Sacramento Division.

Dated: January 31, 2008

Respectfully submitted,

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P.A.Motion for Change of Venue.wpd
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