Necessary and indispensable parties in all foreclosure cases. The security instruments (mortgages) were virtually and actually merged) and so were the notes. By combining them into one portfolio with a series of tranches, all the borrowers became co-borrowers and all the investors became co-investors. Keeping in mind that the ABS was a bond and not stock, the lien rights migrate directly to the investors. Add to that the false appraisals from real estate appraisers and from security rating agencies, and you join the borrower and the investor as c-victims in a pandemic Ponzi scheme. Then add the Carriers for E&O and malpractice for the parties (middlemen) and the auditors of the middlemen and you can really have a party.

[Editor's Note: The significance of this is that besides the borrower's obligation to pay and the investor's right to receive revenue from the note payments, there were co-obligors that received fees in exchange for their guarantee or warranty or contractual obligation to make payments to the SPV on behalf f the investor holding the certificate of asset backed security. Thus the pooling activity is very close to the pooling of rights discussed in this case. And the cross currents that result from attempting to parse up the chain of securitization into multiple independent contracts becomes evident. The fact is the money came from the investor and was loan to the borrower. The single stream of revenue from the note payments and the multiple pools and reserves at the level of pooling and servicing, assignment and assumption and contingency SPV reserve, require an accounting as to whether the note in question was paid in whole or in part and whether it is in default at all, even if the borrower has not made the payments. If the holder in due course is the investor, and the the investor received the payments, then no breach has occurred and no notice of delinquency, default, sale or foreclosure would be appropriate or could be prosecuted without running into Rule 11 of frivolous pleading sanctions.]

SUMMARY OF ARGUMENT (from CA AG below)
San Pasqual contends the State's calculation of the total number of Gaming Device licenses available under the 1999 Compact formula is too low. The Tribe, however, tries to deny the State and all other Compact-signatory tribes their longstanding due process rights, by filing a declaratory relief action without joining all signatory tribes. San Pasqual attempts a flanking maneuver to avoid mandatory joinder under Rule 19 by arguing that it seeks only judicial construction of its Compact with the State and none other. However, the provision
challenged by San Pasqual is a material, interdependent term included in each 1999 Compact that functionally integrates all 1999 Compacts, as there can be but 9. The 1999 Compact created the Revenue Sharing Trust Fund (RSTF) to provide revenue sharing with tribes that conduct no gaming, and tribes that conduct only limited gaming, through payments by Compact Tribes into the fund. (SER 63-64 (Compact §§ 4.3.2, 4.3.2.1).) The RSTF, defined in Compact section 4.3.2(a)(ii), is funded by Gaming Device license fees. (SER 64-66 (Compact § 4.3.2.2(a)(2), (e)).)

one aggregate Gaming Device license determination applicable to all Compact Tribes. Because the Compact formula created a limited Gaming Device license pool from which all signatory tribes draw, all signatory tribes have a legally protected interest in this case and are necessary to this action. In addition, the absent tribes enjoy sovereign immunity from suit _1 and are indispensable. Therefore, the district court correctly dismissed San Pasqual's suit.

The "complete relief" factor "is concerned with consummate rather than partial or hollow relief as to those already parties, and with precluding multiple lawsuits on the same cause of action." Northrop Corp. v. McDonnell Douglas Corp., 705 F.2d 1030, 1043 (9th Cir. 1983).

The formula establishes a single, fixed license pool for all signatory tribes that it is inseparable from any individual Compact because there can be only one such pool. Indeed, San Pasqual acknowledges that its requested relief would add Gaming Device licenses to the statewide pool, and that all Compact Tribes could participate in future draws from the pool. (AOB 24, 28.) Therefore, the provision functionally integrates all 1999 Compacts, and each signatory tribe has an interest in any action challenging the State's existing interpretation.

