

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS DEFENDANTS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorney's (Firm Name, Address, and Telephone Number)
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
PTF DEF
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans (Excl. Veterans)
153 Recovery of Overpayment of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability
196 Franchise
REAL PROPERTY
210 Land Condemnation
220 Foreclosure
230 Rent Lease & Ejectment
240 Torts to Land
245 Tort Product Liability
290 All Other Real Property
TORTS
PERSONAL INJURY
310 Airplane
315 Airplane Product Liability
320 Assault, Libel & Slander
330 Federal Employers' Liability
340 Marine
345 Marine Product Liability
350 Motor Vehicle
355 Motor Vehicle Product Liability
360 Other Personal Injury
PERSONAL INJURY
362 Personal Injury - Med. Malpractice
365 Personal Injury - Product Liability
368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
370 Other Fraud
371 Truth in Lending
380 Other Personal Property Damage
385 Property Damage Product Liability
PRISONER PETITIONS
510 Motions to Vacate Sentence
Habeas Corpus:
530 General
535 Death Penalty
540 Mandamus & Other
550 Civil Rights
555 Prison Condition
FORFEITURE/PENALTY
610 Agriculture
620 Other Food & Drug
625 Drug Related Seizure of Property 21 USC 881
630 Liquor Laws
640 R.R. & Truck
650 Airline Regs.
660 Occupational Safety/Health
690 Other
LABOR
710 Fair Labor Standards Act
720 Labor/Mgmt. Relations
730 Labor/Mgmt. Reporting & Disclosure Act
740 Railway Labor Act
790 Other Labor Litigation
791 Empl. Ret. Inc. Security Act
IMMIGRATION
462 Naturalization Application
463 Habeas Corpus - Alien Detainee
465 Other Immigration Actions
BANKRUPTCY
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157
PROPERTY RIGHTS
820 Copyrights
830 Patent
840 Trademark
SOCIAL SECURITY
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
FEDERAL TAX SUITS
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS—Third Party 26 USC 7609
OTHER STATUTES
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce
460 Deportation
470 Racketeer Influenced and Corrupt Organizations
480 Consumer Credit
490 Cable/Sat TV
810 Selective Service
850 Securities/Commodities/Exchange
875 Customer Challenge 12 USC 3410
890 Other Statutory Actions
891 Agricultural Acts
892 Economic Stabilization Act
893 Environmental Matters
894 Energy Allocation Act
895 Freedom of Information Act
900 Appeal of Fee Determination Under Equal Access to Justice
950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

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12 *Attorneys for Plaintiff*

13  
 14 **UNITED STATES DISTRICT COURT**  
 15 **DISTRICT OF NEVADA**

16 MOAPA BAND OF PAIUTE INDIANS,  
 17  
 Plaintiff,  
 18  
 vs.  
 19 HERBST MOAPA DEVELOPMENT, LLC,  
 20  
 Defendant.

Case No.  
  
**COMPLAINT FOR DECLARATORY  
 AND INJUNCTIVE RELIEF**

21 **JURISDICTION AND VENUE**

22  
 23 1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1362, as  
 24 this is an action brought by the Moapa Band of Paiute Indians, a federally recognized Indian tribe,  
 25 arising under the laws of the United States, particularly 25 U.S.C. § 81 and 25 U.S.C. § 2711. An  
 26 actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a), and the  
 27 Court is authorized to grant declaratory relief, injunctive relief, and other available relief pursuant  
 28 to 28 U.S.C. §§ 2201 and 2202.



1 on land owned by the United States and held in trust for the Tribe. The Travel Plaza is a  
2 significant source of funds that the Tribe relies on to support its governmental operations and to  
3 provide for the health, safety, and welfare of tribal members.

4 9. On or around June 11, 2013, Herbst executed an agreement regarding management  
5 and development of the Travel Plaza and related facilities (“Agreement”). A true and correct copy  
6 the Agreement is attached as Exhibit 1.

7 10. The Agreement purports to be between Herbst and an entity referred to as the  
8 “Moapa Band of Paiutes Development Corporation.” However, the Moapa Band of Paiutes  
9 Development Corporation is not a legal entity under federal, tribal, or state law, and has no  
10 authority to enter into agreements on behalf of the Tribe.

