IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

THE CHEROKEE NATION, THE CHICKASAW NATION, and THE CHOCTAW NATION, Plaintiffs, THE CITIZEN POTAWATOMI NATION, THE MUSCOGEE (CREEK) NATION, THE QUAPAW NATION, THE DELAWARE NATION, THE SEMINOLE NATION, and THE WICHITA AND AFFILIATED TRIBES, Plaintiffs-in-Intervention, v. J. KEVIN STITT, in his official capacity as the Governor of the State of Oklahoma, Defendant/Counterclaimant.	)	No. CIV-19-1198-D

PLAINTIFFS' AND PLAINTIFFS-IN-INTERVENTION'S CHEROKEE NATION, CHICKASAW NATION, CHOCTAW NATION, CITIZEN POTAWATOMI NATION, DELAWARE NATION, MUSCOGEE (CREEK) NATION, QUAPAW NATION, AND SEMINOLE NATION OPENING BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

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INTRODUCTION

The Plaintiffs and Plaintiffs-in-Intervention, Cherokee Nation, Chickasaw Nation, Choctaw Nation, Citizen Potawatomi Nation, Delaware Nation, Muscogee (Creek) Nation, Quapaw Nation, and Seminole Nation ("Nations"), each entered into a gaming compact with the State of Oklahoma ("Oklahoma" or "State") that then went into effect under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-2721. Under their Compacts, the Nations conduct electronic games and pay the State a share of their gaming revenue. After the Compacts went into effect, state-licensed gaming operators were authorized by the State to conduct the same electronic games as the Nations, subject to limitations that the State promised to keep in effect as consideration for the Nations' revenue sharing payments. The Compact provides that it "shall automatically renew" on January 1, 2020 if those state-licensed gaming operators, or others, are authorized to conduct electronic gaming on that date. They were, and the Compacts therefore renewed on that date. The Nations ask the Court to grant partial summary judgment on our declaratory judgment claim to hold the State to its word.

STATEMENT OF UNDISPUTED MATERIAL FACTS

THE PARTIES AND IGRA

1. The Plaintiffs are federally-recognized Indian tribes. *See* Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 85 Fed. Reg. 5462, 5463, 5465 (Jan. 30, 2020); Answer ¶¶ 9-11 at 4, ECF No. 15; Answer ¶¶ 1-2 at 2, ECF No. 87; Answer ¶ 7 at 2, ECF No. 88; Answer ¶ 7 at 3, ECF No. 98; Answer ¶ 7 at 3, ECF No. 105; Answer ¶ 6 at 3, ECF No. 107.

2. Defendant is J. Kevin Stitt, in his official capacity as Governor of the State of Oklahoma. *See, e.g.*, Answer ¶ 12 at 4, ECF No. 15.

3. IGRA governs gaming on Indian lands. It divides gaming into three "classes." Only Class III gaming is at issue here, which consists of "all forms of gaming that are not class I gaming or class II gaming," 25 U.S.C. § 2703(8), "includ[ing] casino games, slot machines, and horse racing," *Navajo Nation v. Dalley*, 896 F.3d 1196, 1201 (10th Cir. 2018) (quoting *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 785 (2014)).

4. IGRA requires that for a tribe to conduct Class III gaming, its gaming activities must be: authorized by a tribal ordinance that satisfies 25 U.S.C. § 2710(b) and has been approved by the Chairman of the National Indian Gaming Commission ("NIGC"), *id.* § 2710(d)(1)(A); "located in a State that permits such gaming for any purpose by any person, organization, or entity," *id.* § 2710(d)(1)(B); and "conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under [§ 2710(d)(3)] that is in effect," *id.* § 2710(d)(1)(C). *See N. Arapaho Tribe v. Wyoming*, 389 F.3d 1308, 1310 (10th Cir. 2004).

5. IGRA also requires that compacts be submitted to the Secretary of the Interior ("Secretary") for review and states that a compact is effective when notice of its approval by the Secretary, or notice that it has gone into effect because the Secretary has not disapproved it, is published in the Federal Register. 25 U.S.C. § 2710(d)(3)(B), (d)(8)(D).

6. IGRA provides that once a compact has been entered into by the State and is in effect under IGRA the "class III gaming activity on the Indian lands of [each Tribe] shall

be fully subject to the terms and conditions of the Tribal-State compact." 25 U.S.C. § 2710(d)(2)(C).

THE STATE-TRIBAL GAMING ACT AND OKLAHOMA'S IGRA COMPACT OFFER TO TRIBES

7. In 2004, Oklahoma enacted the State-Tribal Gaming Act ("STGA"), Okla. Stat. tit. 3A, §§ 261-282, which was approved by Oklahoma voters in a referendum vote held November 2, 2004, Okla. State Question 712 (Nov. 2, 2004).

8. The STGA authorizes "organization licensees" – i.e., horse racetracks – to conduct electronic gaming under licenses issued by the Oklahoma Horse Racing Commission ("OHRC"). Okla. Stat. tit. 3A, §§ 200.1(9), 205.2(C), 262(A)-(C). The OHRC is an agency of the State, created by the Oklahoma Horse Racing Act, made up of nine members appointed by the Governor with the advice and consent of the Oklahoma Senate. *Id.* § 201(A). The OHRC supervises all race meetings held in Oklahoma, *id.* § 204(A)(1)(a), and may promulgate rules to administer and enforce the Oklahoma Horse Racing Act, *id.* § 204(A)(2), and to govern the conduct of gaming by organization licensees under the STGA, *id.* § 262(F).

9. The STGA provides that the OHRC may issue electronic gaming licenses to organization licensees only "[i]f at least four Indian tribes enter into the model [tribal gaming compact set forth in *id.* § 281], and such compacts are approved by the Secretary of the Interior," *id.* § 262(A). The model gaming compact ("Model Compact"), Okla. Stat. tit. 3A, § 281, is "an offer to federally recognized tribes in the State of Oklahoma to engage in Class III gaming on tribal lands under [its] terms and conditions." *Sheffer v. Buffalo*

Run Casino, PTE, Inc., 2013 OK 77, ¶ 4, 315 P.3d 359 (citing *Griffith v. Choctaw Casino of Pocola, Okla.*, 2009 OK 51, ¶ 11, 230 P.3d 488, *overruled on other grounds by Sheffer*, 2013 OK 77, ¶ 25); *accord* Okla. Stat. tit. 3A, § 280.

10. The Model Compact provides "[t]his Compact, as an enactment of the people of Oklahoma, is deemed approved by the State of Oklahoma. No further action by the state or any state official is necessary for this Compact to take effect upon approval by the Secretary of the Interior and publication in the Federal Register." Okla. Stat. tit. 3A, § 281, Part 16.

11. Each Nation authorizes the conduct of Class III gaming on its Indian lands under a tribal gaming ordinance that was approved pursuant to IGRA.[1]

[1] Ex. 1, Cherokee Nation Technical Gaming Amendment Act, Legis. Act 17-14 (July 18, 2014) (codified at Cherokee Nation Code Ann. tit. 4, §§ 1-69); Ex. 2, Letter from Jonodev Chaudhuri, Acting Chairman, NIGC, to Bill John Baker, Chief, Cherokee Nation (Oct. 27, 2014) (approval letter); Ex. 3, Chickasaw Nation Public Gaming Act of 1994, Tribal Law 11-004 (Jan. 24, 1994) (codified at Chickasaw Nation Code ch. 3, §§ 3-3101 to 3-3610); Ex. 4, Letter from Anthony J. Hope, Chairman, NIGC, to Laquita Rich, Chickasaw Nation (Mar. 4, 1994) (approval letter); Ex. 5, Choctaw Nation of Oklahoma Class II & III Revised Gaming Ordinance, CB-05-07 (Oct. 14, 2006); Ex. 6, Letter from Philip N. Hogen, Chairman, NIGC, to Paula Penz, Gaming Comm'r, Choctaw Nation Office of Pub. Gaming (Nov. 20, 2006) (approval letter); Ex. 7, Citizen Potawatomi Amended Gaming Ordinance, Ordinance No. 07-01 (codified at Citizen Potawatomi Nation Code tit. 23, ch. 3); Ex. 8, Letter from Philip N. Hogen, Chairman, NIGC, to Jason Greenwalt, Gaming Comm'r-Exec. Dir., Citizen Potawatomi Nation Gaming Comm'n (Dec. 11, 2006) (approval letter); Ex. 9, Delaware Nation Gaming Ordinance, Res. No. 2016-073 (Sept. 23, 2016); Ex. 10, Letter from Jonodev O. Chaudhuri, Chairman, NIGC, to Kerry Holton, President, Del. Nation (Jan. 13, 2017) (approval letter); Ex. 11, Muscogee (Creek) Nation Gaming Code, N.C.A. 18-012 (Feb. 2, 2018) (codified at MCNCA tit. 21); Ex. 12, Letter from Michael Hoenig, Gen. Counsel, NIGC, to Zeke Fletcher, Attorney, Fletcher Law PLLC (May 11, 2018) (approval letter); Ex. 13, Quapaw Tribal Gaming Ordinance, Res. No. 082112-A (Aug. 21, 2012) (codified as amended at Quapaw Code tit. 17); Ex. 14, Letter from Tracie L. Stevens, Chairwoman, NIGC, to John L. Berrey, Chairman, Quapaw Tribe of Okla. (Oct. 16, 2012) (approval letter); Ex. 15, Seminole Nation of Okla. Amended Class II &

12. Each Nation accepted the Model Compact and by so doing entered into a Compact with the State under IGRA.[2]

13. Each Nation's Compact was approved or considered to have been approved by the Secretary, 25 U.S.C. § 2710(d)(8)(A), (C), notice of such approval by the Secretary was published in the Federal Register, and each Nation's Compact then went into effect under

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III Gaming Ordinance, Tribal Ord. 2017-06 (July 29, 2017) (codified at Seminole Nation Code tit. 5); Ex. 16, Letter from Jonodev O. Chaudhuri, Chairman, NIGC, to D. Michael McBride III, Crowe & Dunlevy (Nov. 9, 2017) (approval letter); Notice of Approved Class III Tribal Gaming Ordinances, 84 Fed. Reg. 13,314, 13,314-15 (Apr. 4, 2019).