Under Rule 19(a)(2)(i), an absent party will be deemed necessary if disposition of the action in his absence may "as a practical matter impair or impede the person's ability to protect that interest." Fed. R. Civ. P. i 9(a)(2)(i). The treatise cited by San Pasqual clearly states that in "the necessary party analysis under Rule 19(a)... the court is more or less concerned with whether nonjoinder could have one of the adverse effects addressed by that Rule. The basic possibility of such harm justifies joining the absentee." 4 Moore's Federal Practice § 19.05[1][a] (3d ed. 2007) (emphasis in original). Therefore, neither the moving party nor the absentee are required to affirmatively demonstrate actual prejudice for Rule 19 to apply. Indeed, this Court has held that the absent party need merely claim a legally protected interest, and that just adjudication requires the court to protect a party's right to be heard and participate in adjudication of the claimed interest. Dawavendewa, 376 F.3d at 1155 n.5.

LEGAL STANDARD GOVERNING RULE 19 APPLICATION

The district court is required to dismiss a complaint when the plaintiff fails to join a party that is necessary and indispensable. Fed. R. Civ. P. 12(b)(7), 19. Here,
the proper approach is first to decide whether the tribes are, in the traditional terminology, "necessary" parties who should normally be joined under the standards of Rule 19(a). If the tribes are necessary

parties, the district court must then determine whether the tribes are "indispensable"; that is, "whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed." Fed. R. Civ. P. 19(b); see Clinton v. Babbitt, 180 F.3d 1081, 1088 (9th Cir. 1999). Am. Greyhound Racing, Inc. v. Hull, 305 F.3d 1015, 1022 (9th Cir. 2002). The inquiry into whether the absent party is necessary involves a second, two-part analysis. Fed. R. Civ. P. 19(a); Makah Indian Tribe v. Verity, 910 F.2d 555,558- 59 (9th Cir. 1990) (Makah). Rule 19(a) provides for joinder of a party if any of the following requisites is met:

(1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest .... Fed. R. Cir. P. 19(a).

If the absentee is necessary, the Court then evaluates whether the action should proceed or be dismissed because the absentee is indispensable. Fed. R. Cir. P. 19(b). In making this latter determination the Court undertakes a four-part analysis, looking at (1) prejudice to any party or the absent party resulting from a judgment; (2) whether relief can be shaped to lessen the prejudice; (3) whether an adequate remedy, even if incomplete, can be awarded without the absent party;and (4) whether there exists an alternative forum, Id.; Quileute Indian Tribe v. Babbitt, 18 F.3d 1456, 1458 (9th Cir. 1994). Ifthe party is necessary, cannot be joined, and is indispensable, then dismissal is warranted. Quileute Indian Tribe, 18 F.3d at 1458.

Rule 19's primary purpose affords unnamed necessary and indispensable parties the opportunity to join a lawsuit that could have a potentially detrimental effect on their legal interests. See Lincoln Property Co. v. Roche, 546 U.S. 81,90 (2005) ("Rule 19 provides for the joinder of parties who should or must take part in the litigation to achieve a '[j]ust [a]djudication.' See Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 118-123 ... (1968)."). Providing the opportunity for affected parties to present their arguments in court is a longstanding principle of due process. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 309, 314 (1950).

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These Briefs and citations show that a **single common fund** (i.e., the note and mortgage in any particular case, combined with the **inconsistent and prejudicial adjudication of rights to parties who clearly have a claimed interest** in the subject matter is sufficient to establish the existence of a necessary and indispensable party. **The point raised in the first brief AGAINST the finding of a necessary and indispensable party about the third parties having to assert their claim is a grey area. If the Judge agrees then you would need to show that Lehman or whoever,**

declines to assert the claim. In that case, upon showing of the holder in due course being the investor, and the claim being waived, the case of the “lender” fails for lack of consideration and actual payment.
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Brief Filed AGainst Finding Necessary and Indispensable Party Excerpts

No. 07-55536
UN/TED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
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"" bUURT OF ABr_,_gLERt(
SAN PASQUAL BAND OF MISSION INDIANS,
a federally recognized Indian Tribe,
Plaintiff and Appellant,
V°
STATE OF CALIFORNIA;
CALIFORNIA GAMBLING CONTROL COMMISSION, an
agency of the State of California;
and ARNOLD SCHWARZENEGGER,
as Governor of the State of California,
Defendants and Appellees,
APPEAL FROM
THE UNITED STATES DISTRICT COURT
SOUTHERN DIVISION OF CALIFORNIA
HONORABLE LARRY ALAN BURNS
DISTRICT COURT CASE NO. 06CV0988 LAB AJB
PLAINTIFF-APPELLANT'S OPENING BRIEF
STEPHEN WARREN SOLOMON SBN 36189
STEPHEN ALLEN JAMIESON SBN I 15805
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Attorneys for Plaintiff and Appellant:
San Pasqual Band of Mission Indians

