

Jonathan Jantzen, Attorney General, SBN 016220
Laura Berglan, Deputy Attorney General, SBN 022120
Office of Attorney General
TOHONO O'ODHAM NATION
P.O. Box 830
Sells, AZ 85634
(520) 383-3410
jonathan.jantzen@tonation-nsn.gov
laura.berglan@tonation-nsn.gov

Seth P. Waxman (*Pro hac vice*, motion pending)
Danielle Spinelli (*Pro hac vice*, motion pending)
Kelly P. Dunbar (*Pro hac vice*, motion forthcoming)
Sonya L. Lebsack (*Pro hac vice*, motion pending)
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 663-6000
seth.waxman@wilmerhale.com
danielle.spinelli@wilmerhale.com
kelly.dunbar@wilmerhale.com
sonya.lebsack@wilmerhale.com
Counsel for Plaintiff Tohono O'odham Nation

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

THE TOHONO O'ODHAM NATION,

Plaintiff,

v.

DOUGLAS DUCEY, Governor of Arizona;
MARK BRNOVICH, Arizona Attorney General;
and DANIEL BERGIN, Director, Arizona
Department of Gaming, in their official
capacities,

Defendants.

Case No.

**THE TOHONO O'ODHAM
NATION'S MOTION FOR
PRELIMINARY INJUNCTIVE
RELIEF**

ORAL ARGUMENT REQUESTED

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26	Ariz. Op. Att’y Gen. No. I97-010 (Aug. 8, 1997)	3, 13
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1 Plaintiff, the Tohono O’odham Nation (the “Nation”), moves for a preliminary
2 injunction to enjoin Defendants, state officers sued in their official capacity, from
3 refusing to take steps to permit the Nation to engage in Class III gaming on the Nation’s
4 Indian lands based on Defendants’ assertion that the Nation has engaged in “disqualifying
5 conduct” that “nullif[ies]” the Nation’s rights under the Indian Gaming Regulatory Act
6 (“IGRA”). The Nation also moves for a preliminary injunction enjoining Defendants
7 from taking any action that obstructs the Nation’s ability to engage in Class II gaming,
8 over which Defendants have no legal authority.

9 PRELIMINARY STATEMENT

10 The Nation brings this action to vindicate rights secured to it by federal law. After
11 this Court held that the Nation has the right under IGRA to engage in Class III gaming at
12 the West Valley Resort—a facility located on the Nation’s Indian lands—Defendants
13 executed a new ploy to prevent the Nation from opening that facility. Remarkably,
14 Defendants have taken the position that the Arizona Department of Gaming (“ADG”) has
15 *state-law* authority to decide that the Nation has engaged in conduct that “disqualif[ies]”
16 the Nation from exercising its *federal* right to engage in gaming on its Indian lands.
17 Defendants take that position despite Congress’s longstanding plenary authority over
18 Indian affairs; despite IGRA’s comprehensive regime regulating Indian gaming, which
19 nowhere gives States the power to nullify rights conferred by IGRA; and despite this
20 Court’s judgment holding that the Nation is entitled to engage in Class III gaming at the
21 West Valley Resort under IGRA and its tribal-state gaming compact.

22 The Nation is entitled to preliminary relief to prevent Defendants from invoking
23 supposed state-law authority to prevent the Nation from conducting gaming permitted
24 under IGRA and the Compact. The four factors governing the issuance of preliminary
25 injunctions are readily satisfied here. The Nation is likely to succeed on the merits of its
26 preemption claims: IGRA occupies the field of gaming on Indian lands and Defendants’
27 position directly conflicts with the statutory scheme Congress created. The Nation will
28 be irreparably harmed without preliminary relief because Defendants’ conduct may

1 prevent the Nation from opening its West Valley Resort on schedule, potentially costing
 2 the Nation millions of dollars in lost revenues, preventing members of the Nation from
 3 obtaining gainful employment, and impairing the Nation’s reputation and goodwill with
 4 its employees, vendors and the community—injuries that cannot be remedied later.
 5 Finally, the balance of equities and the public interest weigh heavily in favor of
 6 preventing Defendants from enforcing a state law that is preempted, that denies the
 7 Nation its federal rights, and that impedes the opening of a facility that will bring
 8 substantial economic benefits to impoverished tribal members and the West Valley
 9 community.

10 **BACKGROUND**

11 **I. LEGAL BACKGROUND**

12 **A. The Indian Gaming Regulatory Act**

13 In 1988, Congress passed IGRA “to provide a statutory basis for the operation of
 14 gaming by Indian tribes as a means of promoting tribal economic development, self-
 15 sufficiency, and strong tribal governments.” 25 U.S.C. § 2702(1). To that end, the
 16 statute establishes a comprehensive “framework for regulating gaming activity on Indian
 17 lands” that carefully balances the roles of tribes, the federal government, and States.
 18 *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2028 (2014); *Idaho v. Shoshone-*
 19 *Bannock Tribes*, 465 F.3d 1095, 1096 (9th Cir. 2006). That framework, in turn, is
 20 supplemented by comprehensive federal regulations. *See, e.g.*, 25 C.F.R. pt. 291
 21 (Class III Gaming Procedures).

22 In enacting IGRA, Congress declined to give States broad authority to regulate
 23 Indian gaming. Rather, IGRA recognizes that “tribes have the exclusive right to regulate
 24 gaming activity on Indian lands if the gaming activity is not specifically prohibited by
 25 Federal law and is conducted within a State which does not, as a matter of criminal law
 26 and public policy, prohibit such gaming activity.” 25 U.S.C. § 2701(5); *see also Bay*
 27 *Mills*, 134 S. Ct. at 2034.

1 The role IGRA assigns to States depends on the class of gaming activity at issue.
 2 Class I gaming, which involves social games with prizes of minimal value, is regulated
 3 exclusively by tribal governments. 25 U.S.C. § 2710(a)(1). Class II gaming, which
 4 generally includes bingo, certain similar games, and certain card games, is “within the
 5 exclusive jurisdiction of Indian tribes subject only to federal oversight.” *Crow Tribe of*
 6 *Indians v. Racicot*, 87 F.3d 1039, 1041 (9th Cir. 1996); *see* 25 U.S.C. § 2710(a)(2), (b)-
 7 (c). Class II gaming “cannot be regulated by the State,” *Oneida Tribe of Indians of Wis.*
 8 *v. Wisconsin*, 951 F.2d 757, 759 (7th Cir. 1991), and “may be conducted in Indian
 9 country without a tribal-state compact,” *Seneca-Cayuga Tribe of Okla. v. NIGC*, 327 F.3d
 10 1019, 1023 (10th Cir. 2003). *See also* Ariz. Op. Att’y Gen. No. I97-010 (Aug. 8, 1997);
 11 *Wisconsin v. Ho-Chunk Nation*, 784 F.3d 1076, 1078 (7th Cir. 2015).

12 Class III gaming, sometimes described as “casino-style gaming,” means “all forms
 13 of gaming that are not class I gaming or class II gaming.” 25 U.S.C. § 2703(8). Class III
 14 gaming may be conducted on gaming-eligible Indian lands if such gaming is
 15 (1) authorized by an approved tribal gaming ordinance; (2) located in a State that permits
 16 such gaming by any person, organization, or entity for any purpose; and (3) conducted in
 17 conformance with a tribal-state gaming compact that is in effect. *Id.* § 2710(d)(1); *see*
 18 *Crow Tribe*, 87 F.3d at 1041-1042. When each of those three conditions is satisfied, an
 19 Indian tribe has a federal statutory right to engage in Class III gaming: “Class III gaming
 20 activities *shall* be lawful” only when those conditions are met, and IGRA prescribes no
 21 other conditions for lawful gaming. 25 U.S.C. § 2710(d)(1) (emphasis added).

22 IGRA adopted tribal-state compacts as a way to reconcile tribal and state interests
 23 concerning Class III gaming: “The compacting process gives to states civil regulatory
 24 authority that they otherwise would lack under [the Supreme Court’s pre-IGRA decision
 25 in] *Cabazon*, while granting to tribes the ability to offer legal class III gaming.”
 26 *Artichoke Joe’s Cal. Grand Casino v. Norton*, 353 F.3d 712, 716 (9th Cir. 2003); *see also*
 27 S. Rep. No. 100-446, at 5-6 (1988). “IGRA limits the state’s regulatory authority to that
 28 expressly agreed upon in a compact. Outside the express provisions of a compact, the

1 enforcement of IGRA’s prohibitions on class III gaming remains the exclusive province
 2 of the federal government.” *Cabazon Band of Mission Indians v. Wilson*, 124 F.3d 1050,
 3 1059 (9th Cir. 1997).

4 IGRA closely regulates the formation and enforcement of gaming compacts. An
 5 Indian tribe may “request” that a State “enter into negotiations for the purpose of entering
 6 into a Tribal-State compact governing the conduct of gaming activities,” 25 U.S.C.
 7 § 2710(d)(3)(A), and IGRA contains an “elaborate remedial scheme” to ensure the
 8 formation of a compact where a tribe requests one, *Seminole Tribe of Florida v. Florida*,
 9 517 U.S. 44, 50 (1996). IGRA also specifies the topics that may be addressed in a
 10 compact, including “the application of the criminal and civil laws and regulations of the
 11 Indian tribe or the State that are directly related to, and necessary for, the licensing and
 12 regulation of such activity”; “remedies for breach of contract”; and “any other subjects
 13 that are directly related to the operation of gaming activities.” 25 U.S.C.
 14 § 2710(d)(3)(C). Compacts may not include provisions not permitted by IGRA’s terms.
 15 *See Rincon Band of Luiseno Mission Indians of Rincon Reservation v. Schwarzenegger*,
 16 602 F.3d 1019, 1027-1029 & n.9 (9th Cir. 2010). Moreover, a compact cannot “take
 17 effect” until the Secretary of the Interior “approv[es]” it. 25 U.S.C. § 2710(d)(3)(B); *see*
 18 *id.* § 2710(d)(8).

19 Finally, IGRA governs the geographic locations where Indian gaming may occur,
 20 defining “Indian lands” to include, among other things, land within the limits of an Indian
 21 reservation or land held in trust by the United States for a tribe’s benefit. 25 U.S.C.
 22 § 2703(4). Under IGRA, certain gaming is not permitted on such lands acquired after
 23 October 17, 1988 (IGRA’s effective date), *id.* § 2719(a), but this bar on gaming on “after-
 24 acquired lands” is subject to an exception permitting Class III gaming on lands that are
 25 “taken into trust as a part of ... a settlement of a land claim,” *id.* § 2719(b)(1)(B)(i).

26 **B. Arizona Gaming Law**

27 ADG is a state agency created in 1995 to “carry out the duties and responsibilities
 28 of the state gaming agency in compacts executed by the state and Indian tribes of this

state pursuant to [IGRA].” A.R.S. § 5-601(D). Under Arizona law, ADG is charged with certifying certain prospective gaming employees, vendors, and contractors to “ensure that unsuitable individuals or companies are not involved in Indian gaming.” *Id.* § 5-602(A). The statute provides that, in doing so, ADG “shall seek to promote the public welfare and public safety and shall seek to prevent corrupt influences from infiltrating Indian gaming.” *Id.* § 5-602(C); *see* Compl. ¶¶ 26-28.

II. FACTUAL BACKGROUND

A. The Tribal-State Compact Between The Nation And Arizona

As set forth more fully in the Nation’s complaint, pursuant to IGRA, the Nation and Arizona have entered into two tribal-state compacts, the first in 1993, and a second in 2002. *See* Compl. ¶¶ 29-56. The 2002 Compact is in effect: It was approved by Arizona voters and signed in 2002, and it took effect on February 5, 2003, following approval by the Secretary of the Interior. *See* 68 Fed. Reg. 5,912.