[2] Ex. 17, Tribal Gaming Compact Between Cherokee Nation & Oklahoma; Ex. 18, Tribal Gaming Compact Between Chickasaw Nation & Oklahoma; Ex. 19, Tribal Gaming Compact Between Choctaw Nation & Oklahoma; Ex. 20, Tribal Gaming Compact Between Citizen Potawatomi Nation & Oklahoma; Ex. 21, Tribal Gaming Compact Between Del. Nation & Oklahoma; Ex. 22, Tribal Gaming Compact Between Muscogee (Creek) Nation & Oklahoma; Ex. 23, Tribal Gaming Compact Between Quapaw Nation & Oklahoma; Ex. 24, Tribal Gaming Compact Between Seminole Nation of Okla. & Oklahoma. *See* Ex. 25, Letter from Mike Olsen, Principal Deputy Assistant Sec'y-Indian Affairs, Dep't of Interior, to Chad Smith, Principal Chief, Cherokee Nation (Dec. 28, 2004) (Cherokee approval letter); Ex. 26, Letter from Mike Olsen, Principal Deputy Assistant Sec'y-Indian Affairs, Dep't of Interior, to Bill Anoatubby, Governor, Chickasaw Nation (Jan. 12, 2005) (Chickasaw approval letter); Ex. 27, Letter from George Skibine, Acting Deputy Assistant Sec'y-Policy & Econ. Dev., Dep't of Interior, to Gregory E. Pyle, Chief, Choctaw Nation of Okla. (Mar. 8, 2005) (Choctaw approval letter); Ex. 28, Letter from George Skibine, Acting Deputy Assistant Sec'y-Policy & Econ. Dev., Dep't of Interior, to John A. Barrett, Tribal Chairman, Citizen Potawatomi Nation (Jan. 6, 2006 [sic]) (Citizen Potawatomi approval letter); Ex. 29, Letter from George Skibine, Acting Deputy Assistant Sec'y-Policy & Econ. Dev., Dep't of Interior, to Brad Henry, Governor, State of Oklahoma (Jan. 6, 2006) (Delaware approval letter); Ex. 30, Letter from George Skibine, Deputy Assistant Sec'y-Policy & Econ. Dev., Dep't of Interior, to A. D. Ellis, Principal Chief, Muscogee (Creek) Nation (Mar. 16, 2005) (Muscogee (Creek) approval letter); Ex. 31, Letter from Mike Olsen, Principal Deputy Assistant Sec'y-Indian Affairs, Dep't of Interior, to John L. Berrey, Chairman, Quapaw Tribal Bus. Comm. (Jan. 12, 2005) (Quapaw approval letter); Ex. 32, Letter from Mike Olsen, Acting Principal Deputy Assistant Sec'y-Indian Affairs, Dep't of Interior, to Kenneth Chambers, Principal Chief, Seminole Nation of Okla. (Apr. 11, 2005) (Seminole approval letter) (collectively, "Compact Approval Letters").

IGRA, *id.* § 2710(d)(3)(B), on or about January 27, 2005 (Cherokee Nation), February 8, 2005 (Chickasaw and Quapaw Nations), February 9, 2005 (Choctaw and Citizen Potawatomi Nations), April 8, 2005 (Muscogee (Creek) Nation), April 26, 2005 (Seminole Nation) and June 1, 2005 (Delaware Nation). *See* Answer ¶ 38 at 10-11, ECF No. 15; Answer ¶¶ 15-16 at 5, ECF No. 87; Answer ¶ 11 at 4, ECF No. 98; Answer ¶ 11 at 4, ECF No. 105; Answer ¶ 10, at 4, ECF No. 107.[3]

14. Upon approval of their Compacts, the Nations were authorized to conduct "covered games," Compact Parts 3.5., 4.A., namely

> an electronic bonanza-style bingo game, an electronic amusement game, an electronic instant bingo game, nonhouse-banked card games; [and] any other game, if the operation of such game by a tribe would require a compact and if such game has been: (i) approved by the Oklahoma Horse Racing Commission for use by an organizational licensee, (ii) approved by state legislation for use by any person or entity, or (iii) approved by amendment of the [STGA]; . . . .

Id. Part 3.5.

15. On January 27, 2005, notice of approval by the Secretary of compacts that four tribes had entered into with the State was published in the Federal Register, 70 Fed. Reg.

[3] *See* Notice of Approved Class III Gaming Compacts, 70 Fed. Reg. 3942 (Jan. 27, 2005) (Cherokee compact); Notice of Approved Class III Gaming Compacts, 70 Fed. Reg. 6725 (Feb. 8, 2005) (Chickasaw and Quapaw compacts); Notice of Class III Gaming Compacts taking effect, 70 Fed. Reg. 6903 (Feb. 9, 2005) (Choctaw and Citizen Potawatomi compacts); Notice of Approved Tribal-State Compacts, 70 Fed. Reg. 18,041 (Apr. 8, 2005) (Muscogee (Creek) compact); Notice of Approved Tribal-State Compact, 70 Fed. Reg. 21,440 (Apr. 26, 2005) (Seminole compact); Notice of Class III Gaming Compacts taking effect, 70 Fed. Reg. 31,499 (June 1, 2005) (Delaware compact); *Choctaw Nation of Okla. v. Oklahoma*, 724 F. Supp. 2d 1182, 1184 (W.D. Okla. 2010); *Cherokee Nation v. Oklahoma*, No. CIV-10-979-W, at 2 (W.D. Okla. Nov. 9, 2010); *Citizen Potawatomi Nation v. Oklahoma*, 881 F.3d 1226, 1228 (10th Cir. 2018); *Comanche Nation v. Oklahoma*, No. CIV-10-01339-W, at 4 (W.D. Okla. Dec. 28, 2010).

at 3942. Following the effective date of those compacts, the STGA permitted the OHRC to authorize organization licensees to conduct electronic gaming, specifically "electronic amusement games," "electronic bonanza-style bingo games," and "electronic instant bingo games," subject to limits on the number of locations that may be licensed to do so and the number of machines that may be used to play such games. Okla. Stat. tit. 3A, § 262(A), (C). These are the same electronic games that the Nations conduct under their Compacts.

16. On April 6, 2005, after most of the Nations' Compacts had gone into effect, the OHRC promulgated its first set of rules and regulations to "establish Standards and requirements for licensure, certification, registration, renewal, and other approval under the [STGA]." 23 Okla. Reg. 1150, 1150 (Apr. 6, 2005). The OHRC made these rules permanent, effective June 25, 2006, after the effective dates of all of the Nations' Compacts. 23 Okla. Reg. 2602, 2604 (June 25, 2006); *see* Okla. Admin. Code tit. 325 ch. 80. The OHRC since amended its rules at least four times, in May 2008, April 2009, June 2009, and June 2013. *See* OHRC, *Rules for Racetrack Gaming* at iii (2013).[4]

17. On August 11, 2005, after the effective dates of the Nations' Compacts, *see* SOF ¶ 13, the OHRC first authorized horse racetracks to conduct electronic gaming other than pari-mutuel wagering on live horse races, and it has continued to do so annually since then, Answer ¶ 43 at 12, ECF No. 15. Most recently, on October 17, 2019, the OHRC authorized Remington Park and Will Rogers Downs to conduct such electronic gaming during the calendar year beginning January 1, 2020. OHRC, Regularly Scheduled Meeting Minutes

[4] *Available at* https://www.ohrc.org/documents/Rules%20for%20Racetrack%20Gaming%20%209-10-13.pdf.

1-2 (Oct. 17, 2019);[5] *see* Ex. 33, Order Granting Cond'l Racetrack Gaming Operator License, *In re Global Gaming RP, LLC*, No. 2019-OHRC-013 (OHRC Oct. 17, 2019); Ex. 34, Order Granting Cond'l Racetrack Gaming Operator License, *In re Will Rogers Downs, LLC*, No. 2019-OHRC-014 (OHRC Oct. 17, 2019); Answer ¶ 43 at 12, ¶ 54 at 15, ECF No. 15.

