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2 **UNITED STATES DISTRICT COURT**  
3 **EASTERN DISTRICT OF CALIFORNIA**

4 **PAUMA BAND OF MISSION INDIANS, a**  
5 **federally-recognized Indian tribe,**

6 **Plaintiff**

7 **v.**

8 **GAVIN NEWSOM, as Governor of the**  
9 **State of California; STATE OF**  
10 **CALIFORNIA; and DOES 1 THROUGH**  
11 **10;**

12 **Defendants**

**CASE NO. 2:21-CV-1166 AWI SKO**

**ORDER ON PLAINTIFF’S MOTION TO**  
**CONSOLIDATE**

**(DOC. NO. 23)**

13 **BERRY CREEK RANCHERIA OF**  
14 **MAIDU INDIANS OF CALIFORNIA, a**  
15 **federally-recognized Indian tribe,**

16 **Plaintiff**

17 **v.**

18 **GAVIN NEWSOM, as Governor of the**  
19 **State of California; STATE OF**  
20 **CALIFORNIA; and DOES 1 THROUGH**  
21 **10;**

**Defendants**

**CASE NO. 2:21-CV-2284 AWI SKO**

**ORDER ON PLAINTIFF’S MOTION TO**  
**CONSOLIDATE**

**(DOC. NO. 16)**

21 Plaintiff Pauma Band of Mission Indians (the “Pauma Tribe”) and Plaintiff Berry Creek  
22 Rancheria of Maidu Indians of California (“Berry Creek Tribe”) (collectively “the Tribes”) have  
23 filed separate lawsuits against the State of California and Gov. Gavin Newsom (collectively  
24 “California”) alleging violations of the Indian Gaming Regulatory Act (“IGRA”). Specifically,  
25 Plaintiffs allege that California failed to engage in good faith negotiations on a new Tribal-State  
26 Gaming Compact. Currently before the Court are Pauma Tribe’s and Berry Creek Tribe’s motions  
27 to consolidate their separate lawsuits into a single lawsuit. For the reasons that follow, the Court  
28 will deny the motions to consolidate.

**PLAINTIFFS' MOTIONS<sup>1</sup>**

Plaintiffs' Argument

Plaintiffs argue that there are 15 shared claims of bad faith that are alleged in the Tribes' respective lawsuits. Many of these claims go beyond the claims addressed in the *Chicken Ranch* IGRA case. Both Tribes are represented by the same counsel. Without the benefit of consolidation, the Tribes' counsel will have to go through two separate scheduling conferences with an eye on creating two distinct summary judgment processes; the Court would be penalized by having to comb through an excessive amount of briefing; and California would be able to have two bites at the apple because it will be able to double its oppositional argument for what are overwhelmingly the same set of facts. The best course is to create one summary judgment process with one set of focused and informed briefs per side. Such a course effectively and efficiently saves the parties and the Court time and resources. Moreover, because this case will be decided on cross-motions for summary judgment, there will be no danger of jury confusion.

Defendant's Opposition

California argues that consolidation should be denied for two reasons. First, in the Pauma Tribe's case, there is a pending motion transfer. Second, judicial efficiency would not be served. The two cases are not based on the same facts. While the legal theories are similar, these cases involve separate and unconnected negotiations for a new Tribal-State Gaming Compact. Unlike other cases pending in this district, the Berry Creek Tribe and Pauma Tribe did not engage in joint negotiations. Thus, the Tribes will have to prepare and rely on their own individual records of negotiation. The records of negotiations will be submitted as part of individual summary judgment motions in order to decide the good faith issues. Because the Tribes will be required to use their own records of negotiation and their own statements of undisputed fact, consolidation is not warranted. Moreover, the Tribes' concerns about scheduling orders and motions practice can be addressed through parallel scheduling conferences and scheduling orders.

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<sup>1</sup> The docket in Pauma indicates a motion is pending, but there is no opposition or reply; there is only a copy of Berry Creek Tribe's motion. California has filed an opposition in the Berry Creek docket, but did not file an opposition in the Pauma docket. Although unorthodox, the Court will view both cases as having pending motions to consolidate and will view the motion, opposition, and reply that was filed in Berry Creek to apply equally in Pauma.

1           Legal Standard

2           Federal Rule of Civil Procedure 42 provides in part: “If actions before the court involve a  
3 common question of law or fact, the court may: (1) join for hearing or trial any or all matters at  
4 issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary  
5 cost or delay.” Fed. R. Civ. P. 42(a). A district court has broad discretion to determine whether  
6 and to what extent consolidation is appropriate. See Garity v. APWU Nat’l Labor Org., 828 F.3d  
7 848, 855-56 (9th Cir. 2016); Investors Research Co. v. U.S. Dist. Ct. for the Cent. Dist. of Cal.,  
8 877 F.2d 777, 777 (9th Cir. 1989). In deciding whether to consolidate, a court “weighs the saving  
9 of time and effort consolidation would produce against any inconvenience, delay, or expense that  
10 it would cause.” Huene v. United States, 743 F.2d 703, 704 (9th Cir. 1984); Single Chip Sys.  
11 Corp. v. Intermec IP Corp., 495 F.Supp.2d 1052, 1057 (S.D. Cal. 2007). The purpose of Rule  
12 42(a) is “not simply to identify shared issues of law or fact of some kind, but to identify those  
13 shared issues that will collectively advance the prosecution of multiple claims in a joint  
14 proceeding.” Campbell v. City of L.A., 903 F.3d 1090, 1114-15 (9th Cir. 2018). Further, “the law  
15 is clear that an act of consolidation does not affect any of the substantive rights of the parties.”  
16 J.G. Link & Co. v. Continental Cas. Co., 470 F.2d 1133, 1138 (9th Cir. 1972); see Hall v. Hall,  
17 138 S.Ct. 1118, 1130 (2018) (“... consolidation could not prejudice rights to which the parties  
18 would have been due had consolidation never occurred.”).