11 11. The Agreement purports to be implemented under “the Corporate Charter issued by  
12 the Secretary of the Interior to the Moapa Band . . . pursuant to Section 17 of the Indian  
13 Reorganization Act of 1934 . . . and ratified by the Moapa Band of Indians on May 3, 1942.”  
14 Exhibit 1, Recitals, ¶ A. A true and correct version of the referenced Corporate Charter is attached  
15 as Exhibit 2.

16 12. Under the Corporate Charter, any agreement entered into on behalf of the tribal  
17 corporate entity “involving payment of money by the corporation in excess of \$300 in any one  
18 year” must be approved by the Secretary or her duly authorized representative. Exhibit 2, § 5(g).  
19 In addition, the Corporate Charter requires that any pledge or assignment of future tribal income  
20 be approved by the Secretary or her duly authorized representative. Exhibit 2, § 5(h).

21 13. The Agreement purports to “be an irrevocable and exclusive business development  
22 arrangement . . . .” Exhibit 1, Recitals, ¶ E. Moapa was to pay Herbst a “consulting fee” equal to  
23 “50% of the gross profits (after ordinary prior historical Travel Center income is deducted) earned  
24 for any year in which Herbst adds value to the Travel Center by consulting and developing the  
25 Travel Center.” Exhibit 1, § 1.5. This consulting fee was to “be based on and payable on monthly  
26 increases every 45 days.” Exhibit 1, § 1.5.

27 14. The Agreement, if implemented, would legally encumber land owned by the United  
28 States and held for the benefit of the Tribe.

1           15.     The Agreement purports to “grant[] Herbst the right to exclusively develop for  
2 commercial purposes the Tribe’s available pads” and entitle Herbst to “receive 20% of the gross  
3 rents received from any lease entered into for the use of the pad for no more than ten years.”

4 Exhibit 1, § 2.4.

5           16.     The Agreement purports to require the Tribe to “designate and provide immediately  
6 the real property necessary for the development and construction of the Pads, the X-Park, the New  
7 Travel Center, and the Hotel/Casino.” Exhibit 1, § 4.3(c).

8           17.     The Agreement purports to permit Herbst to “peaceably have access to all real  
9 property, personal property, buildings, facilities, and locations identified in this Agreement, free  
10 from molestation, eviction, and disturbance by the Tribe or by any other person or entity” while  
11 the Agreement is in effect. Exhibit 1, § 4.3(b).

12           18.     Under the Agreement, Herbst would be authorized “to develop and construct on the  
13 land provided by the Tribe an off-road entertainment facility (‘X-Park’)” with certain features to  
14 be selected by Herbst, Exhibit 1, § 2.1, and Herbst would have “the right to become the exclusive  
15 manager and operator of the X-Park and to host events on or at the X-Park.” Exhibit 1, § 2.2.

16           19.     The Agreement would make Herbst “irrevocably and solely responsible for all  
17 facets of the management and operation of the Hotel/Casino and the New Travel Center” including  
18 responsibility over “[t]he development of the surrounding commercial pads.” Exhibit 1, § 3.3.

19           20.     The Agreement purports to require the Tribe to “ensure that all utilities . . . are  
20 installed on the real property used for the development and construction of the Pads, the X-Park,  
21 the New Travel Center, and the Hotel/Casino within 24 months.” Exhibit 1, § 4.3(d); *see also*  
22 Exhibit 1, Art. 6.

23           21.     The Agreement purports to prohibit the Tribe from “enter[ing] into or mak[ing] any  
24 contract, agreement, or understanding with, or for the benefit of, any Travel Center development  
25 land or buildings herein contemplated in this agreement with Herbst without express written notice  
26 to Herbst.” Exhibit 1, § 4.3(h).

27           22.     Additionally, the agreement purports to obligate the Tribe for a term of seven years  
28 or more.

1           23.     The Agreement provides that “[t]he term of this management agreement will be for  
2 seven (7) years, such term starting after construction is complete and the facility is open and  
3 operating.” Exhibit 1, § 2.1(a).