The Compact incorporates the precise terms governing the permissible locations for gaming facilities set out in the initiative that voters approved. These provisions authorize gaming wherever IGRA permits it, *see* Compl. Exh. B (Compact §§ 3(a), 3(j), 2(s)), including on after-acquired lands on which gaming is permitted under IGRA, *see id.* (Compact §3(j)(1) (citing 25 U.S.C. § 2719)).

Consistent with IGRA’s design, the Compact grants the State a specific, limited role, along with the Nation, in approving certain persons who provide goods or services to the Nation’s Class III gaming enterprises. Specifically, the Compact provides that certain gaming employees, management contractors, and vendors of gaming devices and services shall be certified by ADG. Compl. Exh. B (Compact § 4(b), (c), (d)).

Employees, contractors, and vendors seeking certification must submit applications to ADG. Compl. Exh. B (Compact § 5(a)). The Compact provides that ADG “shall conduct the necessary background investigation,” “shall expedite State Certification Applications,” and “[u]pon completion of the necessary background investigation, ... shall either issue a State Certification, or deny the Application.” *Id.*

(Compact § 5(b)(2)). The Compact enumerates specified grounds on which ADG may deny certification to a prospective employee, contractor, or vendor. *Id.* (Compact § 5(f)).

In addition, the Compact requires the Nation’s Gaming Office to license gaming facilities and gaming facility operators. Compl. Exh. B (Compact § 4(a)). “Prior to the initial commencement of the operation, [ADG] and Tohono O’odham Gaming Office shall verify compliance with this requirement through a joint pre-operation inspection and letter of compliance.” *Id.* ADG must send a “compliance letter” or “non-compliance letter” within seven business days of that inspection. *Id.*

The Compact contains no provision giving ADG the right to certify *the Nation*, nor does it reserve any right to either the State or the Nation to rescind or reform the Compact for any reason. Moreover, the Compact includes an integration clause providing that the Compact “contains the entire agreement of the parties” and that “no other statement, agreement, or promise made by any party, officer, or agent of any party shall be valid or binding.” Compl. Exh. B (Compact § 25).

B. The Nation’s West Valley Resort And The State’s Suit To Enjoin It

In 2009, the Nation announced its intention to open a resort and gaming facility—the West Valley Resort—on its Maricopa County land, which has since been taken into trust and is thus part of the Nation’s “Indian Lands.” Compl. ¶¶ 57-63.

The State of Arizona, along with tribes with competing gaming interests, sued the Nation in this Court under 25 U.S.C. § 2710(d)(7)(A)(ii), seeking to enjoin the West Valley Resort. The State and its allies alleged that gaming at the facility would violate the Compact because the Gila Bend Indian Reservation Lands Replacement Act (“LRA”), Pub. L. No. 99-503, 100 Stat. 1798 (1986)—the statute under which the Nation purchased the land—was not a settlement of a land claim under IGRA and because the Compact barred the Nation from gaming in the Phoenix area. The State also asserted that the Nation had deceived the State in negotiating the Compact, supporting claims of promissory estoppel, fraud in the inducement, and material misrepresentation.

1 This Court rejected the claims of the State and its allies. *See Arizona v. Tohono*
 2 *O’odham Nation*, 944 F. Supp. 2d 748 (D. Ariz. 2013); *see also* Compl. ¶¶ 64-74. The
 3 Court held that “no reasonable reading of the Compact could lead a person to conclude
 4 that it prohibited new casinos in the Phoenix area.” 944 F. Supp. 2d at 768. The Court
 5 also held that the LRA was a “classic” “settlement of a land claim” under IGRA. *Id.* at
 6 755-756. Finally, the Court held that the State’s remaining claims were barred by the
 7 Nation’s sovereign immunity because those claims sought remedies beyond the scope of
 8 IGRA’s abrogation of immunity. *Id.* at 769-770 (promissory estoppel); 2011 WL
 9 2357833, at *12-13 (D. Ariz. June 15, 2011) (fraud in the inducement and material
 10 misrepresentation).

11 In its final judgment, the Court held that Class III gaming at the West Valley
 12 Resort “will not violate the Compact” and “is expressly permitted by the federal statute
 13 that authorizes Indian gaming.” 944 F. Supp. 2d at 753, 754. Although the State and its
 14 allies appealed that judgment, none sought any relief from the judgment pending appeal,
 15 and the Nation has accordingly moved forward with the planning and construction of the
 16 West Valley Resort consistent with the Court’s ruling.

17 **C. Defendants’ Extrajudicial Efforts To Block The West Valley Resort**

18 Notwithstanding this Court’s judgment, Defendants have now taken the position
 19 that *state* law gives them the authority to deny the Nation’s *federal* statutory right to
 20 game at the West Valley Resort. Defendants claim that Arizona law gives ADG the
 21 authority to decide whether the Nation has engaged in “disqualifying conduct.” Compl.
 22 ¶ 81. On that basis, Defendant Bergin has asserted that supposed “evidence” of fraud
 23 during compact negotiations “nullif[ies] any right that [the Nation] would otherwise have
 24 under the compact to build the Glendale casino.” Compl. ¶ 77. He has stated that state
 25 law (specifically A.R.S. §§ 5-602(A), (C)) “binds” ADG and forecloses it from
 26 “permit[ting] gaming” at the West Valley Resort “regardless of whether such gaming
 27 would otherwise be permitted by a valid tribal-state compact.” Compl. ¶ 81. Defendant
 28

1 Bergin has informed the Nation that ADG “will not issue any certification or approval
2 relating to the opening or the operation of the” West Valley Resort. *Id.* ¶ 82.

3 At Defendants’ behest, ADG has now taken further steps to nullify the Nation’s
4 right to engage in Class III gaming at the West Valley Resort, and in doing so has
5 threatened to compromise the Nation’s ability to engage in Class II gaming at the site.
6 ADG has notified existing and prospective vendors and employees that the West Valley
7 Resort is not an “authorized” casino and that they may be “subject to legal and/or
8 regulatory risks” for providing goods or services to the West Valley Resort. *See* Compl.
9 ¶¶ 84-91. Defendants’ communications have drawn no distinction between Class II or
10 Class III gaming. ADG has also required prospective gaming employees, starting July 3,
11 2015, to certify that they understand they may not work at “unauthorized” facilities. *Id.*
12 ¶ 90. These efforts have threatened the Nation’s ability to timely open the Resort for
13 Class II or Class III gaming, causing the Nation substantial and irreparable injury.
14 Francisco Decl. ¶¶ 11-21.

15 ARGUMENT

16 The Nation is entitled to a preliminary injunction because “(1) it is likely to
17 succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of
18 preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in
19 the public interest.” *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1124 (9th Cir.
20 2014) (applying *Winter v. Natural Resource Defense Council, Inc.*, 555 U.S. 7, 20
21 (2008)); *see Puente Arizona v. Arpaio*, -- F. Supp. 3d --, 2015 WL 58671, at *11
22 (D. Ariz. Jan. 5, 2015).¹ Each factor weighs in the Nation’s favor.

25 ¹ Courts in this Circuit have held that these factors may be applied through a
26 “‘sliding scale approach,’ such that “‘serious questions going to the merits’ and a balance
27 of hardships that tips sharply towards the plaintiff can support issuance of a preliminary
28 injunction.”” *Arc of California v. Douglas*, 757 F.3d 975, 983 (9th Cir. 2014).
Consideration of a sliding scale is unnecessary here because the Nation is entitled to
preliminary relief under a straightforward application of the four factors.

I. LIKELIHOOD OF SUCCESS ON THE MERITS

Defendants’ attempt under state law to nullify the Nation’s right to engage in gaming at the West Valley Resort is preempted by IGRA. Under the Supremacy Clause, “the Laws of the United States” are “the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. “The preemption doctrine consists of three well-recognized classes: express, field, and conflict preemption.” *Puente Arizona*, 2015 WL 58671, at *12 (citing *Arizona v. United States*, 132 S. Ct. 2492, 2500-2501 (2012)); accord *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9th Cir. 2013) (same); see also *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 n.6 (2000) (bases for preemption are not “rigidly distinct” and “‘field pre-emption may be understood as a species of conflict pre-emption’”). Defendants’ actions with respect to Class III and Class II gaming are preempted under related principles of field and conflict preemption.

A. Defendants’ Efforts To Block Class III Gaming Are Preempted

The Nation is likely to succeed on its claim that Defendants’ refusal to take regulatory steps necessary to permit the Nation to engage in Class III gaming at the West Valley Resort is preempted. Contrary to Defendants’ view, state law cannot give ADG the authority to decide that the Nation has engaged in “disqualifying conduct” and thus may not conduct Class III gaming that IGRA and the Compact permit.

1. Field Preemption

Where “Congress occupies an entire field, ... state regulation is impermissible.” *Arizona*, 132 S. Ct. at 2502. “Field preemption can be ‘inferred from a framework of regulation “so pervasive that Congress left no room for States to supplement it.”’” *Valle del Sol*, 732 F.3d at 1022. When field preemption applies, it is complete and total: It “forclose[s] any state regulation in the area, even if it is parallel to federal standards.” *Arizona*, 132 S. Ct. at 2502. “States may not enter, in any respect, an area that the Federal Government has reserved for itself.” *Id.*

1 IGRA occupies the field with respect to the regulation of gaming on Indian lands.
 2 “[T]he Constitution grants Congress broad general powers to legislate in respect to Indian
 3 tribes, powers that [the Supreme Court] ha[s] consistently described as ‘plenary and
 4 exclusive.’” *United States v. Lara*, 541 U.S. 193, 200 (2004).² Exercising that plenary
 5 authority, Congress enacted IGRA “to provide a statutory basis for the operation of
 6 gaming by Indian tribes.” 25 U.S.C. § 2702(1). IGRA’s “framework for regulating
 7 gaming activity on Indian lands,” *Bay Mills*, 134 S. Ct. at 2028, is comprehensive. *See*
 8 *supra* pp. 2-4. Indeed, Congress “intended to expressly preempt the field in the
 9 governance of gaming activities on Indian lands.” S. Rep. No. 100-446, at 6 (1988).

10 Courts thus have had little difficulty concluding that Congress’s preemptive intent
 11 is manifest from IGRA’s text, structure, and purpose. *See Tamiami Partners v.*
 12 *Miccosukee Tribe of Indians*, 63 F.3d 1030, 1033 (11th Cir. 1995) (“The occupation of
 13 this field by federal law is evidenced by the broad reach of [IGRA’s] regulatory and
 14 enforcement provisions and is underscored by the comprehensive regulations
 15 promulgated under the statute.”); *Gaming Corp. of Am. v. Dorsey & Whitney*, 88 F.3d
 16 536, 544 (8th Cir. 1996) (“Examination of the text and structure of IGRA, its legislative
 17 history, and its jurisdictional framework ... indicates that Congress intended it
 18 completely preempt state law.”). Under IGRA’s comprehensive federal scheme,
 19 “Congress left states with no regulatory role over gaming except as expressly authorized
 20 by IGRA.” *Dorsey & Whitney*, 88 F.3d at 546; *see also United Keetoowah Band v.*
 21 *Oklahoma*, 927 F.2d 1170, 1177 (10th Cir. 1991) (“[T]he very structure of the IGRA
 22 permits assertion of state civil or criminal jurisdiction over Indian gaming *only* when a
 23 tribal-state compact has been reached to regulate class III gaming. The statute appears to
 24 leave no other direct role for ... State gaming enforcement.” (citations omitted)).