"SUBSTANTIAL EXCLUSIVITY," REVENUE SHARING, AND THE STATE'S SUBSEQUENT EXPANSION OF ELECTRONIC GAMING

18. IGRA provides that except for "assessment[s] by the State . . . in such amounts as are necessary to defray the costs of regulating [gaming] activity," 25 U.S.C. § 2710(d)(3)(C)(iii), it does not authorize states "to impose any tax, fee, charge, or other assessment upon an Indian tribe," *id.* § 2710(d)(4).

19. The Compacts provide for such oversight assessments at Part 11.B., which requires compacting Tribes to remit such assessments by June 30 of each year to cover oversight costs for the next calendar year. *Id.*

20. Each Compact also requires each Nation to pay the State a share of its Class III gaming revenues "so long as the state does not change its laws after the effective date of this Compact to permit the operation of any additional form of gaming by any such organization licensee, or change its laws to permit any additional electronic or machine gaming within Oklahoma." Compact Part 11.A. The Compacts further provide that "[the State] will not, during the term of this Compact, permit the nontribal operation of any machines or devices to play covered games or electronic or mechanical gaming devices

[5] *Available at* https://www.ohrc.org/MeetingMinutes10172019.pdf.

otherwise presently prohibited by law within the state in excess of the number and outside of the designated locations authorized by the State-Tribal Gaming Act." *Id.* Part 11.E. "[I]n the event of a breach of this provision by the state," the State must pay liquidated damages to certain qualifying Nations. *Id.*

21. IGRA allows tribes to pay gaming revenues to states only if the Secretary has approved the terms of a compact that so provide. *See* 25 U.S.C. § 2710(d)(3)(B). The Secretary approved, or allowed to go into effect, the revenue-sharing provisions of the Nations' Compacts after determining that the State had made meaningful concessions to the Nations, that had been shown by those Nations that provided an economic analysis to have significant economic benefit to those Nations in exchange for the revenue-sharing payments agreed upon, and that the Compacts of the Nations that had not provided an economic analysis should be allowed to go into effect because they would otherwise be competitively disadvantaged in relation to the nations with approved compacts. Compact Approval Letters at 1-2. In making these determinations, the Secretary expressly recognized that the Nations' revenue-sharing obligations terminate if the State breaches the substantial exclusivity provisions of the Compacts. *Id.* at 2.

22. In 2017, the State repealed certain hourly and daily limits on the conduct of electronic gaming by organization licensees. 2017 Okla. Sess. Law Serv. ch. 115, § 1 (West) (codified at Okla. Stat. tit. 3A, § 262(B)).

23. In 2018, the State enacted a supplemental compact offer to authorize additional "covered games." 2018 Okla. Sess. Law Serv. ch. 11, § 2 (West) (codified at Okla. Stat. tit. 3A, § 280.1). The Cherokee Nation, Chickasaw Nation, Choctaw Nation, Citizen

Potawatomi Nation, Muscogee (Creek) Nation, and Quapaw Nation accepted this supplemental compact offer from the State, which was then approved by the Secretary for each of those Nations.[6]

24. Also, in 2018, the State enacted legislation that permits the State Lottery to conduct a form of "Internet gambling." 2018 Okla. Sess. Law Serv. ch. 125, § 1 (West) (codified at Okla. Stat. tit. 3A, § 724.5).

THE AUTOMATIC RENEWAL OF THE COMPACTS UNDER PART 15.B.

25. Part 15.A.-C. of the Compacts provide as follows:

> A. This Compact shall become effective upon the last date of the satisfaction of the following requirements:

[6] Tribal Gaming Compact Supplement Between Cherokee Nation & Oklahoma, *available at* https://www.sos.ok.gov/documents/filelog/92594.pdf; Chickasaw Nation & Oklahoma Gaming Compact Non-House-Banked Table Games Supplement, *available at* https://www.sos.ok.gov/documents/filelog/92595.pdf; Choctaw Nation & Oklahoma Gaming Compact Non-House-Banked Table Games Supplement, *available at* https://www.sos.ok.gov/documents/filelog/92592.pdf; Tribal Gaming Compact Supplement Between Citizen Potawatomi Nation & Oklahoma, *available at* https://www.sos.ok.gov/documents/filelog/92593.pdf; Tribal Gaming Compact Supplement Between Muscogee (Creek) Nation & Oklahoma, *available at* https://www.sos.ok.gov/documents/filelog/92599.pdf; Ex. 35, Tribal Gaming Compact Supplement Between Quapaw Nation & Oklahoma; Ex. 36, Letter from Tara Sweeney, Assistant Sec'y-Indian Affairs, Dep't of Interior, to John L. Berrey, Chairman, Quapaw Tribal Bus. Comm. (Aug 10, 2018) (Quapaw supplemental approval letter); Notice of Approval of Tribal-State Class III Gaming Compact Amendments in Oklahoma, 83 Fed. Reg. 41,101 (Aug. 17, 2018) (Cherokee, Chickasaw, and Citizen Potawatomi Nations), *corrected by* 83 Fed. Reg. 45,958; Notice of Approval of Tribal-State Class III Gaming Compact Amendments in Oklahoma, 83 Fed. Reg. 41,102 (Aug. 17, 2018) (Choctaw Nation); Notice of Approval of Tribal-State Class III Gaming Compact Amendments in Oklahoma, 83 Fed. Reg. 43,703 (Aug. 27, 2018) (Quapaw Nation); Correction of Notice of Approval of Tribal-State Class III Gaming Compact Amendments in Oklahoma, 83 Fed. Reg. 45,958 (Sept. 11, 2018) (Muscogee (Creek) Nation), *correcting* 83 Fed. Reg. 41,101.

> 1. Due execution on behalf of the tribe, including obtaining all tribal resolutions and completing other tribal procedures as may be necessary to render the tribe's execution effective;
>
> 2. Approval of this Compact by the Secretary of the Interior as a tribal-state compact within the meaning of IGRA and publication in the Federal Register or satisfaction of any other requirement of federal law; and
>
> 3. Payment of the start-up assessment provided for in subsection C of Part 11 of this Compact.
>
> B. This Compact shall have a term which will expire on January 1, 2020, and at that time, if organization licensees or others are authorized to conduct electronic gaming in any form other than pari-mutuel wagering on live horse racing pursuant to any governmental action of the state or court order following the effective date of this Compact, the Compact shall automatically renew for successive additional fifteen-year terms; provided that, within one hundred eighty (180) days of the expiration of this Compact or any renewal thereof, either the tribe or the state, acting through its Governor, may request to renegotiate the terms of subsections A and E of Part 11 of this Compact.
>
> C. This Compact shall remain in full force and effect until the sooner of expiration of the term or until the Compact is terminated by mutual consent of the parties.

26. The actions of the state government set forth in SOF ¶¶ 15-17 authorized organization licensees "to conduct electronic gaming . . . other than pari-mutuel wagering on live horse . . . racing following the effective date of this Compact," and the conduct of such electronic gaming by organization licensees continued to be authorized by the State on January 1, 2020, the day on which the Compacts' first fifteen-year term expired. The Compacts therefore "automatically renew[ed]" January 1, 2020, for a second fifteen-year term pursuant to Part 15.B. and remain in full force and effect under Part 15.C.

27. The state governmental actions set forth in SOF ¶¶ 22 and 24 expand the electronic gaming that organization licensees and others are permitted to conduct under state law,

rather than prohibiting the conduct of all forms of electronic gaming other than pari-mutuel wagering on live horse races.

DEFENDANT'S AND OTHER OKLAHOMA OFFICIALS' STATEMENTS CONCERNING THE COMPACTS AND TRIBAL GAMING RIGHTS

28. Defendant has consistently denied that the Nations' Compacts automatically renewed on January 1, 2020, and are in full force and effect.

29. On July 5, 2019, Defendant stated to the Nations that "since there has been no governmental action of the State, or court order authorizing electronic gaming in the State, since the effective date of the Compact, . . . the Compact will not automatically renew" on January 1, 2020, and that "pursuant to Article 6 of the Oklahoma Constitution, 74 O.S. § 1221 C.1., and Part 15 Section B of the Compact, I am hereby requesting that we renegotiate *not only the terms of Subsections A and E of Part 11 of the Compact, but the rest of the terms of the Compact as well*." *See, e.g.*, Ex. 37, Letter from J. Kevin Stitt, Governor, State of Oklahoma, to Bill John Baker, Principal Chief, Cherokee Nation (July 5, 2019); Ex. 38, Letter from J. Kevin Stitt, Governor, State of Oklahoma, to Bill Anoatubby, Governor, Chickasaw Nation (July 5, 2019); Ex. 39, Letter from J. Kevin Stitt, Governor, State of Oklahoma, to Gary Batton, Chief, Choctaw Nation of Okla. (July 5, 2019); Ex. 40, Letter from J. Kevin Stitt, Governor, State of Oklahoma, to James Floyd, Principal Chief, Muscogee (Creek) Nation (July 5, 2019) (emphasis added) (collectively, "Okla. Governor's July 5 Letter"); Answer ¶ 33 at 8, ECF No. 87; Answer ¶ 29 at 17, ECF No. 88; Answer ¶ 19 at 5, ECF No. 98; Answer ¶ 19 at 5, ECF No. 105; Answer at 2, ECF No. 107 (General Denial adopting ECF No. 15 in its entirety). Defendant further stated

that, unless the Nations agreed to renegotiate the Compact, Class III gaming would be illegal in Oklahoma after December 31, 2019 "because of the January 1, 2020, termination date." Okla. Governor's July 5 Letter.