4           24.     The Agreement provides that “[i]f repayment of construction costs and expenses  
5 are not recovered after 7 years, the MBOPDC and Herbst will extend the terms of the agreement  
6 for an additional 3 years . . . .” Exhibit 1, § 2.5.

7           25.     The Agreement provides that if the Tribe fails to provide certain necessary utilities  
8 within 24 months, all deadlines, required dates, and periods of time identified in the Agreement  
9 are to be extended automatically by the amount of time in excess of 24 months that it takes until  
10 such utilities are actually installed. Exhibit 1, § 6. There is no current schedule to install such  
11 utilities, such installation is likely to be difficult and expensive, and will in any event, likely take  
12 far more than 24 months to complete. The effect of this provision is to extend the Agreement  
13 indefinitely.

14           26.     Under the Agreement, “[u]pon completion of the Hotel/Casino or the New Travel  
15 Center, the Term of this Agreement shall be extended automatically for (7) seven years exclusive  
16 of the (5) year contract for Phase 1 of this agreement which ends on August 1, 2018.” Exhibit 1, §  
17 3.4.

18           27.     The Agreement also purports to “irrevocably grant[] Herbst the right to become the  
19 exclusive manager and operator of all gaming operations conducted at the Hotel/Casino or the  
20 New Travel Center through August 1, 2028.” Exhibit 1, § 3.5.

21           28.     For the reasons stated above, the Agreement encumbers land held in trust for the  
22 Tribe for a period of at least seven years. Accordingly, under 25 U.S.C. § 81, the agreement is  
23 invalid unless it is approved by the Secretary of the Interior (“Secretary”) or her duly authorized  
24 representative. However, no party has ever submitted the Agreement to the Secretary or her  
25 representative for review and approval, and neither the Secretary nor her representatives has in  
26 fact reviewed or approved the Agreement.

27           29.     Moreover, under the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. § 2711,  
28 contracts to manage tribal gaming operations are invalid unless they have been approved by the

1 National Indian Gaming Commission (“Commission”). The Agreement constitutes a gaming  
2 management contract subject to Commission approval.

3 30. The Agreement purports to give Herbst “the irrevocable right to become the  
4 exclusive and sole manager and operator of the Hotel/Casino” and make Herbst “irrevocably and  
5 solely responsible for all facets of the management and operation of the Hotel/Casino . . .  
6 including, but not limited to . . . the existing and future gaming operations.” Exhibit 1, § 3.3.

7 31. Under the Agreement, upon completion of the casino, Herbst would “irrevocably”  
8 possess “the right to become the exclusive manager and operator of all gaming operations  
9 conducted at the Hotel/Casino or the new Travel Center through August 1, 2028.” Exhibit 1, §  
10 3.5.

11 32. The Agreement gives Herbst the right to collect a “fee for its management and  
12 operation of the Hotel/Casino . . . .” Exhibit 1, § 3.7.

13 33. In light of the above provisions, the Agreement expressly vests management of the  
14 Tribe’s future gaming operations at the Travel Plaza in Herbst. Accordingly, the Agreement  
15 constitutes a tribal gaming management agreement that must be approved by the Commission to  
16 be valid. However, no party has ever submitted the Agreement to the Commission or its  
17 representatives for review and approval, and neither the Commission nor its representatives has in  
18 fact reviewed or approved of the Agreement.

19 **FIRST CLAIM FOR RELIEF**

20 **THE AGREEMENT IS VOID *AB INITIO* BECAUSE IT WAS NOT APPROVED BY THE**  
21 **SECRETARY UNDER 25 U.S.C. § 81.**

22 34. The Tribe hereby realleges and incorporates by reference the allegations in all  
23 preceding paragraphs of this Complaint.

24 35. The Agreement is a contract with a federally recognized Indian tribe that  
25 encumbers Indian land for a period of seven years or more.

26 36. The Agreement was never submitted to the Secretary or her authorized  
27 representatives for approval and has not been approved by the Secretary or her authorized  
28 representatives.







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5. An injunction prohibiting Herbst from implementing or enforcing any aspect of the Agreement; and

6. An order granting the Tribe any other relief that the Court deems just and equitable.

DATED: March 17, 2014

WOLF, RIFKIN, SHAPIRO,  
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