25
 26 ² The “presumption against preemption” is inapplicable here. States have no
 27 “historic police powers” over, and have not “traditionally regulated,” gaming on Indian
 28 lands. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987); *see id.*
 at 206 n.18. Indeed, the presumption is reversed in this context: States may regulate
 such gaming only “if Congress has expressly so provided.” *Id.* at 207.

Those principles are dispositive. Defendants have asserted state-law authority to regulate the conduct of Class III gaming at the West Valley Resort. According to Defendants, state law gives ADG the authority to decide that the Nation has engaged in “disqualifying conduct”—that is, conduct that forecloses the Nation from exercising its right under IGRA and under its compact with the State to engage in Class III gaming on its Indian lands—and that the West Valley Resort is an “unauthorized” facility. But, as described above, Congress has given States only limited authority with respect to Class III gaming, and it has circumscribed that authority carefully. *See supra* pp. 3-4. IGRA nowhere authorizes States to judge the qualifications of tribes entitled to game under IGRA and under a tribal-state gaming compact, or to decide when and where those tribes may game. Thus, any authority that the Arizona Legislature has purportedly delegated to ADG to do so is “void.” *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436 (1819).³

2. Conflict Preemption

Defendants’ assertion of state-law authority also violates principles of conflict preemption. “[A] state law is preempted when it ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” *Arizona*, 132 S. Ct. at 2505. Left standing, Defendants’ position would seriously frustrate the purposes and objectives of IGRA.

Under IGRA, a tribe has a right to engage in Class III gaming on Indian lands if three conditions are satisfied. Such Class III gaming “shall be lawful” only if it is (1) “authorized” by an appropriate tribal ordinance or resolution approved by the National Indian Gaming Commission; (2) “located in a State that permits such gaming for any purpose by any person, organization, or entity”; and (3) “conducted in

³ This is not a case in which a State seeks to regulate conduct “remotely related” to Indian gaming. *Barona Band of Mission Indians v. Yee*, 528 F.3d 1184, 1193 (9th Cir. 2008). Here, Defendants rely on state law to regulate the Nation directly by denying it the right to engage in otherwise lawful Class III gaming on Indian land.

1 conformance with a Tribal-State compact ... that is in effect.” 25 U.S.C. § 2710(d)(1).
2 IGRA imposes no other conditions.

3 Class III gaming at the West Valley facility would satisfy each of those three
4 conditions. *See* Compl. ¶ 99. The first two conditions are not in dispute. And, as to the
5 third, Class III gaming at the West Valley Resort would be “conducted in conformance”
6 with the Compact, as this Court has already held. *See supra* pp. 6-7. For those reasons,
7 the Nation has a federal right to engage in Class III gaming at the West Valley Resort.
8 *See Tohono O’odham Nation*, 944 F. Supp. 2d at 754 (Class III “gaming” at the West
9 Valley Resort “is expressly permitted by [IGRA]”).

10 Defendants’ actions countermand that federal scheme by “depriv[ing]” the Nation
11 of a right “given [to] it” by IGRA. *Fidelity Fed. Sav. & Loan Ass’n v. De la Cuesta*, 458
12 U.S. 141, 155-156 (1982) (state law that “limited” a party’s “right” to exercise an option
13 provided by federal law was preempted on conflict-preemption grounds); *see also*
14 *Arizona*, 132 S. Ct. at 2506 (striking down on conflict-preemption grounds an Arizona
15 law that permitted warrantless arrests of deportable aliens where “[f]ederal law specifies
16 limited circumstances in which state officers may perform the function of an immigration
17 officer” and such warrantless arrests were not one of those circumstances); *Hillman v.*
18 *Maretta*, 133 S. Ct. 1943, 1953 (2013). Put differently, as the Supreme Court has made
19 clear, “Congress would not want States to forbid, or to impair significantly, the exercise
20 of a power that Congress explicitly granted.” *Barnett Bank v. Nelson*, 517 U.S. 25, 33
21 (1996); *see also, e.g., Orson, Inc. v. Miramax Film Corp.*, 189 F.3d 377, 385 (3d Cir.
22 1999) (“well-established legal principles” lead “to the ineluctable conclusion [the
23 challenged state law] cannot stand because it prohibits the copyright holder from
24 exercising rights protected by the Copyright Act”); *Spain v. Mountanos*, 690 F.2d 742,
25 746 (9th Cir. 1982) (“a state cannot frustrate the intent of [42 U.S.C. § 1988] by setting
26 up state law barriers to block enforcement of an attorney’s fees award” made pursuant to
27 that federal statute); *Tohono O’odham Nation v. City of Glendale*, 2011 WL 2650205, at
28 *11 (D. Ariz. June 30, 2011) (applying similar principles in holding that H.B. 2534 is

1 preempted by federal law because it imposed burdens on the “exercise[]” of the Nation’s
2 “right under [the LRA]”).

3 Defendants’ position also would create intolerable conflict with federal law
4 because it would leave States free to upset the delicate balance among federal, tribal, and
5 state interests that Congress struck in IGRA. State laws disrupting a balance struck by
6 Congress are preempted. *See Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S.
7 141, 152 (1989); *Buckman Co. v. Plaintiffs’ Legal Comm.*, 531 U.S. 341, 348 (2001). As
8 one district court in this Circuit has explained: “IGRA creates a comprehensive
9 jurisdictional framework for the regulation of gaming activities on Indian lands. The
10 regulation of gaming by states outside the framework of IGRA would frustrate this
11 framework and Congress’s careful balancing of the competing interests involved in
12 Indian gaming.” *Sycuan Band of Mission Indians v. Roache*, 788 F. Supp. 1498, 1504
13 (S.D. Cal. 1992) (criminal prosecutions or execution of warrants in connection with on-
14 reservation gaming were preempted). That principle controls here.

15 **B. Any State Interference With Class II Gaming Is Preempted**

16 Independently, Defendants’ actions are preempted because they threaten to
17 prevent vendors and employees from providing goods and services in connection with
18 Class II gaming at the West Valley Resort.

19 *First*, as explained above, IGRA occupies the field with respect to Indian gaming;
20 States have only the limited authority IGRA expressly grants them. *See supra* pp. 2-4.
21 And with respect to Class II gaming, States have *no* authority. Under IGRA, Class II
22 gaming is regulated exclusively by tribes and the National Indian Gaming Commission.
23 *See* 25 U.S.C. § 2710(a)(2), (b)-(c). Thus, as the State itself has recognized, “Tribes may
24 conduct Class II gaming on Indian lands without a gaming compact or State regulation,”
25 *Ariz. Op. Att’y Gen. No. I97-010* (Aug. 8, 1997).

26 *Second*, State actions obstructing Class II gaming are void under principles of
27 conflict preemption. IGRA authorizes the Nation to engage in Class II gaming at the
28 West Valley Resort. 25 U.S.C. § 2710(b). Permitting Defendants to impose additional,

1 state-law conditions on Class II gaming would impermissibly “depriv[e]” the Nation of a
 2 right “given [to] it” by federal law. *Fidelity Fed. Sav. & Loan*, 458 U.S. at 155-156.

3 **II. IRREPARABLE INJURY**

4 The Nation also is entitled to preliminary relief because it is “likely to suffer
 5 irreparable harm in the absence of preliminary relief.” *Pom Wonderful*, 775 F.3d at 1124.

6 **First**, Defendants’ refusal to take steps to permit Class III gaming at the West
 7 Valley Resort will inflict substantial, and irreparable, economic injury on the Nation and
 8 its members. The Nation plans to begin Class III gaming in the last quarter of 2015.
 9 Francisco Decl. ¶ 8. ADG’s recent conduct threatens the Nation’s ability to open in that
 10 time frame. *Id.* ¶¶ 11-19. For example, ADG’s letter to vendors and employees and its
 11 new employment applications will impede the Nation’s ability to open on that timetable
 12 because vendors and employees are justifiably concerned that providing goods or
 13 services to the Nation will result in sanctions by ADG. *Id.* ¶¶ 17-18; *see also* Brown
 14 Decl. ¶¶ 8-12 (vendor explaining that it “interprets [ADG’s letter] as a threat to revoke, or
 15 to take adverse action against [its] Certification if it continues to construct the West
 16 Valley Resort”); Ehret Decl. ¶¶ 7-14 (“If PENTA continues constructi[on] ... ADG has
 17 threatened to take adverse regulatory action against PENTA’s ADG Certification”);
 18 Simpson Decl. ¶¶ 10-15 (“ADG’s threats are a significant concern to RLB”).

19 Every month of delay in beginning Class III gaming operations would result in
 20 millions of dollars of lost net income. *See* Francisco Decl. ¶ 20. This substantial
 21 economic injury is irreparable because the Nation likely would have no claim for money
 22 damages later against the State. *See, e.g., California Pharmacists Ass’n v. Maxwell-Jolly*,
 23 563 F.3d 847, 852 (9th Cir. 2009) (economic injury is irreparable where “[p]laintiffs can
 24 obtain no remedy in damages against the State because of the Eleventh Amendment”),
 25 *abrogated on other grounds, Douglas v. Indep. Living Center of S. Cal.*, 132 S. Ct. 1204
 26 (2012); *Planned Parenthood Arizona, Inc. v. Betlach*, 899 F. Supp. 2d 868, 886 (D. Ariz.
 27 2012) (lost annual revenue of \$350,000 is “irreparable harm” where plaintiffs “would be
 28 unable to recover this lost revenue as damages” because of immunity). The loss of those

1 revenues is particularly significant because they are desperately needed to remedy severe
 2 poverty among the Nation's members. Claw Decl. ¶¶ 6-15. Any delay would also
 3 prevent many of the Nation's members from obtaining gainful employment at the West
 4 Valley Resort. Francisco Decl. ¶ 8.

5 Defendants' actions threatening the Nation's ability to conduct Class II gaming
 6 inflict additional, independent harm on the Nation. Even if Defendants were correct that
 7 ADG has state-law authority to deny Class *III* certifications based on the Nation's
 8 "disqualifying conduct," the Nation could still operate a Class *II* gaming facility at the
 9 West Valley Resort. Francisco Decl. ¶ 21. Defendants' threats against any vendor or
 10 employee who deals with the West Valley Resort do not distinguish between Class II and
 11 Class III gaming, and thus threaten to chill those parties' willingness to provide goods
 12 and services necessary to engage in Class II gaming. *Id.*; *see also* Ehret Decl. ¶ 13
 13 (expressing concern that ADG is "threatening to take adverse action against its ADG
 14 Certification ... even if [the Nation's Gaming Enterprise] operates only Class II gaming
 15 at the West Valley Resort."); Simpson Decl. ¶ 16 (similar). Absent preliminary relief,
 16 those threats will delay the Nation in opening a Class II facility, resulting in millions of
 17 dollars a month in lost revenue. Francisco Decl. ¶ 21.