GENERAL PRINCIPLES GUIDING THE RULE 19 INQUIRY
In determining whether to dismiss a claim for relief pursuant to Rule 19, a court must engage in a rigorous two-part analysis. Clinton v. Babbitt, 180 F.3d 1081, 1088 (9th Cir. 1999). First, a court must determine if the absent party is "necessary to the suit" as outlined in Rule 19(a)(1) and (a)(2). If the absent party is deemed "necessary to the suit" and cannot be joined, then the court must determine, by balancing the guiding factors of Rule 19(b), whether the absent party is "indispensable" such that "in equity and

good conscience the suit should be dismissed." ld. (citations omitted).
Rule 19(a) consists of two separate and distinct parts:
RULE 19:
(a) Persons to be Joined if Feasible. A person
who is subject to service of process and whose
joinder will not deprive the court of jurisdiction
over the subject matter of the action shall be joined
as a party in the action if:
(1) in the person's absence complete relief cannot
be accorded among those already parties, or
(2) the person claims an interest relating to the
subject of the action and is so situated that the
disposition of the action in the person's absence
may (i) as a practical matter impair or impede the
person's ability to protect that interest or (ii) leave
any of the persons already parties subject to a
substantial risk of incurring double, multiple, or
otherwise inconsistent obligations by reason of the
claimed interest.

The first part, Rule 19(a)(1), is whether complete relief can be accorded amongst those already a party. As will be discussed in detail below, for this part of the analysis a court must restrict its analysis solely to the relationship between those persons already a party and cannot consider the possible effect of an absent party. *Elderdge,* 662 F.2d at 537.
If an absent party is given notice of a lawsuit, Rule 19(a)(2) requires that absent party to affirmatively "claim" a legally protected interest will be prejudiced by the lawsuit in order to be deemed a necessary party. *Altmann v. Republic of Austria,* 317 F.3d 954, 971 (9th Cir. 2002). Additionally, this Court has held that to achieve the status of a "legally protected interest," a party must claim more than just a financial interest at stake in the litigation. *Makah Indian Tribe,* 910 F.2d at 558. If an absent party fails either to "claim" an interest after being provided notice or if that claimed interest is not a legally protected interest, then a court's inquiry ceases under Rule 19(a)(2) and the party is not deemed necessary.
If and only if an absent party "claims" a legally protected interest, should a court inquire whether the lawsuit may, as a practical matter, impair or impede the absent party's ability to protect that interest. F.R.C.P. 19. Also, if and only if an absent party "claims" a legally protected interest may a court inquire whether a party would be subject to a substantial risk of incurring inconsistent obligations. F.R.C.P. 19.
I
A. 19(a)(2): NO TRIBE WITH THE DISPUTED COMPACT PROVISION REMAINING IN ITS COMPACT HAS CLAIMED AN INTEREST IN THIS LAWSUIT AND THEREFORE THE NON-AMENDED TRIBES ARE NOT

NECESSARY PARTIES

I 19(a)(2): THE AMENDED COMPACT TRIBES DO NOT HAVE A LEGALLY PROTECTED INTEREST IN THE INTERPRETATION OF COMPACT TERMS THEY ARE NO LONGER BOUND BY_ AND THEREFORE ARE NOT NECESSARY PARTIES

I

In fact, "[i]t is generally recognized that a person does not become indispensable to an action to determine rights under a contract simply because that person's rights or obligations under an entirely separate contract will be affected by the result of the action." Helzberg's Diamond Shops, Inc. v. Valley West Des Moines Shopping Center, Inc., 564 F.2d 816, 820 (8th Cir. 1977); see Northrop Corp., 705 F.2d. at 1044. This rule is not made inapplicable merely because an absent party happens to be a government. Northrop Corp., 705 F.2d. at 1044. As this Court observed in Disabled Rights, an absent party is not a necessary party even if it "stands to lose a valuable source of income - not an insubstantial consideration." Disabled Rights Action Committee v. Las Vegas Events, Inc. , 375 F.3d 861, 883 (9th Cir. 2004).

