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March 5, 2019

VIA E-MAIL (bgc\_regulations@doj.ca.gov) & U.S. MAIL

Stephanie Shimazu  
Bureau of Gambling Control  
P.O. Box 168024  
Sacramento, CA 95816-8024

RE: Banker Position Rotation Workshops

Dear Chief Shimazu:

I write on behalf of the Morongo Band of Indians to provide the Bureau of Gambling Control our Tribe's written comments for the regulatory workshops it is conducting on rotation of the player-dealer position in California card rooms.

We want to make these fundamental points:

1. California law prohibits anyone (other than a tribal nation with a compact) from playing banked card games. The card rooms, however, have for many years violated this prohibition, and the State has done nothing about it, a point proven by the fact that the card rooms to this day continue to play the illegal banked games. This harms Morongo, because while we are restricted to offering gaming on our reservation, card rooms engage in both advertising and offering these illegal games in the urban areas where our customers reside. Playing and advertising these prohibited games violates the tribal exclusivity established in Article IV, Section 19(f) of the California Constitution as approved by the voters in Proposition 1A, and in our Tribe's Compact with the State of California.

2. Banking even a single hand of a card game makes that an illegal banked game. The Bureau and the card rooms have already established an industry standard for rotation of the player-dealer position, and yet the card rooms violate these standards routinely without any enforcement action from the Bureau. For many years, the card rooms have submitted to the Bureau rules for their games, which rules the Bureau has approved and features on its website. Almost every single rule provides that the player-dealer position must be offered or actually rotate every two hands. Thus, the card rooms and the Bureau – with neither input nor influence from the tribes – have determined what "continuously rotated" means under Penal Code section 330.11. In addition, we would like to point out that under the Penal Code, the games of blackjack and baccarat, which is not a banked game, are impermissible for any entity other than a tribe to offer in California. There is therefore no reason to re-examine the rules that the Bureau

Bureau Chief Stephanie Shimazu

March 5, 2019

Page 2

and card rooms have already agreed upon, but there is every reason to exercise your authority to force the card rooms to comply with existing approved rules and the Penal Code.

3. If the Bureau insists on conducting that re-examination, the rotation of the player-dealer position can *never* exceed two hands. An important foundational point is that under California's Constitution and the Penal Code, the Bureau does not have any authority to expand the scope of gaming in California. Stated otherwise, the Bureau must strictly maintain the prohibition on banked and percentage card games in card rooms. With this in mind, we note that common and accepted definitions of the word "continuously" are "without break" and "constantly." These definitions leave no room for the card rooms to argue that their current practices are legal. They also leave no room to justify the 60-minute rotation standard the Bureau espoused in its June 30, 2016 guidelines. Indeed, we believe the word "continuously" and any of its definitions leave no room to argue for any rotation standard besides every hand. We would like to emphasize that, as noted above, the law requires that the player-dealer position must actually rotate every hand, or if not, no less frequently than the industry-standard two, and if it does not, the game must stop and cannot begin again until another player who has no business relationship with the card room or a third party proposition player provider takes that position.

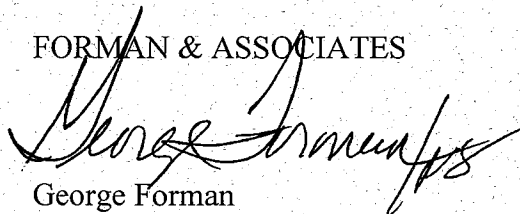
4. The role of Third Party Proposition Players in card rooms violates the prohibition on banked games by permitting the card rooms to obtain an improper interest in the funds wagered, by failing to obtain collection fees from all players rather than only from the TPP players, and by having the TPP players serve as the "bank." Contrary to the California Supreme Court's decision in *UNITE HERE v. Davis*, this use of TPP players is a "bank" that is prohibited by the California Constitution and the Penal Code.

Morongo believes it is long past time to stop the card rooms' illegal gaming and to support the exclusive constitutional right that Tribes possess to engage in particular types of gaming. The ongoing illegal activities of the card rooms harm Morongo's government and all other California tribes because we are all restricted to using gaming revenues for the purposes prescribed in the Indian Gaming Regulatory Act, and any decrease in revenue directly undermines the general welfare of our tribal members, the ability to provide strong governmental infrastructure, the future self-sufficiency of the Tribe, and our ability to engage in non-gaming economic development. Impacts also may be felt by our surrounding local communities that benefit from our charitable activities and support of local governments.

We therefore ask the Bureau to enforce the law and protect the exclusive right of Indian tribes to offer banked and percentage card games.

Sincerely,

FORMAN & ASSOCIATES



George Forman