18 ***Second***, Defendants' attempt to stall or block lawful gaming at the West Valley
 19 Resort will result in irreparable *intangible* harm absent preliminary relief. Impeding the
 20 Nation's ability to begin gaming in a timely manner will, among other things, result in
 21 the loss of customers and severely damage the Nation's goodwill and reputation with
 22 customers, vendors, local municipalities, and employees alike. Francisco Decl. ¶ 20; *see*
 23 Ehert Decl. ¶ 12. Such injuries are irreparable. *See, e.g., Stuhlberg Int'l Sales Co. v.*
 24 *John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001) ("threatened loss of prospective
 25 customers or goodwill certainly supports" irreparable harm finding); *Rent-A-Center, Inc.*
 26 *v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991)
 27 ("intangible injuries, such as damage to ... goodwill, qualify as irreparable harm").
 28

1 **Third**, the impairment of the Nation’s rights by a preempted state law is itself
 2 irreparable injury. As the Ninth Circuit held in affirming a preliminary injunction in a
 3 preemption challenge to another Arizona law, ““an alleged constitutional infringement
 4 will often alone constitute irreparable harm.”” *United States v. Arizona*, 641 F.3d 339,
 5 366 (9th Cir. 2011), *rev’d in part on other grounds*, 132 S. Ct. 2492 (2012); *accord*
 6 *Puente Arizona*, 2015 WL 58671, at *18 (“imminent threat of enforcement of a
 7 preempted state law” where “injury may not be remedied by monetary damages” is
 8 “irreparable harm”).

9 **III. THE BALANCE OF EQUITIES**

10 The “balance of equities tips” decidedly “in ... favor” of preliminary relief. *Pom*
 11 *Wonderful*, 775 F.3d at 1124. In contrast to the substantial and irreparable injury to the
 12 Nation without relief, neither Defendants nor the State will be harmed by a preliminary
 13 injunction. To begin with, “[e]njoining the enforcement of laws that are likely preempted
 14 will impose little hardship” on the State, *Puente Arizona*, 2015 WL 58671, at *19,
 15 because a State “does not have an interest in enforcing a law that is likely constitutionally
 16 infirm,” *Chamber of Commerce of U.S. v. Edmonson*, 594 F.3d 742, 771 (10th Cir. 2010).
 17 Defendants’ interest is especially weak because States have no authority other than that
 18 conferred by federal law to regulate gaming on Indian lands in the first place. *See*
 19 *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987).

20 In addition, the State has already had its day in court regarding its objections to the
 21 West Valley Resort and this Court rejected those claims. Particularly given that the State
 22 did not seek a stay of this Court’s judgment pending appeal, there is no equitable basis
 23 for allowing Defendants to use unlawful, extrajudicial means to obtain the same result.

24 **IV. THE PUBLIC INTEREST**

25 Finally, “an injunction is in the public interest.” *Pom Wonderful LLC*, 775 F.3d at
 26 1124. “The public has little interest in the enforcement of laws that are unconstitutional.”
 27 *Puente Arizona*, 2015 WL 58671, at *19. To the contrary, “the public interest ... favor[s]
 28 ‘prevent[ing]’” continuing violations of rights secured by federal statute and the

1 Supremacy Clause. *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1069 (9th
2 Cir. 2014). In addition, the public interest would be served by the timely opening of the
3 West Valley Resort and the jobs and economic gains that the Resort will bring to the
4 local community. *See* Francisco Decl. ¶¶ 7-8 (explaining that construction spending is
5 estimated to exceed \$400 million dollars; more than 500 permanent jobs will be created
6 when the facility opens); Gamez Decl. ¶¶ 4-9 (describing the “significant employment”
7 and other benefits expected for the City of Tolleson); Bailey Decl. ¶¶ 4-15 (“[T]he West
8 Valley Resort will produce significant economic benefits each year for the City [of
9 Glendale], including substantial tax revenue.”). These positive “effect[s]” on the “local
10 economy [are] a proper consideration in the public interest analysis.” *Alliance for the
11 Wild Rockies v. Cottrell*, 632 F.3d 1127, 1138 (9th Cir. 2011).

12 CONCLUSION

13 The Nation respectfully requests that this Court issue an order for preliminary
14 injunctive relief as described in the attached proposed order.

1 Dated: June 22, 2015

Respectfully submitted,

3 /s/ Laura Berglan

Jonathan Jantzen,

Attorney General, SBN 016220

Laura Berglan,

Deputy Attorney General, SBN 022120

Office of Attorney General

TOHONO O'ODHAM NATION

P.O. Box 830

Sells, AZ 85634

(520) 383-3410

jonathan.jantzen@tonation-nsn.gov

laura.berglan@tonation-nsn.gov

11 Seth P. Waxman (*Pro hac vice*, motion pending)

12 Danielle Spinelli (*Pro hac vice*, motion pending)

13 Kelly P. Dunbar (*Pro hac vice*, motion forthcoming)

Sonya L. Lebsack (*Pro hac vice*, motion pending)

WILMER CUTLER PICKERING

HALE AND DORR LLP

1875 Pennsylvania Avenue, N.W.

Washington, D.C. 20006

(202) 663-6000

seth.waxman@wilmerhale.com

danielle.spinelli@wilmerhale.com

kelly.dunbar@wilmerhale.com

sonya.lebsack@wilmerhale.com

Counsel for Plaintiff Tohono O'odham Nation

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2015, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System. In addition, I caused copies of the foregoing document to be served on Defendants by hand service at the following addresses:

DOUGLAS DUCEY,
Governor of Arizona
1700 West Washington Street
Phoenix, Arizona 85007

MARK BRNOVICH,
Arizona Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

DANIEL BERGIN,
Director, Arizona Department of Gaming
1110 W. Washington Street, Suite 450
Phoenix, Arizona 85007

/s/ Laura Berglan
LAURA BERGLAN

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

THE TOHONO O'ODHAM NATION,

Plaintiff,

v.

DOUGLAS DUCEY, Governor of Arizona;
MARK BRNOVICH, Arizona Attorney
General; and DANIEL BERGIN, Director,
Arizona Department of Gaming, in their
official capacities,

Defendants.

Case No.

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTIVE RELIEF**

Upon consideration of Plaintiff Tohono O'odham Nation's Motion for Preliminary Injunctive Relief and the entire record herein, the Court concludes that the motion should be GRANTED. Plaintiff has established a likelihood of success on the merits of its claim that the state-law authority asserted by the Defendants under A.R.S. § 5-602 to regulate gaming activities at the West Valley Resort is both field and conflict preempted and therefore violates the Supremacy Clause of the U.S. Constitution. Plaintiff has also demonstrated irreparable harm in the absence of a preliminary injunction, that the balance of hardships tips strongly in its favor, and that a preliminary injunction advances the public interest.

Accordingly, until such time as the Court makes a final ruling on the merits or until further order from the Court, it is hereby ORDERED that:

1. Defendants' assertion of state-law authority to refuse to perform regulatory approvals for Class III gaming, or otherwise obstruct Class III gaming, at the West Valley Resort is preempted by IGRA.
2. Defendants have no authority to regulate or otherwise obstruct Class II gaming at the West Valley Resort.

3. Defendants have no authority to impose regulatory sanctions on an employee or vendor holding a certification relating to Class III gaming because the employee or vendor provided goods or services in support of lawful Class II gaming.
4. Defendants are barred from relying on state law to refuse to perform regulatory approvals for Class III gaming, or otherwise to obstruct Class III gaming, at the West Valley Resort.
5. Defendants are barred from interfering with the Nation's relationships with vendors and employees based on the provision of goods or services for Class III or Class II gaming at the West Valley Resort; from refusing to certify, revoking the certification of, or otherwise threatening or sanctioning vendors, employees, or others based on the provision of goods or services for Class III or Class II gaming at the West Valley Resort; and from taking any other actions to obstruct the Nation from conducting Class III and Class II gaming at the West Valley Resort.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

THE TOHONO O'ODHAM NATION,

Plaintiff,

v.

DOUGLAS DUCEY, Governor of Arizona;
MARK BRNOVICH, Arizona Attorney General;
and DANIEL BERGIN, Director, Arizona
Department of Gaming, in their official
capacities,

Defendants.

Case No. _____

**DECLARATION OF ELIZABETH
FRANCISCO IN SUPPORT OF
THE TOHONO O'ODHAM
NATION'S MOTION FOR A
PRELIMINARY INJUNCTION**

I, Elizabeth Francisco, declare as follows:

I. BACKGROUND AND QUALIFICATIONS

1. My name is Elizabeth Francisco. I am over the age of eighteen, and I am fully competent to make this declaration. I have personal knowledge of the facts set forth in this declaration or believe them to be true based on my experience in the gaming industry, my work with the Tohono O'odham Gaming Enterprise (the "Gaming Enterprise"), or information provided to me by others under my direction. If asked to do so, I could testify truthfully about the matters contained in this declaration.

2. I am currently the Chief Operating Officer of the Tohono O'odham Gaming Enterprise, and have served in that position since 2005. Prior to that time, I was the Director of Gaming Operations for the Gaming Enterprise from 2000 to 2005.

3. The Gaming Enterprise is an entity created by the Tohono O'odham Nation (the "Nation") to operate the Nation's gaming facilities, including the planned West Valley Resort on the Nation's reservation land located in Maricopa County near Glendale. The Enterprise also is responsible for constructing the West Valley Resort. The Gaming Enterprise provides training and employment opportunities for members of the Nation, and

1 periodically distributes its net income to the Nation. The Nation uses the funds it receives
2 from the Gaming Enterprise for government operations and services to the tribal
3 membership in accordance with the Indian Gaming Regulatory Act.

4 4. As Chief Operating Officer, I am one of three executives responsible for the
5 Gaming Enterprise. My responsibilities relate directly to the gaming operations at the
6 Gaming Enterprise's three existing casinos. Since 2009, my responsibilities also have
7 included planning for the West Valley Resort. In that capacity, I am familiar with the plans
8 for the West Valley Resort and the financial and operational circumstances of the project. I
9 supervise the Gaming Enterprise's Construction Manager and the General Manager for the
10 West Valley Resort, and am actively involved in addressing issues relating to vendors and
11 employees for the resort.

12 **II. THE GAMING ENTERPRISES' EFFORT TO OPEN THE WEST VALLEY RESORT AND**
13 **THE ECONOMIC BENEFITS OF THE PROJECT**

14 5. The West Valley Resort is a major undertaking requiring a substantial
15 investment of time and capital by the Gaming Enterprise. Since the Gaming Enterprise
16 began planning for the West Valley Resort, its activities have included the following:

- 17 (a) advertising for and evaluating proposals by architectural firms, retaining an
18 architectural firm, and working with the architectural firm to design the West
19 Valley Resort;
- 20 (b) advertising for and evaluating proposals by potential owner's representatives,
21 retaining an owner's representative, and working with the owner's representative
22 on design and cost issues;
- 23 (c) advertising for and evaluating proposals by potential general construction
24 contractors, retaining a general contractor, and working with the general contractor
25 on cost and other construction issues; and
- 26 (d) overseeing ongoing construction activities, while ensuring coordination among
27 the architect, the general contractor, the subcontractors, and the owner's
28 representative.

1 6. The Gaming Enterprise's investment in the planning and construction of the
2 West Valley Resort has been substantial. From January 2009 to date, the Gaming
3 Enterprise has invested more than \$60 million in the development of the West Valley
4 Resort. The Gaming Enterprise's general contractor has already retained 40 subcontractors,
5 most of which have offices in the Phoenix area. The general contractor and its
6 subcontractors will have employed more than 1,000 workers on the project by the time the
7 first phase of the project (the interim casino) is complete. As the full resort is built out,
8 several thousand construction workers ultimately will have been employed on the project.

9 7. By the end of 2015, the Gaming Enterprise expects to have invested more than
10 \$200 million in construction and related infrastructure improvements for the first phase of
11 the West Valley Resort. The total construction cost for the complete build-out of the
12 project is estimated to exceed \$400 million. This construction spending will provide a
13 significant boost to the West Valley's economy.