Moreover, before concluding that other treaty tribes with treaty rights to share in the fishery were indispensable, the District Court in Makah engaged in a rigorous analysis wholly lacking in this case. As the District Court in Makah noted:

"Simply because a number of parties harbor an interest in a specific quantity of pie, does not necessarily mean that their claims are conflicting. There may be more than enough pie to satisfy all of the claims and the interests are therefore not always mutually exclusive .... But when, as in this case, the parties' interest is in a specific percentage of the pie, and the combined request of the parties exceed 100% of the pie, the court cannot afford one relief without affecting the rights of the others. In that instance, the claims are mutually exclusive, and the problem of indispensability of an absent party is accentuated."

Makah Indian Tribe v. Verity, Not Reported in F.Supp., 1998 WL 144137, 21 (W.D. Wash. 1998).

In short, the State Aggregate Limit of Gaming Device licenses is not a fixed fund creating a legally protected interest because San Pasqual is not asking the court to allocate or reallocate anything. Unlike the finite natural resource of salmon in Makah, San Pasqual does not seek the allocation or reallocation of any Gaming Device licenses (its salmon) to itself or any other tribe. Makah emphasized the importance of considering not just whether any absent party may have a protectable interest in the subject matter of the action, but also whether that interest would, in fact, be prejudiced by a ruling in the party's absence.

ASSUMING *ARGUENDO* THAT ABSENT TRIBES **HAVE A LEGALLY PROTECTED INTEREST_**THE **DISTRICT COURT RELIED SOLELY ON SPECULATION THAT PREJUDICE** WOULD RESULT

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Assuming arguendo that the absent tribes have a legally protected interest in the interpretation of San Pasqual's Compact, the District Court abused its discretion in relying on pure speculation about possible prejudice to absent parties, rather than taking, as is required by Rule 19, "a closer look at the real probability and severity of prejudice caused by nonjoinder." 4 Moore' s Federal Practice ¶ 19.05 [1] [a] (2006).

ABSENT PARTIES DO NOT BECOME INDISPENSABLE TO SAN PASQUAL'S ACTION TO DETERMINE ITS RIGHTS UNDER ITS COMPACT **SIMPLY BECAUSE THE ABSENT PARTIES' RIGHTS UNDER A SEPARATE COMPACT MAY BE AFFECTED BY THE OUTCOME OF THIS ACTION**

I I

If the decision of the District Court is allowed to stand, Rule 19 will become a potent weapon by absent parties to prevent litigation when their financial obligations under a separate contract may be affected. But that is not, and should not be the law under Rule 19. In fact, it is generally recognized that a nonparty to a contract is not a necessary party to an adjudication of rights under the contract simply because the nonpar_'s rights or obligations under a separate contract may be affected by the result of the action. Northrop Corp., 705 F.2d at 1044. This rule is not made inapplicable merely because an absent party happens to be a government. Id.

In sum, the absent tribes were found to be indispensable in American Greyhound, Clinton and Manybeads under the general rule that "all parties who may be affected by a suit to set aside a contract must be present." Northrop Corp., 705 F.2d at 1044; American Greyhound, 305 F.3d at 1020; Clinton, 180 F.3d at 1089; Manybeads, 209 F.3d at 1166. However, the courts' concern was not just some impact, but the termination of the absent party's contract. Id. But in an action like San Pasqual's that does not seek to set aside or enjoin performance of any tribal-state gaming compact, this rule is inapplicable. Disabled Rights Action Committee, 375 F.3d 882 (declaring that a party is not necessary to a "suit that does not threaten to destroy [its] contract nor [its] bargained-for rights.").

