CHAIRPERSON JAMES: Mr. Smith.

CHAIRMAN SMITH: Good morning, Chairman and members of the Commission. I'd like to thank you for the opportunity to speak to you today.

I'm Robert Smith, Tribal Chairman of the Pala Band of Mission Indians.

I'd like to go over the Pala Compact, why it's good for Pala and all Californians. The Pala Tribal State Compact took 17 months to negotiate. At the beginning most everyone understood and agreed that this process would lead to a model compact for others to follow. It took years before that to get the Governor to the negotiating table because he felt rightly or wrongly that it was not fitting for him to negotiate with any Tribe that was operating gaming devices on its land that were in violation of California law.

In August, 1996, the Governor agreed to negotiate for an acceptable electronic lottery device for a Tribe that did not have any operation. Pala was chosen for the role for several reasons. We did not have a gaming operation. We were, however, interested in establishing one on our reservation and had a long-standing request into the Governor's office to negotiate a Class III compact. We also, by California standards, are a large Tribe (867 members and a 12,000 acre reservation in San Diego County) with a stable Tribal government. For these reasons the Governor felt we were in a good position to negotiate a compact that would serve as a model for other compacts, and the organization representing California's gaming Tribes, the California-Nevada
Indian Gaming Association, agreed. So formal negotiations between Pala and the Governor began in October, 1996.

Before the negotiations concluded many Tribes that had additionally endorsed and participated in our compact meetings began to criticize the process. Some of the Tribes pulled their lawyers out in September of 1997 because they no longer could abide by the confidentiality agreement that we had entered into with the Governor at the start of negotiations. This confidentiality agreement was made so that leaks to the media could not force one or both sides to harden their positions.

Pala, however, felt the negotiations were progressing in a positive direction and that we were obligated to continue in good faith negotiations with the Governor. We did so, and in March, 1998, our compact was executed and a month later approved by the Secretary of Interior.

What's good about the compact? Pala feels our compact is good for the Tribe and other Tribes who enter into substantially similar ones, and the people of California. The features that convinced our Tribal Council to approve the compact are these:

Tribes have a virtual monopoly on video gaming devices. The compact allows for unique Tribal video gaming devices that is a lottery, not a slot machine. The lottery device agreed to by the Governor and Pala has a look and feel of a video slot machine to the player but only operates legally as a lottery that no one else besides the Tribes and California State Lottery can operate, and CSL has made it clear that it has no

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intention of using fast paced video lottery games similar to the kinds of devices agreed to by the Governor and Pala.

Tribes get an increase in video machines allowed, but a limit is established for the benefit of everyone. According to the compact the total number of video lottery devices that will be permitted to operate on any lands for the first year is 19,900, an increase of almost 50 percent from the total number now in operation in California on Indian lands. On March 1st, 1999 the number can be renegotiated upward between the new governor and the Tribes. Each Tribe has a base allocation right of 199 devices, but by leasing rights from other Tribes, a Tribe can have up to 975 machines. This is more than the 33 of the 37 current gaming Tribes now have, and as for those four the total number over 975 that they have cumulatively is 1200.

All Tribes will benefit from gaming, not just a few based on the accident of location. There are more than 100 federally recognized Tribes in California, but less than 40 engage in gaming, and the majority get no benefits whatsoever from gaming. This is because most Tribes are in remote rural locations and cannot attract persons from major population centers to gamble on their Reservations. Pala and the Governor are of the firm belief that all Tribes should benefit from the gaming. Accordingly, we worked out a mechanism so that every federally recognized Tribe is entitled to a base allocation right of 199 machines that it can, if it chooses, lease to another Tribe more advantageously located for $5,000 per device per year. This amounts to about $1,000,000 in annual revenue that any non-gaming Tribe who chooses to lease it's rights to other Tribes.
Rights of workers and patrons protected. The compact assures that non-gaming related employees (e.g. restaurant, hotel, laundry, valet parking) who choose a union can collectively bargain with Tribes for certain worker protections. Some Tribes do not like this provision, but Pala feels that there is no reason not to extend these rights to employees who by a majority vote choose to have them.