14 8. In addition to construction jobs, when the initial phase of the West Valley
15 Resort is opened, more than 500 permanent jobs will immediately be created. (The
16 construction schedule currently will allow the gaming facility to open in the fourth quarter
17 of this year.) Based upon the staffing of the Gaming Enterprise's existing casinos, I expect
18 roughly 40% of those employed at the West Valley Resort to be Native American, with
19 75% of the Native American workforce being Tohono O'odham.

20 9. Once complete, the West Valley Resort will be a mixed-use facility that
21 includes a hotel, conference center, and casino, along with related amenities. The
22 completed Resort will create more than 3,000 permanent jobs, approximately half at the
23 Resort and half in the wider community. As with the initial gaming facility, the Gaming
24 Enterprise expects about 40% of the jobs at the Resort to be filled by Native Americans,
25 with 75% of the Native American workforce being Tohono O'odham.

26 10. The Gaming Enterprise expects the West Valley Resort, when completed, to
27 generate several hundred million dollars in economic benefits for the community annually,
28 in addition to tens of millions of dollars in federal, state, and local tax revenue each year.

III. WITHOUT A PRELIMINARY INJUNCTION, ADG'S CONDUCT WILL CAUSE IRREPARABLE DAMAGE

11. Under Arizona law and the Nation's gaming compact, the Arizona Department of Gaming ("ADG") is required to review and issue certifications to prospective gaming employees and vendors involved in Class III gaming. The Nation's gaming compact also requires ADG to conduct a pre-operation inspection of each new Class III gaming facility and to issue a letter addressing whether it believes the gaming facility complies with the gaming compact.

12. ADG has publicly stated that it will not issue any required certifications or letter of compliance for the West Valley Resort. In addition, ADG recently sent a letter to current gaming employees and vendors claiming that "the proposed West Valley casino is not authorized"—even though this Court held otherwise in a lawsuit brought by the State.

13. On May 26, 2015, ADG sent information to the Nation's Gaming Office informing the Office that a new "Notice" had been added to its certification application forms for both vendor licensees and employee licensees.

14. The new Vendor Certification Application now includes the following statement:

"Please be advised this application for certification is valid Only for authorized Arizona gaming facilities. Providing goods or services to any location considered by the State to be unauthorized , or in pending litigation with the State concerning whether it is authorized, would be outside the approval granted through State Certification. Vendors providing goods and services to unauthorized facilities may be subject to legal and/or regulatory risks."

In addition to providing this Vendor Certification form to the Nation, ADG has also sent the same information to all ADG Certified vendors.

15. On June 9, 2015, ADG provided new Employee Certification Application forms to the Nation's gaming office and instructed that it must begin using these forms by July 3, 2015. These new Certification forms are to be used for new hires renewals, as well as for

1 transfers and rehires. The new forms, which have been provided to the Gaming Enterprise,
2 require prospective employees to initial the following:

3 “Please be advised this application for certification is
4 valid only for authorized Arizona gaming facilities.
5 Employees of any location considered by the State to be
6 unauthorized, or in pending litigation with the State
7 concerning whether it is authorized, would be outside the
8 approval granted through State Certification. Employees
9 of unauthorized facilities may be subject to legal and
10 regulatory risks.”

11 16. ADG’s conduct has already seriously impaired the Gaming Enterprise’s plans to
12 open the West Valley Resort and, without preliminary relief, ADG’s conduct could delay the
13 opening of the facility. The construction of the first phase of the West Valley Resort is well
14 under way and the current construction schedule calls for the interim casino to be completed
15 in time for a December 2015 opening, but ADG’s recent actions have been creating
16 immediate and adverse effects on the progress of the West Valley Resort. To open on
17 schedule, the Gaming Enterprise must now begin hiring employees, purchasing equipment,
18 and contracting with vendors for services such as food and surveillance.

19 17. ADG’s recent claim that “the proposed West Valley casino is not authorized,”
20 coupled with its threats to vendors and employees that their certifications will be at risk if
21 they provide goods or services for the West Valley Resort, are chilling the willingness of
22 vendors and employees to deal with the Gaming Enterprise. ADG’s threats are
23 understandably frightening to prospective vendors and employees, whose livelihoods depend
24 on maintaining their state certification. No knowledgeable gaming licensee, whether a
25 vendor or an employee, wants to face a license sanction or revocation in any jurisdiction.
26 Not only may a sanction or revocation preclude a person or entity from working in the
27 gaming industry in the jurisdiction levying the sanction, but a sanction must be disclosed in
28

1 all (or at least nearly all) jurisdictions in which a party is licensed and can result in a denial
2 or revocation of a license those jurisdictions too. Simply put, no rational gaming licensee
3 wants to risk his or her future employment in, or its firm's ability to sell goods or services to,
4 the gaming industry.

5
6 18. The following are specific, concrete examples of the immediate chilling effect of
7 ADG's conduct:

8
9 a. *Gaming-device vendors.* Shortly after receiving ADG's letter, the Gaming
10 Enterprise's usual gaming device vendors informed us that they were not
11 currently willing to supply the Gaming Enterprise with gaming devices for
12 the West Valley Resort. More recently, those vendors informed us that
13 they were unwilling to supply the Gaming Enterprise with either Class III
14 devices or Class II devices, because of the ADG letter. The vendors have
15 said they are evaluating the ADG letter with their legal and/or compliance
16 staff.

17 b. *Employees.* Existing employees of the Gaming Enterprise have expressed
18 concern that ADG might sanction them or revoke their certification if they
19 transfer to the West Valley Resort. Although the Gaming Enterprise is just
20 beginning to recruit new employees for the West Valley Resort, and
21 therefore does not have a good understanding of how prospective
22 employees will react to ADG's actions, we expect ADG's actions to
23 significantly impair the Gaming Enterprise's ability to recruit high quality
24 employees for the West Valley Resort.

25 19. Although ADG's actions may not prevent the Gaming Enterprise from opening
26 the West Valley Resort, ADG's actions will:

27 A. Limit the Gaming Enterprise's ability to acquire goods and services
28 from the vendors of its choice, requiring the Gaming Enterprise accept less than

1 optimal goods and services for the West Valley Resort and, likely, to accept less
2 favorable terms and conditions from those vendors who will do business with the
3 Gaming Enterprise notwithstanding ADG's actions;

4 B. Limit the Gaming Enterprise's ability to hire quality employees for the
5 West Valley Resort and, likely, with much greater recruiting costs than otherwise
6 would be the case; and

7 C. Damage the Gaming Enterprise's goodwill if it must open with
8 employees, goods, and services other than those it would otherwise choose for the
9 West Valley Resort.

10 20. In addition, ADG's actions may delay the opening of the West Valley Resort,
11 which would cost the Gaming Enterprise millions of dollars each month in lost net income.
12 In addition to financial losses, delay in opening will also damage the reputation and goodwill
13 of the West Valley Resort, the Gaming Enterprise, and the Nation in the eyes of potential
14 employees, potential gaming customers, local officials, and the public—who are relying on
15 the West Valley Resort for employment, entertainment, economic development, as financial
16 partners, or as interested parties. The Gaming Enterprise has announced a late 2015 opening
17 and the loss of goodwill if it fails to do so will not easily be repaired or restored.

18 21. Finally, regardless of whether the Nation is entitled to operate Class III gaming at
19 the West Valley Resort, the Nation is entitled under the Indian Gaming Regulatory Act to
20 operate Class II gaming at the West Valley Resort. ADG's threats to sanction employees
21 and vendors who provide goods or services for the West Valley Resort is interfering with the
22 Gaming Enterprise's ability to operate Class II gaming at the West Valley Resort. Some
23 vendors of Class II gaming devices have informed the Gaming Enterprise that they won't sell
24 Class II equipment to the Gaming Enterprise because they are concerned that ADG will take
25 action against their Class III certifications if they do—even though, under federal law, ADG
26 has no role in regulating Class II gaming. The Gaming Enterprise's net income from a Class
27 II gaming facility would be millions of dollars each month and any delay in opening a Class
28

1 II gaming facility because of ADG's conduct would cause substantial economic harm to the
2 Gaming Enterprise and the Nation.

3 I declare under penalty of perjury that the foregoing is true and correct.
4

5 Executed on June 19, 2015.

6 
7
8 ELIZABETH FRANCISCO

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2015, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System. In addition, I caused copies of the foregoing document to be served on Defendants by hand service at the following addresses:

DOUGLAS DUCEY,
Governor of Arizona
1700 West Washington Street
Phoenix, Arizona 85007

MARK BRNOVICH,
Arizona Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

DANIEL BERGIN,
Director, Arizona Department of Gaming
1110 W. Washington Street, Suite 450
Phoenix, Arizona 85007

/s/ Laura Berglan
LAURA BERGLAN

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

THE TOHONO O'ODHAM NATION,

Plaintiff,

v.

DOUGLAS DUCEY, Governor of Arizona;
MARK BRNOVICH, Arizona Attorney General;
and DANIEL BERGIN, Director, Arizona
Department of Gaming, in their official
capacities,

Defendants.

Case No. _____

**DECLARATION OF RYAN CLAW
IN SUPPORT OF THE TOHONO
O'ODHAM NATION'S MOTION
FOR A PRELIMINARY
INJUNCTION**

I, Ryan Claw, declare as follows:

I. BACKGROUND AND QUALIFICATIONS

1. My name is Ryan Claw. I am over the age of eighteen, and I am fully competent to make this declaration. I have personal knowledge of the facts set forth in this declaration or believe them to be true based on my experience in the financial industry, my work with the Tohono O'odham Nation (the "Nation"), or information provided to me by others under my direction. If asked to do so, I could testify truthfully about the matters contained in this declaration.

2. I am currently the Treasurer of the Nation, and have served in that position since February 2015. I also previously served as the Nation's Treasurer from February 2007 to April 2012.

3. As the Nation's Treasurer, I am responsible for oversight of the Nation's finances, including gaming-related distributions. In that capacity, I am familiar with the Nation's plans for the West Valley Resort and the financial impact of the project on the Nation.

1 **II. THE NATION’S PLANNED WEST VALLEY RESORT**

2 4. The Nation acquired the land on which the West Valley Resort is being
3 constructed in August 2003. The United States now holds that land in trust for the benefit
4 of the Nation under the terms of the Gila Bend Indian Reservation Lands Replacement Act
5 (LRA), which compensated the Nation for the United States’ flooding of the Nation’s Gila
6 Bend Indian Reservation in the 1970s and 1980s.

7 5. Since acquiring the land, the Nation has expended substantial effort and
8 resources in bringing the West Valley Resort to fruition. The Nation and the Tohono
9 O’odham Gaming Enterprise have collectively invested over \$100 million in their efforts to
10 develop the West Valley Resort.

11 **III. THE WEST VALLEY RESORT WILL HAVE SUBSTANTIAL ECONOMIC BENEFITS FOR**
12 **THE NATION AND HELP ALLEVIATE SEVERE POVERTY AMONG ITS MEMBERS**

13 6. Although the Nation has reservation lands near several of Arizona’s largest
14 cities (Phoenix, Tucson, and Casa Grande, among others), the Nation’s reservation lands in
15 Maricopa, Pinal, Yuma, and Pima Counties also encompass vast stretches of rural desert,
16 with a combined area of more than 2.8 million acres—roughly the size of Connecticut.

17 7. Many of the Nation’s members live in remote parts of its vast reservation.
18 Because the Nation’s population is so widely dispersed, it is inordinately costly for the
19 Nation’s government to provide basic services such as 911 response, clean drinking water,
20 school-bus service, and utility service.