"Inconsistent adjudications are not the same as inconsistent obligations." Id. at 446 (emphasis in original). Inconsistent obligations occur when a party must breach one court's order to comply with another

court's order concerning the same incident. Delgado v. Plaza Las Americas, Inc., 139 F.3d 1, 3 (1 _t Cir. 1998). It is for this reason that inconsistent obligations are "typically created by allocation of a limited fund to which absent parties are entitled." Morongo Band of Mission Indians, 34 F.3d at 908. The reason being is that a defendant cannot allocate a limited fund in two different ways at the same time without breaching at least one court's order.

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In contrast, inconsistent adjudications occur when two separate courts arrive at two separate results. Delgado, 139 F.3d at 3. The distinction between "inconsistent obligations" and "inconsistent adjudications" is of critical importance to the instant matter.

ASSUMING ARGUENDO THAT OTHER TRIBES ARE DEEMED NECESSARY_ THEY ARE NOT INDISPENSABLE.

A NECESSARY PARTY IS NOT ALWAYS AN INDISPENSABLE PARTY

If an absent party is deemed "necessary to the suit" and cannot be joined, then the court must determine, by balancing the guiding factors of Rule 19(b), whether the absent party is "indispensable" such that "in equity and good conscience the suit should be dismissed." Clinton, 180 F.3d at 1088. The demands of equity and good conscience "can only be determined in the context of particular litigation." Provident Tradesmen Bank & Trust Co. v. Patterson, 390 U.S. 102, 118 (1968).

Despite the overlapping considerations between the two analyses, "indispensability must meet a higher standard than necessity." Merrill Lynch, Pierce, Fenner and Smith, Inc. v. ENC Corp., 464 F.3d 885, 891 (9th Cir. 2006). This more searching inquiry demands "a closer look at the real probability and severity of prejudice caused by nonjoinder," thus requiring the court to "determine whether nonjoinder actually will result in the kind of prejudice hypothesized" under Rule 19(a). 4 Moore's Federal Practice ¶19.05 [1] [a] (emphasis added).

In making this determination, the Court must apply a four-part factor test, and decide (l) whether there is any prejudice to any party or to the absent party, (2) whether relief can be shaped to lessen prejudice, (3) whether an adequate remedy, even if not complete, can be awarded without the absent party, and (4) whether there exists an alternative forum. Makah Indian Tribe, 910 F.2d. at 559. Similar to the analysis in determining whether an absent party is necessary, the prejudice determined in the first factor must impair a legally protected interest. American Greyhound Racing, 305 F.3d at 1024-25.

I

DATED: August 16, 2007 SOLOMON, SALTSMAN & JAMIESON

By:

Stephen Warren Solomon

Stephen Allen Jamieson

R. Bruce Evans

Ryan M. Kroll
Attorneys for Plaintiff-Appellant, San Pasqual Band of Mission Indians

Proof of Service
I PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
I am employed in the County of Los Angeles, State of Califomia. 1 am over the age of 18 and not a party to the within action; my business address is: 426 Culver Boulevard, Playa Del Rey, California 90293.
On August 16, 2007, I served the foregoing document described as: PLAINTIFF-APPELLANT'S OPENING BRIEF on the interested parties in this action by placing a true copy thereof in an enclosed sealed envelope addressed as follows:
Randall Pinal, Esq.
Office of the Attorney General
1 I0 W "A" Street, #1100
San Diego, CA 92101
Randy.pinal@doi.ca.gov
Peter H. Kaufman, Esq.
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IX] BY MAIL. I deposited such envelopes in the mail at Playa del Rey, California. The envelope was mailed with first class postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and _rocessing of correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than 1 day after date of deposit for mailing in this Proof of Service.
Executed on August 16, 2007, at Playa del Rey, California.
[ ] (State) I declare under penalty.of perjury under the laws of the State of California that the above is true and correct.
[x]
and correct.
(Federal) I declare under penalty of;:Z//_ t the abl/__
lexandria Alamango
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

IN THE UNITED STATES COURT OI 7 APPEALS
FOR THE NINTH CIRCUIT
SAN PASQUAL BAND OF MISSION INDIANS, a federally recognized Indian tribe,
Plaintiff-Appellant,