19           Discussion

20           1. Common Questions of Law or Fact

21           There is really no dispute that the two cases share common questions of law and fact. Both  
22 cases involve negotiation between California and the Tribes, and both Tribes allege that California  
23 engaged in 15 practices against them that constitute “bad faith” under IGRA. The law that applies  
24 to whether these 15 instances of alleged bad faith has recently been set by the Ninth Circuit in  
25 Chicken Ranch Rancheria of Me-Wuk Indians v. California, 42 F.4th 1024 (9th Cir. 2022).  
26 Because the Tribes’ respective cases share common questions of law and fact, consolidation is  
27 possible by the express terms of Rule 42(a). See Fed. R. Civ. P. 42(a).

1           2.     Propriety of Consolidation

2           After consideration, the Court agrees with California that consolidation is not advisable.

3           First, as IGRA good faith negotiation cases, the Tribes’ respective cases will be decided  
4 through a review of the record of negotiation. See Rincon Band of Luiseno Mission Indians of the  
5 Rincon Reservation v. Schwarzenegger, 602 F.3d 1019, 1041 (9th Cir. 2010). There is no dispute  
6 that the Pauma Tribe and the Berry Creek Tribe engaged in separate and distinct negotiations with  
7 California. As a result, the Pauma Tribe’s record of negotiation will be different from the Berry  
8 Creek Tribe’s record of negotiations. These distinct records of negotiation will have a significant  
9 impact on the summary judgment practice. Whether consolidated or not, separate facts will have  
10 to be submitted as part of a summary judgment motion with respect to both the Pauma Tribe and  
11 the Berry Creek Tribe. The Court will have to assess the individual records and facts of both  
12 negotiations and then apply the appropriate legal standard as set by *Chicken Ranch* to determine  
13 whether “bad faith” tainted a particular negotiation. Whether the Court performs this task by  
14 reviewing one large motion or two separate motions will matter little – the Court must still  
15 separately review each set of facts.<sup>2</sup>

16           Second, in terms of a burden on the parties, it does not seem that much additional work  
17 would be necessary to create two separate summary judgment motions. As discussed above,  
18 whether in one motion or two, the Tribes’ counsel will have to create one set of facts based on the  
19 record of negation for the Berry Creek Tribe, and a separate set of facts based on the record of  
20 negotiation for the Pauma Tribe. To the extent that the legal analyses may be the same or even  
21 identical, through modern word processing, it takes very little to cut the legal analysis in one brief  
22 and paste it to the other (with minor edits as may be appropriate). Further, to the extent that the  
23 Tribes’ counsel is concerned about separate scheduling orders and separate dates for summary  
24 judgment practice, the Court will direct the Magistrate Judge to coordinate these scheduling  
25 matters so that all relevant dates coincide.<sup>3</sup>

26 \_\_\_\_\_  
27 <sup>2</sup> The Court notes that because the same judge will be assigned to these IGRA cases, there is little chance of  
inconsistent rulings/results.

28 <sup>3</sup> The Court notes that in other IGRA good faith negotiation cases, the parties have entered stipulations in light of  
*Chicken Ranch* and thus, obviated the need for a summary judgment. It is possible that this may also occur in these  
cases as well.

1 Finally, if the Court determines that either or both of these cases must be sent to mediation,  
2 see 25 U.S.C. § 2710(d)(7)(B), it seems more desirable that the cases remain separate. These  
3 cases represents separate tribes, separate casinos, separate locations, and separate negotiations, as  
4 well as other unique aspects. For possible proceedings before a mediator, not consolidating these  
5 cases will maintain the distinctness of the negotiations and will easily permit the mediator to focus  
6 on an individual tribe's unique situation in forming a new tribal-gaming compact. These same  
7 considerations would also seem to apply if Secretarial Procedures before the Secretary of the  
8 Interior become necessary. See id.

9 In sum, the Court is not convinced that consolidation is necessary or that it will sufficiently  
10 further either judicial or administrative proceedings. Therefore, the Court will not consolidate  
11 these two cases.

12  
13 **ORDER**

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff Pauma Tribe's motion to consolidate (Doc. No. 23) and Plaintiff Berry Creek  
16 Tribe's motion to consolidate (Doc. No. 16) are DENIED;
- 17 2. The Clerk shall ensure a copy of this order is filed in both the Berry Creek case and the  
18 Pauma case;
- 19 3. This matter is referred back to the Magistrate Judge for further proceedings; and
- 20 4. In setting scheduling conferences and relevant dates, the Court respectfully requests that  
21 the Magistrate Judge coordinate all relevant to dates (but particularly the scheduling  
22 conference and summary judgment) between these two cases as may be desirable for the  
23 efficient resolution of these cases.

24  
25 IT IS SO ORDERED.

26 Dated: April 7, 2023

  
27 SENIOR DISTRICT JUDGE  
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