21 8. The Nation’s reservation lands abut roughly 75 miles of the international
22 boundary between the United States and Mexico. The Nation spends more than \$3 million
23 each year dealing with the consequences of cross-border smuggling, drug trafficking, and
24 illegal migration across its territory. The United States does not reimburse the Nation for
25 these expenditures.

26 9. Although gaming revenues and other economic-development initiatives have
27 improved conditions on its reservation, many of the Nation’s members remain mired in
28

1 deep poverty. Nearly half of the Nation's families live below the federal poverty line (in
2 2014, \$23,850 in annual income for a family of four).

3 10. The median household annual income for residents on the Nation's reservation
4 in 2010 was \$27,434; the Arizona median household income was \$50,448. Life expectancy
5 on the reservation trails both the national average and the average for Indians in other parts
6 of Arizona.

7 11. The Nation has few sources of revenue to address the many challenges facing
8 its people. The Nation derives no revenue from income taxes or property taxes. Gaming
9 has thus been a vital source of revenue to fund the day-to-day operations of the Nation's
10 government.

11 12. Among many other things, the Nation has used revenues from its existing
12 gaming facilities to:

13 A. Construct and operate the Tohono O'odham Community College and a
14 skilled nursing home for 60 residents (both tribally chartered enterprises), five
15 recreation centers, a museum, and a forty-seat dialysis center;

16 B. Fund public safety and justice programs, including creating its fire
17 department, dramatically expanding its police force, and constructing and staffing a
18 modern courthouse.

19 C. Fund scholarships, allowing more than 2,000 of the Nation's members
20 to attend college.

21 13. Unfortunately, however, the Nation's unmet needs are still profound. Thirty-
22 one percent of tribal members on the Nation's reservation live in overcrowded homes, with
23 more than one occupant per room. Fewer than half of the Nation's students graduate from
24 high school; only 8% have an associate's degree or higher. One in five households among
25 tribal members living on the reservation lacks hot and cold piped water, a flush toilet, or a
26 bathtub or shower—compared with one in a hundred nationally.

27 14. The employment opportunities provided by West Valley Resort to members of
28 the Nation will help remedy these problems, as will the revenue the Nation will receive

1 from the West Valley Resort. West Valley Resort revenues will allow the Nation to better
2 fund tribal governmental budgets, as well as to fund infrastructure and capital development
3 projects that have been put on hold during the general economic recession.

4 15. Any actions by the Arizona Department of Gaming that delay or block the
5 opening of the West Valley Resort, or otherwise impair the ability of the Tohono O'odham
6 Gaming Enterprise to maximize revenues from the West Valley Resort, will be profoundly
7 detrimental to the Nation, as such actions will deprive the Nation's members of much-
8 needed employment and deprive the Nation of much-needed gaming revenue to fund
9 programs and services that are desperately needed by the Nation's members.

10
11 I declare under penalty of perjury that the foregoing is true and correct.

12
13 Executed on June 20, 2015.

14 

15 _____
16 RYAN CLAW
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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2015, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System. In addition, I caused copies of the foregoing document to be served on Defendants by hand service at the following addresses:

DOUGLAS DUCEY,
Governor of Arizona
1700 West Washington Street
Phoenix, Arizona 85007

MARK BRNOVICH,
Arizona Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

DANIEL BERGIN,
Director, Arizona Department of Gaming
1110 W. Washington Street, Suite 450
Phoenix, Arizona 85007

/s/ Laura Berglan
LAURA BERGLAN

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA

3 THE TOHONO O'ODHAM NATION,
4

5 Plaintiff,

6 v.

7 DOUGLAS DUCEY, Governor of Arizona;
8 MARK BRNOVICH, Arizona Attorney General;
9 and DANIEL BERGIN, Director, Arizona
10 Department of Gaming, in their official
capacities,

11 Defendants.
12

Case No. _____

**DECLARATION OF JEFFREY
EHRET IN SUPPORT OF THE
TOHONO O'ODHAM NATION'S
MOTION FOR A PRELIMINARY
INJUNCTION**

13 I, Jeffrey Ehret, declare as follows:

14 **I. BACKGROUND**

15 1. My name is Jeffrey Ehret. I am over the age of eighteen, and I am fully
16 competent to make this declaration. I have personal knowledge of the facts set forth in this
17 declaration or believe them to be true based on my experience in the construction and
18 gaming industries, my company's work with the Tohono O'odham Gaming Enterprise (the
19 "Gaming Enterprise), or information provided to me by others under my direction. If asked
20 to do so, I could testify truthfully about the matters contained in this declaration.

21 2. I am currently President of The PENTA Building Group ("PENTA"), a general
22 contractor and construction manager. I have served as PENTA's President since 2000.
23 PENTA has over 300 employees, with construction contract revenue exceeding \$350 million
24 per year.

25 3. PENTA has performed over \$4 billion in construction contracts, with the
26 majority in hospitality and gaming projects. PENTA has successfully worked with 14 Indian
27 tribes, in Arizona and elsewhere.
28

1 4. In March 2014, PENTA, through a joint venture with Hunt Construction
2 Group, contracted with the Gaming Enterprise to provide Pre-Construction Services to the
3 Gaming Enterprise for the West Valley Resort. In September 2014, PENTA, through its
4 joint venture with Hunt Construction Group, contracted with the Gaming Enterprise to
5 construct the West Valley Resort as the Construction Manager at Risk.

6 5. As PENTA's President, I am fully responsible for formulating and executing
7 the company's business plan. In that capacity, I have worked on our company's contracts to
8 provide Pre-Construction Services and Construction Manager at Risk services to the Gaming
9 Enterprise for the West Valley Resort.

10 6. PENTA has an unwavering commitment to legal compliance in all areas, and
11 to obtaining all appropriate licenses and certifications before proceeding with work.

12
13 **II. THE ARIZONA DEPARTMENT OF GAMING'S LETTER**

14 7. As a vendor working in the gaming industry, PENTA often is required to
15 obtain tribal and/or state licenses or certifications as a condition of working on gaming
16 projects. PENTA regularly works on projects in Arizona for which it is required to hold a
17 Certification from the Arizona Department of Gaming ("ADG"). As a result, PENTA has
18 maintained an ADG Certification for several years, in good standing and without incident.

19 8. PENTA also regularly works on gaming projects in other jurisdictions that
20 require tribal and/or state licenses or certifications. Although PENTA does not need an
21 ADG Certification to work on projects in other jurisdictions, any adverse action against
22 PENTA's ADG Certification could result in gaming regulators in other jurisdictions refusing
23 to license or certify PENTA or revoking a license or certification.

24 9. On or about May 26, 2015, PENTA received from ADG a letter and
25 attachments (the "Letter") stating that "the Tohono O'odham Nation is moving forward with
26 construction of a proposed West Valley casino," and that "the Arizona Department of
27 Gaming has determined that the proposed West Valley casino is not authorized." An
28 accurate copy of the Letter is attached as Exhibit A.

1 10. The Letter said any vendor “[p]roviding goods or services to any location
2 considered by the State to be unauthorized, or in pending litigation with the State concerning
3 whether it is authorized, would be outside the approval granted through State Certification.”
4 The Letter said “[v]endors providing goods or services to unauthorized facilities may be
5 subject to legal and/or regulatory risks,” which PENTA interprets as a threat to revoke, or to
6 take adverse action against, PENTA’s ADG Certification if it continues to construct the West
7 Valley Resort for the Gaming Enterprise.

8 11. Not only is the threat of being disqualified from working on gaming projects in
9 Arizona material to PENTA, as it would preclude PENTA from working on any gaming
10 projects in Arizona, but the ADG’s threat could have a “domino” effect, as other
11 jurisdictions might revoke or deny a license or certification to PENTA based *solely* on
12 ADG’s actions against PENTA’s ADG Certification.

13 12. The Letter puts PENTA in a very difficult position, as it plainly was calculated
14 to do. If PENTA continues constructing the West Valley Resort, ADG has threatened to take
15 adverse regulatory action against PENTA’s ADG Certification. Regardless of the propriety
16 of ADG’s threat, any action by ADG against PENTA’s ADG Certification would be very
17 costly to PENTA. If PENTA discontinues constructing the West Valley Resort, PENTA will
18 suffer significant financial losses and also cause over 1,300 construction workers to lose their
19 jobs. The Gaming Enterprise also might contend that the Hunt/PENTA joint venture has
20 breached its contractual obligations to the Gaming Enterprise.

21 13. Moreover, as the Letter could be read to apply even if the Gaming Enterprise
22 operates the West Valley Resort only for Class II gaming, PENTA is concerned that ADG
23 also is threatening to take adverse action against its ADG Certification (which is required
24 only for the provision of goods of services in connection with Class III gaming) even if the
25 Gaming Enterprise operates only Class II gaming at the West Valley Resort.

26 14. PENTA is concerned that if it continues construction of the West Valley
27 Resort, it will suffer adverse consequences from ADG.
28

1 I declare under penalty of perjury that the foregoing is true and correct.

2

3 Executed on June 22, 2015.

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JEFFREY EHRET

EXHIBIT A

RECEIVED

JUN 02 2015



Arizona Department of Gaming

Douglas A. Ducey
Governor

Daniel H. Bergin
Director

1110 W. Washington St, Suite 450
Phoenix, Arizona 85007
Tel 602.771.4263
Fax 602.255.3883
www.azgaming.gov

Vendor Notice

State Certification Valid Only For Authorized Arizona Gaming Facilities

May 26, 2015

Dear Vendor,

The Arizona Department of Gaming has modified the application for State Certification to include additional language as set forth below:

"Please be advised this application for certification is valid only for authorized Arizona gaming facilities. Providing goods or services to any location considered by the State to be unauthorized, or in pending litigation with the State concerning whether it is authorized, would be outside the approval granted through State Certification. Vendors providing goods or services to unauthorized facilities may be subject to legal and/or regulatory risks."

This position is already a part of every vendor's obligations and duties as a holder of State Certification; the added language merely underscores these obligations and duties. All vendors are required to know and adhere to the laws, statutes and regulations applicable to doing business with the Arizona casinos.

As you may be aware, the Tohono O'odham Nation is moving forward with construction of a proposed West Valley casino in the Phoenix Metropolitan area. If you have applied for or intend to use vendor certification with the objective of providing goods or services to the Tohono O'odham Nation's proposed casino, please be advised that the proposed casino has been and continues to be subject to legal challenges by the State of Arizona; such legal challenges remain pending. Further, based upon fraud and misrepresentation committed by the Tohono O'odham Nation against the State of Arizona, other Tribes and the public, the Arizona Department of Gaming has determined that the proposed West Valley casino is not authorized.

If you have further questions contact the public information officer at 602-255-3806

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2015, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System. In addition, I caused copies of the foregoing document to be served on Defendants by hand service at the following addresses:

DOUGLAS DUCEY,
Governor of Arizona
1700 West Washington Street
Phoenix, Arizona 85007

MARK BRNOVICH,
Arizona Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

DANIEL BERGIN,
Director, Arizona Department of Gaming
1110 W. Washington Street, Suite 450
Phoenix, Arizona 85007

/s/ Laura Berglan
LAURA BERGLAN

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

THE TOHONO O'ODHAM NATION,

Plaintiff,

v.

DOUGLAS DUCEY, Governor of Arizona;
MARK BRNOVICH, Arizona Attorney General;
and DANIEL BERGIN, Director, Arizona
Department of Gaming, in their official
capacities,

Defendants.