V •
STATE OF CALIFORNIA, CALIFORNIA
GAMBLING CONTROL COMMISSION, an
agency of the State of California, and ARNOLD
SCHWARZENEGGER, as Governor of the State
of California,
Defendants-Appellees.
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O," ,.,-'r_._-_'
On Appeal from the United States District Court
for the Southern District of California
No. 06-CV-0988 LAB AJB
Honorable Larry A. Burns, Judge
APPELLEES' ANSWER BRIEF
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SUMMARY OF ARGUMENT
San Pasqual contends the State's calculation of the total number of Gaming Device licenses available under the 1999 Compact formula is too low. The Tribe, however, tries to deny the State and all other Compact-signatory tribes their longstanding due process rights, by filing a declaratory relief action without joining all signatory tribes. San Pasqual attempts a flanking maneuver to avoid mandatory joinder under Rule 19 by arguing that it seeks only judicial construction of its Compact with the State and none other. However, the provision
challenged by San Pasqual is a material, interdependent term included in each 1999 Compact that functionally integrates all 1999 Compacts, as there can be but 9. The 1999 Compact created the Revenue Sharing Trust Fund (RSTF) to

provide revenue sharing with tribes that conduct no gaming, and tribes that conduct only limited gaming, through payments by Compact Tribes into the fund. (SER 63-64 (Compact §§ 4.3.2, 4.3.2.1).) The RSTF, defined in Compact section 4.3.2(a)(ii), is funded by Gaming Device license fees. (SER 64-66 (Compact § 4.3.2.2(a)(2), (e)).)
one aggregate Gaming Device license determination applicable to all Compact Tribes. Because the Compact formula created a limited Gaming Device license pool from which all signatory tribes draw, all signatory tribes have a legally protected interest in this case and are necessary to this action. In addition, the absent tribes enjoy sovereign immunity from suit _1 and are indispensable. Therefore, the district court correctly dismissed San Pasqual's suit.

LEGAL **STANDARD GOVERNING** RULE 19 **APPLICATION**
The district court is required to dismiss a complaint when the plaintiff fails
to join a party that is necessary and indispensable. Fed. R. Civ. P. 12(b)(7), 19.
Here,
the proper approach is first to decide whether the tribes are, in the
traditional terminology, "necessary" parties who should normally be
joined under the standards of Rule 19(a). If the tribes are necessary
11
parties, the district court must then determine whether the tribes are
"indispensable"; that is, "whether in equity and good conscience the
action should proceed among the parties before it, or should be
dismissed." Fed. R. Civ. P. 19(b); see Clinton v. Babbitt, 180 F.3d
1081, 1088 (9th Cir. 1999).
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(1) in the person's absence complete relief cannot be accorded among
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If the absentee is necessary, the Court then evaluates whether the action
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analysis, looking at (1) prejudice to any party or the absent party resulting from a
judgment; (2) whether relief can be shaped to lessen the prejudice; (3) whether an
adequate remedy, even if incomplete, can be awarded without the absent party;and (4)
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Babbitt, 18 F.3d 1456, 1458 (9th Cir. 1994). lfthe party is necessary, cannot be

joined, and is indispensable, then dismissal is warranted. Quileute Indian Tribe, 18 F.3d at 1458.
Rule 19's primary purpose affords unnamed necessary and indispensable parties the opportunity to join a lawsuit that could have a potentially detrimental effect on their legal interests. See Lincoln Property Co. v. Roche, 546 U.S. 81,90 (2005) ("Rule 19 provides for the joinder of parties who should or must take part in the litigation to achieve a '[j]ust [a]djudication.' See Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 118-123 ... (1968)."). Providing the opportunity for affected parties to present their arguments in court is a longstanding principle of due process. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 309, 314 (1950).

