

1 Paul K. Charlton (012449)
2 Karl M. Tilleman (013435)
3 Erin N. Bass (030104)
4 STEPTOE & JOHNSON LLP
5 201 East Washington Street, Suite 1600
6 Phoenix, Arizona 85004-2382
7 Telephone: (602) 257-5200
8 Facsimile: (602) 257-5299
9 pcharlton@steptoe.com
10 ktilleman@steptoe.com
11 ebass@steptoe.com

12 Jennifer B. Bonneville (*Pro hac vice*)
13 STEPTOE & JOHNSON LLP
14 633 West Fifth Street, Suite 700
15 Los Angeles, California 90071
16 jbonnevi@steptoe.com

17 *Counsel for Plaintiff Tohono O'odham Nation*
18 (Additional attorneys for
19 Plaintiff listed on next page)

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

The Tohono O'odham Nation,

Plaintiff,

v.

Douglas Ducey, Governor of Arizona; Mark
Brnovich, Arizona Attorney General; and Daniel
Bergin, Director, Arizona Department of
Gaming, in their official capacities,

Defendants.

Case No. 2:15-cv-01135-DGC

**JOINT MEMORANDUM ON
LIKELIHOOD OF SETTLEMENT**

1 Additional Attorneys:

2 Danielle Spinelli (*Pro hac vice*)
3 Kelly P. Dunbar (*Pro hac vice*)
4 Sonya L. Lebsack (*Pro hac vice*)
5 Kevin M. Lamb (*Pro hac vice*)
6 WILMER CUTLER PICKERING
7 HALE AND DORR LLP
8 1875 Pennsylvania Avenue, N.W.
9 Washington, D.C. 20006
10 Telephone: (202) 663-6000
11 danielle.spinelli@wilmerhale.com
12 kelly.dunbar@wilmerhale.com
13 sonya.lebsack@wilmerhale.com
14 kevin.lamb@wilmerhale.com

11 Laura Berglan, Acting Attorney General
12 Office of Attorney General
13 TOHONO O'ODHAM NATION
14 P.O. Box 830
15 Sells, AZ 85634
16 Telephone: (520) 383-3410
17 laura.berglan@tonation-nsn.gov
18
19
20
21
22
23
24
25
26
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I. The Tohono O'odham Nation's Position

The Nation does not believe that settlement of this matter is imminent. The State and the Nation engaged in formal settlement discussions earlier this year but failed to reach a resolution of this dispute. More recently, the State has apparently engaged in discussions with tribes other than the Nation and has reached agreement with several, but not all, Arizona tribes on an amendment to those tribes' existing Compacts, as announced in the State's November 21, 2016 press release. On November 17, 2016, the State contacted the Nation and requested that the Nation sign a different proposed amendment to its Compact and agree to various other terms.

There have been no bilateral settlement discussions between the State and the Nation regarding the proposed amendment. Although the Nation is still reviewing the State's proposal and determining how to respond, the proposal's current terms are unlikely to be acceptable to the Nation for a number of reasons. The Nation accordingly believes resolution of this matter by December 14 is unlikely.

Nevertheless, the Nation remains willing to continue to explore the possibility of settlement. Because the Nation believes that guidance and input from a neutral third party, such as a federal magistrate judge, would be most likely to lead to settlement, the Nation proposed to counsel for Director Bergin and counsel for the Governor that the parties have a settlement conference with a magistrate. Although the State rejected that proposal, the Nation nonetheless believes that it offers the best path forward. If such a settlement conference were scheduled, the Nation would recommend that the December 14 hearing be continued. However, if the State remains unwilling to participate in such a settlement conference, the Nation believes there is little possibility of settlement, and the Nation thus respectfully requests that the Court hold the hearing on December 14 and resolve the issues currently pending before the Court.

II. Director Bergin's Position

Director Bergin is prepared to go forward with the hearing on the Nation's summary judgment motion on December 14, 2016. However, Director Bergin understands that the Governor's office recently wrote to the Nation in an attempt to re-initiate a dialogue regarding a proposed Compact amendment that focuses on rebuilding the trust necessary for more comprehensive Compact-modernization discussions with the Nation and all other Tribes. As of today's date, eight other tribes have signed the Governor's proposed Compact amendment. Although Director Bergin understands that the Governor's office has not yet received a response from the Nation, the Nation issued the following statement in a press release on November 21, 2016: "The Nation stands ready to consider compact amendment language that would resolve the outstanding litigation, including the Class III issue at its west valley facility, and includes language regarding no new casinos in the Phoenix area during the current Compact."

Regarding the Nation's proposal that the parties have a settlement conference with a federal magistrate judge, Director Bergin believes this proposal is premature and will not accomplish the State's goals. The Governor's proposed Compact amendment not only involves issues currently pending before the Court, but also seeks to address broader Compact issues that impact the Governor's office and all other gaming tribes in Arizona, who are not parties to this litigation. Additionally, Director Bergin does not have the authority to negotiate directly with the Nation regarding the Governor's proposed Compact amendment. *See* A.R.S. § 5-601.02(E) ("The state, *through the governor*, is authorized to negotiate and enter into amendments to new compacts that are consistent with this chapter and with the policies of the Indian gaming regulatory act." (emphasis added)). Therefore, Director Bergin does not believe a bilateral settlement conference between the Nation and Director Bergin would be productive at this time.

However, in order to allow a re-initiation of the dialogue between the Governor's office and the Nation regarding the Governor's proposal, and in order to conserve judicial

resources, Director Bergin is amenable to a 30- or 45-day continuance of the hearing (or whatever continuance the Court deems appropriate), and proposes that the parties update the Court on the status of Compact-amendment discussions between the State and the Nation by January 2, 2017.

Dated: November 30, 2016

STEPTOE & JOHNSON LLP

/s/ Karl M. Tilleman

Karl M. Tilleman

Counsel for Plaintiff Tohono O'odham Nation

Dated: November 30, 2016

GIBSON, DUNN & CRUTCHER LLP

/s/ Matthew A. Hoffman (w/permission)

Matthew A. Hoffman (*pro hac vice*)

*Counsel for Defendant Director Daniel Bergin
Arizona Department of Gaming*

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November, 2016, I caused the foregoing document to be served via email upon the following persons to the addresses noted below:

Patrick Irvine
Douglas C. Northup
Carrie Pixler Ryerson
Fennemore Craig, P.C.
2394 E. Camelback Road, Suite 600
Phoenix, AZ 85016-3429

Matthew D. McGill
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue N.W.
Washington, DC 20036-5306

Matthew A. Hoffman
Timothy W. Loose
Andrew G. Pappas
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197

Attorneys for Defendant
Director Daniel Bergin
Arizona Department of Gaming

/s/ Beth Hardin _____