30. Defendant continues to maintain that the Compacts terminated on January 1, 2020, and that all Class III gaming conducted by the Nations under the Compacts became illegal as of that date. Answer ¶¶ 27, 29 at 8-9, ¶ 51 at 14, ECF No. 15; Answer ¶¶ 50, 52 at 12, ¶¶ 49-50 at 29, ECF No. 87; Answer ¶¶ 10, 15 at 4, ¶ 55 at 22, ¶ 57 at 23, ECF No. 88; Answer ¶ 13 at 4, ¶ 18 at 5, ¶ 24 at 6, ¶¶ 52-53 at 23, ECF No. 98; Answer ¶¶ 5-6 at 3, ¶¶ 13, 18 at 5, ¶¶ 51-52 at 23, ECF No. 105; Answer at 2, ECF No. 107 (General Denial incorporating ECF No. 15 in its entirety).

JURISDICTION AND SUMMARY JUDGMENT STANDARD

This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331, which "gives a district court subject matter jurisdiction to decide any claim alleging a violation of IGRA," *Bay Mills*, 572 U.S. at 787 n.2. The Court also has subject matter jurisdiction under 28 U.S.C. § 1362, because this action is brought by federally recognized Indian Tribes to protect and enforce rights held under IGRA, 25 U.S.C. §§ 2701-2721, and Compacts that were entered into and are now in effect under IGRA, and that therefore have the force of federal law, *id*. § 2710(d)(2)(C); *accord Citizen Potawatomi Nation*, 881 F.3d at 1239 n.17 (quoting *Cabazon Band of Mission Indians v. Wilson*, 124 F.3d 1050, 1056 (9th Cir. 1997)); *Muhammad v. Comanche Nation Casino*, 742 F. Supp. 2d 1268, 1276 (W.D. Okla. 2010) (citing *Cabazon*, 124 F.3d at 1056) ("[A]n action seeking the enforcement of a tribal gaming compact arises under federal law.").

"Summary judgment is appropriate 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Evans v. Sandy City*, 944 F.3d 847, 852 (10th Cir. 2019) (quoting Fed. R. Civ. P. 56(a)), *petition for cert. filed*, (U.S. Mar. 2, 2020) (No. 19-1091). A "genuine dispute of material fact" exists when there is a question of fact in the case that a factfinder must resolve because the outcome of that question might affect the outcome of the suit under applicable principles of law. *See United States v. Magnesium Corp. of Am.*, 616 F.3d 1129, 1136 (10th Cir. 2010); *Birch v. Polaris Indus., Inc.*, 812 F.3d 1238, 1251 (10th Cir. 2015).

SUMMARY OF ARGUMENT

The Compact provides at Part 15.B. that its first term expires on January 1, 2020, and at the same time automatically renews for fifteen year terms if organization licensees or others are authorized to conduct any form of electronic gaming other than pari-mutuel wagering on live horse races pursuant to State action following the Compact's effective date. That set precondition has been satisfied: On January 1, 2020, "organization licensees" – that is, Oklahoma horse racetracks – were authorized by the State to conduct electronic gaming in a form other than pari-mutuel wagering on live horse racing, which conduct was made lawful after the Compacts went into effect and remains lawful to this day. The plain language of Part 15.B. requires no more for the Compact to automatically renew, and it did so on January 1, 2020. The State could have derailed its renewal by completely prohibiting electronic gaming prior to the end of the Compacts' first term, but did not do so. Nevertheless, Defendant has suggested automatic renewal did not occur for other reasons, which come up empty. The automatic operation of Part 15.B.'s renewal

clause is not derailed by a party claiming to have requested renegotiation of Part 11.A. and E., because renewal is mandatory if Part 15.B.'s condition is met. Nor does the automatic renewal of the Compacts under Part 15.B. make them vulnerable to challenge as perpetual agreements. To be sure, the Compacts do not allow either party to unilaterally terminate them, for otherwise their promises would be illusory. But the Nations' Compacts were entered into and approved under IGRA, and their terms are valid under IGRA.

In sum, the Compacts renewed for a second fifteen-year term on January 1, 2020. And as the Compacts have the force of federal law under IGRA, 25 U.S.C. § 2710(d)(2)(C), the Nations possess a federal law right to conduct Class III gaming on and after that date and are entitled to partial summary judgment on their claim.

ARGUMENT

I. Under The Plain Language of Part 15.B. The Compact Renewed On January 1, 2020.

A. Federal Law Governs Interpretation of Compacts and Requires Unambiguous Terms Be Construed in Accordance with Their Plain Language.

"'A compact is a form of contract[,]' . . . [and] a creation of IGRA, which determines a gaming compact's effectiveness and permissible scope." *Citizen Potawatomi Nation*, 881 F.3d at 1238 (quoting *Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546, 1556 (10th Cir. 1997)) (citing *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 48–49 (1996); 25 U.S.C. § 2710(d)(3)); *Muhammad*, 742 F. Supp. 2d at 1275, 1276 n.7 (citations omitted). "A tribal-state gaming compact is similar to a 'congressionally sanctioned interstate compact the interpretation of which presents a question of federal law.'" *Id.* at 1276 n.7 (quoting

Cuyler v. Adams, 449 U.S. 433, 442 (1981)). "Accordingly, in interpreting the Compact . . . we look to the federal common law." *Citizen Potawatomi Nation*, 881 F.3d at 1239 (citing *Pauma Band of Luiseno Mission Indians v. California*, 813 F.3d 1155, 1163 (9th Cir. 2015)).

"Under federal contract principles, if the terms of a contract are not ambiguous, this court determines the parties' intent from the language of the agreement itself." *Id.* (citing *Anthony v. United States*, 987 F.2d 670, 673 (10th Cir. 1993); *Arizona v. Tohono O'odham Nation*, 818 F.3d 549, 560-61 (9th Cir. 2016)).[7] The Compacts are not ambiguous, *see* Answer ¶ 9 at 20, ECF No. 15, and therefore their interpretation "must be discerned within [their] four corners," *Citizen Potawatomi Nation*, 881 F.3d at 1239 (quoting *Tohono O'odham Nation*, 818 F.3d at 560-61), giving meaning to every word or phrase, *id.* (citing *United States v. Brye*, 146 F.3d 1207, 1211 (10th Cir. 1998)); *Mirrow v. Barreto*, 80 F. App'x 616, 618 (10th Cir. 2003); *accord Muhammad*, 742 F. Supp. 2d at 1276 n.7 (Compact "must be construed and applied in accordance with its terms") (quoting *Texas v. New Mexico*, 482 U.S. 124, 128 (1987)).

In addition, as with all textual interpretation, the Compacts must "be read to give effect to all [their] provisions and to render them consistent with each other." *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63 (1995) (citations omitted); *see also Lujan*

[7] Furthermore, "[w]hether contract terms are ambiguous, and the interpretation of unambiguous terms, are questions of law." *Pueblo of Isleta v. Lujan Grisham*, No. 17-654 KG/KK, 2019 WL 1429586, at *20 (D.N.M. Mar. 30, 2019) (citing *Bank of Okla. v. Muscogee (Creek) Nation*, 972 F.2d 1166, 1171 (10th Cir. 1992); *Sault Ste. Marie Tribe of Chippewa Indians v. Granholm*, 475 F.3d 805, 810 (6th Cir. 2007)).

Grisham, 2019 WL 1429586, at *20 (a compact must be construed "as a harmonious whole") (quoting *Doña Ana Mut. Domestic Water Consumers Ass'n v. City of Las Cruces, N.M.*, 516 F.3d 900, 907 (10th Cir. 2008)). Likewise, courts should read the Compacts to avoid absurdity. *See, e.g.*, *Westland Water Dist. v. United States*, 153 F. Supp. 2d 1133, 1150 (E.D. Cal. 2001) (discussing federal common law governing contract interpretation); *In re Villa W. Assocs.*, 146 F.3d 798, 803 (10th Cir. 1998) (citing general principles of contract interpretation).

Interpreted in accord with these rules, the Compacts renewed January 1, 2020, for a second fifteen-year term.

B. The Compact Automatically Renewed on January 1, 2020, Upon the Satisfaction of Part 15.B.'s Set Precondition.

Part 15.B. states the Compact "shall have a term which will expire on January 1, 2020, and at that time" "shall automatically renew for successive additional fifteen-year terms" if organization licensees or others were authorized by the State to conduct electronic gaming after the Compacts went into effect and on January 1, 2020. The "shall automatically renew" clause provides as follows:

> [*A*]*t that time* [i.e., January 1, 2020], *if* organization licensees or others are authorized to conduct electronic gaming in any form other than pari-mutuel wagering on live horse racing pursuant to any governmental action of the state or court order following the effective date of this Compact, *the Compact shall automatically renew* for successive additional fifteen-year terms . . . .

Id. (emphasis added). Part 15.B.'s plain terms ask one simple question: Whether, on January 1, 2020, "organization licensees or others" were authorized by the State to conduct

electronic gaming following the effective date of the Compact? The answer to that question is an unequivocal "yes."