The district court recognized that "[i]n deciding whether the absent party is 'necessary under Rule 19(a)(l), the court 'must decide if complete relief is possible among those already parties to the suit,' an analysis independent of the question whether relief is available to the absent party." (ER 50-51, citing Makah, 910 F.2d at 558 (emphasis added).) The "complete relief" factor "is concerned with consummate rather than partial or hollow relief as to those already parties, and with precluding multiple lawsuits on the same cause of action." Northrop Corp. v. McDonnell Douglas Corp., 705 F.2d 1030, 1043 (9th Cir. 1983).
Following these standards, the district court appropriately determined the State would be denied complete relief without all 1999 Compact Tribes because the uniform Compact term challenged by San Pasqual is integral to all 1999 Compacts.

Tribes With 2004 Amended Compacts Have a Legally Protected Interest in the Gaming Device License Pool Created by the 1999 Compact
San Pasqual contends the 2004 Amended Compact tribes are not necessary to this action because the Amended Compacts deleted the disputed 1999 Compact
provision. (AOB 24-26.) The argument rests on the false assumption that the 2004 Amended Compacts are "entirely separate" contracts that could be affected only incidentally by the result of this action. (AOB 25.) The 2004 Amended Compacts are not "entirely separate" contracts--they are, as appropriately titled, amendments to the principal 1999 Compact and include language that continues to bind those tribes to certain 1999 Compact provisions. Specifically, the 2004 Amended Compacts expressly repealed section 4.3.2.2 of the 1999 Compact but replaced it with new language requiring those tribes to, among other things, maintain and continue paying fees to the State for all licenses previously obtained under the 1999 Compact. (SER 9, 11.) Thus, the 2004 Amended Compact tribes retain a legally protected interest in any judicial construction of the aggregate Gaming Device license formula included in the 1999 Compact. [Editor's Note: Single Transaction consuming the entire circle of all participants from investors through Wall Street through Main Street Bank to the Borrower]

Northrop Corp., 705 F.2d 1030, United States v. Bowen, 172 F.3d 682 (9th Cir. 1999) and Altrnann v. Republic of Austria, 317 F.3d 954 (9th Cir. 2002), are equally unavailing. (See AOB 22.) All three cases support the proposition that joinder requires the absent party to claim a legally protected interest relating to the subject matter of the action. Northrop Corp., 705 F.2d at 1043; Bowen, 172 F. 3d at 689; Altmann, 317 F.3d at 971. But none discuss how the absentees received notice, or what process constitutes sufficient notice, that an absentee's subsequent failure to claim an interest, as San Pasqual essentially argues, waives any claim under Rule 19(a)(2). Notice adequacy is particularly critical here because San Pasqual's purported notice to all absent Compact Tribes is suspect. [Editor's Note: The interesting feature here being that the Lender refuses to or is unable to disclose the indispensable parties, thus putting the burden on THEM to show absence of a claimed interest.)

Under Rule 19(a)(2)(i), an absent party will be deemed necessary if disposition of the action in his absence may "as a practical matter impair or impede the person's ability to protect that interest." Fed. R. Civ. P. i 9(a)(2)(i). The treatise cited by San Pasqual clearly states that in "the necessary party analysis under Rule 19(a)... the court is more or less concerned with whether nonjoinder could have one of the adverse effects addressed by that Rule. The basic possibility of such harm justifies joining the absentee." 4 Moore's Federal Practice § 19.05[1][a] (3d ed. 2007) (emphasis in original). Therefore, neither the moving party nor the absentee are required to affirmatively demonstrate actual prejudice for Rule 19 to apply. Indeed, this Court has held that the absent party need merely claim a legally protected interest, and that just adjudication requires the court to protect a party's right to be heard and participate in adjudication of the claimed interest. Dawavendewa, 376 F.3d at 1155 n.5.

THE ABSENT TRIBES' INTEREST IN THE BARGAINED-FOR, INTERDEPENDENT COMPACT TERM CHALLENGED BY SAN PASQUAL RENDERS THEM NECESSARY TO THIS ACTION, AND POTENTIAL PREJUDICE FROM NONJOINDER NEED NOT BE "SEVERE" OR "ENORMOUS"