Case No. _____

**DECLARATION OF MICHAEL
BROWN IN SUPPORT OF THE
TOHONO O'ODHAM NATION'S
MOTION FOR A PRELIMINARY
INJUNCTION**

I, Michael Brown, declare as follows:

I. BACKGROUND AND QUALIFICATIONS

1. My name is Michael Brown. I am over the age of eighteen, and I am fully competent to make this declaration. I have personal knowledge of the facts set forth in this declaration or believe them to be true based on my experience in the construction industry, my company's work with the Tohono O'odham Gaming Enterprise (the "Gaming Enterprise"), or information provided to me by others under my direction. If asked to do so, I could testify truthfully about the matters contained in this declaration.

2. I am the President of Brown & Associates, which provides trusted Building Safety Consultants to ensure quality and safe built environments. I am a certified building inspector and have served as Brown & Associates' President since 2003. Brown & Associates has 20 employees.

3. Brown & Associates has been involved in thousands of successful projects of varying sizes. We have experience in a wide variety of projects in Arizona, including sports complexes, education facilities, office complexes, entertainment facilities, solar projects, hotels, multi-family housing, and others. Brown & Associates is or has been

1 involved with the construction of other casinos in the State of Arizona, including on the
2 reservation of the Salt River Pima Maricopa Indian Community, as well as in other states.

3 4. Brown & Associates has entered into an agreement with the Gaming Enterprise
4 to provide full building safety services at the West Valley Resort, including building plan
5 review, code consulting, building inspections, building code assessments, and accessibility
6 plan review and inspections.

7 5. As President, I manage significant commercial projects and develop business.
8 In that capacity, I have worked on our company's contract with the Gaming Enterprise to
9 provide building safety services at the West Valley Resort.

10 **II. THE ARIZONA DEPARTMENT OF GAMING'S LETTER**

11 6. As a vendor working in the gaming industry, Brown & Associates often is
12 required to obtain tribal and/or state licenses or certifications as a condition of working on
13 gaming projects. Brown & Associates regularly works on projects in Arizona for which it
14 is required to hold a Certification from the Arizona Department of Gaming ("ADG").
15 Brown & Associates obtained a Certification from ADG in 2013 and has maintained that
16 Certification in good standing since obtaining it.

17 7. Brown & Associates also regularly works on gaming projects in other
18 jurisdictions that require tribal and/or state licenses or certifications. Although Brown &
19 Associates does not need a Certification from ADG to work on projects in other
20 jurisdictions, any adverse action against Brown & Associates' Arizona Certification could
21 result in gaming regulators in other jurisdictions refusing to license or certify Brown &
22 Associates or revoking a license or certification.

23 8. On or about May 28, 2015, Brown & Associates received from ADG a letter
24 and attachments (the "Letter") stating that "the Tohono O'odham Nation is moving forward
25 with construction of a proposed West Valley casino," and that "the Arizona Department of
26 Gaming has determined that the proposed West Valley casino is not authorized."

27 ///

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1 9. The Letter said any vendor “[p]roviding goods or services to any location
2 considered by the State to be unauthorized, or in pending litigation with the State
3 concerning whether it is authorized, would be outside the approval granted through State
4 Certification.” The Letter said “[v]endors providing goods or services to unauthorized
5 facilities may be subject to legal and/or regulatory risks,” which Brown & Associates
6 interprets as a threat to revoke, or to take adverse action against, Brown & Associates’
7 Certification if it continues to construct the West Valley Resort for the Gaming Enterprise.

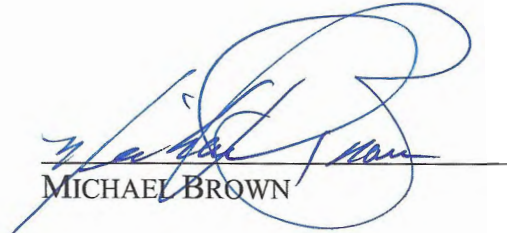
8 10. ADG’s letter was unexpected and, in my experience, unprecedented, as I am
9 not aware of ADG ever singling out a gaming facility as being “unauthorized.”

10 11. As Brown & Associates regularly works on casino projects in Arizona that
11 require a Certification from ADG, the loss of its State Certification would be disastrous for
12 the company. Given that the consequences of the loss of its Certification would be grave,
13 even a risk of the loss of the Certification is very serious to Brown & Associates.
14 Moreover, other jurisdictions also might revoke or deny a license or certification to Brown
15 & Associates based *solely* on any actions ADG might take against Brown & Associates’
16 Arizona Certification.

17 12. Although Brown & Associates is committed to its working relationship with
18 the Gaming Enterprise on the West Valley Resort, ADG’s threats are substantial and
19 threaten Brown & Associates’ viability. Brown & Associates is considering whether it can
20 bear the risk of sanctions from ADG if it continues to work with the Gaming Enterprise on
21 the West Valley Resort.

22 I declare under penalty of perjury that the foregoing is true and correct.

23
24 Executed on June 19, 2015.

25
26 
27 MICHAEL BROWN
28

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2015, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System. In addition, I caused copies of the foregoing document to be served on Defendants by hand service at the following addresses:

DOUGLAS DUCEY,
Governor of Arizona
1700 West Washington Street
Phoenix, Arizona 85007

MARK BRNOVICH,
Arizona Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

DANIEL BERGIN,
Director, Arizona Department of Gaming
1110 W. Washington Street, Suite 450
Phoenix, Arizona 85007

/s/ Laura Berglan
LAURA BERGLAN

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

THE TOHONO O'ODHAM NATION,

Plaintiff,

v.

DOUGLAS DUCEY, Governor of Arizona;
MARK BRNOVICH, Arizona Attorney General;
and DANIEL BERGIN, Director, Arizona
Department of Gaming, in their official
capacities,

Defendants.

Case No. _____

**DECLARATION OF PHILIP
WARD SIMPSON IN SUPPORT
OF THE TOHONO O'ODHAM
NATION'S MOTION FOR A
PRELIMINARY INJUNCTION**

I, Philip Ward Simpson, declare as follows:

I. BACKGROUND

1. My name is Philip Ward Simpson. I am over the age of eighteen, and I am fully competent to make this declaration. I have personal knowledge of the facts set forth in this declaration or believe them to be true based on my experience in the construction and gaming industries, my company's work with the Tohono O'odham Gaming Enterprise (the "Gaming Enterprise"), or information provided to me by others under my direction. If asked to do so, I could testify truthfully about the matters contained in this declaration.

2. I am currently a Principal of Rider Levett Bucknall Ltd. ("RLB"), which provides Project Management, Cost Management, and Advisory Services for property and construction projects. RLB has approximately 3,500 employees and over 120 offices globally, and with approximately 130 staff members in 21 offices across the North America practice group. The firm's history extends for more than two hundred and twenty-five years.

3. RLB has worked on a range of gaming (including tribal gaming) projects across the United States. Our experience includes, but is not limited to:

- Sheraton Wild Horse Pass Resort and Spa, Sacaton, AZ
- Inn of the Mountain Gods, Mescalero, NM
- Foxwoods Resort & Casino, Mashantucket, CT
- MGM CityCenter, Las Vegas, NV
- Spirit Mountain Casino, Grand Ronde, OR
- Angel of the Winds Resort and Casino, Arlington, WA
- Pechanga Entertainment Center, Temecula, CA
- French Lick Springs Resort, French Lick, IN

4. In addition to serving as a Principal of RLB since 2011, my background includes approximately 41 years of professional experience in the construction industry. I have experience in all facets of project management throughout the United States and in overseas consulting commissions, including hospitality, gaming, and tribal projects. My experience in hospitality projects dates back to 1999, when I acted as Principal-In-Charge for Phase 1 of the \$125 million Sandia Pueblo Casino development in Albuquerque, New Mexico (while with another company). I went on to work in that same capacity for their Phase 2 hotel, conference center, swimming pool, golf course and clubhouse and on five other similar Native American hospitality projects. In addition, I have worked on a variety of public and private sector hospitality and gaming projects ranging in value from \$40 million to \$350 million. My academic qualifications include: graduate course work in Civil Engineering and Business Construction Management at the University of Colorado; a Bachelor of Architecture from the University of Kansas; and a Bachelor of Environmental Design from the University of Kansas. My professional qualifications include being a Registered Architect in Arizona, Hawaii, and Kansas and certification by the National Council of Architectural Registrations Board (NCARB). My professional memberships include the American Institute of Architects and the Construction Management Association of America.

5. RLB is committed to legal compliance and is diligent in obtaining all the appropriate licenses and certifications before proceeding with work.

II. RLB'S BUSINESS RELATIONSHIP WITH THE GAMING ENTERPRISE

6. As a Principal of RLB, I am responsible for the Project Management division on mainland North America. In that capacity, I have worked on RLB's contract with the Gaming Enterprise as Project Coordinator to provide Owner's Representative/Project Management services at the West Valley Resort.

7. Prior to the West Valley Resort project, RLB did not have previous experience working with the Nation on any gaming projects (although RLB has worked with the Nation on non-gaming projects/matters). Our gaming relationship began with responding to a formal statement of qualification solicitation from the Gaming Enterprise for Project Management/Owner's Representative services in October 2013. Since that initial solicitation, and in our previous non-gaming experience, we have found the Nation and the Gaming Enterprise to be ethical and fair in all dealings.

8. For the West Valley Resort project, RLB, in partnership with Summit Project Management, has been providing Owner's Representative/Project Management services since approximately November 2013.

9. My involvement and that of the Project Management team is to provide the critical service of coordinating the efforts of the Gaming Enterprise's departments, architect, and contractors. We work on behalf of the Gaming Enterprise to obtain government-related reviews, permits, and inspection services. We coordinate with all utilities, off-site construction and acquisition of extensive amounts of Gaming Enterprise-provided equipment and furnishings. We review pay applications, change orders and schedule scenarios. When over budget and schedule, we work with the project team to bring the project back to the approved budget and schedule. When there are conflicts and project issues, we lead the project team and Gaming Enterprise to resolve, expedite, and find alternatives in delivering the project. In general, we work as an extension of the Gaming Enterprise's staff to work with the project team to deliver a successful project for the Gaming Enterprise and project team.

III. THE ARIZONA DEPARTMENT OF GAMING'S LETTER

10. On or about May 29, 2015, RLB received from the Arizona Department of Gaming (the "ADG") a letter and attachments dated May 26, 2015 (the "Letter"), stating that "the Tohono O'odham Nation is moving forward with construction of a proposed West Valley casino," and that "the Arizona Department of Gaming has determined that the proposed West Valley casino is not authorized." An accurate copy of the Letter is attached as Exhibit A.

11. The Letter said any vendor "[p]roviding goods or services to any location considered by the State to be unauthorized, or in pending litigation with the State concerning whether it is authorized, would be outside the approval granted through State Certification." The Letter said "[v]endors providing goods or services to unauthorized facilities may be subject to legal and/or regulatory risks."

12. RLB currently holds a Gaming License (V1365-3) from the Tohono O'odham Nation and a Gaming Certification (96873) from the ADG. RLB interprets the Letter as threatening adverse action against, or the revocation of, RLB's Certification, if it continues to work on the West Valley Resort project.

13. The ADG's threats are a significant concern to RLB, and may impact its work for the Gaming Enterprise on the West Valley Resort, putting four full-time positions and additional part-time positions at risk. RLB would have no choice but to discontinue work on the West Valley Resort Project if the ADG revokes RLB's Certification.