On January 1, 2020, organization licensees were authorized to conduct electronic gaming pursuant to the STGA, as they have been every year since 2005. SOF ¶ 17. The STGA expressly authorizes organization licensees to conduct such gaming after the effective date of at least four compacts, Okla. Stat. tit. 3A, § 262(A), and organization licensees were authorized to do so after the effective date of the Nations' Compacts. SOF ¶ 17. Part 15.B.'s set precondition was therefore met, and the Compacts automatically renewed on January 1, 2020.[8]

Faced with these facts, Defendant apparently contends renewal requires that some *additional* form of electronic gaming be authorized by state action. No such requirement exists. The Compacts only exclude pari-mutuel wagering on live horse racing from the electronic gaming that satisfies Part 15.B.'s precondition, *id.*, and in the Compacts the State promised *not* to authorize additional electronic gaming, *id.* Parts 11.A. and E., so it cannot be required to do so in order to renew the Compacts. Indeed, even assuming, *arguendo*,

[8] Oklahoma House Speaker Charles McCall reads the Compacts to have automatically renewed: "In my opinion, the compact has renewed for another 15 years . . . . In review of the documentation, what we have to look at, I think it very much supports the auto-renew and that threshold has been met." He added that "[t]he governor has asked me my opinion" and that "I have given him my opinion and my counsel on it. He has made his decision on his approach." Barbara Hoberock, *Speaker McCall on Tribal Gaming: 'In My Opinion, the Compact has Renewed for Another 15 Years'*, Tulsa World (Jan. 29, 2020) (quoting House Speaker Charles McCall), *available at* https://www.tulsaworld.com/news/state-and-regional/speaker-mccall-on-tribal-gaming-in-my-opinion-the-compact-has-renewed-for-another-15/article_7993bff3-9590-543a-9c52-9c658b06ec3b.html.

that such "additional" gaming was required, the State has taken such action in numerous forms.

1. Because Part 15.B. Provides for Automatic Renewal, No Additional Action By the Parties Was Necessary for the Compacts to Renew on January 1, 2020.

Under settled rules of contract interpretation, the language of Part 15.B. must be given its ordinary meaning. "Unless a contrary intention appears in the instrument, the words used [in a contract] are presumed to have been used in their ordinary or customary meaning, deliberately and with intention." *Lujan Grisham*, 2019 WL 1429586, at *20 (alteration in original) (quoting *Raulie v. United States*, 400 F.2d 487, 521 (10th Cir. 1968)). And the "ordinary or customary meaning" of a word may be determined with reference to a dictionary. *See Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012); *Anderson Living Tr. v. Energen Res. Corp.*, 886 F.3d 826, 848 (10th Cir. 2018); *see also, e.g.*, *United States v. Thomas*, 939 F.3d 1121, 1123 (10th Cir. 2019) (relying on Black's Law Dictionary and Webster's New Int'l Dictionary).

The Compacts "automatically renew," which means that they renew "with little or no direct human control," *Automatic*, Black's Law Dictionary (11th ed. 2019), pursuant to "a self-acting or self-regulating mechanism that performs a required act at a predetermined point in an operation," *Hassler v. Sovereign Bank*, 644 F. Supp. 2d 509, 516 (D.N.J. 2009) (quoting Webster's New Int'l Dictionary 148 (3d ed. 1993)). Under the Compact, that predetermined point is January 1, 2020, at which time the self-regulating mechanism set forth in the Compacts works as follows: After at least four Compacts are entered into and approved under IGRA, the OHRC is permitted to authorize horse racetracks to conduct

electronic gaming, and if the OHRC's authority to do so remains in effect on January 1, 2020, the Compacts automatically renew on that date, as Part 15.B. clearly provides.[9] The renewal provision is drafted broadly, so that renewal is also triggered if electronic gaming is being conducted by "others," or pursuant to a court order, or any other State action, Compact Part 15.B. In all of these circumstances, renewal is ***automatic***.

This interpretation is also consistent with the Compacts as a whole, *see Lujan Grisham*, 2019 WL 1429586, at *20 ("[A] contract should be interpreted as a harmonious whole." (citation omitted)), which consistently provide for legal consequences to flow from the satisfaction of set preconditions: "This Compact, as an enactment of the people of Oklahoma, is deemed approved by the State of Oklahoma. *No further action by the state or any state official is necessary for this Compact to take effect* upon approval by the Secretary of the Interior and publication in the Federal Register." Compact Part 16. (emphasis added). Likewise, the Compacts provide that in addition to the games listed in Part 3.5., the Nations may conduct

[9] As the Senior Policy Analyst for the State Legislative Council stated in a 2004 report, the Model Compact "[p]rovides that the compact shall expire January 1, 2020, but will be automatically renewed for fifteen years." Alicia Ramming Emerson, State Legislative Council, Summary of Enrolled Senate Bill 1252 § 22, https://docs.google.com/viewerng/viewer?url=https://KWTV.images.worldnow.com/library/38b61123-6f18-4d46-b200-9d56efbedd0a.pdf; *see* Aaron Brilbeck, *House, Senate Records Show Gaming Compacts Automatically Renew*, News9 (Jan. 15, 2020), https://www.news9.com/story/5e345def3196993fcfd056a7/house-senate-records-show-gaming-compacts-automatically-renew. The Model Compact was read the same way after the STGA was enacted. "The compact will expire January 1, 2020, but will automatically renew for 15 years. The fees and penalties may be renegotiated at that time." Research Div., Okla. House of Representatives, *Session Highlights 2004* at 8 (Nancy Marshment et al. eds., 2004), https://www.okhouse.gov/Documents/2004SessionHighlights.pdf.

> any other game, if the operation of such game by a tribe would require a compact and if such game has been: (i) approved by the Oklahoma Horse Racing Commission for use by an organizational licensee, (ii) approved by state legislation for use by any person or entity, or (iii) approved by amendment of the [STGA] . . . .

Compact Part 3.5. These provisions, like Part 15.B., provide for specific legal consequences to follow *automatically* from the satisfaction of set preconditions.

Returning to Part 15.B.'s automatic design and function, the inquiry proceeds as follows: (1) On January 1, 2020, "*are*" horse racetracks or others "*authorized* to conduct electronic gaming in any form other than pari-mutuel wagering on live horse racing"; (2) is that authorization "pursuant to *any governmental action of the state* or court order"; and (3) does any such authorized conduct "*follow[] the effective date of this Compact.*" The undisputed facts answer "yes" to each of these questions: (1) the OHRC has licensed Remington Park and Will Rogers Downs to continue to conduct electronic gaming other than pari-mutuel wagering on live horse racing for the calendar year beginning January 1, 2020, SOF ¶ 17; (2) the OHRC is an agency of the State, created by the Oklahoma Horse Racing Act, with authority to govern the conduct of gaming by organization licensees under the STGA, SOF ¶ 8; and (3) the OHRC has authorized horse racetracks to conduct electronic gaming following the effective date of the Nations' Compacts pursuant to licenses it has issued every year since 2005. SOF ¶ 17.

2. The Compact's Plain Language Rejects Defendant's Argument that Some New Additional Action Was Required for Automatic Renewal.

Defendant admits that the OHRC has licensed electronic gaming under the STGA every year since 2005 and that it licensed Remington Park and Will Rogers Downs to

conduct electronic gaming for the calendar year beginning January 1, 2020. Answer ¶ 43 at 12, ECF No. 15. Defendant also admits that in 2017 the Oklahoma Legislature repealed the STGA's restrictions on the hours and days on which electronic gaming could be conducted at OHRC-licensed horse racetracks. *Id.* ¶ 44 at 12-13. Nevertheless, Defendant maintains that "there has been no governmental action of the State, or court order authorizing electronic gaming in the State, since the effective date of the Compact." Okla. Governor's July 5 Letter. Evidently, Defendant denies that these admitted actions are "governmental action of the state . . . following the effective date of this Compact" under Part 15.B., or contends that the State must authorize some new or additional form of electronic gaming "following the effective date of this Compact" to satisfy Part 15.B. Both of these constructions are meritless.

First, Part 15.B. speaks of "*any* governmental action . . . following the effective date of this Compact." *Id.* (emphasis added). The OHRC is a state agency, SOF ¶ 8, its actions are therefore State action, and "any" is a word that "means what it says," *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980)). It "has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *Id.* (quoting Webster's Third New Int'l Dictionary 97 (1976)); *accord Republic of Iraq v. Beaty*, 556 U.S. 848, 856 (2009) (quoting *Gonzales*, 520 U.S. at 5). Part 15.B. therefore does not *exclude* either actions taken by the OHRC pursuant to the STGA or statutes enacted by the state legislature from the provision "any governmental action."

Indeed, the Compacts themselves treat administrative acts of the OHRC and legislative enactments, including amendments to the STGA, as state governmental action

that authorizes Class III gaming activities. The Compacts define "covered game" to include any game that would require a compact "if such game has been: (i) *approved by the [OHRC]* for use by an organizational licensee, (ii) *approved by state legislation* for use by any person or entity, or (iii) *approved by amendment of the [STGA]*; . . . ." Compact Part 3.5. Each of these actions is attributable to the Oklahoma government, and the Compacts treat them all as state governmental action.[10] Furthermore, to contend that *neither* the actions of a state agency acting under the authority of a state statute *nor* the actions of the state legislature are "governmental action of the state" is an absurd interpretation of the Compacts, which is to be avoided. *See, e.g.*, *In re Villa W. Assocs.*, 146 F.3d at 803; *Westland Water Dist.*, 153 F. Supp. 2d at 1150.