Similarly, Pala agreed to provide workers' compensation, unemployment insurance, disability compensation to its workers, as well as protections from OSHA, the Fair Labor Standards Act and the state's Labor Code. We also agreed to utilize the Uniform Building Code, the county standard for fire suppression and safety, as well as to provide adequate emergency medical services and security. We think these guarantees are good for the Tribe and for everyone affected.

Cooperative regulation with the State to assure integrity of the games. We agreed, indeed, invited, the State to do background checks on certain key employees and investors. Again, this is in the mutual interests of the Tribe, our customers, and the general public.

County participation agreement for off-reservation environmental impacts. If a county, which is legally a subdivision of the State, chooses to do so, and does not already permit in a majority of its jurisdiction gambling and card rooms, it may negotiate a government-to-government agreement with the Tribe to mitigate significant off-reservation environmental and related aspects of the Tribal gaming facility.
Arbitration is the principal way disputes are resolved. To avoid costly and time consuming litigation battles, the Tribe and the State, including the county if it chooses to negotiate in a participation agreement with the Tribe, agree to resolve disputes through a mutual arbitrator.

Most favored nation provision. The compact contains a most favored Tribe or nation provision, which means that if any other later Tribe conducts a more favorable company provision than what Pala or other compacting Tribes enjoy, that they automatically get the benefit of the new better provision.

Comparing Proposition 5 to the Pala Compact. Pala feels the compact is a model to build on, not a ceiling or the best that the Tribes can get, but a floor for improvement. In stark contrast to our compact, however, is Proposition 5 which several Tribes who do not like our compact are supporting on the November ballot. When we compare the compact with Proposition 5, Pala comes out in favor of the compact, and here's why:

Proposition 5 is a "cookie-cutter" compact imposed on all Tribes and the State. Proposition 5, if it passes in November and survives a likely court challenge as to its constitutionality, mandates the terms of Class III gaming agreements between the Tribes and California with no negotiation, no compromise, and no discussion. It is a take it or leave it compact that ignores the government-to-government relationship between states and Tribes that our compact recognizes and respects.

Proposition 5 contains no protections for workers or patrons. Unlike our compact, the initiative recognizes no rights
of workers to rudimentary protections like unemployment or
disability insurance, workers' compensation, OSHA and Fair Labor
Standards Act protections, and it gives no rights to patrons that
would guarantee the integrity of the games they play on Tribal
lands and resolve disputes over prizes in a neutral forum. This
is bad business and unnecessarily tarnishes the reputation of
Tribes as fair and decent.

Proposition 5 contains no environmental protections
for off-reservation impacts, and gives no right to counties to
negotiate agreements with Tribes to protect non-Indians who come
onto the Indian lands to gamble.

Proposition 5 is penny wise and pound foolish for
Tribes. The initiative, if passed and held constitutional, would
essentially allow Tribes, and Tribes alone, to operate slot
machines on their land. While this would benefit gaming Tribes
in the short run, it is a long-term death knell for Tribal
gaming. Why? Because Proposition 5 is simply a statutory
measure. What the Tribes gain by its passage, any other group
can achieve by legislative enactment or any other statutory
initiative. How can Tribes justify to the people of California
that they alone are entitled to have slot machines on their
lands, and not racetracks, card rooms or other enterprises?

The Pala Compact is fair to our Tribe and public
interest. It is not a grab all for Tribes alone, but balances
legitimate competing interests of Tribes, law enforcement
workers, environmentalists and local government. It is truly a
model that other Tribes have successfully built on and gone
beyond. We hope your Commission will examine its model for other states and Tribes.

Thank you.

CHAIRPERSON JAMES: Thank you.