14. Additionally, as indicated above, RLB has performed work on other gaming projects in Arizona and relies on its ADG Certification to conduct that business. If the ADG revokes RLB's Certification, RLB would be barred from working on other gaming projects in Arizona.

15. Further, the loss of its Arizona Certification could negatively impact RLB's ability to work on both gaming and non-gaming projects outside of Arizona. Gaming regulators in other jurisdictions may consider sanctions levied against a company in another jurisdiction when evaluating whether to certify that company to do business with its own

1 gaming industry. RLB also may be asked on non-gaming public projects whether it has
2 ever been suspended or debarred from contract performance, such that any action by ADG
3 against RLB's Arizona Certification also might disqualify RLB from out-of-state non-
4 gaming projects.

5 16. As the Letter could be read to apply even if the Gaming Enterprise operates
6 the West Valley Resort only for Class II gaming, RLB also is concerned that the ADG is
7 threatening to take action against its Certification even if the Gaming Enterprise operates
8 only Class II gaming at the West Valley Resort.

9
10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed on June 20, 2015.

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14 PHILIP WARD SIMPSON
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EXHIBIT A



Arizona Department of Gaming

1110 W. Washington St, Suite 450
Phoenix, Arizona 85007
Tel 602.771.4263
Fax 602.255.3883
www.azgaming.gov

Douglas A. Ducey
Governor

RECEIVED

MAY 27 2015

Daniel H. Bergin
Director

Rider Levett Bucknall

Vendor Notice

State Certification Valid Only For Authorized Arizona Gaming Facilities

May 26, 2015

Dear Vendor,

The Arizona Department of Gaming has modified the application for State Certification to include additional language as set forth below:

“Please be advised this application for certification is valid only for authorized Arizona gaming facilities. Providing goods or services to any location considered by the State to be unauthorized, or in pending litigation with the State concerning whether it is authorized, would be outside the approval granted through State Certification. Vendors providing goods or services to unauthorized facilities may be subject to legal and/or regulatory risks.”

This position is already a part of every vendor’s obligations and duties as a holder of State Certification; the added language merely underscores these obligations and duties. All vendors are required to know and adhere to the laws, statutes and regulations applicable to doing business with the Arizona casinos.

As you may be aware, the Tohono O’odham Nation is moving forward with construction of a proposed West Valley casino in the Phoenix Metropolitan area. If you have applied for or intend to use vendor certification with the objective of providing goods or services to the Tohono O’odham Nation’s proposed casino, please be advised that the proposed casino has been and continues to be subject to legal challenges by the State of Arizona; such legal challenges remain pending. Further, based upon fraud and misrepresentation committed by the Tohono O’odham Nation against the State of Arizona, other Tribes and the public, the Arizona Department of Gaming has determined that the proposed West Valley casino is not authorized.

If you have further questions contact the public information officer at 602-255-3806

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2015, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System. In addition, I caused copies of the foregoing document to be served on Defendants by hand service at the following addresses:

DOUGLAS DUCEY,
Governor of Arizona
1700 West Washington Street
Phoenix, Arizona 85007

MARK BRNOVICH,
Arizona Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

DANIEL BERGIN,
Director, Arizona Department of Gaming
1110 W. Washington Street, Suite 450
Phoenix, Arizona 85007

/s/ Laura Berglan

LAURA BERGLAN

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

THE TOHONO O'ODHAM NATION,

Plaintiff,

v.

DOUGLAS DUCEY, Governor of Arizona;
MARK BRNOVICH, Arizona Attorney General;
and DANIEL BERGIN, Director, Arizona
Department of Gaming, in their official
capacities,

Defendants.

Case No. _____

**DECLARATION OF MICHAEL
BAILEY IN SUPPORT OF THE
TOHONO O'ODHAM NATION'S
MOTION FOR A PRELIMINARY
INJUNCTION**

I, Michael D. Bailey, declare as follows:

I. BACKGROUND AND QUALIFICATIONS

1. My name is Michael Bailey. I am over the age of eighteen and I am fully competent to make this declaration. I have personal knowledge of the facts set forth in this declaration or believe them to be true based on my experience. If asked to do so, I could testify truthfully about the matters contained in this declaration.

2. I am currently the City Attorney for the City of Glendale, and have served in that position since September 2013.

3. As City Attorney, I am the chief legal advisor to the City of Glendale and represent the City of Glendale, the City Council and its employees. In this capacity, I am familiar with the planned West Valley Resort by the Tohono O'odham Nation (the "Nation") and its implications for the City of Glendale. I am also familiar with the City of Glendale's decision to support the West Valley Resort.

II. GLENDALE'S SUPPORT FOR THE WEST VALLEY RESORT

4. When the Nation announced plans to construct the West Valley Resort in a portion of unincorporated Maricopa County bordering the City of Glendale, Glendale did not support the project. In fact, Glendale was a party to litigation against the Nation until August 2014.

5. Glendale now supports the West Valley Resort and acknowledges that it would improve the City's fiscal position, relieve the tax burden on Glendale citizens, and provide economic benefits for residents of Glendale.

6. In August 2014, Glendale and the Nation entered into a Settlement Agreement ("Agreement"). The Agreement settles all disputes between the Nation and Glendale, including pending litigation. Under the Agreement, Glendale expresses its support for the Resort and encourages the Nation to construct and open the Resort as expeditiously as possible.

7. The City of Glendale believes the economic benefits of the West Valley Resort would be substantial: Pursuant to the terms of the Agreement, the Nation made an immediate \$500,000 payment to Glendale and agrees to make larger payments for twenty years, beginning when the Nation commences Class III gaming at the West Valley Resort site. Specifically, the Nation agrees to make an annual payment of \$1.4 million, increasing at 2% per year, through 2026, and to pay \$900,000 per year, increasing at the same rate, for the remainder of the 20-year period.

8. The City of Glendale has factored the first payment of \$1.4 million into its 2015-16 budget. These payments, which will help Glendale balance its budget, will begin only when the Nation commences Class III gaming at the West Valley Resort.

9. The Nation recognizes the City's development and infrastructure standards and agrees to bear any infrastructure costs incurred by Glendale in relation to the project; to allow the Glendale Fire Marshall or an appropriate designee to inspect the property; to work cooperatively to avoid gaps in police, fire, or EMS coverage between the Nation's reservation and Glendale; to purchase certain utility services exclusively from Glendale at

1 commercial non-resident rates; and to pay the Glendale Convention and Visitors Bureau
2 \$100,000 per year, increasing at 2% per year, for the duration of the Agreement.

3 10. The City and Tohono O'odham Gaming Enterprise have entered into Inter-
4 governmental agreements for fire, emergency services, and law enforcement services. .
5 Additional agreements are currently being negotiated regarding the myriad of services that
6 the Resort will require in order to open by the end of the year

7 **III. THE PLANNED RESORT WILL RESOUNDINGLY BENEFIT WEST VALLEY**
8 **RESIDENTS, BRINGING LONG-TERM ECONOMIC GAINS**

9 11. The Glendale City Council has pronounced that the West Valley Resort is
10 undoubtedly in the public interest.

11 12. The Nation's revenue payments will continue to provide Glendale residents
12 tens of millions of dollars over the life of the Settlement Agreement—but only if the Nation
13 is able to engage in Class III gaming.

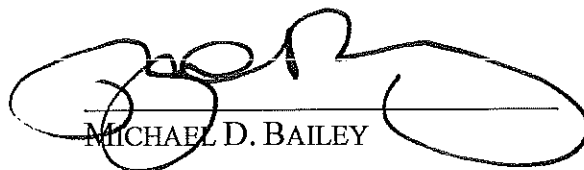
14 13. Glendale believes that the project will also result in significant employment for
15 the region with many of the jobs filled by Glendale residents.

16 14. Glendale believes that the West Valley Resort will produce significant
17 economic benefits each year for the City, including substantial tax revenue.

18 15. It is my understanding that the Nation plans to open the West Valley Resort by
19 the end of the year. In my opinion, any delay in opening the facility would be to the
20 detriment to the people of Glendale for the reasons set forth in my declaration.

21 I declare under penalty of perjury that the foregoing is true and correct.

22
23 Executed on June 20, 2015.

24
25 
26 MICHAEL D. BAILEY
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2015, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System. In addition, I caused copies of the foregoing document to be served on Defendants by hand service at the following addresses:

DOUGLAS DUCEY,
Governor of Arizona
1700 West Washington Street
Phoenix, Arizona 85007

MARK BRNOVICH,
Arizona Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

DANIEL BERGIN,
Director, Arizona Department of Gaming
1110 W. Washington Street, Suite 450
Phoenix, Arizona 85007

/s/ Laura Berglan

LAURA BERGLAN

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

THE TOHONO O'ODHAM NATION,

Plaintiff,

v.

DOUGLAS DUCEY, Governor of Arizona;
MARK BRNOVICH, Arizona Attorney General;
and DANIEL BERGIN, Director, Arizona
Department of Gaming, in their official
capacities,

Defendants.

Case No. _____

**DECLARATION OF ADOLFO F.
GAMEZ IN SUPPORT OF THE
TOHONO O'ODHAM NATION'S
MOTION FOR A PRELIMINARY
INJUNCTION**

I, Adolfo F. Gamez, declare as follows:

1. My name is Adolfo F. Gamez. I am over the age of eighteen and am fully competent to make this declaration. I have personal knowledge of the facts set forth in this declaration or believe them to be true based on my experience. If asked to do so, I could testify truthfully about the matters contained in this declaration.

2. I am currently Mayor for the City of Tolleson, Arizona, and have served in that position since 1995.

3. As Mayor, I am responsible for the advancement and financial security of the municipal organization of Tolleson. In that capacity, I am familiar with the West Valley Resort planned by the Tohono O'odham Nation (the "Nation"), as well as its implications for Tolleson. I also am familiar with the Tolleson's decision to support the West Valley Resort project.

1 4. Tolleson was the first West Valley city to support the Nation's plan to build the
2 West Valley Resort. The City strongly supports the West Valley Resort because of the
3 significant economic benefits it will provide for the people of Tolleson and the West
4 Valley.

5 5. The West Valley Resort will produce significant employment in the West
6 Valley, both during its construction and after it commences operation, which is scheduled
7 for later this year. The number of people employed at the West Valley Resort will build
8 over time, as the full resort is constructed. Tolleson expects many of its residents to be
9 employed at the West Valley Resort.

10 6. In addition to the benefits to the West Valley economy from the hundreds of
11 millions of dollars the Nation will spend to construct the West Valley Resort, I expect the
12 resort to generate several hundred million dollars per year of economic benefits for the
13 community, including generating millions of dollars of federal, state, and local tax revenue
14 each year.

15 7. The public's support for the West Valley Resort is substantial, in part because
16 of the economic benefits it will bring to the West Valley.

17 8. The West Valley Resort is scheduled to open before the end of 2015. If the
18 opening of the facility is delayed because of the actions of the Arizona Department of
19 Gaming, the people of Tolleson and the West Valley will be harmed because of the delay in
20 reaping the economic benefits the West Valley Resort will bring.

21 9. For these reasons, the City of Tolleson supports the Nation's motion for a
22 preliminary injunction.

23 I declare under penalty of perjury that the foregoing is true and correct.

24
25 Executed on June 16, 2015.

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28 

MAYOR, CITY OF TOLLESON

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2015, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System. In addition, I caused copies of the foregoing document to be served on Defendants by hand service at the following addresses:

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DANIEL BERGIN,
Director, Arizona Department of Gaming
1110 W. Washington Street, Suite 450
Phoenix, Arizona 85007

/s/ Laura Berglan
LAURA BERGLAN