Second, Part 15.B.'s plain language rejects the assertion that automatic renewal occurs *only* if the State authorizes some new or additional form of Class III electronic gaming after the Compacts are in effect. Part 15.B.'s plain terms inquire whether the horse racetracks "*are*" authorized on January 1, 2020 to conduct electronic gaming, i.e., *on that date*, and whether that authorization occurred after the effective date of the Compacts—

[10] Even if the Compacts did not make that clear, federal common law does so, by defining the term "government action" or "governmental action" to cover all actions by the legislative, executive, or judicial branches of the government, including permitting or enforcement of permitting laws. *See, e.g.*, *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1005 (1984) (referring to cases considering "governmental action": judicial determination of rights; regulation and permitting; application of municipal ordinances (first citing *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 83 (1980); then citing *Kaiser Aetna v. United States*, 444 U.S. 164, 175 (1979); and then citing *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978))); *Chevron Mining Inc. v. United States*, 863 F.3d 1261, 1280-81 (10th Cir. 2017) (referring to permitting and issuance of reports and approval letters as "government actions"); *Seegmiller v. LaVerkin City*, 528 F.3d 762, 768 (10th Cir. 2008) (discussing legislative and executive acts as "governmental action").

nothing more. No one can dispute that, under the STGA, the OHRC could only authorize horse racetracks to conduct electronic gaming after "at least four Indian tribes enter[ed] into" the Model Compact. Okla. Stat. tit. 3A, § 262(A). Nor is it disputed that the OHRC did not issue its first electronic gaming licenses until *after* all the Nations' Compacts went into effect. *See* SOF ¶ 17. And finally, it cannot be disputed that the STGA remained in effect on January 1, 2020, and it continues to authorize horse racetracks to conduct electronic gaming. *Id.* Part 15.B. requires nothing more.

Furthermore, nothing in Part 15.B. or elsewhere in the Compacts requires the State to authorize some new form of gaming for the Compacts to automatically renew. Part 15.B. rejects that construction by providing that the Compacts "shall automatically renew" if organization licensees are "authorized to conduct electronic gaming in <u>*any*</u> form other than pari-mutuel wagering on live horse racing" on January 1, 2020 and following the effective date of the Compacts. *Id.* (emphasis added). Here too, "any" means what it says. *See supra* at 22. This language cannot be read to exclude any form of electronic gaming other than that specifically excepted, and it certainly does not exclude the electronic gaming that the Compacts expressly recognize organization licensees will be authorized to conduct after the Compacts are in effect. Compact Part 4.B. If previously authorized games were disqualified from Part 15.B., those games would have been excluded expressly, as was pari-mutuel wagering on live horse racing, which is authorized by the Oklahoma Horse Racing Act, Okla. Stat. tit. 3A, § 205.6, which was enacted in 1983, *id.* § 200.

In addition, when Compact obligations turn on the State's authorization of new games, the Compacts say so with precision. Part 11.A.'s tribal revenue-share obligation pertains only "so long as the state does not change its laws after the effective date of this Compact to permit the operation of *any additional form of gaming* by any such organization licensee, or change its laws to permit *any additional electronic gaming* within Oklahoma." *Id.* (emphasis added). Furthermore, requiring the State to authorize some new form of electronic gaming after the Compacts took legal effect would produce absurd results: By doing so the State would break its promise to provide the Nations' "substantial exclusivity" in the conduct of electronic gaming under Part 11.A. and E., which would in turn terminate the State's right to Tribal revenue-share payments.[11] While the Nations do not deny that such a violation also would trigger automatic renewal, there is no reasonable basis—in either the Compacts' language or basic logic—for saying that *only* a violation of the Compacts' terms can do so.

In sum, the argument that an additional State action was required for renewal cannot be squared with Part 15.B.'s plain language or the structure of the Compacts. It is instead an absurd construction of the Compacts, which disqualifies it from consideration. *See In re Villa W. Assocs.*, 146 F.3d at 803; *Westland Water Dist.*, 153 F. Supp. 2d at 1150.

[11] It is undisputed that the Nations' obligation to make revenue-share payments terminates if the State authorizes additional gaming that would diminish the Nations' exclusive rights to conduct Class III gaming under the Compact. Compact Approval Letters at 2.

3. Oklahoma Not Only Continues to Authorize Organization Licensees to Conduct Electronic Gaming, It Has Expanded the Electronic Gaming Authorized Under State Law.

No affirmative action was required for the Compacts to automatically renew under Part 15.B. once the Compacts were in place, as the OHRC was then permitted to authorize organization licensees to conduct electronic gaming other than pari-mutuel wagering on live horse racing. Nevertheless, since the Compacts went into effect, the State has taken such action in many forms, reaffirming its commitment to the conduct of electronic gaming by organization licensees and others after the effective date of the Compacts. The OHRC, for example, has promulgated, revised, and renewed its rules and regulations for permitting electronic gaming at Oklahoma's horse racetracks, *see* Okla. Admin. Code §§ 325:80-5-1(a), 325:80-5-2, 325:80-19-1, pursuant to which the OHRC has issued racetrack gaming licenses annually since August 11, 2005. SOF ¶ 17. Most recently, the OHRC authorized the operators of Remington Park and Will Rogers Down to conduct electronic gaming other than pari-mutuel wagering on live horse racing during the calendar year beginning on January 1, 2020. *Id.* These governmental actions of the State are completely inconsistent with Defendant's arguments.

Similarly, action by the Oklahoma Legislature reflects the State's ongoing commitment to the gaming authorized under state law after the Compacts took effect. In 2017, the Legislature repealed the STGA's express limitations on the number of hours per day and per week that organization licensees could conduct electronic gaming. 2017 Okla. Sess. Law Serv. ch. 115, § 1 (West) (codified at Okla. Stat. tit. 3A, § 262(B)). That state action effectively *re*-authorized organization licensees' conduct of electronic gaming;

moreover, it did so even *beyond* the limits set under the STGA as originally enacted. *See Murphy v. NCAA*, 138 S. Ct. 1461, 1474 (2018) ("When a State completely or partially repeals old laws banning sports gambling, it 'authorize[s]' that activity." (alteration in original)).

Finally, in 2018, the Oklahoma Legislature effectively overruled a 2017 opinion of the Oklahoma Attorney General and made lawful the conduct of the Oklahoma Lottery in a form the Legislature referenced as "Internet gambling." SOF ¶ 24. This State action confirms Oklahoma's record of both re-authorizing existing gaming and also authorizing additional gaming—i.e., continuing to move away from its otherwise "pervasive anti-gambling public policy." *In re Redburn*, 2017 OK AG 2, 2017 WL 1901894, at *1 (Okla. A.G. May 4, 2017).

While none of these new and additional actions are necessary to satisfy Part 15.B.'s provision for automatic renewal, each is sufficient for that purpose and therefore defeats Defendant's arguments.

4. Automatic Renewal is Not Affected by a Valid Request to Renegotiate Part 11.A. and E.

The sole question presented by the Nations in this action is whether the Compacts automatically renewed on January 1, 2020 pursuant to Part 15.B. Compl. ¶¶ 2-3, ECF No. 1. A separate provision of Part 15.B. permits a party to request to renegotiate Parts 11.A. and E. of the Compacts within a set time period that ends on the day the Compacts expire or renew. Compact Part 15.B. For the following reasons, the renegotiation provision does not affect the renewal of the Compacts, which Part 15.B. makes mandatory if organization

licensees remain authorized to conduct electronic gaming on January 1, 2020, and which is necessary to the efficacy of the renegotiation provision in the event a valid request is made under its terms.[12]

[12] Defendant's counterclaims assert in the alternative that Part 15.B. requires renegotiation of "certain compact terms within 180 days of the expiration or renewal of the Gaming Compacts," and seek relief on that basis. *See* Answer ¶ 3 at 23, ECF No. 15. The Nations are immune from Defendant's counterclaims in their entirety and do not waive that immunity by showing that automatic renewal is mandatory under Part 15.B. and is not affected by a request made under the renegotiation provision. "It's long since settled that 'an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.' This principle extends to counterclaims lodged against a plaintiff tribe—even compulsory counterclaims." *Ute Indian Tribe of Uintah & Ouray Reservation v. Utah*, 790 F.3d 1000, 1009 (10th Cir. 2015) (Gorsuch, J.) (first quoting *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998); then citing *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509-10 (1991)). And as "Tribal sovereign immunity is a matter of subject matter jurisdiction," *E.F.W. v St. Stephen's Indian High Sch.*, 264 F.3d 1297, 1302 (10th Cir. 2001) (citing *Fletcher v. United States*, 116 F.3d 1315, 1323-24 (10th Cir. 1997)), this Court also lacks jurisdiction over Defendant's counterclaims.