San Pasqual contends that the potential prejudice to absent Compact-signatory tribes is not sufficiently egregious to warrant mandatory joinder, and that the tribes do not have a legally protected interest in San Pasqual's Compact with the State. (AOB 33-38.) That no other 1999 Compact Tribe signed San Pasqual's Compact with the State is irrelevant. (AOB 37-38.) The 1999 Compacts are nominally bilateral, but certain material provisions, including the formula for determining the aggregate Gaming Device license limit, are equally binding on the State and all signatory tribes, giving all Compact parties a legally protected interest in judicial construction of that term. Moreover, Rule 19 does not require absentees to risk extreme prejudice by nonjoinder. First, San Pasqual claims absent Compact Tribes are not rendered necessary simply because they "may be affected by the outcome of this action." (AOB 33.) Instead, San Pasqual claims

the prejudice to absent parties must be "severe" or "enormous" to require joinder. (AOB 33-36.) Under Rule 19(a)(2)(i), however, the standard is whether proceeding without the absentee "may... as a practical matter impair or impede the person's ability to protect that interest." Fed. R. Civ. P. 19(a)(2)(i) (emphasis added). San Pasqual reads Rule 19(a) too narrowly. The necessary party analysis required by Rule 19(a) is applied liberally. Lopez v. Martin Luther King, Jr. Hosp., 97 F.R.D. 24, 29 (C.D. Cal. 1983) (Rule 19(a) "is designed to broadly define all those parties that have a bona fide interest in the subject of the litigation."). As discussed in argument IV, ante, the district court properly considered the potential prejudice that could possibly result from nonjoinder.

ADJUDICATING SAN PASQUAL'S CLAIM WITHOUT THE ABSENT TRIBES WOULD SUBJECT THE STATE TO A SUBSTANTIAL RISK OF INCURRING DOUBLE, MULTIPLE, OR INCONSISTENT OBLIGATIONS

San Pasqual claims the State would not face inconsistent obligations because the risk of inconsistent adjudications, or different results in different cases, is not the same as inconsistent obligations. (AOB 38-41.) San Pasqual misapprehends Rule 19's liberal standard for necessary party status, and ignores the fact that several tribes have asserted an interest in the subject of this litigation.

Rule 19(a)(2)(ii) provides that an absent party with an interest in the action must be joined where the absence "may... leave any of the parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest." Fed. R. Civ. P. 19(a)(2)(ii) (emphasis added). Thus, as emphasized, Rule 19's plain language indicates the absent tribes may be necessary if their claimed interest subjects the State to substantial risk of incurring either double, multiple, or otherwise inconsistent obligations. Here, the State risks incurring multiple and otherwise inconsistent obligations. San Pasqual challenges the State's interpretation of a material term uniformly present in all 1999 Compacts. (See arguments I & II(A), ante.) San Pasqual's proposed interpretation 39 would result in the State performing in one manner under San Pasqual's Compact and in a different, directly incongruous manner under sixty-one other virtually identical Compacts. The State cannot calculate the Gaming Device license limitation to be one amount under San Pasqual's Compact, and a different amount under all other 1999 Compacts without breaching the Compacts and violating state law. See Cal. Gov't Code § 12012.25. A judgment for San Pasqual here would not preclude other signatory tribes from seeking similar relief on the same claims against the State, which could present multiple conflicting district court decisions subjecting the State to multiple or inconsistent obligations.

[Editor’s Note: The significance of this is that besides the borrower’s obligation to pay and the investor’s right to receive revenue from the note payments, there were co-obligors that received fees in exchange for their guarantee or warranty or

contractual obligation to make payments to the SPV on behalf f the investor holding the certificate of asset backed security. Thus the pooling activity is very close to the pooling of rights discussed in this case. And the cross currents that result from attempting to parse up the chain of securitization into multiple independent contracts becomes evident. The fact is the money came from the investor and was loan to the borrower. The single stream of revenue from the note payments and the multiple pools and reserves at the level of pooling and servicing, assignment and assumption and contingency SPV reserve, require an accounting as to whether the note in question was paid in whole or in part and whether it is in default at all, even if the borrower has not made the payments. If the holder in due course is the investor, and the the investor received the payments, then no breach has occurred and no notice of delinquency, default, sale or foreclosure would be appropriate or could be prosecuted without running into Rule 11 of frivolous pleading sanctions.]

Respectfully submitted,
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