Nor has Congress abrogated tribal immunity for the Defendant's counterclaims. A federal statute does not abrogate tribal sovereign immunity unless Congress "'unequivocally' express[es] that purpose." *Bay Mills*, 572 U.S. at 790 (citation omitted). While Defendant relies on 25 U.S.C. § 2710(d)(7)(A)(ii) to authorize his counterclaims, Answer 24 ¶ 10, ECF No. 15 (citing 25 U.S.C. § 2710(d)(3)(A) but quoting § 2710(d)(7)(A)(ii)), that provision only authorizes federal district courts to hear suits brought by States or Indian tribes. The Defendant is neither, and therefore § 2710(d)(7)(A)(ii) has no application here. And while Defendant argues that the State of Oklahoma is a real party in interest for purposes of the counterclaim, § 2710(d)(7)(A)(ii) does not waive immunity for actions brought "*ex rel.*" a state. And Defendant's assertion that the State is the real party in interest in this action is wrong. This action was brought by the Nations against the Defendant in his official capacity under *Ex parte Young*, 209 U.S. 123 (1908), *see, e.g.*, Compl. ¶ 8, ECF No. 1, and the Tenth Circuit has squarely held that the State is not the real party in interest in a *Young* action. *Lewis v. N.M. Dep't of Health*, 261 F.3d 970, 976 (10th Cir. 2001). Finally, § 2710(d)(7)(A)(ii) only authorizes federal district courts to hear actions "to enjoin a class III gaming activity . . . conducted in violation of any Tribal-State compact [entered under IGRA] that is not in effect." *Id.* The Nations are not "in violation" of any Tribal-State compact, and the Defendant is not seeking to enjoin a "class III gaming activity," and the Nations are immune from Defendant's counterclaims for that reason as well.

Under settled law, the purpose and effect of the renegotiation provision is determined by application of the generally applicable principles of construction, including plain meaning. *See Beaty*, 556 U.S. at 858; *McDonald v. United States*, 279 U.S. 12, 20-22 (1929); *United States v. Wewoka Creek Water & Soil Conservancy Dist. No. 2*, 222 F. Supp. 225, 230 (E.D. Okla. 1963); *Zweigel v. Webster*, 32 F. Supp. 1015, 1018 (E.D. Okla. 1940); *see also Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Attorney*, 198 F. Supp. 2d 920, 939 (W.D. Mich. 2002), *aff'd sub nom. Grand Traverse Band of Ottawa & Chippewa Indians v. Office of U.S. Attorney*, 369 F.3d 960 (6th Cir. 2004). We proceed to that determination. The first reason that a request to renegotiate Parts 11.A and E. does not affect the automatic renewal of the Compacts is that the renegotiation provision in Part 15.B. says no such thing. Its plain meaning is that either party may only request to renegotiate Parts 11.A. and E. and then only within 180 days of renewal or expiry of the Compacts. Compact Part 15.B. The period within which such a request may be made ends when the Compacts renew or expire, which the renegotiation provision does not purport to affect. *Id.*

Furthermore, the plain language of Part 15.B. makes renewal mandatory, i.e., the Compacts "shall automatically renew" if the State authorized organization licensees or others to conduct electronic gaming after the Compacts went into effect and as of January 1, 2020. "The word 'shall' is ordinarily 'the language of command.'" *Alabama v. Bozeman*, 533 U.S. 146, 153 (2001) (quoting *Anderson v. Yungkau*, 329 U.S. 482, 485 (1947)) (according "shall" mandatory effect in interpreting interstate compact). "'Shall' is defined as 'has a duty to; more broadly, is required to,'" *Tri-Lakes Petrol. Co. v. Brooks*,

No. 14-CV-0005-CVE-FHM, 2014 WL 1789391, at *3 (N.D. Okla. May 5, 2014) (quoting Black's Law Dictionary 1499 (9th ed. 2009)), and it is "clear, mandatory language" when used in a contract, *id.*[13] And it means that here. If the renegotiation provision had any effect on the mandatory automatic renewal provision, it would say so in clear terms, e.g., by first stating "notwithstanding anything to the contrary herein," and then spelling out that effect. *Cf.* Compact Parts 5.C.1., 5.K.3.

Indeed, that provision is wholly permissive even within its own domain: Either party "may request to renegotiate the terms of subsections A and E of Part 11 of this Compact." Compact Part 15.B. "'[M]ay' means '[t]o be permitted to.'" *Scarlett v. Air Methods Corp.*, 922 F.3d 1053, 1060 (10th Cir. 2019) (alterations in original) (quoting *May*, Black's Law Dictionary (10th ed. 2014)); *see also Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1977 (2016) ("The word 'may,' when used in a statute, usually implies some degree of discretion." (quoting *United States v. Rodgers*, 461 U.S. 677, 706 (1983))). That permission is necessary as Parts 11.A. and E. set forth the State's double-locked promise that, as consideration for the Nations' revenue sharing payment, the State will not permit any additional non-tribal electronic gaming in the State. If a renegotiation request is made, the other party may agree to renegotiate Parts 11.A. and E. or not. The automatic renewal

[13] So too when "shall" is used in a statute. *In re Gracy*, 689 F. App'x 590, 594 (10th Cir. 2017) ("shall" "indicates a mandatory conclusion" when used in state statute providing that a mobile home "shall" be considered a fixture when stated conditions are met (citation omitted)); *Forest Guardians v. Babbitt*, 174 F.3d 1178, 1187 (10th Cir. 1999) ("The Supreme Court and this circuit have made clear that when a statute uses the word 'shall,' Congress has imposed a mandatory duty upon the subject of the command."). In short, "'[s]hall' means shall," *Forest Guardians*, 174 F.3d at 1187, and therefore the automatic renewal of the Compacts is mandatory when Part 15.B.'s condition is met.

of the Compacts is not affected by that decision, and that is so with good reason: Otherwise, the State could use the renegotiation provision as a club to shatter the central bargain made in the Compacts and force the Nations to agree to terms more advantageous to the State.[14] Moreover, it would be absurd to interpret Part 15.B. to allow a party to prevent the Compacts from automatically renewing on January 1 by requesting to renegotiate Parts 11.A. and E. as late as December 31 of the last year of the Compacts' term. And absurd constructions are to be avoided. *See, e.g.*, *In re Villa W. Assocs.*, 146 F.3d at 803; *Westland Water Dist.*, 153 F. Supp. 2d at 1150.

Finally, the use of "may" in the renegotiation proviso in contradistinction to the word "shall" in the automatic renewal provision, confirms that "'shall' imposes a mandatory duty." *Kingdomware*, 136 S. Ct. at 1977 (citing *United States ex rel. Siegel v. Thoman*, 156 U.S. 353, 359-60 (1895)); *Yungkau*, 329 U.S. at 485 ("[W]hen the same Rule uses both 'may' and 'shall,' the normal inference is that each is used in its usual sense—the one act being permissive, the other mandatory."). Not one word of the renegotiation provision affects that mandatory duty.

[14] The Compacts could not, in any event, require that the Nations agree on new terms for Parts 11.A. and E. *See Rincon Band of Luiseno Mission Indians of Rincon Reservation v. Schwarzenegger*, 602 F.3d 1019, 1030-31 (9th Cir. 2010) (state cannot impose terms under IGRA as "all the states are empowered to do is negotiate"). That is even clearer with respect to the revenue sharing provisions, such as Parts 11.A. and E, as IGRA explicitly provides that, except for state regulatory assessments negotiated and agreed upon under 25 U.S.C. § 2710(d)(3)(C)(iii), it shall not be interpreted "as conferring upon a State . . . authority to impose any tax, fee, charge, or other assessment upon an Indian tribe . . . to engage in a class III activity." *Id.* § 2710(d)(4). That provision "preclud[es] state authority to *impose* taxes, fees, or assessments, but [does] not prohibit[] states from *negotiating* for such payments where 'meaningful concessions' are offered in return." *Rincon Band*, 602 F.3d at 1036 (citation omitted). Thus, if the negotiations fail, the matter is concluded.

Second, in order to renegotiate Parts 11.A. and E., the Compacts must remain in effect and must automatically renew pursuant to their terms. The proviso only applies to Parts 11.A. and E., which only address substantial exclusivity and revenue sharing. Parts 11.A. and E. are meaningless standing alone, even if renegotiated. Indeed, there is no revenue to share unless the Compacts remain in effect, as the conduct of Class III gaming is authorized by Parts 3.5. and 4. And if Parts 11.A and E. are successfully renegotiated, the Compacts must automatically renew so that the amended terms can be integrated into the Compacts as a whole. And if Parts 11.A. and E. were successfully renegotiated, Secretarial approval of their modified terms would be required. *See* Compact Approval Letters at 3 (citing 25 U.S.C. § 2710(d)(8)(B)). In the interim, the substantial exclusivity provisions of Parts 11.A. and E. must remain in effect for the revenue sharing payments to be lawful. And if renegotiations fail, the Compacts must automatically renew for the State to continue to receive revenue-sharing payments.

Third, were there any doubt remaining, the explicit terms of Part 15.C. make clear that a request to renegotiate Parts 11.A. and E. does not affect the continuing validity of the Compacts by providing that: "This Compact shall remain in full force and effect until the sooner of expiration of the term or until the Compact is terminated by mutual consent of the parties." Here too, "shall" means what it says. A permissive request to renegotiate two Compact provisions does not affect that mandatory directive.

C. Automatic Renewal Does Not Result in the Compacts Lasting "In Perpetuity" or "Continu[ing] on One-Side Forever."

Defendant has protested that "you can't have a contract that in perpetuity continues forever on one side." *Governor Stitt Challenging Indian Tribes on Gaming Compacts*, News9 (July 25, 2019), https://www.news9.com/story/5e35d92e5c62141fdee972c0/governor-stitt-challenging-indian-tribes-on-gaming-compacts (interview beginning at 00:46); Answer ¶ 51 at 14, ECF No. 15. But whether the Compacts last in perpetuity is not before the Court in this case. The only question presented in this case is whether the Compacts renewed on January 1, 2020. Compl. ¶¶ 2-3, ECF No. 1. Whether the Compacts will renew again on January 1, 2035, or at some more distant date, is not before the Court. To the extent that Defendant raises this argument, such a claim would not be ripe in 2020. A court determines whether an issue is ripe for judicial review by "examining the fitness of the issues for judicial decision and the hardship caused to the parties if review is withheld." *Friends of Marolt Park v. U.S. Dep't of Transp.*, 382 F.3d 1088, 1093 (10th Cir. 2004) (citation omitted). "[A] claim may not be ripe if there is no direct, immediate effect on plaintiffs." *Id.* at 1094 (citing *Toilet Goods Ass'n v. Gardner*, 387 U.S. 158, 164-65 (1967)); *accord In re Tex. Brine Co.*, 879 F.3d 1224, 1230-31 (10th Cir. 2018). The only issue before the Court now is whether the Compacts renewed on January 1, 2020 for an additional term. Whether the Compacts renewed "in perpetuity" is therefore not fit for judicial decision until the end of the second fifteen-year term. And since the Compacts renewed for an additional fifteen-year term, Defendant will suffer no hardship, or any other direct, immediate effect, if the perpetuity question is not resolved now, as the Compacts

will remain in place for another fifteen years whether or not the renewal is "perpetual." And even if Defendant could bring this argument now, it is meritless for the following reasons.

First, under IGRA the duration of a compact is a "subject[] that [is] directly related to the operation of gaming activities," 25 U.S.C. § 2710(d)(3)(C)(vii), *see also Chemehuevi Indian Tribe v. Newsom*, 919 F.3d 1148, 1152-54 (9th Cir. 2019), and may therefore be negotiated and agreed upon by the parties, as it was in Part 15.B. of the Compacts. IGRA does not require the parties to settle that issue in one way or another, and nothing bars them from negotiating an indefinite term. Such a term serves to guarantee revenue sharing payments to state treasuries and a steady source of employment in local economies, as well as being consistent with IGRA's goal of protecting the long-term stability of the tribal gaming industry, in order to promote "tribal economic development, self-sufficiency, and strong tribal governments," 25 U.S.C. § 2702(1).[15]

Second, the Compacts' term is not perpetual. The Compacts' first term was definite, and it then automatically renewed when the condition that the parties agreed upon in Part 15.B. was met, which occurred on January 1, 2020. The State could have prevented that result by prohibiting organization licensees and all others from conducting any form of electronic gaming other than pari-mutuel wagering on live horse racing. *See* Compact Part

[15] Defendant's protest that the Nations' Compacts will allegedly last "in perpetuity" is ironic, given that he has recently signed agreements that purport to recognize tribal rights to "conduct class III Covered Games in Oklahoma for an indefinite duration." Pls.' Resp. to Joint Mot., Ex. 1 at Part 3.A., ECF No. 123-1 at 10; Pls.' Resp. to Joint Mot., Ex. 2 at Part 3.A., ECF No. 123-2 at 10.

15.B. It chose not to do so. And even after renewal, the Compacts reserve to the parties the right to terminate their agreement at any time on mutual agreement: "This Compact shall remain in full force and effect until the sooner of expiration of the term or *until the Compact is terminated by mutual consent of the parties*." Compact Part 15.C. (emphasis added).

Third, while the Compacts do not permit unilateral termination, that is not unusual or improper either. Intergovernmental agreements often allow termination by mutual agreement only. Oklahoma has agreed to such a provision in numerous interstate compacts governing jurisdiction over the beds and waters of interstate rivers that flow through the State. All provide that they will continue unless and until the legislatures of each signatory state all agree to terminate the compact.[16] Part 15.C. is no different—and so Defendant's protest rings hollow.

In short, while a gaming compact can have a perpetual term, the renewal of the Nations' Compacts does not result in such an agreement. The Compacts only prohibit *unilateral abrogation*, which is necessary for its promises to be meaningful. And their

[16] *See* Red River Boundary Compact Between Oklahoma & Texas, arts. VIII, X (codified at Okla. Stat. tit. 74, § 6106), *consented to by Congress*, Pub. L. No. 106-288, 114 Stat. 919 (2000); Red River Compact Between Arkansas, Louisiana, Oklahoma & Texas, art. XII, § 12.01 (codified at Okla. Stat. tit. 82, § 1431), *consented to by Congress*, Pub. L. No. 96-564, 94 Stat. 3305 (1980); Arkansas River Basin Compact Between Arkansas & Oklahoma, art. X, § A (codified at Okla. Stat. tit. 82, § 1421), *consented to by Congress*, Pub. L. No. 93-152, 87 Stat. 569 (1973); Arkansas River Basin Compact Between Kansas & Oklahoma, art. XII, § A (codified at Okla. Stat. tit. 82, § 1401), *consented to by Congress*, River and Harbor Act of 1966, Pub. L. No. 89-789, § 107(a), 80 Stat. 1405, 1409.

terms accord with IGRA and other intergovernmental agreements into which the State has entered.

II. Defendant's Actions Interfere With The Nations' Federal Right To Conduct Class III Gaming And Therefore Violate Federal Law.

The Compacts were entered into by the State and are in effect under IGRA, and their terms therefore have the force of federal law. *See* 25 U.S.C. § 2710(d)(2)(C); Okla. Stat. tit. 3A, § 280; *Citizen Potawatomi Nation v. Oklahoma*, 881 F.3d 1226, 1228 (10th Cir. 2018) (the State "offer[ed] 'a model tribal gaming compact' to federally recognized tribes within Oklahoma's borders and provid[ed] that a compact would take effect through the 'signature of the chief executive officer of the tribal government,' with '[n]o further action by the Governor or the state' required" (third alteration in original) (citation omitted)); *Muhammad v. Comanche Nation Casino*, No. CIV-09-968-D, 2010 WL 4365568, at *7 n.8 (W.D. Okla. Oct. 27, 2010); *Choctaw Nation*, 724 F. Supp. 2d at 1184; *Cherokee Nation*, No. CIV-10-979-W; *Comanche Nation*, No. CIV-10-01339-W; SOF ¶ 13. Accordingly, the "class III gaming activity on the Indian lands of [each Tribe] shall be fully subject to the terms and conditions of the Tribal-State compact entered into under [25 U.S.C. § 2710(d)(3)] by the Indian tribe that is in effect." 25 U.S.C. § 2710(d)(2)(C). Each Nation therefore has a federal law right to conduct Class III gaming in accordance with the term of the Compacts, under which the Compacts automatically renewed on January 1, 2020. Compact Part 15.B.

For these reasons, Defendant's position that the Nations may not lawfully conduct Class III gaming unless they negotiate a new compact that is approved under IGRA is

contrary to federal law. So too is any action taken by Defendant that interferes with the Class III gaming conducted by the Nations pursuant to the Compacts. Defendant has no authority to take such action under state law because the Compacts are in effect and have the force of federal law. Indeed, Defendant's lack of such authority could not be clearer. The Compacts provide that they "shall not alter tribal, federal or state civil adjudicatory or criminal jurisdiction," Compact Part 9, and Oklahoma has never been authorized to exercise state civil or criminal jurisdiction over Indian tribes in Indian country, *Okla. Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114, 125 (1993). For the same reasons, Defendant has no authority to demand that the Compacts be renegotiated. The sole authority under which Defendant may seek to renegotiate any provision of the Compacts is the Compacts themselves, which authorize the Governor to request to renegotiate only the terms of Parts 11.A. and E. of the Compact.

CONCLUSION

For the foregoing reasons, the Nations respectfully request that the Court:

Grant partial summary judgment on the Nations' claim for declaratory relief and issue a declaration that: (a) the Nations possess a federal law right to conduct Class III gaming pursuant to IGRA and IGRA compacts; (b) Part 15.B. of the Compacts provides that they "shall automatically renew" on January 1, 2020, if at that time "organization licensees or others are authorized to conduct electronic gaming in any form other than pari-mutuel wagering on live horse racing pursuant to any governmental action of the state or court order following the effective date of this Compact"; (c) the State has taken actions that satisfy Part 15.B.'s condition for automatic renewal; (d) the Compacts renewed on

January 1, 2020 for another fifteen-year term; and (e) Defendant's denying, interfering with, or otherwise acting contrary to the Nations' rights under their Compacts that renewed on January 1, 2020, either through his direct action or through the action of any of his agents, officers, employees, or representatives, is contrary to and violates federal law, and therefore has no legal effect.

Respectfully submitted,

Dated: May 22, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2020, I electronically filed the above and foregoing document with the Clerk of Court via the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the parties registered to receive such notice.

/s/ Frank S. Holleman
Frank S. Holleman